

AN EVALUATION OF THE QUALITY OF IMPACT ASSESSMENT: THE CASE OF SLOVAKIA AND SLOVENIA

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Regulatory reforms in Europe and OECD countries in the last decade have focused on various tools that would improve 'regulatory quality'. Impact assessment (IA) is considered to be a tool that assists decision-makers in making choices by systematic appraisal of the potential effects (fiscal, social, economic and other) of proposed legislation. IA is a relatively new tool introduced into the legislative systems of CEE countries. This article intends to assess in a systematic and critical way institutional framework for IA in Slovakia and Slovenia, as well as the quality of information contained in regulatory impact assessments as part of the explanatory memoranda. The aim is to demonstrate the gap between the formal framework and the reality of IA, and to explain why this has occurred.

I INTRODUCTION

The notion of ex-ante policy Impact Assessment (IA) was introduced in the late 1990s² in OECD countries, followed by CEE countries in early 2000.

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² *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*. Paris: OECD, 1995.

With the OECD declaration on regulatory quality in 1995,³ it provided the first international standards in this policy area, endorsed at the highest possible level by its Member States. IA became a fundamental component of the smart regulatory state advocated by international organizations because of its systematic consultation, criteria for policy choice, and the economic analysis of how costs and benefits of proposed regulations affect a wide range of actors. Modern legal systems have introduced the obligation of regulatory authorities to perform an *ex ante* Impact Assessment (during the process of drafting and prior to law approval).

Although IA was initially developed as a means of assessing the impact of regulation on businesses and was primarily concerned with reducing regulatory and administrative burdens in an era of deregulation, it provides a useful framework for assessing regulations by using several techniques, including the analysis of costs and benefits which can be also used in the social and poverty reduction sector with some adaptations. Many studies assume that the availability and use of information from impact assessment (IA) leads to positive changes in law-making and quality of outcome.⁴ Thanks to the information provided by IA accountability and legitimacy of any law-making system also improves.⁵ According to both OECD and European Commission⁶ intergovernmental agreements, a system of *ex ante* IA (systematic and consistent assessment of the likely effects of a range of proposed programmes or regulations such as draft laws), is an integral part of good government practice.⁷

The European Commission initiated efforts to improve the quality of European regulation and legislation under the concept of 'better regulation' and as part of the Lisbon strategy for growth and jobs. Impact assessment (IA) became

³ See Renda, Andrea. *The Development of RIA in European Countries: An Overview*. Draft working paper available at <http://ssrn.com/abstract=1679764> (January 2011). See also Robert W. Hahn and Robert E. Litan, *Improving Regulatory Accountability* (Washington D.C.: Brookings Institution Press, 1997); *Regulatory Impact Analysis: Best Practice in OECD Countries* (Paris: OECD, 1997); *Guiding Principles on Regulatory Quality and Performance*, OECD, 2005. Available at <http://www.oecd.org/dataoecd/19/51/37318586.pdf> (January 2011); Mandelkern Group Report, Final Report, Brussels, 13 November 2001. Available at <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/mandfinrep.pdf> (January 2011). See also *Impact Assessment in the Commission – Guidelines*, adopted by European Commission, 2002. Available at http://europa.eu.int/comm/secretariat_general/impact/index_en.htm (January 2011).

⁴ Robert W. Hahn and Robert E. Litan, *Improving Regulatory Accountability* (Washington D.C.: Brookings Institution Press, 1997).

⁵ *Impact Assessment in the Commission – Guidelines*, adopted by European Commission, 2002. Available at http://europa.eu.int/comm/secretariat_general/impact/index_en.htm (January 2011). *Regulatory Impact Analysis: Best Practice in OECD Countries* (Paris: OECD, 1997). *Guiding Principles on Regulatory Quality and Performance*, OECD, 2005. Available at <http://www.oecd.org/dataoecd/19/51/37318586.pdf> (January 2011).

⁶ 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.

⁷ Declaration 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty, 1997.

the main tool of these efforts. 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 legislation⁸. Since then Impact Assessment has been firmly established in the European Commission where IA is a tool for transparent and accountable governance in multi-level political systems. Impact assessment is applied to all items on the Commission's Work Programme covering regulatory proposals, White Papers, expenditure programmes and negotiating guidelines for international agreements. Social, economic and environmental IA in an integrated methodology is now becoming an obligation for policy makers in all EU countries.⁹

Since then many European member states, including new ones, have adopted Better Regulation programs and legislative frameworks for the introduction of impact assessment (IA) as a tool for the improvement of the regulatory processes. Individual member states are at varying stages with the implementation of their IA processes. The diversity of legal cultures, the various models of IAs adopted and different levels of commitment towards IAs 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 IA into national legislation in relation to these principles.

As such, it is an integral part of the policy design process and allows politicians to take their decisions in light of the best available evidence. The lack of systematic impact assessment has, in turn, created favourable conditions for the initiation of draft laws, which may involve high social, economic and environmental risks during the implementation phase, as well as frequent amendments and an unsure legal environment which influences the economy and society.

⁸ For evolution of impact assessment use in the European Commission see Radaelli 2005 and 2010. In most OECD countries IA became an integral part of the policy appraisal and evaluation process. See *Next Steps – In Support of Competitiveness and Sustainable Development*, commission report on impact assessment, SEC(2004)1377 of 21 October 2004.

⁹ 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. See Claudio M. Radaelli, "How context matters: regulatory quality in the European Union," *Journal of European Public Policy*, 12, 5 (2005), 924–943.

At the moment, IA implementation is not a formal requirement for EU member states, in fact provisions of European institutions about IA are non-binding recommendations. Nevertheless, it was noted that with the full implementation of the European Commission's impact assessment system in 2004, it became necessary for member states to develop their capacity for IA in order to contribute to the Commission's assessment and to indicate, wherever possible, the likely broad impacts of significant and substantial amendments that they wished to make during the negotiation of European regulation.

This paper looks at the case studies of Slovakia and Slovenia for the existence and quality of IA in the explanatory memoranda of draft laws. These are required by national legislative frameworks on the proposal of draft laws and other rules. This paper looks at two levels: first, the formal framework and requirements for IA and public consultations in a national setting; second, the actual practice of IA as manifest in information contained in the explanatory memoranda attached to draft legislation. In this way, a preliminary and partial evaluation of a country compliance with the normative requirements and/or recommendations of the EU Commission is also provided and general capacity to participate in IA on EU level can be judged.

Methodological Approach

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 distinguishes between two approaches to measurements of quality: indicators and tests.¹⁰ 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 al¹¹ 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, research will take yet a different approach and will focus on the quality of information on IA from the perspective of a decision-maker (government) who should decide on the appropriateness of a certain policy by way of the information prepared by individual ministries and contained in the explanatory memoranda attached to draft laws. The IAs are not judged by their validity, truthfulness or the appropriateness of their 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

¹⁰ Hahn, W. Robert et al, *Assessing the Quality of Regulatory Impact Analyses*, Working Paper 00-1 (Washington D.C.: Brookings Joint Center for Regulatory Studies, 2000).

¹¹ See *Regulatory Impact Analysis: Best Practice in OECD Countries* (Paris: OECD, 1997).

content components of IA, details of analysis and consultation process. All three criteria are analyzed against the benchmark of the European Commission, 'Impact Assessment: Next Steps' and OECD.

Content components of IA: Typically, an IA describes a policy problem, identifies alternative solutions to achieve the policy objectives, assesses possible effects and describes measures to be taken.¹² European Commission 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 impact analysis looks into details of the analysis conducted in individual areas, such as fiscal, social, economic and environmental areas. We look into depth of analysis and whether IA provides information, data and analysis to support the assessment of intended and unintended impacts of future policies. We will differentiate between the 'internal' (impact on state) and 'external' (impacts on society) impacts¹³ as the advantage of IA also lies in its ability to expand the range of impacts relevant to decisions to external impacts affecting interests other than those to of government.

The third criterion of the consultancy process looks into the how a range of social groups have been identified and involved in contributing to the analysis and weighting of potential costs and benefits of a policy. According to IA literature, all stakeholders have to be sufficiently involved throughout the

¹² See *Next Steps – In Support of Competitiveness and Sustainable Development*, commission report on impact assessment, SEC(2004)1377 of 21 October 2004.

¹³ Katarína Staroňová, "Regulatory Impact Assessment: Formal Institutionalization and Practice," *Journal of Public Policy*, 30, 1 (2010), 117–136.

decision-making process, particularly if plans are controversial. The opportunity to make comments and objections is an important element of this, and thus we look how these are presented in the explanatory memoranda.

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

- a) *pro-forma IA* – 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 IA* – 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 IA* – these inform and challenge policy making; in our case they show other than just fiscal consequences with a relatively good precision of data formulation

The paper proceeds from a simple thesis that the problems of IA implementation relate to insufficient willingness of governments to incorporate IA into existing policy-making processes. Formally, they do so by adopting relevant legislation because they want to achieve legitimacy in international contexts, not because they have carefully examined the real opportunities of the IA process.

2 FIRST STEPS: INSTITUTIONALIZATION OF IA IN SLOVAKIA AND SLOVENIA

As a part of a world wide trend towards a *Better Regulation* agenda, both countries have adopted the full document claiming principles of better regulation – Slovenia in 2005¹⁴ and Slovakia in 2007¹⁵. Thus, although both countries aspire to the better regulation principles, only in Slovenia have these materialized into practice, particularly in the agenda of administrative burdens. The *Better Regulation* topic in Slovakia has never gained much attention since being launched during process of more comprehensive reforms (e.g. fiscal, tax, pension, social, etc.). In Slovakia, some fragments of intention for better regulation, and IA use, is to be found in the *Strategy of competitiveness of Slovakia until 2010* (the so-called Lisbon Strategy for Slovakia) and its Action Plans.

¹⁴ Slovenia's Development Strategy and *Programme of Measures for Reduction of Administrative Burdens*.

¹⁵ Government Resolution No. 833/2007 on *Better Regulation Program* and *Action Plan of Reducing Administrative Burden on Businesses in 2007-2012*.

The requirement to apply ex ante regulatory impact assessment to draft legislation was introduced to both countries prior to the development of the Better Regulation documents and are anchored in the Rules of Procedure, mostly as a reaction to pressure from the European Commission and other relevant international organisations, such as the OECD. In Slovakia, it was the amendment in November 2001¹⁶ to the Rules of Procedure of the Government (so called Legislative Rules) requiring impact assessment to be part of Explanatory Memorandum. These followed the recommendation of the Audit of state administration (so called Functional Review) prepared a year prior to that. In Slovenia, it was the amendment in July 2002 to the Rules of Procedure of the National Assembly of Slovenia (article 115) where any draft law originating from the Cabinet had to include a description of the impacts of the proposal. Thus, in Slovenia, it was Parliament that played an important role in changes, also later when signing *The Act on Cooperation between the National Assembly and the Government in EU Affairs*¹⁷ in 2004, in which the Slovene Government is obliged to carry out the assessment of the impact and implications of the draft EU affair, in particular the aspects of the necessity of amending the regulations, the implications for the budget, the impact on the economy, the impact on public administration and the impact on the environment. However, some earlier needs for IA are recognized in the document from 2003 (*The Strategy on the Development of the Public Sector in the years 2003–2005*).

The next stage of development in Slovenia was focused on the reduction of administrative burdens. Initial activities for the implementation of strategies started later in 2003, with the preparation of methodology for reduction of administrative burdens. In November 2005, the Government of Slovenia adopted *The Programme of Measures for Reduction of Administrative Burdens*, implementation of which the Ministry of Public Administration became responsible. The measures were previously harmonized with all responsible ministries and also with the Slovene Chambers of Commerce and Craft. The Ministry of Public Administration prepared: *Methodology for Implementation and Supervision of Statements on Reduction of Administrative Burdens and Participation of Interested Public*, formed to follow two components of legislative procedure: analysis of the decision effects and participation of the

¹⁶ 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.

¹⁷ Article 9 stipulates that: „Together with the draft positions of the Republic of Slovenia, the Government shall forward to the National Assembly an assessment of the impacts and implications of the draft EU affair for the Republic of Slovenia and the assessment of the impacts and implications shall comprise in particular the following aspects: the necessity of amending the regulations, the implications for the budget, the impact on the economy, the impact on public administration, the impact on the environment.” (The Act on Cooperation between the National Assembly and the Government in EU Affairs, Official Gazette of RS, No. 34/2004).

interested public. The Statement on Reduction of Administrative Burdens and Participation of Interested Public serves as a convenient tool for early warning of possible effects of regulations.

In Slovakia, the Cabinet approved *Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic* and entrusted 4 line ministries with the development of unified methodologies for particular areas of IA (Ministry of Finance for fiscal IA, Ministry of Economy for business environment and employment, Ministry of Environment for environmental IA and Ministry of Labor, Social Affairs and Family for IA on households).

Formal Institutional Framework

Impact assessment is part of a system based on clear mandatory requirements, scope and directions. The scope can be broad or narrow, but it is clear that an IA is not an ad-hoc or voluntary effort to examine impacts. Thus, in this section we examine the institutional framework of IA - that means the system within which a mandatory and consistent IA process occurs in both countries.

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 in explanatory memoranda. The first of these is '*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 IA*' was passed after a long discussion by the Government, this document is to guide in more detail, the process of IA preparation. Among other issues it has introduced a two phase process with a requirement for applying the so called „quick test“ on draft legislation going to Government sessions.

In Slovenia, the above mentioned *Act on Cooperation between the National Assembly and the Government in EU Affairs* and *Rules of Procedure of the National Assembly*, have established the obligation to carry out the assessment of the impacts of new regulations on the economy, public administration and environment. Accompanying assessment in explanatory memoranda is also mandatory due to the Law on Public Finance, Law of Environmental Protection and new Government Rules of Procedure. This legal framework incontestably provides formal “demand” for originators of draft laws (line ministries and other

central bodies) and regulations to submit a report with data and options on the assessment of impacts.

In both countries, the analytical information from the process of assessing impacts of proposed legislation has to be given in explanatory memoranda, which is obligatorily accompanying a draft law. The explanatory memoranda of the draft law is a normatively structured legal document: *introduction, text of draft law, explanation of draft law and note on impact assessment*. In introduction, the originator of a draft law has to specify why it is necessary to adopt it, and whether it is consistent with EU laws. 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 in different parts of the explanatory memoranda, some are missing and overall, the presented information is relatively disorganized and the logic is difficult to follow.

Thus, formal regulatory framework exists in both countries under examination, so we cannot talk about any legal inhibition or negligence towards IA activities. However, the formal framework already exhibits some serious deficiencies in understanding what IA is and how it should be organized which, in turn, affects the performance and output of the IA process. Table 1 contrasts how individual elements of IA are understood and recommended by Mandelkern Group Report¹⁸ and implemented on the level of the European Commission and the examined countries Slovakia and Slovenia.

TABLE 1 – COMPARISON OF FORMAL FRAMEWORK REQUIREMENTS FOR IA IN EU AND SLOVAKIA AND SLOVENIA (BENCHMARK OF MANDELKERN REPORT)

Elements (Mandelkern Report)	European Commission	Slovak Republic	Slovenia
Executing body	Directorates general	Originator (Individual line ministries and other central bodies)	Originator (Individual line ministries and other central bodies)
Coordinating and supervising body	Impact Assessment Board (IAB)	None	None

¹⁸ Mandelkern Group Report, Final Report, Brussels, 13 November 2001. Available at <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/mandfinrep.pdf> (January 2011).

Guiding document	Impact Assessment Guidelines (SEC 2005 791) Minimum Standards for Consultation in the IA Process (COM 2002 704)	Legislative rules of the Government of Slovakia (2001) Joint Methodology for the IA (2008)	Rules of Procedure of the National Assembly of Slovenia ¹⁹ (2002) Slovenia's Development Strategy, June 2005 (Measurement 37: Regulatory Impact Assessment) The Programme of Measures for Reduction of Administrative Burdens (2005)
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“ - „justification of need for new draft legislation and current context analysis“ (Legislative Rules), however, not justification of intervention per se	- „an evaluation of the current situation and reasons for enacting the law“
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“ (yes-no question type added since 2008 without need to further specify or analyze the options)	- measurable aims - no option identification per se - the presentation of regulation in other legal systems
Assessment of impacts	- extended impact assessment	- assessment of impacts according to questions set in Joint Methodology since 2008	- assessment of impacts with focus on fiscal and administrative burdens
Effected groups identification	- part of problem identification	- no	- no

Consultation process	<ul style="list-style-type: none"> - start as early as possible - who, how, when consultation took place (including consultation plan in roadmap) - consultation documents (White Book, Green Book) 	- no (voluntary)	Methodology for Implementation and Supervising of Statement on Reduction of Administrative Burdens and Participation of Interested Publics (October 2005)
Comparison of options	- cost benefit of each option	- no	- no
SME	- SME test	- part of economic impact since 2008	n/a
Legal system	- yes (test of subsidiarity)	<ul style="list-style-type: none"> - compliance with general legal framework - compliance with EU legal framework (part of Explanatory Memorandum) 	<ul style="list-style-type: none"> - 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)	- no

Source: updated, based on Staroňová (2007); Staroňová, Pavel and Krapež (2007).

Options. Despite all the recommendations included in the EC guidelines or OECD standards, neither the Slovak nor Slovene documents ask for explicit consideration of options or alternatives to regulation. In Slovenia this is interpreted as a comparison of draft law with other legal systems. In Slovakia, new methodology asks only a yes-no question as to whether options have been considered, but not what the actual contents are of the options or for their comparison. This is a serious methodological problem as IA is a tool that should assist decision making, by making the trade-offs among possible options more visible to the decision maker.

Consultation. Contrary to OECD terminology and practice, both in Slovakia and Slovenia equate the IA consultations with the formal inter-ministerial review process, related mostly to legislative preparation of materials (legislative items). The inter-ministerial review process is, however, a different process compared to Consultation. It is reserved for the 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 ready made draft

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¹⁹ Came into force on 15th July 2002 (Official Gazette of the Republic of Slovenia, No. 35/2002).

law and thus, the opinions address mostly nomo-technical solutions of the legal language or other issues of a legal, rather than of a substantive, nature.

Nevertheless, Slovenia has a tradition of involvement with civil society regarding civil as well as economic issues. Thus, the originator usually seeks the opinions of social partners (business associations, trade unions in matters concerning their field of interests) and organisations of civil society.²⁰ Draft proposals are sent to the different parties involved, and to interest groups in order to gather relevant information for making an assessment impact. Important in this regard is the social partnership, as a means of indirect influence on various associations of non-government organisations on the legislative process. Also, the Ministry of Public Administration prepared the Methodology for Implementation and Supervision of Statements on Reduction of Administrative Burdens and Participation of Interested Parties, so even if the key focus of impact assessment is on fiscal matters, the public participation component has already appeared. Thus, in Slovenia there is wide awareness in the country about the importance of consultations in policy making, and as such, it is being encouraged prior to the inter-ministerial review process.

Slovakia, on the other hand, has one of the poorest legislative characteristics within almost total absence of stakeholder consultation and public discussion/hearings preceding the adoption of regulations. There is no specific requirement for *consultations* outside of public administration. Only thanks to the adoption of Free Access to Information Law (FOIA) from 2001 consultations outside public agencies are becoming more accessible since FOIA requires all draft legislation in inter-ministerial review to be put on the internet so that the public also has the opportunity to provide comments. Thus, the open inter-ministerial review process is a revolutionary step forward but it still does not substitute a proper consultation process. The EU approach to consultations during the process of impact assessment is more pluralistic than the one presented above because it draws explicitly on notions of participatory governance and on the idea of democratising expertise.²¹

Implementation measures. Consideration of how a policy will be implemented should be an integral part of the analysis from the earliest stages of policy formulation: if a solution cannot be implemented except at great cost or difficulty, there is a strong case for looking at another way of achieving the same policy end. Although the new Guidelines in Slovakia asked for an indication of

²⁰ Katarina Staroňová, Jan Pavel and Katarina Krapež, "Piloting regulatory impact assessment: a comparative analysis of the Czech Republic, Slovakia and Slovenia," *Impact Assessment and Project Appraisal Journal*, 25, 4 (2007), 271–281.

²¹ Claudio M. Radaelli, "How context matters: regulatory quality in the European Union," *Journal of European Public Policy*, 12, 5 (2005), 924–943. *Mandelkern Group Report, Final Report*, Brussels, 13 November 2001. Available at <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/mandfinrep.pdf> (January 2011).

“next measures” from 2008, it is not explained what information civil servants are asked to provide, which may lead to confusion. In Slovenia this type of information is not expected.

The process dimension of IA is increasingly seen as an invaluable function of the IA system rather than a pure technical method, due to its integration into broader systems of policy making. Thus, IA is currently seen less as an analytical method of arriving at precise quantitative answers but as a process that forces civil servants to think beyond the usual narrow aims of the line ministry, as well as enhancing learning. It is this process of asking the right questions in a structured format that supports wider and more transparent policy debate where the value of IA can be found. Thus, it is the process of asking, learning and communicating systematically that becomes the core of government and which continually improves its capacities for problem solving.

Oversight. The importance of an independent body in charge of overseeing the implementation of the IA procedure is stressed by several authors.²² This body should have with a mandate for issuing guidance and checking that the quality of the analysis is satisfactory and to ensure transparency and coordination. Both in Slovakia and Slovenia, there is no central coordinating body regarding policy impact assessment, and only when both governments adopted better regulation programs, did they create small, better regulation (rather than IA) units at the level of line ministries. In Slovenia, the Ministry of Public Administration and, in Slovakia, the Ministry of Economy became responsible for the implementation of better regulation in 2005 and 2007, respectively. In both cases, these are single-person units with no powers over other ministries. Thus, in both cases it is up to the line ministries to decide whether to carry out impact assessment or not; unless in Slovenia the national Assembly specifically asks for it.

In Slovakia, only with the new Joint Methodology introduced in 2008, was a certain type of oversight, namely in the preparation of basic methodology and its implementation. Nevertheless, this oversight is broken down among four ministries depending on the type of IA: The Ministry of Finance oversees the impacts on public budget and informatization of society, The Ministry of Economy oversees the impacts on business environment, The Ministry of Labour, Social Affairs and Family oversees the impacts in the social area and The Ministry of Environment oversees impacts on environment. Despite these efforts, the individual ministries 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 Commissions

²² Andrea Renda, *Impact Assessment in the EU: The State of the Art and the Art of the State* (Brussels: Center for European Policy Studies, 2006).

proposal *Impact Assessment: Next Steps*²³ 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.

3 PILOTING IA

Some governments decide to proceed with the introduction of IA with caution (e.g. the UK, Portugal), initially mandating only a simplified procedure or conducting pilot studies that are meant to test the mandatory requirements and adjust these to the context of the country and only later are these to be expanded into a systematic, mandatory and consistent IA programme. Both Slovakia and Slovenia have conducted a pilot study for carrying out impact assessment in the 2005–2006 period, with strong emphasis given to administrative burden methodology and the Dutch model.²⁴ Although the general aim of conducting the pilot studies was very similar, the process factors differed significantly between the two. Nevertheless, the pilot studies have not brought the expected benefit of obtaining broader support in favour of IA in either of them.

Although, both countries piloted IA model during the same time period, in the case of Slovakia, the impetus for conducting pilot IA can be traced back to a specific external factor - the association of small and medium sized enterprises, notably the National Agency for the development of small and medium sized entrepreneurs (NADSME). Thus, the pilot project on IA was a continuation of a joint project "Improving the Entrepreneurial Environment in Slovakia" implemented by NADSME in partnership with Dutch ECORYS institution. It was the representatives of SMEs who came to the Ministry of Economy and offered the possibility of conducting a pilot IA. The Ministry of Economy agreed for practical reasons: the ministry itself was at that time asked to prepare a detailed methodology for conducting an economic impact assessment and the pilot seemed to be a way of doing it²⁵. The pilot - a law on archives and registry - was selected from laws that were already passed and adopted by the Parliament. Nevertheless, NADSME considered this law to be a good choice for conducting a pilot IA as it "had significant impact on a whole spectrum of SMEs, it already

²³ *Impact Assessment in the Commission – Guidelines*, adopted by European Commission, 2002. Available at http://europa.eu.int/comm/secretariat_general/impact/index_en.htm (January 2011).

²⁴ See more in Katarina Staroňová, Jan Pavel and Katarina Krapež, "Piloting regulatory impact assessment: a comparative analysis of the Czech Republic, Slovakia and Slovenia," *Impact Assessment and Project Appraisal Journal*, 25, 4 (2007), 271–281.

²⁵ Government Resolution No. 557 from July 2005 directed the Minister of Finance, Minister of Environment, Minister of Social Affairs, and Minister of Economy to draft unified methodologies for assessment on financial, economic, environmental, social and business environment impacts.

provoked a hot debate in both Cabinet and Parliament and media which was a good sign for any awareness raising activities once the pilot IA would be over and finally but importantly with proper IA conducted there was still a chance to challenge some of the negative aspects of the approved legislation with real data." (interview with NADSME director).

In Slovenia, a draft law on Chamber of Commerce and Industry, which was in its first phase of design was selected. The impetus came from the Ministry of Economy which wanted to make the membership of the Chamber of Commerce and Industry of Slovenia (GZS) - one of the main organisations representing employers' interests - voluntary, rather than compulsory as at the time of piloting IA (2005). Draft legislation to this effect was being prepared with a pilot IA in the Department for the Internal Market in the Ministry of Economy. The analysis of the Chambers systems was made to estimate the current state of chambers system in Slovenia, compare this system with similar systems in other states, prepare alternative options to this system and analyze the effect of different systems on the economy at large, enterprises and chambers.

Thus, the selection of the pilot legislation in both Slovakia and Slovenia had dual but separate aims from the very beginning: the primary aim was to find substantive alternative solutions to legislation concerning the way that could harm the interests of the SMEs and in this way demonstrate the benefits of IA; the only secondary aim was to conduct a pilot study, on the basis of which, the methodology of the IA would be prepared and the possibilities of the approach demonstrated.

TABLE 2: COMPARISON OF IA ELEMENTS IN THE PILOT STUDIES OF 3 TARGET COUNTRIES ACCORDING TO THE MANDELKERN REPORT RECOMMENDATIONS

	Slovakia	Slovenia
Pilot Item	Law on archives and registry (passed by Parliament few weeks prior to Pilot IA) – retrospective conduction of IA	Draft law on Chamber of Commerce and Industry
Impetus for conducting Pilot IA	External - National Agency for the development of small and medium sized entrepreneurs (NADSME)	Internal – Ministry of Economy
Executor of IA	External - (NADSME)	Internal – Ministry of Economy
Problem identification – justification of intervention	Missing (due to ex post characteristics), however main changes and problems of the new legislation are summarized	Yes, problems are well described and analysed

Description of options	- 2 options (zero and new proposal), preferred option is not clearly stated (due to ex post character) - indicators of assessment developed	- 4 options (zero and three new proposals), preferred option is clearly stated and advocated for
Listing of affected parties	Yes (SME subdivided into categories + state institutions)	Yes (SMEs, other enterprises and state institutions)
Assessment of impact on affected parties	Yes both quantitative and qualitative (SMEs)	Yes, Qualitative (SMEs)
Consultation process conducted	No	Yes (questionnaire)
Summary of results of the consultation process	No	Yes
Description of impacts (both benefits and costs)	Focus on costs rather than balance of both costs and benefits	Very vague
Fitting with existing rules and policies	Yes	Not entirely (Methodology is still in the process of adoption)
Description of methodology adopted for analysis	Yes, it is possible to verify the results	No
Implementation measures	No	No
Measures for Ex post monitoring and evaluation	No	No

Source: Staroňová, Pavel and Krapež (2007).

Pilot studies in both Slovakia and Slovenia did not bring the expected results due to several factors. First, due to the limited capacities of the executor of IA, both internal and external, in both countries, the pilot did not follow all the standard elements (see Table 2) as benchmarked by OECD or EC. Second, it primarily focused on substantive solutions of advocated options by SMEs for selected draft legislation in both countries and neglected the learning experience and potential for civil servants. Third, following the pilot phase, the IA model – if it is

to be successful – should be refined and mainstreamed across all departments and offices. This has not taken place in either case. Moreover, the pilot experience was not transformed into a range of recommendations about how the model and methodologies could be amended and improved for utilization by civil servants and no final report with recommendations accompanied the pilot. Consequently, the IA pilot was restricted to one draft law in one ministry. Even this limited learning experience was not utilized in further actions. For example, the methodologies developed were not adopted by the centre of government which has further weakened the role of IA in both countries.

4 PRACTICE OF IA

In most European countries, 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 in both countries, approved proposals by Cabinet to Parliament in 2007 were taken, focusing on explanatory memoranda accompanying draft laws and amendments. Analysis omitted all other material that goes for discussion to the Cabinet 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 the policy process, which again allows the author to evaluate the degree of compliance with national and international standards. The initiators of draft laws and amendments are mostly ministries (80% of the cases) so the author indirectly assesses the capacity of the administration by evaluating outputs. Thus, draft laws and amendments initiated by members of 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 in Slovakia and 132 in Slovenia explanatory memoranda of draft law proposals and amendments proposed to Cabinet meeting in 2007 year were analyzed for quality of information contained.

Formally, all draft legislation (both draft and amendments) both in Slovakia and Slovenia comply with the formal requirement of attaching both Explanatory Memoranda and Statements of Impact to the material that goes for Cabinet sessions (see Table 3). The analysis of the explanatory memoranda in the period

of 2007 (see also next parts) shows that the biggest problem is not compliance but the scope and depth of analysis conducted and individual components of IA covered.

TABLE 3 – COMPONENTS OF IA IN EXPLANATORY MEMORANDA

Issues	Slovakia n=126		Slovenia n = 132	
	N	%	N	%
General Purpose	126	100	119	90,1
Measurable Objectives	29	23	119	90,1
Intervention Justification	0	0	0	0
Options	0	0	0	0
Impact statements	124	98,4	119	90,2
Identification of concrete measures for implementation	0	0	0	0
Identification of measures for ex post monitoring and evaluation	0	0	0	0
Parties Affected	0	0	0	0
Consultation	1	0,7	0	0

In terms of individual components covered (see Table 3), the majority of Explanatory memoranda addresses information regarding the purpose of the legislation in question. However, the information purposely does not provide detailed information on the problems analyzed, nor justification for intervention (need for regulation), but rather is very general. For example, most EU transposition related issues simply state „EU harmonization“ as the legislative purpose, without any further elaboration. Specification of measurable objectives does not meet IA standards in Slovakia, nevertheless in Slovenia measurable objectives are stated in 90 per cent of proposals. Since the formal framework in both countries does not require the identification of options (the same goes for Identification of concrete measures for implementation and identification of measures for monitoring and evaluation), these are not included. Explanatory memoranda (and Statement of Impacts) are a means to justify ex post the only solution submitted to the Cabinet.

When it comes to the Statement of Impacts, again, these are attached to the explanatory memoranda in all proposals both in Slovakia and Slovenia. In both countries, most of these are of a very formalistic nature (see also Table 4), with

statements such as 'no impact' or vague statements such as 'the changes will be positive for society', 'there are no impacts on citizens, the state budget and the environment' or even 'non-action will bring sanctions from the EU which are costly' without providing any further explanations. When discussing the scope and depth of IA 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 an in-depth analysis can exist on few pages), it is still an indicator of the length of the document and thus an indirect measurement of what such a document may potentially contain. A typical A4 page with double spacing and Times New Roman Font contains approximately 300-330 words. Table 3 shows an overview of number of words in the most important document – Statement of Impacts with relation to type of legislation proposed (domestic vs. EU transposition vs. international agreements and draft legislation vs. amendments to legislation) for the year of 2007. IA statement shows all impacts in all areas concerned (financial, economic, environmental, social) and we see that the average number of words here ranges between 340 to 730 words in Slovakia and even less (below 250) in Slovenia. This means that an average Impact Assessment statement is of 1-2 A4 pages or half a page (and less) per IA area. How deep such an analysis can be?

TABLE 4 – LENGTH OF STATEMENTS OF IMPACT WITHIN EXPLANATORY MEMORANDA

Number of words in Statement of Impacts (average)	Domestic legislation	EU transposition	International Agreements	Draft Law	Amendment to Law
Slovakia	508 (max. 8568, min. 50)	416 (max. 4209, min. 55)	671 (max. 8568, min. 40)	732 (max. 8568, min. 65)	361 (max. 4209, min. 40)
Slovenia	238 (max. 1108, min. 27)	131 (max. 742, min. 27)	0 (max. 0, min. 0)	243 (max. 1108, min. 36)	178 (max. 934, min. 27)

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

On the EU level, in the wake of the Mandelkern Report, the European Union fully implemented new EU Integrated Impact Assessment model in 2002 as a part of an overall strategy on Better Regulation. Among the common areas of EU member countries,²⁶ are the impact on the economy, especially on small and medium enterprises and competitiveness, the impact on the environment, the negative impact on the citizens through the establishment of

²⁶ See Report to the Ministers responsible for Public Administration in the EU member states on the progress of the implementation of the Mandelkern Report's Action Plan on Better Regulation (Brussels: European Commission, 2003).

new bureaucracy (the so-called administrative burden), and the negative impact on consumers. The advantage of IA lies also in its ability to expand the range of impacts relevant to decisions to external impacts affecting interests other than those to government. In this sense an assessment of only fiscal or government budget implications is an input into traditional fiscal policy. Thus, IA should consider other impacts as well, particularly in social and environmental areas and how these effect individual groups of citizenry. The balancing of social and economic and environmental issues in policy-making is of high importance and an integrated framework is put forward by the EU. Table 5 analyzes the way in which Statements of Impact in Slovakia and Slovenia identify fiscal, economic, social and environmental impacts.

TABLE 5: AREAS OF IMPACT ASSESSMENT

Impact Assessment Areas		Slovakia		Slovenia	
		N	%	N	%
Number of proposals passed by Cabinet		126		132	
Statement of Impacts (IA) attached		124	98,4	119	90,2
Fiscal impact	State budget addressed	125	99,2	119	90,2
	State budget analyzed	59	46,8	55	41,7
	State budget - data provided	56	44,4	43	32,6
	Local government addressed	124	98,4	24	18,2
	Local government analyzed	5	4,0	8	6,1
	Local government – data provided	2	1,6	3	2,3
Social impact	Social impact addressed	124	98,4	22	16,7
	Social impact analyzed	1	0,8	10	7,6
	Social impact – data provided	0	0,0	3	2,3
Economic impact	Economic impact addressed	124	98,4	15	11,4
	Economic impact analyzed	3	2,4	4	3,0
	Economic impact – data provided	3	2,4	2	1,5
	SME analyzed	0	0	1	0,8
	Competitiveness analyzed	2	1,6	0	0,0
Environmental impact	Environmental impact addressed	124	98,4	1	0,8
	Environmental impact analyzed	15	11,9	1	0,8
	Environmental impact - data provided	0	0,0	0	0,0

Source: own calculations. Note: one proposal can contain one type or several types of IAs at

once. SME= small and medium sized enterprises.

In both countries those areas of impacts are formally addressed (see Table 5) in almost all cases that are also formally identified in the guidelines and methodologies. Thus, in Slovakia these are four areas of fiscal, economic, social and environmental impacts and in Slovenia these are fiscal impacts. Nevertheless, most of these impacts simply state expressions such as 'no impact' or 'will bring positive impact' or 'no serious impacts' or numerical information is provided with no further explanation how this number has been calculated or achieved. They offer no analysis on quantitative or qualitative substantiation.²⁷ Most impacts are analyzed in the fiscal area, which is discussed in more detail below. Interestingly, Slovenia analyzes social impacts in 7 per cent of the cases, even though the IA guidelines do not ask for social impacts, whereas in Slovakia this type of analysis is being asked but not performed. From the original 28 cases identified in Slovakia, 27 had to be excluded as social impacts since they have limited their discussion of 'employment' strictly to 'employment within the state and public service' (internal and not external effects), 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 process. Besides, such an interpretation also fits more appropriately into the category of administrative/ organizational impacts rather than social. In general, economic impact assessments in both countries are more of an exception than the rule, even though both pilots in Slovakia and Slovenia have focused on impacts on SMEs. Thus, we observe no learning experience from the pilots. Surprisingly, environmental impact assessments in both countries remained at a very low level, despite the volume and tradition of environmental impact assessments in the EU. If there is any mention of environmental IA, it is generally limited to the comment that the draft law "fulfils EIA". None of the draft laws in Slovakia or Slovenia 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 noted above, in both countries (more than 40% – see Table 5) most of the substantial analysis within impact assessment areas 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 IA was introduced. Thus, civil servants are used to the preparation of this part and know how to

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²⁷ 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 the possibility of control on the validity of estimates and truthfulness of information provided.

tackle it. Second, there exists a more rigorous requirement for the Ministry of Finance than other overseeing bodies to check the quality of assessments on state budgets during the inter-ministerial review process. In Slovakia, this requirement has existed prior to 2008 introduction of *Joint Methodology* and also before the 2001 introduction of IA. Traditionally, the Ministry of Finance in Slovakia is a strong and respected body without whose opinion the 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 minimal motivation from the side of the ministries to conduct proper and substantial impact assessments in the other areas.

The Mandelkern Report²⁸ 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 tools²⁹ and to systematically appraise distributional consequences (social, economic and environmental) of proposed change. Thus, identifying direct and indirect, positive and negative impacts in economic, social and environmental terms is a specified component of IA. 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 6). 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 about 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 6: CALCULATION OF COSTS AND BENEFITS IN FISCAL IA (STATE BUDGET)

		Slovakia		Slovenia	
		n=126	%	n=132	%
IA analyzes fiscal impact (identifies data)	Total	59	46,8	55	41,7
	EU	16	12,7	15	11,4

²⁸ Mandelkern Group Report, *Final Report*, Brussels, 13 November 2001. Available at <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/mandfinrep.pdf> (January 2011).

²⁹ Hahn, W. Robert et al, *Assessing the Quality of Regulatory Impact Analyses*, Working Paper 00-1 (Washington D.C.: Brookings Joint Center for Regulatory Studies, 2000).

IA states "no fiscal impact"	Total	67	53,2	53	40,2
	EU	29	23,0	18	13,6
IA identifies costs	Total	45	35,7	40	30,3
	EU	10	7,9	11	8,3
IA quantifies costs	Total	40	31,7	37	28,0
	EU	5	4,0	11	8,3
IA identifies benefits	Total	23	18,3	27	20,5
	EU	1	0,8	7	5,3
IA quantifies benefits	Total	17	13,5	17	12,9
	EU	1	0,8	4	3,0
IA compares costs and benefits	Total	0	0	0	0

Source: own calculations.

Consultations and the involvement of affected parties, are important parts of the IA process. The European Commission places considerable 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, as well as implementation. *'Those affected by European or national regulation have the right to be able to access it and understand it'*.³⁰ 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 undertaking, 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*.³¹ Both countries identify public administration, e.g. central and local state authorities as the main bearers of effects, which are usually also quantified. However, Slovenia, in 22 per cent of cases tries to also identify specific groups of citizens in proposals (e.g. 'owners of cars will have to undertake extra activities'), industries and businesses who might be effected. This is not the case in Slovakia. Both countries present the results of the inter-ministerial review process (in more than 97% of cases) in a very organized way, usually via a table (though as discussed earlier in this paper, it is not a consultation process during drafting of the proposal). This table enlists the name of the institution,

³⁰ See second chapter of the *Mandelkern Group Report, Final Report*, Brussels, 13 November 2001. Available at <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/mandfinrep.pdf> (January 2011).

³¹ *Towards a Reinforced Culture of Consultation and Dialogue: Proposal for General Principles and Minimum Standards for Consultation of Interested Parties by Commission*, communication from the Commission, COM (2002), 704.

its comments and the response of the originating ministry (acceptance/non-acceptance of the comments and reasons for that). Opinions mostly come from other ministries, subordinated agencies and other public institutions to which the originating ministry is obliged to send the draft proposal for opinions. Also, the inter-ministerial review 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, particularly in the case of Slovakia.

5 DISCUSSION

The methodological weakness of both countries is related to having no alternative policy options consideration when preparing draft policy proposals, including impact assessment. As a result, we may assume that most IAs 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 both Slovakia and Slovenia 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 center is currently in charge of supervising the 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 both Slovakia and Slovenia, without real substance, only confirm the notion of Radaelli 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*'.³² 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 to creating a

³² Claudio M. Radaelli, "How context matters: regulatory quality in the European Union," *Journal of European Public Policy*, 12, 5 (2005), 924–943.

specific context of reduced will to conduct assessments for imposed legislation. Third, the systematic data collection and analysis is still in the process of being established. Whatever the reason for specific context, ignoring the importance of IA may increase the risk of an inadequate basis for decision-making and subsequent poor policies.

On the basis of results, we can put Slovakia and Slovenia into a pro-forma approach towards IA implementation. The only exception is in the component of stating measurable objectives in Slovenia, where we observe integrated approach. The results from 2007 show no change in comparison with in-depth analysis of quality of information in IAs from 2004.³³ Thus, no learning occurred during that time. The only exception is the fiscal area where results show an unbalanced coverage in the types of impacts, with strong preference towards fiscal IA. Here an informative IA approach is to be found. Informative IA is also to be found in Slovenia with Consultation processes where a strong tradition and informal ways of consulting social partners prevail – these are missing in Slovakia.

RIA frame Approaches	Components				Impacts		Consultation	
	Objectives	Options	Statement of impacts	Implementation	Fiscal	Other	Parties Identification	Consultation
Integrated IA	Slovenia							
Informative IA					Slovakia Slovenia		Slovenia	Slovenia
Pro-forma IA	Slovakia	Slovakia Slovenia	Slovakia Slovenia	Slovakia Slovenia		Slovakia Slovenia	Slovakia	Slovakia

6 CONCLUSION

This paper has examined the current formal framework, piloting of IA in 2005 and performance in the implementation of the impact assessment in Slovakia and Slovenia in 2007. Officially, both countries comply with the IA declarations but the level of the actual implementation is low with clear ex post preparation of IAs. The results also showed the traditional 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

³³ Katarina Staroňová, "The Quality of Impact Assessment in Slovakia," in *Impact Assessment and Sustainable Development: European Practice and Experience*, ed. George Clive and Colin Kirkpatrick (Cheltenham: Edward Elgar Publishing, 2007).

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 IA methods, methodological guidelines, systematic training and basic surveillance mechanisms.

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