

INCLUSION OF THE REGULATORY IMPACT ASSESSMENT ON DRAFTING LAWS



May 2016

1. Introduction

The application of the Regulatory Impact Assessment (RIA) in the Republic of Kosovo for draft laws and supplementation and amendment of laws was initially envisioned by Regulation no.01/2007 on the Work of the Government¹. This Regulation was later abrogated and replaced by Regulation no.09/2011 on the Work of the Government of the Republic of Kosovo² which did not envision the application of RIA during the drafting of legal acts. Due to the lack of expertise, limited budget and adoption of laws in expedited procedures, the RIA was never implemented in practice.

In May 2014, the Government adopted the Better Regulation Strategy 2014-2020 - Regulatory Impact Assessment³. This strategy derives from the demand to fulfill the goals defined in the Small and Medium Enterprises Development Strategy in Kosovo 2012-2016 with vision to 2020⁴, which envisioned application of the RIA in order to improve the legal infrastructure of doing business, as well as the Strategy for Cooperation with Civil Society 2013-2017⁵, which envisioned setting the standards for inclusion of civil society organizations in drafting and implementation of legislation.

In view of improving sustainable economic development in Kosovo, in January 2016 the Government adopted the National Development Strategy 2016-2021⁶. This strategy, too, envisions the evidence based adoption of new policies. This goal was set as a need to address the problem that laws and sub-legal acts in Kosovo are adopted without applying the RIA and without proper consultations with businesses and other interested parties which are affected by these legal acts

¹ Regulation no. 01/2007 on the Work of the Government. Article 4 accessed on 03.02.2016, see: <http://bit.ly/1Rkp1BF>


² Regulation No.09/2011 on the Work of the Government of the Republic of Kosovo, accessed on 15.01.2016, see: <http://bit.ly/1UFcGup>

³ Decision to adopt the Better Regulation Strategy, Regulatory Impact Assessment, Decision No. 03/189, on 23.05.2014, Republic of Kosovo, accessed on 02.02.2016, see: <http://bit.ly/1V65Eic>

⁴ Small and Medium Enterprises (SME) Development Strategy in Kosova 2012-2016 with vision to 2020, Strategic Objective 1: Enforcement of Legislative and Regulatory Frame to Establish and Develop SME, pg. 23, accessed on 03.02.2016, see: <http://bit.ly/1V65Eic>

⁵ Strategy for Cooperation with Civil Society 2013-2017, Measure/Strategic sub-objective 1.1. & 1.2, accessed on 02.02.2016, see: <http://bit.ly/23cES9w>

⁶ Decision to adopt the National Development Strategy 2016-2021 (NDS), Decision No. 02/71, on 22.01.2016, Republic of Kosovo, accessed on 01.02.2016, see: <http://bit.ly/1W8r0Ls>



when they are implemented. Consequently, this has resulted in opposite outcomes different from those intended through respective legal acts, and have incurred many public expenses. In view of implementing the above-mentioned strategy, in January 2016 the Government adopted the Economic Reform Program⁷. This program envisions the undertaking of specific actions by the public institutions in applying the RIA during the process of drafting legal acts and non-legal regulations which shall be described in detail further in this analysis.

One of the key supporters of the continuous application of RIA in Kosovo to improve the quality of regulations in the country is the application of the *ex Post* Evaluation, which is described in the Guideline for *ex post* Evaluation of the Legislation in the Republic of Kosovo⁸, adopted in July 2015. In relation to this, through the *ex post* evaluation, the public administration collects the data and assessments whether the achieved effectiveness justifies the incurred expenses; it also identifies possible reasons that have caused difficulties to the public institutions or failure to accomplish their goals and other damaging effects. Moreover, in its decision to implement the ex-post evaluation, the government envisioned that in the second half of 2015 two laws should be identified so they may undergo ex-post evaluation⁹, and then during 2016 to start implementing this evaluation.

Through the quality *ex-post* evaluation of legal acts in force, the Government of Kosovo orientates the proper decision-making towards improving the quality of the regulatory body by abrogating the acts in force and replacing them with new acts or by only supplementing and amending the existing ones. The ex-Post evaluation is to be completed through the methodology and application of RIA¹⁰.

⁷ Decision to adopt the Economic Reform Program, Decision No. 04/27, on 29.01.2016, Government of the Republic of Kosovo, accessed on 02.02.2016, see: <http://bit.ly/1UScNTQ>

⁸ Guidelines for the *ex post* Evaluation of the Legislation in the Republic of Kosovo, Government of the Republic of Kosovo, accessed on 12.01.2016, see: <http://bit.ly/1SxrDZh>

⁹ See 8, pg.2, item 4 of the decision of Government.

¹⁰ See 8 pg.18.

2. Regulatory Impact Assessment

The Organization for Economic Cooperation and Development (OECD) defines the Regulatory Impact Assessment (RIA) as

“a systematic approach in a critical method of assessing the positive and negative effects of the proposed and existing rules and the non-regulatory alternatives¹¹.”

Furthermore, the RIA is an essential policy tool to assist the government in assessing the impact of legal acts and non-legal regulations that regulate respective fields. The RIA is also used to examine and measure benefits, expenses and potential effects of legal acts in power or new ones that shall be adopted.¹² The RIA is the perfect regulatory tool that provides quality empirical data for policy makers and a comparative frame in which they may assess possible alternatives for solving respective problems, as well as consequences of their decisions in the country.¹³

The RIA is used as an analysis document by the policy and law makers in order to correctly define the problem that is aimed to be regulated. The RIA helps the political decision-making with specific evidence. During the drafting of the RIA the *economic, social and environmental impacts* of public policies or legal acts are mainly taken into consideration. Through the application of the RIA during the drafting of new regulations or supplementing or amending existing ones, policy makers are ensured that the actions of the government are reasonable, suitable, effective and generally less expensive.

In many countries, the RIA is applied during the initial stages of drafting the respective legal acts, or during the **ex ante** stage - based on the assumption and prediction about

¹¹ Regulatory Policy in Perspective, A Reader's Companion to the OECD Regulatory Policy Outlook 2015, Chapter 2, pg.38, OECD see: <http://bit.ly/1MPpSKm>

¹² Building an Institutional Framework for Regulatory Impact Analysis (RIA), Guidance for Policy Makers, Chapter I, pg.7, OECD, accessed on 04.02.2016, see: <http://bit.ly/1PRbmwr>

¹³ Regulatory Impact Analysis in OECD Countries – Challenges for Developing Countries, 2.1, pg. 5, accessed on 04.02.2016, see: <http://bit.ly/1V69CY5>

how things were shown earlier, rather than the assessment after their completion¹⁴. In a smaller number of states, the RIA is applied in stages after the adoption of legal acts, that is at the **ex post** stage- based on knowledge and facts, by assessing the country-confirmed facts.¹⁵

One RIA should observe the following steps:

1. Title of proposal;
2. Problem identification and definition;
3. Description of objectives;
4. Description of possible solutions (including the regulatory and non-regulatory, as well as the option of "inaction");
5. Conducting an open and public consultation with interested parties (foreign, experts, interested parties, others);
6. Assessment of expenses and possible benefits and their distribution effects (maximum in terms of quantity);
7. Description of the recommendation of the preferred option based on empirical data;
8. Definition of mechanisms and description of monitoring, assessment and reporting process on its implementation¹⁶.

Considering that today most RIAs are implemented at the initial stage, the main steps of an RIA *ex ante*¹⁷ are as follows:


- **Definition of the problem:** identification of the problem is described in detail, as well as the factors that have affected its creation. The policy/regulatory problems are mainly classified in two separate groups: *market failure*, including asymmetrical failure, obstacles to entering a market, monopolizing powers in a market, transaction expenses and many other imperfections in a market which lead to unsatisfactory results; and *regulatory failure*, which includes all the cases in which a

¹⁴ Black's Law Dictionary, Eight Edition, Bryan A. Garner – Editor's Chief, *ex-ante* definition, pg. 601, 2004, Thomson West, ISBN 0-314-151990;

¹⁵ Black's Law Dictionary, Eight Edition, Bryan A. Garner – Editor's Chief, *ex-post* definition, pg. 620, 2004, Thomson West, ISBN 0-314-151990;

¹⁶ Building an Institutional Framework for Regulatory Impact Analysis (RIA), Guidance for Policy Makers, Chapter I, pg.14, OECD, accessed on 04.02.2016, see: <http://bit.ly/1PRbmwr>

¹⁷ Regulatory Impact Analysis in OECD Countries – Challenges for Developing Countries, 2.1, pg. 36-37, OECD, accessed on 04.02.2016, see: <http://bit.ly/1V69CY5>



set of existing rules have not achieved the desired result and as such requires an update or abrogation of the respective regulations.

- **Identifying Alternative Regulatory options:** includes the definition of possible regulatory options in solving problems, as well as a detailed assessment of each option with respective evidence. These options mainly include regulations with a significant impact, regulations with a smaller impact through regulatory information based on alternative principles and forms of intervention, such as self-regulations or co-regulations that should be taken into consideration to ensure that the tool chosen to solve the problem is not disproportional to the targeted problem.
- **Data collection and administration:** includes the final stage, which may contain a variety of empirical methods such as phone calls and face-to-face interviews, distribution of questionnaires, conducting surveys and electronic consultations, cooperation between regulatory authorities (Ministries, customs authorities, agencies, statistics institutions, etc.), focus groups etc. The quantity of data required and methods of administration vary depending on the nature of the problem and the objective, but they should not be disproportionate to the RIA: the available data and information are designed to enable normal functioning and accuracy. When there is a lack of data, economic modeling is also possible, especially through models of behavior similar to the ones used in legal and economic literature, and through econometric modeling.
- **Assessment of alternative options:** is an essential stage of the RIA, which can be conducted using various techniques - mainly Cost-Effectiveness Analyses (CEA), Cost-Benefits Analyses (CBE) and Risk Analyses (RA). Always in the reviewed options the RIAs include the option "zero" – "inaction" – the option where no action is taken and the situation remains the same in relation to the problem, which is sometimes considered as "basic" or the "no change in the policy" scenario. This should not be confused with the "status quo" situation, since it includes evolution of policy problem and lack of the intervention of the new regulation. Additionally, depending on the available data and the depth of

application of the RIA, the assessment may be qualitative and quantitative, or even a combination of both.

- **Identification of the preferred policy option:** in cases when detailed evidence is available for all options considered, a comparison leads to an easy identification of the most preferred option. However, the preferred option is not necessarily the one chosen since the RIA only provides support and does not replace policy makers in choosing the most suitable option. The preferred option is mainly the subject of a deeper assessment, generally with the aim of determining the extent of future impact.
- **Provisions for the supervision and assessment:** includes specification of methods where the impact of actions for the chosen policy may be monitored over time, as well as the specification of clear and efficient updates of actions in the future. Related to this, whenever the measures may be chosen in the initial stage (*ex ante*), this helps the assessment during (*interim*) and after (*ex post*) the specific action, which should include the action during the *ex post* stage, later or in the future.

Upon the correct application of the RIA, the governments improve the quality of the regulations in the country and increase the *efficiency* (achieving the targeted objectives with the lowest costs for all parties involved) and *effectiveness* (achieving the targeted objectives) of their policy making through the respective regulation in force in the country.


Benefits of the application of the RIA in drafting laws and public policies

The application of the RIA as a tool for drafting legal and non-legal public policies has many benefits. Legal acts set out the rules that govern the daily life of businesses and citizens and at the same time they are essential for economic growth, social welfare and environmental protection. However, drafting them involves great financial expenses and social impacts. The use of qualitative RIAs to draft the regulations ensures expansion of performance, cost efficiency, as well as the quality of legal acts and administrative and implementing measures in view of their enactment nationally.

It is considered that the use of RIAs as a mechanism for setting up a quality legal regulations ensures that they:

- serve to clearly identify the objectives of the policies and are efficient in reaching those goals;
- are clear, simple, understandable and practical for the users;
- are legally grounded and based on empirical data;
- comply with the other legal acts and respective policies in the country;
- produce benefits that justify costs by taking into consideration the distribution of effects throughout the society, as well as economic and environmental effects;
- are implemented correctly, transparently and proportionally;
- reduce the costs and market distortions;
- promote innovation through market stimulus and objective-based approach;
- are compliant to the greatest extent possible with the principles of competition, trade and investment assistance on an internal and international level.¹⁸

¹⁸ OECD Regulatory Policy Outlook 2015, Chapter 1, Global Trends in regulatory policy: Evidence from new OECD survey data, Box 1.1. What is regulatory quality?, pg. 23, OECD accessed on 04.02.2016, see: <http://bit.ly/1RfKvwW>



Generally, governments that apply the RIA have identified the following four main objectives pertaining to expenses and impacts of regulations of the country:

- Inclusion of many policy goals;
- Improving the transparency and public consultations;
- Improving the understanding of the real life impact of adopted regulations, consequential benefits and expenses;
- Improving government's accountability towards society.¹⁹

3. The application of RIA in other countries

The application of the modified RIA started 20 years ago when the OECD adopted the Recommendations of the OECD Council for Improving the Quality of Governmental Regulatory as the first international standard on the quality of Regulations²⁰. Generally though, there are several common challenges that most states face when applying the RIA, such as:

- Lack of political will;
- Opposition from policy makers;
- Disregard by the public administration;
- Lack of inclusion of all stakeholders;
- Lack of professional personnel;
- Low level of knowledge about RIA;
- Lack of correct and sufficient data.²¹

Some of the developed countries that have applied RIAs suitable to the circumstances of the country, which has brought significant reforms in the legal frame and ensured the sustainable economic development of the country are the USA, United Kingdom, Canada, Australia, Mexico,

¹⁹ Building an Institutional Framework for Regulatory Impact Analysis (RIA), Guidance for Policy Makers, Chapter I, pg.24-25, OECD, accessed on 04.02.2016, see: <http://bit.ly/1PRbmwr>

²⁰ Recommendations of the Council on Improving the Quality of Government Regulation, 9 March 1995 - C(95)21/FINAL, OECD, accessed on 08.02.2016, see: <http://bit.ly/1MPwWGV>

²¹ Building an Institutional Framework for Regulatory Impact Analysis (RIA), Guidance for Policy Makers, Chapter I, pg.25-26, OECD, accessed on 04.02.2016, see: <http://bit.ly/1PRbmwr>



Ireland, Denmark, Sweden, European Union for the European regulations, etc.

The trends are, however, continuously increasing for the developing and the less developed countries, since the RIA has been generally evaluated as one of the main regulatory stimulus to improve, simplify, reduce costs, increase effectiveness, expand the groups involved in drafting and public consultations for the qualitative approval of the legal and non-legal regulatory. Countries in the region such as Croatia, Serbia, Montenegro, and Macedonia have also started to apply the RIA.

Details of the application of the RIA in developed countries and in the region are shown in the Annex to this analysis.

4. Most successful experiences of RIA application

Since there is still no ideal model adopted on an international level when it comes to the application of the RIA, various approaches have been implemented to assess the impact of the regulations depending on the targeted issues or the respective field of the policy maker. Depending on the objectives of the policies and their capacities, states have encouraged different priorities upon applying the RIA to achieve the targeted objectives such as:

- **Netherlands** has adopted the Business Effects Analysis, concentrating only on the impacts that derive from businesses;
- **Czech Republic** has adopted the Financial Impact Analysis and Impacts on the Economy, which was later expanded in the other socio-economic impacts;
- **France** has adopted the RIA ex-ante to measure the expenses of the regulations for businesses and public administration;
- **Austria** and **Portugal** have used the Financial Analysis, focusing on direct budget expenses for the governmental administration;

- **Finland** has a wide set of analyses and partial impacts that cover the budget, economy, organization and labor force, environment, society, health, regional policy and gender equality. These partial analyses are not integrated, but are conducted by various Ministries, depending on the sector they regulate based on their competencies;
- **Belgium** performs the risk assessment only in cases of health, security and environment regulations;
- **Greece, Ireland, Spain** and **Sweden** have a list of impacts that derive from the regulations;
- **Mexico** uses three types of assessments: High impact RIA, common RIA and periodic RIA²².

However, the priorities of policies that are repeated in most of the countries are especially focused in increasing the level of competitiveness of goods and services in the market, opening of markets and free movement of goods, encouraging environmental investments, labor conditions and employment, public finances, health, environment, fighting poverty, supporting and developing RIAs, and fighting informal economy.

The content of a RIA varies depending on the nature and extent of the conducted analysis. In general, countries that apply for a RIA have distinguished the preliminary process of the RIA and the complete application of the RIA (as implemented by Ireland).

Table 2: Preliminary RIA and complete RIA²³

The preliminary RIA	The complete RIA includes:
Description of the policy context, objectives and options;	Description of the policy problem;
Identification of expenses, benefits and other impacts of another option that have been taken into consideration;	Identification and description of options;
Public consultation with interested parties;	Impact analysis including expenses and benefits of each

²² Building an Institutional Framework for Regulatory Impact Analysis (RIA), Guidance for Policy Makers, Chapter I, pg.18, OECD, accessed on 04.02.2016, see: <http://bit.ly/1PRbmwr>

²³ Building an Institutional Framework for Regulatory Impact Analysis (RIA), Guidance for Policy Makers, Chapter I, pg.20-21, OECD, accessed on 04.02.2016, see: <http://bit.ly/1PRbmwr>

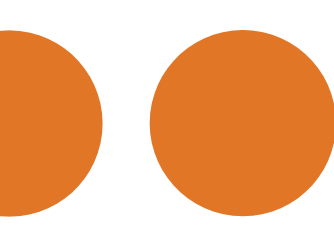
	option (including the option of "inaction");
Revising the mechanisms and specific stimuli for a successful proposal of the regulation;	Formal public consultation with interested parties;
	Applicability in the country and the compatibility of each option;
	Revising the procedures on how each policy shall be revised, and identifying the stimuli for a successful measurement and assessment of each option;
	Performance summary of each option and identifying the preferred recommendation from the most suitable option (based on data).

The preliminary RIA includes the identification stage of the regulation, which should be going to the detailed RIA (regulatory proposals), whereas the complete RIA includes only some proposals based on the limits (thresholds) set by countries themselves. These limits may be defined in terms of monetary expenses and implications of benefits (e.g. Korea on regulatory proposals, expenses that exceed 10 billion dollars in profit, 100 million dollars in the USA, and 50 million dollars in Canada) or issues such as the extent of impacts on competition, productivity, employment, opening of the market, innovation, investments, as well as the number of people impacted by the proposed regulation²⁴. Ireland and Macedonia apply both types of the RIA.

5. Required criteria for the quality application of the RIA

Upon institutionalization of the RIA, the OECD recommends a complete list with respective references for the decision making of the

²⁴ See 12 pg. 19.



regulation, in which case governments should revise the RIA and check:

1. Has the problem been defined correctly?
2. Is the government action reasonable?
3. Is the regulation the best form of government action?
4. Is there a legal ground for the regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Does the justification of the regulation justify expenses incurred?
7. Is the distribution of regulatory effects in the society transparent?
8. Is the regulation clear, consistent, understandable and accessible to users?
9. Did all interested parties have the opportunity to present their viewpoints?
10. How shall compatibility be achieved?²⁵

Moreover, based on lessons from international experience, the OECD has identified good practices of effective use of the RIA by:

1. Increasing political engagement of the RIA;
2. Sharing carefully responsibilities for programming elements of the RIA;
3. Training regulators;
4. Using analytical, consistent and flexible methods;
5. Creating and implementing strategies to collect the data;
6. Integrating the RIA in the decision-making process as early as possible;
7. Communicating the results;
8. Wide inclusion of the public.²⁶

A successful implementation of a RIA also requires an expertise at several levels:

- **Political** – this would help in providing concrete leadership, advice and recommendations to achieve the targeted objectives of the policies and address possible resistance to change;

²⁵ The OECD Reference Checklist For Regulatory Decision-Making, accessed on 23.02.2016, see: <https://www.oecd.org/gov/regulatory-policy/35220214.pdf>

²⁶ Regulatory Impact Analysis: Best Practice in OECD Countries, 1997, pg.7, accessed on 25.02.2016, see: <http://www.oecd.org/gov/regulatory-policy/35258828.pdf>

- **Legal** – to provide advice and recommendations in relation to the application and interpretation of the legal instruments, diverse laws and respective jurisdiction;
- **Economic** – RIA assesses economic expenses of proposed regulations and use of economic data for evidence-based analyses;
- **Communication** – important to manage internal, inter-institutional and external consultations with interested parties (businesses, non-governmental organizations, independent regulators, independent agencies, various associations).²⁷

In view of collecting qualitative data upon application of the RIA, states have institutionalized various mechanisms such as: “*Testing Panels of Businesses*” in Denmark²⁸ to assess regulatory obstacles that businesses are facing, as well as “*Focus Panels*” which are used to acquire data on the impact of bills with specific impact on economic sector²⁹.

The methods used by states during the drafting phase of the RIA in relation to data collection, stimuli that are taken into consideration and their calculations vary, such as: Cost-benefit analysis, Cost-efficiency or expenses-foreign production analysis, budgetary or fiscal analyses, socio-economic impact analyses, risk assessments, outcome analyses, cost compliance analysis and test of impact on businesses³⁰.

6. Application of RIA in Kosovo


In Kosovo it is initially envisioned to include the Regulatory Impact Assessment for Better Regulation 2014-2020, which describes concrete steps based on the Action Plan for

²⁷ See 12 pg. 35-36

²⁸ See 12 pg. 32.

²⁹ Regulatory Impact Analysis (RIA) Inventory, 2004, OECD, accessed on 29.02.2016, see: <http://www.oecd.org/gov/regulatory-policy/35258430.pdf>

³⁰ See 12 pg. 46.



the Inclusion and Application of the RIA in Kosovo. Annex II of this Regulation³¹ shows strategic indicators of results on the reforms of the existing legislation to increase competitiveness. Also shown is an environmental impact assessment:

1. Drafting the annual retrospective analyses from each regulatory authority, by identifying the optimization possibilities;
2. 20% reduction of administrative load of compatibility with the regulatory frame for fields of intervention, assessed through the application of the Standard Cost Models (SCM), until 2020;
3. Drafting annual proposals with the purpose of reducing regulatory load from each regulatory authority for their regulatory fields, calculated based on the SCM and respective indicators (doing business, economic freedoms, etc.);
4. Annual assessment of at least five key sectors by identifying the main obstacles, as well as adopting amendments in the legal framework to apply the proposed solutions that are derived from the regulatory impact assessment;
5. The increase of circulation in chosen sectors, at least twice during the next two years after the implementation of solutions for the identified obstacles, as well as a 10% increase in investments in these sectors, compared to past trends;
6. Development of annual training programs, by covering the following fields: analysis of regulatory obstacles in the value chain, analysis of international indicators and analysis of the SCM (since 2014).


All the above-mentioned objectives have not been fulfilled (except item VI, where 1-2 training sessions were held), since the RIA has not become functional whatsoever and has no legal effect.

The draft Law on Normative Acts, which establishes the legal infrastructure for implementation of the RIA in the country, has not yet been adopted. Pursuant to the Legislative Plan for 2016³², the adoption of the draft Law on Normative Acts is planned to take place by 29 April 2016 at the latest.

Actions planned to be fulfilled during 2014 and

³¹ Strategy for Better Regulation 2014-2020, Annex II, pg.26-34, Office of Prime Minister, Government of the Republic of Kosovo, accessed on 25.03.2016, see: <http://bit.ly/1RVMbi3>

³² Legislative Program for 2016, Office of Prime Minister, pg.2, see: <http://bit.ly/1V3va7V>



2015 are carried over to the following years of the Strategy, which in practice shall create a legal and institutional overload and no real reform of the public administration in implementing a qualitative RIA. This is due to the fact that after the adoption of the draft Law on Normative Acts, the Unit for Better Regulations shall be created, the staff shall be recruited, the sub-legal acts of the basic law shall be drafted and published, the Manual for the Regulatory Impact Assessment shall be adopted, the officers of the public administration shall be trained, and only then shall the RIA be applied in the country. In practice, the RIA may be implemented only in 2017 and only for some draft acts.

7. Conclusions and recommendations

Based on the successful experiences of countries in the region, as well as regulatory envisioned for the application of the Regulatory Impact Assessment for legal draft acts, there are a number of findings based on comparative analyses and recommendations, which the responsible public institutions are encouraged to take into consideration and include during the drafting of the Law on Normative Acts, respectively the part that regulates the application of the RIA, as well as the institutional and administrative mechanisms in the effective application of the RIA, and the steps that shall be undertaken in completing the objectives specified in the Program for Economic Reforms, as follows:

- I. To clearly define how many legal acts shall undergo the process of the Regulatory Impact Assessment, because according to the National Development Strategy, it is envisioned that the RIA shall be applied on average for 20 new laws adopted by the Assembly each year; whereas, the Program for Economic Reforms (PER) defines piloting and implementation of the RIA for three draft acts in 2017, and five draft acts in 2018.
- II. To synchronize and create a clear reflection of actions that shall be undertaken by the ex-post assessment and the RIA, so that the regulatory reform in the country is organized efficiently and effectively. By sharing clearly and consulting jointly the agendas of both processes for the selection of legal acts or draft acts that shall be submitted to these two methods of assessment (ex-post and regulatory impact). The interconnection and coordination of actions of both processes avoids double actions on same issues and provides the general quality of the applied regulatory system in Kosovo. This helps shorten the prolonged periods of drafting laws, facilitate the public administration and increase the efficiency in the process of drafting laws, bypass and doubling services that regulate same matters, reduce expenses, and avoid overloaded administrative procedures.
- III. The draft Law on Normative Acts that shall include the entering into force and application of the RIA shall include and clearly specify:

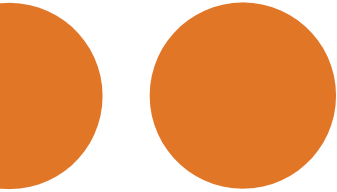
- a) Revision and simplification, as much as possible, during the governmental legal drafting. Instead of the Explanatory Memoranda and Concept Documents that are currently applied in the process of legal drafting, remove entirely the Explanatory Memorandum and the Financial Impact Assessment, whereas the Concept Document is replaced with the Statement or the Report on the Regulatory Impact Assessment, which shall include the Financial Impact Assessment because of the RIA.
- b) The correct definition of the inclusion of legal draft acts or even sub-legal draft acts (in relation to this, it is recommended to apply it for both legal categories since they regulate a joint range of respective fields). Considering the low financial and professional capacities of the country, this may be applied separately:
 - i. apply the RIA only for the legal draft acts until 2019; and then
 - ii. apply the RIA for all legal and sub-legal draft acts from 2020;
- c) Describe clearly the method of selection of normative draft acts which shall be submitted to the RIA. Pertaining to this, the selection criteria of drafting acts to be fulfilled through applying RIA must be defined, and they shall include:
 - i. **Legal criteria** that include the range of all legal obligations that shall be fulfilled in view of implementation of international obligations that Kosovo has taken upon itself during a certain period, such as continuously observing basic principles of the European Union legislation, and the approximation of national regulations with legal obligations specified in the Stabilization and Association Agreement with Kosovo.
 - ii. **Economic criteria** on possible impacts that shall derive from entering into force of those draft acts, in monetary value, e.g. legal draft acts that shall have an impact in the amount of ten million euro, or legal draft acts that shall have an impact of one million euro in terms of their implementation costs;
 - iii. **Administrative and technical criteria** which must be applied in view of improving the quality and fulfilling the regulatory reform in the country, while focusing on that which has an effect on doing business, supporting entrepreneurship, developing SME, ensuring a regulatory reform and at the same time a sustainable

development of the country. This encompasses ensuring and observing market principles, increasing competitiveness, ensuring the quality of goods and services, increasing the level of investments, etc.

- d) Draft **The Annual Plan for the Regulatory Impact Assessment** and update the same annually by defining the legal draft acts that shall be submitted to the RIA. These shall be in harmony with plans specified in the Annual Governmental Legislative Plan. Setting this plan as a legal obligation shall reduce the possibility of ignoring the application of the RIA in public institutions during the drafting phase of their legal and non-legal policies.
- f) Specify the **responsible institution** that shall supervise the observing of the RIA process, assess the quality of the RIA applied in the legal draft acts and non-legal regulations, comment, revise and its (drafted RIA's) supplementing and amending, specified in the Draft Law on Normative Acts.
- g) Specify what impacts shall include the Regulatory Impact Assessment. Pertaining to this it is recommended to include the Economic, Social and Environment Impact Assessment. However, leave the possibility that, depending on the nature of the legal or non-legal regulations and the objective in the specific field, to also include other assessments, such health, competition, employment, etc.
- h) Specify the three main types of analyses that shall be used in applying the RIA (it is mainly recommended to apply the Cost-Benefits Analysis, Cost-Effectiveness Analysis and Multiple Criteria Analysis), but not limit only to them. This is because, as a consequence of the lack of satisfactory data overall in the country, a need to apply other types of analyses to draft quality RIAs shall arise (such as: Risk Analysis, Budget-Fiscal Analysis, Analysis of Consequences, etc.).

- IV. Drafting the Manual on Methods and Techniques of Applying the RIAs in Kosovo shall include a broad consultation and sufficient time for all interested parties to present their viewpoints. There will also be an increased focus in the inclusion of businesses, agencies, institutions, civil society organizations, and other institutions that address drafting and application of policies with high social impact, and which should benefit from qualitative application of the RIA during

their work;

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- V.** Inclusion of professional government officers for specific fields, representatives of regulatory authorities, representatives of non-governmental organizations and businesses in professional trainings on drafting quality RIAs, techniques and methods used, organizing and calculating data, selection of correct options and setting up measuring mechanisms for the supervision of effects of regulations applied in the country or respective fields shall be regulated continuously and permanently by the public institutions.
- VI.** Upon the creation of an electronic database that shall be used to draft the RIA and observing the RIA for legal draft acts or non-legal regulatory, institutions responsible for its creation and maintenance shall ensure that they include:
- i. all the saved data, which can also be accessed by international institutions which address the regulatory impact assessment of the regulatory of the countries across the world (i.e. OECD);
 - ii. continuous statistical data, the communication of which constitutes legal obligations (e.g. EUROSTAT), as well as those required by international obligations the state has taken upon (e.g. SAA);
 - iii. collected data shall be of high quality and realistic and, as required, shall be applied with the RIA standards, as they shall serve other purposes, e.g. measuring units for other public policies that are related to those the RIA has been applied to.

Annex 1: Application of the RIA in developed countries, EU and countries in the region

STATE:	Application of RIA:	Non-application of RIA:	Financial criterion for the application	Supervising Institution of the RIA:	RIA Document:
USA	Secondary legislation of Federal Agencies;	<ul style="list-style-type: none"> - Legislation of Independent Agencies (i.e. Federal Trade Commission, Securities and Exchange Commission, etc.). - Legislation that is reviewed in the Congress (i.e. Affordable Care Act "Obamacare"). 	"Major" federal regulatory that meets several quality and quantity criteria including expectations of their impact at the amount of at least 100 million USD;	<i>Office for Information and Regulatory Affairs</i> -Organization: central level; -Issues the respective Opinion but not mandatory to be observed;	"Notification on the Proposed Decision Making"
Canada	Federal regulations;		Main regulations of the country including expectations of their impact at the amount of at least 50 million USD;	<i>Regulatory Affairs Sector/ Treasury Board of Canada Secretariat;</i> Next, Expertise Center of the Regulatory/ Treasury Board of Canada Secretariat;	<i>Statement of the Regulatory Impact Analysis;</i>
Australia	Regulations in total;	In cases of the lack or extraordinary circumstances, a regulatory project with significant potential impacts on the business or the non-profitable sector cannot be sent to the Cabinet or other decision makers if the drafting of the respective regulation did not act in		<i>Office of Best Practice Regulation/ Department of the Prime Minister and Cabinet;</i>	<i>Statement of the Regulatory Impact</i>

	compliance with the requirements of the		
Mexico	Regulations in total;	<i>National Regulatory Improvement Commission;</i> -Organization: central level; -Issues the respective Opinion but not mandatory to be observed;	<i>Regulatory Impact Analysis;</i>
Sweden	Regulations in total (new and supplemented-amended);	<i>Better Regulation Council - Swedish Agency for Economic and Regional Growth;</i> -Organization: central level but an independent agency; -Issues the respective Opinion but not mandatory to be observed;	<i>Regulatory Impact Analysis;</i>
New Zealand	Regulations in total;	<i>Productivity Commission of New Zealand/ RIA government cabinet sector</i> -Organization: central level or an independent agency; -Issues the respective Opinion but not mandatory to be observed;	<i>Statement of the Regulatory Impact</i>
European Union	All legal and non-legal acts, implementation and delegation acts, which are expected to have	<i>Regulatory Scrutiny Board - European Commission;</i> <i>Directorate for Regulatory Impact Assessment - European Parliament;</i>	<i>Impact Assessment Report;</i>
Croatia³³	All legal draft	<i>Legal Office of the Government of the Republic</i>	<i>Assessment Statement</i>

³³ Act on Regulatory Impact Assessment, The Croatian Parliament, 15 July 2011, accessed on 15.02.2016, see: <http://bit.ly/1qJB29R>

	acts described in the Annual Plan of Normative Acts;		<i>of Croatia;</i> -Organization: central level -Issues the respective Opinion that must be adopted;	<i>of the Regulatory Impact;</i>
Serbia³⁴	All legal draft acts described in the Annual Plan of Normative Acts;	Sub-legal acts;	<i>Government Office for Regulatory Reforms and Assessment of Regulatory Impact;</i> -Organization: central level -Issues the respective Opinion that must be adopted;	<i>Statement of the Regulatory Impact Analysis;</i>
Macedonia³⁵	All legal draft acts described in the Annual Plan of Normative Acts;	Sub-legal acts;	<i>Office for Regulatory Reforms and Regulatory Impact Assessment;</i> -Organization: central level; -Issues the respective Opinion that must be adopted;	<i>Statement of the Regulatory Impact Analysis;</i>
Montenegro³⁶	All the new regulations and supplementing and amending of acts in power, but only those with economic impacts;		<i>Council for Regulatory Reforms and the Improvement of the Business Environment;</i>	<i>Regulatory Impact Assessment;</i>

³⁴ Regulation on the Office for Regulatory Reform and Regulatory Impact Assessment (RIA), accessed on 16/02/2016, see: <http://bit.ly/1XxkBI0> and "Towards Better Regulation – Regulatory Impact Assessment in Montenegro", Institute Alternativa, accessed on 20.02.2016, see: <http://bit.ly/1SCDDIV>

³⁵ Regulations Governing Regulatory Impact Assessment, Republic of Macedonia, Ministry of Information Society and Administration, September 2013, accessed on 21.02.2016, see: <http://bit.ly/1qJAZe4>
"Towards Better Regulation – Regulatory Impact Assessment in Montenegro", Institute Alternativa, accessed on 20.02.2016, see: <http://bit.ly/1SCDDIV>

³⁶ Montenegro Assessment Report 2013, SIGMA Country Assessment Reports, OECD (2013), accessed on 17.02.2016, see: <http://bit.ly/1Q9oXiS>

GAP Institute is a Think-Tank established in October 2007 in Kosovo. The main goal of GAP is to attract professionals in order to create an environment of professional development and research, which is encountered in similar institutions in western countries. This also provides the opportunity for Kosovars to research, develop and implement projects with the aim of advancing Kosovo society. This Institute's priority is to mobilize professionals in addressing economic, political and social challenges of the country. The main goals of GAP are to fill the gaps between the Government and the citizens, and also fill the gaps between problems and solutions.

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