

# Regulatory Policy Scan of Bulgaria



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#### **Please cite this publication as:**

OECD (2022), *Regulatory Policy Scan of Bulgaria*, OECD, Paris.

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# Foreword

Responding to today's dynamic and complex policy problems puts significant pressure on governments in delivering on their policy goals and mandates. Improving public governance and public sector effectiveness is critical if governments are to ensure they meet their citizens' expectations. There are number of areas where governments can focus efforts. This set of public governance scans focuses on three of them. First, it is important to reaffirm and communicate core public sector values and ethics, including integrity, to counter decreasing levels of public trust in institutions and enhance the ability of integrity frameworks to control corruption. Second, to overcome complex and multi-faceted challenges, the government must be able to prioritise among high-level policy objectives, and the centre of government (CoG) must have the capacity to lead and co-ordinate strategic planning, policy design and implementation across government. Third, sound regulatory frameworks and policies are essential for improving the functioning of the public sector as a whole, implementing government objectives, and delivering better economic and social outcomes for citizens and business.

Within the framework of the "Driving Public Administration Reform Forward" project, the OECD provided support to Bulgaria to improve co-ordination among public integrity bodies, enhance the co-ordinating and strategic visioning functions of the CoG, and refine the use of regulatory management tools by developing concrete reform proposals based on good practices and international standards. The project was funded by the European Commission's Directorate-General for Structural Reform Support. Ultimately, this support will help Bulgaria create a more co-ordinated, reliable and favourable institutional environment for more efficient policy design and implementation. The project has led to three different policy scans of Bulgaria that provide an integrated set of recommendations to support Bulgaria's reform efforts:

- The **Public Integrity Scan** analyses the country's institutional and legal public integrity framework and provides proposals to mainstream integrity in all public entities and improve implementation of standards.
- The **Centre of Government Scan** analyses the functions and institutional arrangements underpinning the CoG and provides an assessment of its role in decision- and policy-making systems. The Scan further looks at strategic planning and the CoG's ability to define government priorities and commitments across government and translate them into measurable objectives.
- The **Regulatory Policy Scan** assesses the country's regulatory management capacity by taking stock of regulatory policies, institutions and tools, describing trends and recent developments, and identifying gaps in relation to good practices.

The three Scans were prepared under the auspices of the OECD Public Governance and Regulatory Policy Committees and form part of the Public Governance Directorate's broader engagement with Bulgaria. They draw on the OECD's expertise on public governance, including its work on centres of government, public sector integrity and regulatory policy and contribute to the OECD's programme of work on public sector effectiveness.

This Regulatory Policy Scan was approved by the OECD Regulatory Policy Committee at its 26th session on 11 April 2022 and prepared for publication by the OECD Secretariat.



# Acknowledgements

The scan was prepared by the OECD Public Governance Directorate (GOV) under the leadership of Elsa Pilichowski, Director. It was drafted by Yola Thürer under the strategic direction of Daniel Trnka, Acting Head of the OECD Regulatory Policy Division. The review process of the regulatory policy scan was coordinated by Yola Thürer. Jennifer Stein prepared the document for publication. Ciara Muller created the cover.

The OECD Secretariat wishes to express its gratitude to the Government of Bulgaria, as well as all the public institutions that took part in the review process, for their co-operation. In particular, the OECD would like to thank the team of the Modernisation of the Administration Directorate in the Council of Ministers, headed by Nikolina Stoyanova. Special thanks go to Radoslav Milanov and Krasimir Bozhanov for their invaluable comments to strengthen the analysis and recommendations and their continuous support with the organisation of the fact-finding missions and mobilising all relevant stakeholders. Moreover, the OECD would like to express its gratitude to the different centre of government units and line ministries, who responded to the questionnaires and participated in the fact-finding meetings. Their responses allowed to build the evidence base for this scan and were instrumental in further improving the OECD's understanding of the Bulgarian context and helping to recommend courses of action. The review team also wishes to thank Mina Shoylekova from the European Commission's DG Reform for her support and contributions to the overall project and Peter Kovac, Senior Counsellor at the Ministry of Economy of the Slovak Republic, who served as a peer reviewer and shared his extensive knowledge and invaluable experience during the review process. Tony Dimov, President of the Centre for Regulatory Impact Assessment in Bulgaria, provided valuable insights during the fact-finding mission.

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# Executive summary

The OECD *Diagnostic Scan of Bulgaria* assesses the country's regulatory management capacity by taking stock of regulatory policies, institutions and tools, describing trends and recent developments, and identifying gaps in relation to good practices.

Bulgaria has put in place a solid system for regulatory policy. Reforms under the *Strategy for the Development of the State Administration 2014-2020* placed evidence-based regulation making in the focus. Line ministries are required to use tools such as regulatory impact assessment (RIA), public consultation, and *ex post* evaluation when developing and managing laws and regulations. Compared to OECD countries, Bulgaria performs particularly well at engaging stakeholders during the development of legislation. However, challenges remain in ensuring that regulatory management tools are implemented effectively in practice.

Bulgaria should support good law making by strengthening analytical capacities and quality control of the regulatory process. Improving the entire regulatory policy cycle will ensure that regulations are developed on a foundation of solid evidence and public participation and are designed to improve the security, health and well-being of citizens at a reasonable cost.

## Key findings:

- **Bulgaria has put in place a solid regulatory policy system.** The Government has outlined its strategy and vision for regulatory policy in the *Bulgaria 2030 Programme* and published guidance documents for all regulatory management tools in an important effort to strengthen evidence-based and transparent regulation making. A bespoke, standalone whole-of-government strategy for regulatory policy is missing.
- **The institutional framework for regulatory policy is well developed.** Bodies such as the Regulatory Board and the Impact Assessment Working Group were established with the sole purpose of reviewing and ensuring good regulatory quality and advancing the better regulation agenda. Implementation in practice, however, is missing and a lack of inter-institutional co-ordination hampers effective regulation-making.
- **Regulatory oversight and quality control is ineffective.** The Modernisation of the Administration Directorate of the Council of Ministers - responsible for regulatory oversight in Bulgaria - lacks the capacities and authority to effectively review and ask for high quality analysis. The Directorate's quality control of RIA and stakeholder engagement procedures should be carried out earlier in the process to have an impact. There is no quality control mechanism in place for *ex post* evaluation.
- **Regulatory impact assessment currently does not help to inform regulation making.** RIA takes place too late in the regulatory process to effectively inform the choice of the most appropriate government intervention and there is room to improve the quality of the analysis. The proportionate approach to RIA does not allow for targeting scarce resources to the most impactful proposals.



- **Stakeholder engagement in Bulgaria compares well to other EU countries.** Public consultations are carried out for all draft laws and regulations initiated by the executive and stakeholders are consulted at the early stages of the regulatory process. The Government however rarely gives advance notice of planned consultations. The significant share of laws that are initiated by parliament are not yet prepared in a transparent manner.
- **Systematic *ex post* evaluation of existing legislation is yet to be introduced in practice.** Bulgaria has taken an important step towards good regulatory practice by putting in place a strong formal requirement for systematic *ex post* evaluation. Analytical capacities within the administration to conduct such evaluations are however missing. The institutional framework for regulatory burden reduction is ineffective and regulatory barriers to competition in Bulgaria remain exceptionally high.

### Key recommendations:

- **Bulgaria should develop and publish an explicit, formal, and binding whole-of-government strategy for regulatory policy** to demonstrate political commitment to high quality regulation making. The whole-of-government strategy should be formulated in a single high-level public declaration, e.g. a government resolution, separate from the administrative reform strategy.
- **The institutional set-up for regulatory oversight could be revamped** to strengthen the quality of regulatory management tools. Several options should be reviewed for this purpose, including the establishment of an “independent watchdog” for quality control.
- **Bulgaria should promote effective RIA implementation in practice** to foster evidence-based regulation making. Putting in place measures to strengthen analytical capacities, extend the RIA requirement to include ministerial acts, and revise the targeted approach to RIA could be key steps in this direction.
- **Bulgaria should strengthen stakeholders’ access to public consultations** to promote transparency of the legislative process. First steps in this regard could include introducing a requirement to inform stakeholders in advance of planned consultations and systematically engaging with stakeholders earlier in the process.
- **Introducing systematic *ex post* evaluation in practice is critical** to ensure that existing laws and regulations remain effective and efficient. To this end, the Government should engage with stakeholders to identify the most burdensome areas of regulation in need of review, run pilot tests in selected line ministries to inform the new evaluation methodology, strengthen analytical capacities, and introduce regulatory oversight of *ex post* evaluation.

# 1 Strategy and vision for regulatory policy

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This section describes the extent to which Bulgaria has developed an explicit regulatory policy strategy, linking better regulation initiatives to specific policy goals. It recommends actions to enhance Bulgaria's regulatory policy strategy.

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Bulgaria has put in place a solid framework for regulatory policy. The 2016 reforms have introduced principles of evidence-based and transparent regulation making. The Bulgaria 2030 programme outlines the Government’s vision for regulatory policy, albeit not concretely. A standalone, overarching whole-of-government strategy for regulatory policy however is missing. Therefore, this section recommends that Bulgarian leadership renew its political commitment for high quality regulation making by introducing a bespoke strategy for regulatory policy and pursue its implementation with a dedicated action plan.

**Traffic light snapshot on “Strategy and Vision for Regulatory Policy”**

	<ul style="list-style-type: none"> <li>• Bulgaria has put in place a solid framework for regulatory policy in a short period of time by introducing mandatory <i>ex ante</i> impact assessment and consultations.</li> <li>• The Government outlines its strategy and vision for regulatory policy in national programme documents.</li> </ul>
	<ul style="list-style-type: none"> <li>• Strategy and guidance documents touch upon the rationale and benefits for carrying out regulatory reform, albeit briefly and in a general manner. The number and complexity of documents hinders effective implementation.</li> <li>• The regulatory policy system is evaluated annually in reports. Recommendations for improvement are sometimes implemented.</li> </ul>
	<ul style="list-style-type: none"> <li>• A bespoke, overarching and binding whole-of-government strategy, adopted at the political level and separate from the administrative reform strategy, is missing.</li> <li>• Within and outside of the administration, there is limited appreciation of the benefits associated with making use of regulatory management tools.</li> </ul>

Regulation, along with monetary and fiscal policy, is one of the three key levers for governments to shape economic development and societal well-being. A well-developed regulatory policy – the process governments use to develop policies and if necessary regulation – is absolutely critical for a country to meet its policy goals.

The objective of regulatory policy is to ensure that regulations are made in the public interest. It addresses the permanent need to ensure that regulations and regulatory frameworks are justified, of good quality and “fit-for-purpose” (OECD, 2010<sub>[1]</sub>).

Building on that idea, the OECD Secretariat with the OECD Regulatory Policy Committee produced the *2012 Recommendation of the Council on Regulatory Policy and Governance*, which lays the foundation for better policy making (see Box 1.1).

**Box 1.1. OECD Recommendation on Regulatory Policy and Governance**

The *2012 Recommendation of the OECD Council on Regulatory Policy and Governance* provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards; it advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and it calls for a “whole-of-government” approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication, and co-operation to address the challenges posed by the inter-connectedness of sectors and economies.

The Recommendation advises governments to:

1. Commit at the highest political level to an explicit **whole-of-government policy for regulatory quality**. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.
2. Adhere to **principles of open government**, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide **oversight of regulatory policy**, procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate **Regulatory Impact Assessment (RIA)** into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
5. Conduct **systematic programme reviews** of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
6. Regularly publish reports on the **performance of regulatory policy** and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice.
7. Develop a consistent policy covering the **role and functions of regulatory agencies** in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the **review of the legality and procedural fairness** of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate apply **risk assessment**, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate promote **regulatory coherence** through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. Foster the development of regulatory management capacity and performance at **sub-national levels** of government.
12. In developing regulatory measures, give consideration to all relevant **international standards** and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Source: (OECD, 2012<sup>[2]</sup>), Recommendation of the Council on Regulatory Policy and Governance, OECD Publishing, Paris, [www.oecd.org/gov/regulatory-policy/2012-recommendation.htm](http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm).

## Regulatory policy strategy

Bulgaria has built a solid framework for regulatory policy. Almost ten years after the country's accession to the EU in 2007, the Government put in place important measures to improve the regulatory process, following European best practice. Subsequently, Bulgarian leadership has made a political commitment to high-quality regulatory policy enshrined in law with the amendments to the *Law on Normative Acts*,<sup>1</sup> the *Restricting Administrative Regulation and Administrative Control over Economic Activity Act*, and the *Administrative Procedure Code*.

The Government has formulated strategic objectives pertaining to regulatory policy as part of the whole-of-government *Strategy for the Development of the State Administration 2014-2020*. Adopted by the Council of Ministers *Decision No. 140 2014*, the Strategy set the vision for an effective, transparent, and service-oriented Bulgarian state administration through four strategic objectives: Effective governance and rule of law, partnership governance with citizens and business, open and accountable governance, and professional and expert governance.

Pertaining to regulatory policy, the objectives and measures were, among others:

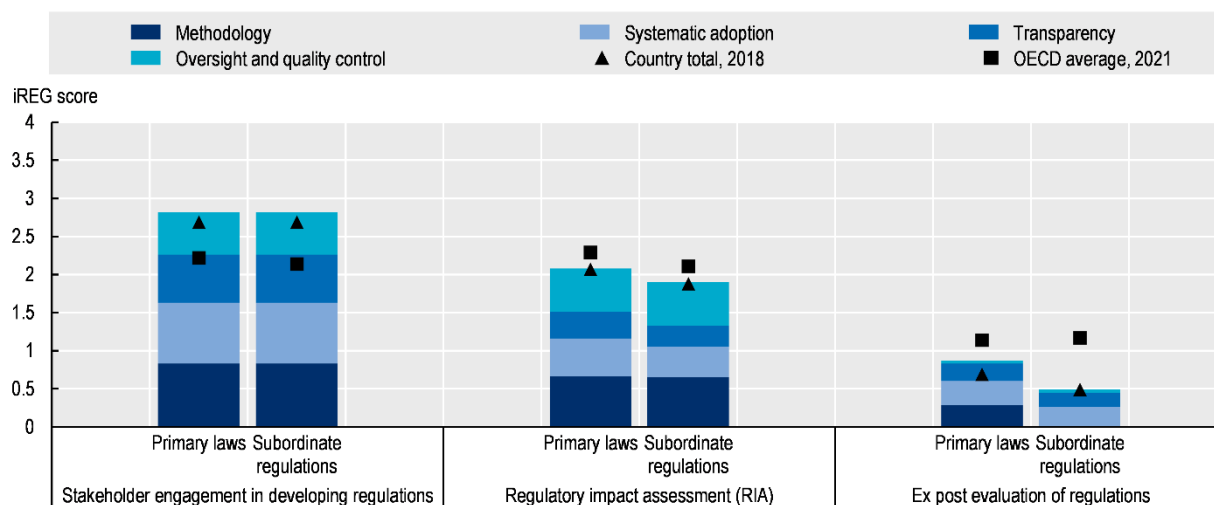
- Establishment of a sustainable regulatory framework;
- Introduction of mandatory *ex ante* impact assessment of regulations;
- Introducing regular *ex post* reviews;
- Reducing regulatory and administrative burdens.

The strategy has led to important changes in Bulgaria's legal framework for regulatory policy, putting evidence-based and transparent regulation making in the focus. Notably, it introduced a process for planning the development of legislation, a requirement to carry out impact assessment for legislative acts issued by the Council of Ministers, and revised procedures for public consultation of draft regulations via amendments to the *Law on Legislative Acts* in 2016. In 2019, the guidelines for regulatory impact assessment were updated and in 2020, guidelines for *ex post* evaluation were introduced to promote a uniform approach to *ex ante* and *ex post* evaluation within the administration.

Those efforts are reflected in the most recent evaluation of Bulgaria's regulatory policy system as part of the OECD *Indicators for Regulatory Policy and Governance 2021*. Bulgaria shows slight improvements across all three areas (RIA, stakeholder engagement, and *ex post* evaluation of laws and regulations) (Figure 1.1).



**Figure 1.1. Indicators of Regulatory Policy and Governance (iREG): Bulgaria 2021**



Note: The more regulatory practices as advocated in the [OECD Recommendation on Regulatory Policy and Governance](#) a country has implemented, the higher its iREG score. The indicators on stakeholder engagement and RIA for primary laws only cover those initiated by the executive (47% of all primary laws in Bulgaria).

Source: OECD (Forthcoming), *Better Regulation Practices across the European Union*, OECD Publishing, Paris.

The changes to the legal framework for regulatory policy have also resulted in a substantial number of documents that outline the processes for regulatory management tools. The procedure for carrying out consultations for example is prescribed in several documents: the *Law on Normative Acts* for late stage consultations and the *Ordinance on the scope and methodology for performing the impact assessment (adopted by Regulation 301/2016 of the Council of Ministers)*, the impact assessment guidelines, and the standards for public consultation for early stage consultations.

The breadth of information available for one single procedure could hinder effective implementation in practice. Civil servants have described the number of documents as not user-friendly and the guidelines themselves as too lengthy and complex for daily use. The number of documents also increases the potential risk of conflicting messaging.

### ***Vision for regulatory policy***

The Bulgarian government's commitment to strengthening the use of evidence and transparency when preparing and implementing laws and regulations is expressed in its latest overarching policy agenda. The *National Development Programme Bulgaria 2030*<sup>2</sup> adopted by Decision No. 25 of Protocol No. 67 of the Council of Ministers of 2 December 2020 outlines the Government's visions, goals, and policy priorities. It succeeds the *Strategy for the Development of the State Administration 2014-2020*.

The programme identifies three strategic policy priorities – accelerated economic development, demographic upswing and reduction of inequalities. Some of the programme's principles can be linked to good regulatory practices, albeit only explicitly in principle 10.

Principle 10 discusses objectives and goals for improving the institutional framework, with efforts aimed at “reducing regulatory burdens, improving the quality, predictability and sustainability of the policies of the executive and the regulatory environment [...], which will (ultimately) improve the business environment and the international competitiveness of the economy.”

The principle's language remains relatively high level, generally committing to core principles of good regulatory practice and “OECD basic standards of good regulation” such as transparent and evidence-

basing decision-making. Few concrete tools are mentioned for supporting the goals, notably a digital tool that will be introduced to create dossiers of regulations with the possibility of tracking the main events of the adoption process. The Government also makes a commitment to introducing an e-Government policy.

The principle's underlying performance indicators are the World Economic Forum's Global Competitiveness Report's institutions pillar, the World Bank's Worldwide Governance Indicators, and the Online Services Index of the UN's e-Government Development Index. Target value is reaching, or not falling too short of, EU average by 2030.

Overall, the Bulgaria 2030 Programme makes less reference to good regulatory practices than the 2014-2020 Strategy. Compared to other OECD whole-of-government strategies for regulatory policy, it lacks a concrete description of the scope and tools of the good regulatory practices to be applied across the administration. An accompanying document detailing the implementation of regulatory management tools is currently under development as of early 2022.

### **Communicating the benefits of regulatory reform**

Bulgaria carries out efforts to communicate the benefits of regulatory reform. The guidelines available for stakeholder engagement, regulatory impact assessment, and *ex post* evaluation spell out the benefits of the tools. The Bulgaria 2030 programme touches upon the rationale for carrying out regulatory reform, albeit briefly and high-level.

Still, appreciation of the advantages associated with regulatory management tools such as *ex ante* impact assessment to inform regulation making and facilitate policy integration is limited within the administration. Both within the administration and among external stakeholders, there is the perception that additional consultations, in-depth IA and gathering of opinions are unnecessarily slowing down the process of preparing legislation.

### **Ex post evaluation of regulatory policy**

Annual reports<sup>3</sup> on the effectiveness of RIA and stakeholder engagement are prepared by the administration of the Council of Ministers, approved by the Administrative Reform Council as mandated by the *Rules of Procedure of the Council of Ministers*, and published on the public consultation portal.

The report presents ministries' compliance with RIA and consultation requirements and procedures and provides recommendations for improvement in cases of non-compliance. They contain a section on the implementation of the preceding report's recommendations, which takes place in some instances. For example, following the 2018 report's recommendation to unify the impact assessment procedure across the administration, a RIA manual was developed. Repeated recommendations concerning the inactivity of dedicated bodies for regulatory policy, such as the Impact Assessment Working Group, were however not acted upon.

### **Assessment and recommendations**

*Bulgaria has put in place a solid framework for regulatory policy, but a bespoke, whole-of-government strategy for regulatory policy is missing.* The Government of Bulgaria is committed to strengthening the use of evidence and transparency when preparing and implementing legislation and has demonstrated political commitment to high-quality regulation making. The Government outlines its strategy and vision for regulatory policy in national programme documents: the *Strategy for the Development of the Public Administration 2014 – 2020* and the *Bulgaria 2030 Programme*. References to regulatory policy in both documents are of general nature and rather high-level.

*The Government published guidance documents for all regulatory management tools in an important effort to strengthen evidence-based and transparent regulation making.* In addition, legally binding procedures

are described in the *Law on Normative Acts* and the *Ordinance on the scope and methodology of the impact assessment*. There is a risk that civil servants perceive the breadth and complexity of the information available as disconcerting, which, in turn, could hinder effective implementation of good regulatory practices.

*Knowledge and appreciation of the benefits associated with regulatory reform is limited both within and outside of the administration.* Despite first efforts to communicate the advantages of regulatory management tools in guidelines and the annual RIA report, civil servants in ministries perceive tools such as regulatory impact assessment as a burdensome and unnecessary procedure and external stakeholders have not fully understood its potential. This limits the capacity to gather support and buy-in for reforms across the administration and the general public.

**Recommendation 1.1. – The Government should renew its commitment to high quality regulation making by developing and publishing an explicit, formal, and binding whole-of-government strategy for regulatory policy.**

- The whole-of-government strategy should be formulated in a single high-level public declaration, e.g. a government resolution, separate from the administrative reform strategy. A centre of government body should take on this task to demonstrate the Government’s commitment to better regulation principles. All bodies and institutions with key competencies in the regulatory process (CoM Directorates for the Modernization of the Administration and Economic and Social Policy, Ministries of Economy and Finance) should be involved in the development of the strategy and roles and responsibilities should be clearly assigned.
- The bespoke strategy should be formulated in a single high-level public declaration and, as a minimum, contain the following elements:
  - a statement outlining the rationale for Bulgaria to implement good regulatory practices and how the strategy supports the objectives of the Bulgaria 2030 Programme;
  - a definition of the core good regulatory principles of – among others – necessity, proportionality, predictability, transparency, simplicity and participation, and the explicit commitment to abide by them when elaborating and adopting new (regulatory) measures;
  - a description of the scope and tools of the Good Regulatory Practices to be applied across Bulgaria;
- The new strategy should be adopted as a Council of Ministers resolution and should, to the extent possible, aim to consolidate the existing legal framework for regulatory policy.

### Box 1.2. Developing “whole-of-government” programmes for regulatory policy

Countries considering the introduction of a **policy for regulatory quality across the whole of government** face the issue of where and how to start the process of embedding regulatory policy as a core element of good governance. An incremental approach has worked in some settings, such as the Netherlands or Denmark, while other countries like the United Kingdom, Australia or Mexico have used a more comprehensive approach.

In Canada, the whole-of-government *Cabinet Directive on Regulation* sets out the government’s expectations and requirements in the development, management, and review of federal regulations. It outlines four guiding principles for departments and agencies:

1. *Regulations protect and advance the public interest and support good government:* Regulations are justified by a clear rationale in terms of protecting the health, safety, security, social and economic well-being of Canadians, and the environment.

2. *The regulatory process is modern, open, and transparent:* Regulations, and their related activities, are accessible and understandable, and are created, maintained, and reviewed in an open, transparent, and inclusive way that meaningfully engages the public and stakeholders, including Indigenous peoples, early on.
3. *Regulatory decision-making is evidence-based:* Proposals and decisions are based on evidence, robust analysis of costs and benefits, and the assessment of risk, while being open to public scrutiny.
4. *Regulations support a fair and competitive economy:* Regulations should aim to support and promote inclusive economic growth, entrepreneurship, and innovation for the benefit of Canadians and businesses. Opportunities for regulatory co-operation and the development of aligned regulations should be considered and implemented wherever possible.

Source: (Treasury Board of Canada Secretariat, 2018<sup>[3]</sup>), Cabinet Directive on Regulation.

**Recommendation 1.2. Drawing from the whole-of-government strategy mentioned in Recommendation 1.1., the Government should elaborate an Action Plan to organise, schedule, co-ordinate and monitor the implementation of good regulatory practices in Bulgaria.**

Implementation guidance:

- The Action Plan should be developed, implemented, and monitored by the centre of government in a joint effort with the oversight body;
- The Action Plan should include explicit (quantitative) targets, deadlines and performance indicators. Besides setting the condition for monitoring progress in implementation, such an approach allows to determine whether success is achieved; and ultimately enhances accountability and stimulates refinement and learning;
- The Action Plan should feature a comprehensive, sustained and tailored capacity-building programme to mainstream expertise on the application of good regulatory practices by all relevant divisions;
- To promote compliance with the Action Plan and incentivise ministries to start implementing good regulatory practices, the plan could include incentive structures such as publishing “naming & praising” reporting mechanisms; and budgetary bonuses and promotions based on objective quality standards and transparent meritocratic criteria.

**Recommendation 1.3. – The Government should engage in a systematic communication campaign both internally and with external stakeholders to explain the Bulgarian better regulation strategy and seek progressive buy-in to the principles of evidence-based, participatory decision-making in Bulgaria.**

Implementation guidance:

- Communicating the benefits of regulatory reform will serve as further evidence to external stakeholders of Bulgaria’s commitment to high-quality regulation. It will be crucial to convey the benefits of good regulatory practices for the attractiveness of the business environment. This undertaking should be supported by the centre of government;
- Such efforts should also be used as a leverage to convince businesses and other external stakeholders to deliver missing data and verify existing evidence to inform regulatory impact assessment and, in turn, decision making;
- Within the administration, the campaign should aim at conveying the purpose, benefits and objectives of good regulatory practices to generate buy-in in ministries;

- Possible forms and channels for communication include awareness-raising events, targeted intensive trainings on the subject provided to civil servants, and potentially a flyer advertising the most important benefits of regulatory reform within and outside of the administration.

### Box 1.3. Communication strategy for regulatory policy in Canada

The Canadian Federation of Independent Business (CFIB) organises its annual *Red Tape Awareness Week* to shed light on the costs of administrative burdens to businesses and to communicate the benefits of regulatory reform to the public.

As part of the Awareness Week, the CFIB awards the “Golden Scissors Award” to individuals or teams in provincial governments who have successfully motivated others to take action or produced meaningful, positive results in cutting red tape. A “Red Tape Report Card” gives each provincial government a grade based on their commitment to cutting red tape. The CFIB also prepares awareness raising reports on regulatory costs in Canada and the United States from a small business perspective in partnership with the Small Business Roundtable in the United States.

Source: <https://initiatives.cfib-fcei.ca/redtape> (last accessed 09 March 2022).

## Notes

<sup>1</sup> See <https://www.lex.bg/laws/ldoc/2127837184>.

<sup>2</sup> For the English version, see <https://www.minfin.bg/en/1394>.

<sup>3</sup> For the latest available report, see <https://www.strategy.bg/Publications/View.aspx?lang=bg-BG&categoryId=16&Id=330&y=&m=&d=>.



## **2** Institutional framework and capacities for regulatory policy

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This section examines the institutional framework for regulatory policy in Bulgaria. Regulatory management needs to find its place in a country's institutional architecture, and capacities for promoting and implementing better regulation need to be build up. Mechanisms and institutions need to be established to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality.

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In Bulgaria, several bodies share regulatory policy functions and competencies for regulatory oversight are spread across different institutions. Dedicated bodies for regulatory policy have been set up, but a lack of inter-institutional co-ordination and implementation in practice hamper effective regulation making. Oversight and quality control of regulatory management tools is ineffective. Therefore, this section recommends that Bulgaria put in place stronger leadership driving a concerted better regulation effort and centralise regulatory oversight functions in one body close to the centre of government.

**Traffic light snapshot on “Institutional Framework and Capacities for Regulatory Policy”**

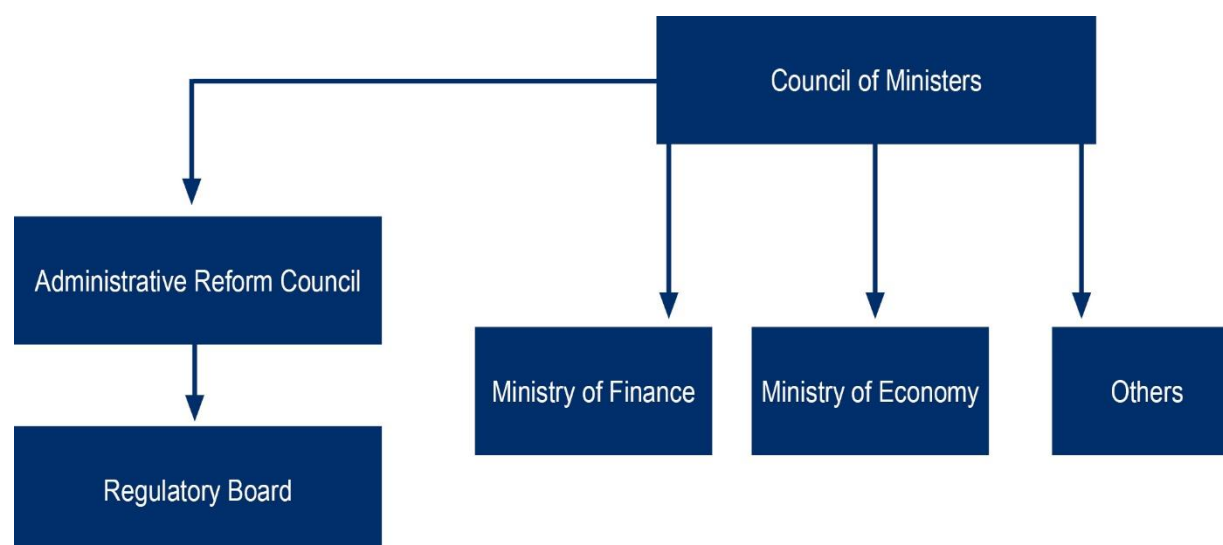
	<ul style="list-style-type: none"> <li>An advanced institutional framework has been put in place to encourage the sharing of regulatory best practices and promote high quality regulation making.</li> </ul>
	<ul style="list-style-type: none"> <li>While dedicated bodies for regulatory quality have been set up, there is no body responsible for the promotion and co-ordination of the better regulation agenda.</li> <li>The Government has undertaken capacity-building efforts by providing targeted trainings and guidance, but so far with limited effect.</li> </ul>
	<ul style="list-style-type: none"> <li>Institutions dedicated to improving regulatory policy, such as the Regulatory Board and the Impact Assessment Working Group, are not working in practice.</li> <li>Quality control of regulatory impact assessment is ineffective and scrutiny of <i>ex post</i> evaluation is missing.</li> </ul>

The institutional set-up of regulatory policy matters. Regulatory management needs to find its place in a country’s institutional architecture and have support from all the relevant institutions. The institutional framework extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the sub-national levels of government also play critical roles in the development, implementation and enforcement of policies and regulations.

### Key institutions for regulatory policy

In Bulgaria, several bodies share critical regulatory policy functions.

**Figure 2.1. Institutional framework for regulatory policy in Bulgaria**



Source: Regulatory Policy in Bulgaria project questionnaire.

### ***Modernization of the Administration Directorate***

The Modernization of the Administration Directorate within the Council of Ministers “supports the powers of the Council of Ministers for the implementation of the general management of the state administration” according to Art. 77b of the *Statutory Regulation of the Council of Ministers*.<sup>1</sup>

This includes a broad range of responsibilities, including proposing measures for administrative reform and reduction of administrative burden, managing the Government’s human resources policy, and administrative service delivery.

The Directorate also has crucial functions pertaining to better regulation efforts, as it co-ordinates the impact assessment process and prepares an annual report on the implementation of RIA. An oversight body within the Directorate is responsible for quality control of RIA and stakeholder engagement. The Directorate also developed the Government’s first comprehensive better regulation programme<sup>2</sup>.

The Directorate serves as secretariat to the Administrative Reform Council and its Regulatory Board and is responsible for publishing relevant information in this regard on the Council’s website.

### ***Economic and Social Policy Directorate***

The Economic and Social Policy Directorate within the Council of Ministers prepares expert opinions on the appropriateness of the draft strategies, programs and acts submitted to the Council of Ministers in the area of economic, infrastructural and social development. It also supports the development of the general policy for administrative burden reduction and is a Member of the Regulatory Board.

From 2010 until 2013, the Directorate developed Bulgaria’s second comprehensive better regulation programme and was responsible for quality control of regulatory management tools at the time. This function was later moved back to the MoA Directorate.

### ***Administrative Reform Council***

The Administrative Reform Council, established by decree in 2009, acts as an advisory body to the Council of Ministers for the co-ordination of regulatory burden reduction on both business and citizens. The Council was inactive during the period of interim governments in 2021<sup>3</sup> and has taken up its activity again in November 2021.

The Council’s responsibilities include the following:

1. Co-ordinating the policy for improving administrative services and reducing regulatory burden;
2. Discussing draft strategic documents and regulations related to:
  - a. administrative reform at central, regional and municipal level;
  - b. reducing the regulatory burden on businesses;
  - c. administrative service delivery;

The Administrative Reform Council also issues guidelines on regulatory management tools.

#### *Regulatory Board*

The Regulatory Board was established as a subsidiary body of the Administrative Reform Council in 2017. It has been inactive since 2019 and reportedly has never fulfilled most of the functions listed below in practice.

The Board’s mandate foresees the following functions with regards to regulatory policy:

1. Carrying out periodic sectoral reviews to identify administrative burdens hampering business activity;
2. Giving opinions on the extent of administrative or regulatory burdens introduced by draft legislation to inform the MoA Directorate's quality control;
3. Carrying out periodic reviews and overseeing the implementation of legislation adopted by the Council of Ministers from the perspective of reducing administrative and regulatory burdens;
4. Examining the reports of the working groups entrusted with tasks related to reducing administrative and regulatory burdens;
5. Addressing other issues relating to the reduction of administrative and regulatory burdens at the initiative of the Prime Minister, Deputy Prime Ministers or Ministers.

The Regulatory Board is chaired by the Deputy Prime Minister. The following Directorates are members: *Modernization of Administration* and *Economic and Social Policy* at the Council of Ministers and departments for *Economic and Financial Policy* at the Ministry of Finance and *Economic Policy* at the Ministry of Economy.

#### *Permanent Working Group on Impact Assessment*

The Permanent Working Group on Impact Assessment serves as a forum for ministries to share experiences and best practices regarding the RIA process and to discuss challenges and opportunities for regulatory policy in Bulgaria more generally. It has been inactive for the most part since its creation in 2017.

#### ***Ministry of Economy***

The Ministry of Economy prepares and implements initiatives for reducing administrative burdens, such as the three consecutive action plans for administrative burden reduction on businesses. The ministry also developed a test to analyse impacts of draft legislation on SMEs as part of the impact assessment process.

#### ***Ministry of Finance***

The Ministry of Finance co-ordinates the process of the assessment of budget impacts of draft laws and regulations issued by the CoM as well as non-legal acts of the CoM and reviews relevant information as presented in the budget justification statement. The MoF then decides if the draft legislation is in compliance with the national budget. This review process takes place in parallel to the regular RIA procedure.

The ministry's unit for national reform and development carries out initiatives aimed at removing regulatory and other barriers for investment and reducing administrative burden.

#### ***National Centre for Parliamentary Research***

The National Centre for Parliamentary Research collects, analyses, and publishes information on the legislative activity of the Parliament. This includes studies on the implementation of *ex ante* and *ex post* impact assessment procedures in practice and the quality of the legislative process within the Parliament more generally.

#### ***Institute of Public Administration***

The Institute of Public Administration provides *ex ante* and *ex post* impact assessment trainings for civil servants from the central and local administration. Since 2012, trainings on the practical implementation of RIA have been delivered for almost 1 000 civil servants.

## Regulatory oversight

Regulatory oversight<sup>4</sup> is a critical aspect of regulatory policy. Without proper oversight, undue political influence or a lack of evidence-based reasoning can undermine the ultimate objectives of policy. Careful, thoughtful analysis of policy and an external check of policy development are required to ensure that governments meet their objectives and provide the greatest benefits at the lowest costs to citizens (OECD, 2012<sub>(2)</sub>).

Bulgaria, like many OECD countries, has a fragmented institutional landscape for regulatory oversight and several bodies share oversight functions. The Modernization of the Administration Directorate at the Council of Ministers is Bulgaria's main regulatory oversight body. It is responsible for quality control of RIA and public consultation for draft laws and regulations initiated by the executive. The Administrative Reform Council issues guidelines on regulatory management tools. The Impact Assessment Working Group provides support to ministries on the RIA process and serves as a forum to exchange best practices, but is currently inactive. The Regulatory Board is mandated to review the level of administrative burden introduced by draft legislation, yet has reportedly never fulfilled this function. The Ministry of the Economy developed an SME test as part of the impact assessment; however, it does not oversee its implementation or support ministries with the assessment. A lack of effective oversight poses substantial challenges to the Bulgarian regulatory policy system. Crucially, there is no body effectively co-ordinating better regulation efforts and advocating for regulatory reform at the centre of government. According to its mandate, the Council of Ministers is responsible for promoting overall regulatory policy in Bulgaria, including in relation to stakeholder engagement, RIA, and *ex post* evaluation. In practice, no body has taken on this responsibility and regulatory reform efforts take place in an un-coordinated fashion.

Furthermore, quality control of RIA and stakeholder engagement is limited to a formal check and quality control of *ex post* evaluation is missing. A lack of resources and time constraints prevent a more substantial review. The MoA Directorate is responsible for several horizontal issues such as HR policy and administrative service delivery and is therefore not in a position to allocate sufficient resources to regulatory policy.

## Co-ordination

The bodies and institutions involved in the regulatory process in Bulgaria face challenges stemming from a lack of clearly defined co-ordination mechanisms, and a dis-joined identification of roles and responsibilities across the Government with regards to regulatory tools and processes.

An overlap of regulatory policy competencies creates obstacles to effective regulation making. For example, several bodies share the responsibility for developing and implementing measures for reducing administrative burden: the Modernization of the Administration Directorate, the Economic and Social Policy Directorate, the Administrative Reform Council (in an advisory function), the Ministry of Economy, and the Ministry of Finance all have administrative burden reduction in their area of competence. Co-ordination between those bodies is limited.

A silo-ed approach to regulation making prevents policy integration and the sharing of best practices between ministries. Sometimes, similar projects (especially in the area of burden reduction) are carried out in parallel without the knowledge of the bodies responsible. In some cases in the past, projects have even been contradictory.

## Capacities

The work of the Bulgarian government is affected by important analytical resource constraints. Capacities for regulatory quality within ministries are underdeveloped, despite the Government's efforts to promote analytical capacities with targeted trainings and guidelines.



The Institute of Public Administration provides *ex ante* and *ex post* impact assessment trainings for civil servants from the central and local administration. Since 2012, trainings on the practical implementation of RIA have been delivered for almost 1 000 civil servants. The Institute and Sofia University also offer a joint post-graduate RIA programme that civil servants can attend. In addition, 200 civil servants received training on the newly introduced public consultation procedure in 2019.

Various guidelines, templates, and examples are available to support civil servants with the implementation of RIA, stakeholder engagement, and *ex post* evaluation. While the OECD recommends promoting capacities within the administration by providing guidance material, there is the risk of “information overload”. Several documents are available for one topic and guidelines are comprehensive, but lengthy and overly complex at times, according to civil servants interviewed in the scope of this project.

## Assessment and recommendations

*Bulgaria has put in place a well-developed institutional framework for regulatory management.* Bodies such as the Administrative Reform Council, the Regulatory Board, and the Impact Assessment Working Group were established with the sole purpose of reviewing and ensuring good regulatory quality and advancing the better regulation agenda in Bulgaria. Implementation in practice however is lacking.

*While the current institutional framework is well set up, there is no body responsible for the promotion of the better regulation agenda and strong leadership from the centre of government is missing.* Political support from the centre of government pushing for regulatory reform is crucial for high-quality regulatory management. Important steps to demonstrate such support have been taken with the revisions to the *Law on Normative Acts*. Still, there is a need for a body with the power to enact change around the Government to promote the better regulation agenda. This need is amplified by the co-ordination issues in the legislative process and the limited appreciation within the administration of the benefits of using regulatory management tools in practice.

*A lack of inter-institutional co-ordination and an overlap of competencies hamper effective regulation making.* Currently, several bodies share the responsibility for regulatory oversight and administrative burden reduction. Efforts are carried out in an un-coordinated manner and sometimes projects are contradicting. A silo-ed approach to regulation making prevents policy integration and the sharing of best practices between ministries.

*The institutional set-up for regulatory oversight does not work well in practice and quality control of regulatory management tools is ineffective.* The MoA Directorate is responsible for several horizontal issues, such as HR policy and administrative service delivery, and is not in a position to allocate sufficient resources to its regulatory oversight function. Other bodies with regulatory oversight functions, such as the Regulatory Board and the Impact Assessment Working Group, are currently inactive. Quality control of RIA and engagement processes takes place too late in the process to have an impact and is largely mechanistic. There is no quality control mechanism in place for *ex post* evaluation of existing regulations.

***Recommendation 2.1. The incoming government should renew political support for regulatory policy by generating buy-in from external stakeholders and putting in place stronger leadership driving a concerted better regulation effort across the administration.***

Implementation guidance:

- Maintained political support from both the administration and the political arm is crucial for relaunching better regulation efforts in Bulgaria to bring evidence-based policy back into the focus. To this end, the incoming government should appoint a body with the authority to enact change around the Government to promote a co-ordinated whole-of-government approach to regulatory policy. The body should be tasked with overseeing the implementation of the Action Plan as

discussed in Recommendation 1.2. and with ensuring that the currently inactive bodies for good regulatory quality take up their activity as foreseen in their mandates;

- This co-ordination function should be placed at the centre of government. The Administrative Reform Council, which among other things has a coordinative function for administrative service policy, could be well placed to take on such functions. It could be considered to merge this function with other oversight functions, such as providing training and guidance and advocating for regulatory policy, as suggested in Recommendation 2.2. A clear mandate consolidating better regulation and oversight responsibilities at the centre of government would help promoting and implementing regulatory management policies through effective monitoring;
- Generating buy-in from stakeholders external to government can help increase the demand for quality regulatory management tools and secure political commitment. Citizens and businesses engaged in the process can provide the information and opinions that the Government needs to truly improve policy.

***Recommendation 2.2. The institutional set-up for regulatory oversight should be reconsidered and quality control of regulatory management tools should be strengthened.***

Implementation guidance:

- The location of the oversight bodies is an important consideration. Where the responsibility for regulatory oversight is placed, i.e. within government or located in a body operating at arm's length, clearly depends on the oversight function carried out:
  - Functions supporting a whole-of-government approach to regulatory policy through co-ordination, the provision of guidance and training or the overall systematic improvement and advocacy for regulatory policy are usually located at the centre of government. Consolidating at least some of these powers in one unit close to the centre of government specifically in charge of regulatory management could improve co-ordination among existing ministries and agencies and would help ensure that regulatory quality principles are successfully applied. This function could be placed with the Administrative Reform Council, as suggested in Recommendation 2.1., or with one of the CoM's Directorates;
  - For the quality control of regulatory management tools however it could be considered to place them in independent bodies external to government. The insufficient quality of RIA statements and compliance issues with the MoA Directorate's opinions suggest a lack of authority across the administration. For this reason, it could be considered to establish an "independent watchdog" for quality control. Such an independent body should be given stronger powers to be able to ensure RIA quality, like being able to stop legislation from going forward if the RIA quality is deemed insufficient.
  - In addition to the oversight body's support and quality control, the IA Working Group should provide support to ministries with the impact assessment process. The Ministry of the Economy should offer assistance with the SME test.
- In the process of reconsidering the institutional set-up for regulatory oversight, the responsibility for regulatory burden reduction should be consolidated within one body. Currently shared between several bodies, this function could be moved to a dedicated unit within the Ministry of the Economy or another CoM Directorate.

### Box 2.1. Institutional set-up for regulatory oversight in selected OECD countries

In the **United States**, the *Office of Information and Regulatory Affairs* (OIRA) carries out all key regulatory oversight functions and is located at the centre of government, in the Executive Office of the President. OIRA scrutinises the quality of significant regulations and RIAs and can return draft regulations to agencies for reconsideration if their quality is deemed inadequate. OIRA also co-ordinates the application of regulatory management tools across government, reports to Congress on their impacts, provides guidance and training on their use and identifies areas where regulation can be made more effective.

In **Germany**, the *National Regulatory Control Council* (Normenkontrollrat, NKR) is a regulatory oversight body operating at arm's length from government. To guarantee independence, the NKR was established by law. This ensures that any change to the NKR's mandate requires a public debate in Parliament. The NKR reviews the quality of all RIAs, provides advice during all stages of rule making, and has responsibilities in administrative simplification and burden reduction. The *Better Regulation Unit* (BRU) in the Federal Chancellery is the central co-ordinating and monitoring body for the implementation of the Federal Government's programme on better regulation and bureaucracy reduction.

The **United Kingdom's** *Regulatory Policy Committee* is an independent regulatory oversight body made up of eight committee members appointed by the Secretary of State for Business, Energy and Industrial Strategy (BEIS). Committee members are not civil servants and are independently appointed, with no affiliation to government. The Committee provides the government with external, independent scrutiny of evidence and analysis supporting new regulatory proposals in RIAs and *ex post* evaluations of legislation. The *Better Regulation Executive* (BRE), located within BEIS, is responsible for better regulation policy and is the lead unit in the UK government for promoting and delivering changes to the regulatory policy framework. The *Cabinet Office* is responsible for the Guide to Making Legislation and providing training and support to government departments making legislation.

Source: (OECD, 2018<sup>[4]</sup>), Case Studies of RegWatchEurope Regulatory Oversight bodies and the European Union Regulatory Scrutiny Board, OECD, Paris. <http://www.oecd.org/gov/regulatory-policy/regulatory-oversight-bodies-2018.htm>; (OECD, 2021<sup>[5]</sup>), Regulatory Policy Outlook 2021, OECD, Paris.

## Notes

<sup>1</sup> See <https://www.lex.bg/laws/ldoc/2135646627>.

<sup>2</sup> see <https://strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=440>.

<sup>3</sup> For the Council's activities and list of meetings, see [https://saveti.government.bg/web/cc\\_203/1](https://saveti.government.bg/web/cc_203/1) (accessed 2 March 2022).

<sup>4</sup> Regulatory oversight is defined as is defined as the “variety of functions and tasks carried out by bodies/entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making” (OECD, 2018<sup>[16]</sup>).

# 3

## Regulatory impact assessment (*ex ante*)

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This section reviews the processes for developing new regulations in Bulgaria, with a particular focus on forward planning, administrative procedures and *ex ante* impact assessment.

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Regulatory impact assessment in Bulgaria in practice takes place too late in the regulatory process to actually inform the choice of the most appropriate government intervention. The current proportional approach to RIA does not allow for targeting scarce resources to the most impactful proposals. Effective quality control is missing. Therefore, this section recommends that the Government undertake measures to build analytical capacities in line ministries, introduce a formal threshold for a full impact assessment, promote a systematic approach to setting SMART<sup>1</sup> objectives, and put in place a stronger regulatory oversight mechanism.

**Traffic light snapshot on “regulatory impact assessment (ex ante)”**

	<ul style="list-style-type: none"> <li>• The RIA methodology was revised in 2019 to promote a uniform approach to impact assessment across the administration.</li> </ul>
	<ul style="list-style-type: none"> <li>• The RIA requirement for legislation initiated by parliament, while good practice, is not achieving the desired effect.</li> <li>• Following international best practice, a proportional approach to RIA has been introduced, albeit not formally and it does currently not allow for targeting scarce resources to the most impactful proposals.</li> <li>• The Impact Assessment Working Group was established as a forum for ministries to share experiences and best practices. The Group is currently inactive.</li> </ul>
	<ul style="list-style-type: none"> <li>• RIA takes place too late in the regulatory process to actually inform the choice of the most appropriate government intervention.</li> <li>• Effective quality control of RIA is missing and RIA quality is not up to standards.</li> </ul>

Laws and regulations should be always based on the best available information, data, analysis and scientific expertise and take into account all potential alternative solutions to a problem. If used systematically and as a government-wide approach, regulatory impact assessment (RIA) provides a critical tool to ensure greater quality of government intervention. (OECD, 2020<sup>[6]</sup>) The RIA process itself is a systematic approach to weigh the benefits and costs of various regulatory and non-regulatory options for the Government to address a specific problem in society. Governments must make decisions for new laws based on a sound rationale and evidence; otherwise, regulations and policies will not be-fit-for-purpose and, in the worst case, may do more harm than good.

RIA is a fundamental part of the 2012 *Recommendation on Regulatory Policy and Governance* that all OECD member and partner countries ought to adhere (Box 3.1).

### Box 3.1. OECD Best Practice Principles for Regulatory Impact Assessment

#### 1. Commitment and buy in for RIA

- Governments should:
  - Spell out what governments consider as “good regulations”.
  - Introduce RIA as part of a comprehensive long-term plan to boost the quality of regulation.
  - Create an oversight unit for RIA with sufficient competences.
  - Create credible “internal and external constraints”, which guarantee that RIA will effectively be implemented.
  - Secure political backing of RIA.
- Securing stakeholder support is essential.

- Governments have to enable public control of the RIA process.

## **2. Governance of RIA – having the right set up or system design**

- RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle.
- RIA and its implementation should be adjusted to the legal and administrative system and culture of the country.
- Governments need to decide whether to implement RIA at once or gradually.
- Responsibilities for RIA programme elements have to be allocated carefully.
- Efficient regulatory oversight is a crucial precondition for a successful RIA.
- Resources invested in RIA must be carefully targeted.
- Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, including the quality of RIA.

## **3. Embedding RIA through strengthening capacity and accountability of the administration**

- Adequate training must be provided to civil servants.
- Governments should publish detailed guidance material.
- There should be only limited exceptions to the general rule that RIA is required.
- Accountability- and performance-oriented arrangements should be implemented.

## **4. Targeted and appropriate RIA methodology**

- The RIA methodology should be as simple and flexible as possible, while ensuring certain key features are covered.
- RIA should not always be interpreted as requiring a full-fledged quantitative cost-benefit analysis of legislation.
- Sound strategies on collecting and accessing data must be developed.
- RIA has to be undertaken at the inception stage of policy development.
- No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem.
- All plausible alternatives, including non-regulatory solutions must be taken into account.
- It is essential to always identify all relevant direct and indirect costs as well as benefits.
- Public consultations must be incorporated systematically in the RIA process.
- Insights from behavioural economics should be considered, as appropriate.
- The development of enforcement and compliance strategies should be part of every RIA.
- RIA should be perceived as an iterative process.
- Results of RIA should be well communicated.

## **5. Continuous monitoring, evaluation and improvement of RIA**

- It is important to validate the real impacts of adopted regulations after their implementation.
- RIA systems should also have an in-built monitoring, evaluation and refinement mechanism in place.
- A regular, comprehensive evaluation of the impact of RIA on the (perceived) quality of regulatory decisions is essential.

- It is important to evaluate the impacts in cases where the original RIA document does not coincide with the final text of the proposal.
- Systematic evaluation of the performance of the regulatory oversight bodies is important.

Source: (OECD, 2020<sup>[6]</sup>), *OECD Best Practice Principles for Regulatory Policy, Regulatory Impact Assessment*, OECD Publishing, Paris, <https://doi.org/10.1787/7a9638cb-en>.

## The legislative process in Bulgaria

The Bulgarian government develops and announces on a regular basis the regulatory initiatives it plans to launch in the forthcoming 6 months. The Council of Ministers adopts the annual legislative plans, which are published on the consultation portal, and prepares a mid-term operational programme with by-laws planned for adoption.

The procedure for the development of legislative acts is prescribed in Art. 26 and following, *Law on Normative Acts*. Regulatory drafts are prepared by ministries and shared with the Modernization of the Administration Directorate for review of the RIA statement, which takes between 7 and 14 days depending on the type of impact assessment (for details see Regulatory oversight of impact assessment).

The draft is then shared with all other ministries (and the National Association of Municipalities, if the draft affects municipal authorities) in a formal consultation as a binding step of the process. All bodies are required to respond within 14 days. The sponsoring ministry must provide feedback on the implementation of the comments received.

Ministries are required to publish all regulatory drafts for public consultation for at least 30 days on the consultation portal and on the Ministry website, along with the RIA document and the MoA Directorate's review statement.

The draft, along with the RIA document and the consultation report, is shared with relevant regulatory agencies and the National Association of Municipalities (if the draft affects municipal authorities) for comments. All bodies are required to respond within 14 days. The sponsoring ministry is free (but not obliged) to implement the comments received.

The draft is submitted to parliament together with the consultation report, the impact assessment document and the MoA Directorate's review statement. Legislative drafts that are not accompanied by a RIA are not discussed in parliament.

Laws and regulations that are adopted are published in the state gazette. In addition, the Council of Ministers announces adopted decisions via communiqués to the media.

### ***A significant share of laws is initiated by parliament***

The share of national laws initiated by parliament is higher in Bulgaria than in any other EU country, where the average is 16% for the period 2014-2016 (see Table 3.1). In Bulgaria, the proportion was reported as 58% for this period and according to Bulgarian authorities has increased to 62-70% in more recent years. The Bulgarian National Centre for Legal Studies reports similar results. According to a study of the legislative activity of the 44th National Assembly,<sup>2</sup> 38.9 % of bills have been submitted by the Council of Ministers, while 61.1 % of bills were submitted by MPs/groups of parliament for the period 19 April 2017 to 25 March 2021.

This share is the highest among EU countries and has important ramifications for regulatory policy in Bulgaria, as RIA and consultation quality standards are much more developed for legislation initiated by the executive than for laws introduced by parliament. As a result, up to 70% of laws are subject to a less



stringent level of scrutiny and the impact assessment and consultations for those laws do not undergo quality control by a regulatory oversight body.

**Table 3.1. Share of national laws initiated by parliament in the EU**

	Proportion of all national primary laws initiated by parliament (%)
Austria	22%
Belgium	21%
<b>Bulgaria</b>	<b>58%</b>
Croatia	9%
Cyprus	23%
Czech Republic	41%
Denmark	1%
Estonia	14%
Finland	0%
France	23%
Germany	10%
Greece	0%
Hungary	24%
Ireland	2%
Italy	12%
Latvia	30%
Lithuania	33%
Luxembourg	10%
Malta	5%
Netherlands	2%
Poland	40%
Portugal	20%
Romania	18%
Slovak Republic	2%
Slovenia	7%
Spain	7%
Sweden	0%
United Kingdom	23%

Note: Data are self-reported by participating countries. The proportion represents an average of the laws initiated by parliament in the years 2014 to 2016.

Source: Indicators of Regulatory Policy and Governance Survey 2017 <http://oe.cd/ireg>.

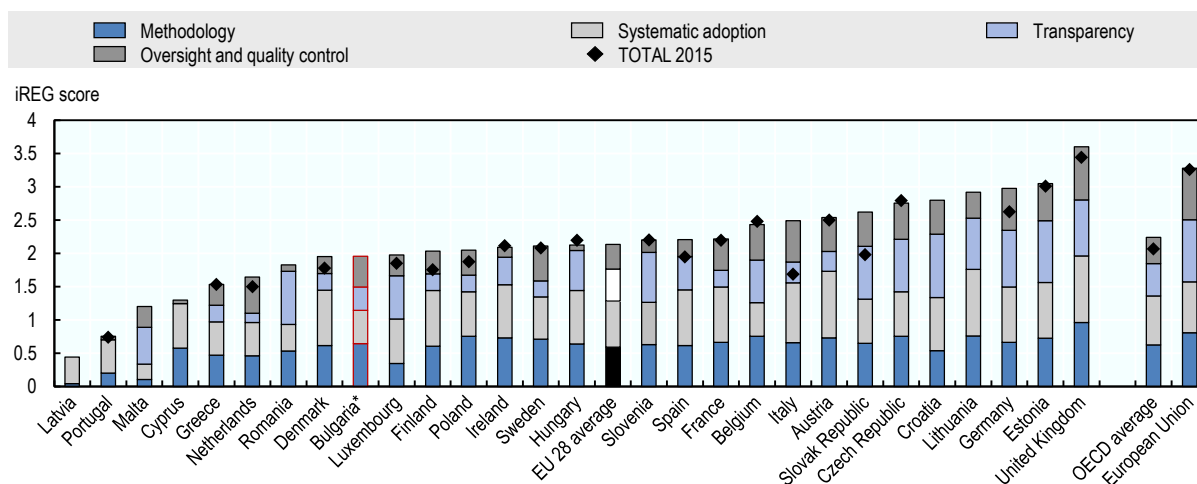
## Current RIA procedure

Since 2016, impact assessments are required for all draft laws and regulations issued by the Council of Ministers according to Art. 19, *Law on Normative Acts*. Ministerial Acts are excluded from this requirement, though they typically pose substantial burdens to businesses and citizens.

Bulgaria scores below average in the OECD *Indicators for Regulatory Policy and Governance* for regulatory impact assessment for assessing primary laws (Figure 3.1). This is due mostly to a lack of transparency and systematic adoption of the RIA process. Crucially, Bulgaria does not have a formal threshold in place to determine when a full or partial RIA is required or whether a RIA is undertaken at all (further discussed below). Results for subordinate regulations can be considered on par with EU average (Figure 3.2).

**Figure 3.1. Regulatory impact assessment for assessing primary laws in the EU**

Composite indicators 2018

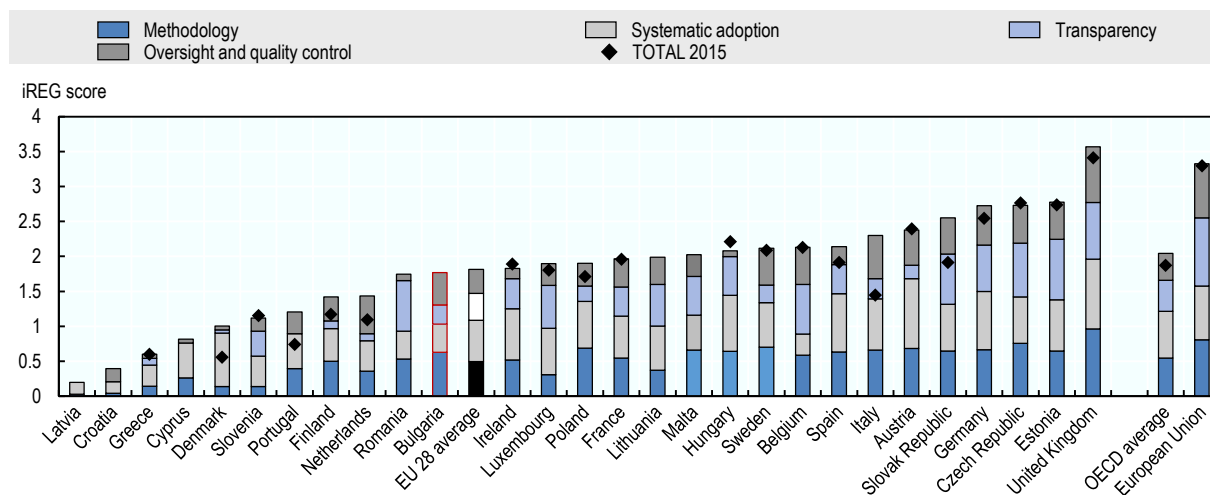


Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. \* In the majority of EU Member States, most primary laws are initiated by the executive, except for Bulgaria, where a higher share of primary laws are initiated by the legislature.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

**Figure 3.2. Regulatory impact assessment for assessing subordinate regulations in the EU**

Composite indicators 2018



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Since 2018, the time of the previous data collection, the Bulgarian system (and score) has not changed substantially. Notable developments for RIA are the adoption of the manual for conducting preliminary impact assessments, which is discussed below. In 2019, eight ministries were assigned dedicated units to carry out impact assessment functions for their institution: Ministry of Economy, Ministry of Education and Science, Ministry of Defence, Ministry of Justice, Ministry of Regional Development and Public Works, Ministry of Labour and Social Policy and Ministry of Finance. It is unclear if those units regularly receive targeted trainings on impact assessment procedures.

### **Executive**

The requirement to carry out impact assessment covers all laws and regulations initiated by the executive, except Ministerial Acts. Bulgaria has a proportional RIA system in place, full RIAs are automatically required for all *new* laws and regulations or when suggested in the partial impact statement for amendments. There is no formal threshold in place for when a full RIA is required when laws and regulations are amended. The Modernization of the Administration Directorate can recommend for a full RIA to be carried out, but there are no formal criteria in place to support this decision.

Procedures for both partial and full impact assessment are mandated by law via the *Law on Normative Acts* and the *Ordinance on the scope and methodology for performing the impact assessment* adopted by Regulation 301/2016 of the Council of Ministers. A manual for conducting RIA was adopted by Council of Ministers *Decision No. 728* in December 2019 and repealed the former *Guide for the preparation of the impact assessment of legislation RMS No. 549* of 2014.

The manual is in line with OECD best practices for regulatory impact assessment. It explains the rationale for carrying out an impact assessment and outlines the steps to be followed by the ministries:

1. Defining the problem;
2. Defining the goals;
3. Development of options for action;
4. Analysis of the impacts of the options;
5. Comparing the options;
6. Monitoring and evaluation.

For the partial assessment, ministries are required to briefly describe the steps as discussed above without having to provide quantitative analysis, as well as a timeline and plan for the stakeholder engagement process, which will be carried out for full impact assessments only.

For both partial *and* full impact assessments, ministries are required to assess a number of impacts (costs and benefits) including on SMEs, the budget, competition, consumers, social and environmental impacts, and impacts at the regional level. Though for partial impact assessments, such assessment will be qualitative only, a much more extensive assessment is required at this initial stage than in many other OECD countries.

Full impact assessments require an additional, comprehensive SME test and analysis will be either “in-depth” qualitative or quantitative. Appropriate tools and methods such as cost-benefit analysis are thoroughly explained in the manual.

For all draft primary laws and subordinate regulations, as well as non-legal acts issued by the Council of Ministers, ministries are required to obtain approval by the Ministry of Finance on “budget compliance”. This process resembles the assessment of financial impacts as part of RIA, but takes place in parallel to the regular RIA procedure.

*Ex ante* and *ex post* impact assessments should be closely linked, according to the RIA manual. Performance indicators and SMART objectives should be included in the RIA statement, along with possible monitoring and evaluation measures.

**In practice**, *ex ante* impact assessment is carried out relatively late in the process. The likely implications of the proposal tend to be highlighted once the course of action is already decided and, most commonly, the related legal text has been drafted to a large extent.

Moreover, RIAs are often of poor quality. A recent study<sup>3</sup> carried out by the Institute for Market Economics found that “the process of complying with the [RIA] requirement is formal – without data, with half-hearted and incomplete consultations with the interested parties, which means in practice – without knowledge of the expected effects” (Institute for Market Economics, 2019<sup>[7]</sup>). The study concludes that RIA in Bulgaria is carried out as a mechanistic tick-the-box exercise rather than as a tool to weigh costs and benefits of different policy options to support decision-making.

The administration also reportedly does not make use of the full RIA toolbox available to civil servants. The 2019 annual RIA reports that even basic tools, such as the Standard Cost Model for measuring administrative burdens posed by a draft legislation, are often not used by ministries when conducting a RIA.

RIA quality is insufficient partly due to a lack of measurable objectives. Often, they are purely qualitative, and ministries avoid setting clearly measurable and quantitative objectives to evade responsibility for a regulation’s potential inefficiency or inability to reach said objectives. Quantitative and measurable objectives will be crucial not only to ensure quality regulation, but also to allow for effective *ex post* evaluation to take place.

To avoid the RIA requirement that automatically triggers a full (quantitative or in-depth qualitative) assessment for new laws, it also occurs regularly that regulators amend existing laws, instead of developing new ones. Thirty seven per cent of legislative initiatives submitted to parliament during the 44th National Assembly contained provisions for changes to other existing legislation according to a study by the National Centre for Parliamentary Research.

As a result, the current RIA process for legislation initiated by the executive does not serve its intended purpose. Legislation is changed frequently to address unwanted consequences that had not been anticipated. Such frequent changes lead to legal uncertainty and create costs for businesses, which in turn leads to hampered competitiveness and economic growth.

In addition, ministries report that data availability, or a lack thereof, is a crucial obstacle to an effective RIA process, even though Bulgaria has a range of publicly accessible registers and data bases and social partners reported collecting data relevant for ministries’ purposes. The RIA manual lists possible sources of data and advises to engage with stakeholders to obtain relevant information and the Institute of Public Administration provides training courses on the issue.

Finally, regulatory alternatives, in particular non-legislative options, are not sufficiently considered in the RIA process, according to the annual RIA report 2019. As in many OECD countries, a “regulatory reflex” is prevalent in Bulgaria. Legal units in ministries often choose regulatory approaches to address policy issues without necessarily addressing the drivers of the problem and considering alternative, non-regulatory interventions in a comprehensive manner. To avoid this “instinctive approach”, RIA should be used to evaluate the impacts of different implementation approaches associated with a decision, including non-regulatory options.

The Government has recently taken steps to address this issue. In 2020, the Council of Ministers developed a concept paper for the implementation of alternative regulatory approaches and the Administrative Reform Council adopted the *Standards for the Implementation of Alternative Regulatory Approaches*.

### **Parliament**

Regulatory impact assessment is mandatory for legislation initiated by Parliament according to Art. 76 of the *Rules of Procedure of the National Assembly*.

The RIA required for laws introduced by the legislature does not meet the general requirements for impact assessment and standards set for the executive. Crucially, there is no quantitative analysis and no assessment of regulatory options and alternatives. There is also no quality control mechanism in place, but draft laws cannot be submitted to the President and registered in the public register without an impact assessment statement.

A RIA requirement for legislation introduced by the legislature is rare among OECD countries, where contrary to Bulgaria, a majority of legislation is usually initiated by the executive. In Bulgaria, such a requirement can be considered a positive step towards assuring that principles of evidence-based, high quality regulation making are followed during the development of the large share of legislation that Parliament introduces.

To date, this approach has however not achieved the desired effect, due to the comparatively lower quality standards applied to RIAs for laws initiated by parliament, and the lack of regulatory oversight.

The National Centre for Parliamentary Studies at the National Assembly analysed the legislative activity of the National Assembly<sup>4</sup> and the quality of the impact assessment carried out for bills initiated by Parliament. Only 14.9% of parliamentary impact assessments made reference to scientific evidence. In 73.9% of bills initiated by parliament, financial and budgetary impacts were not assessed, which is the impact category that is most commonly assessed for laws and regulations initiated by the executive.

Businesses and civil society organisations strongly criticise the poor quality and lack of scrutiny for the (substantial number of) laws initiated by Parliament.

### **Regulatory oversight of impact assessment**

Responsibilities for regulatory oversight of regulatory impact assessment prepared by the executive are shared by the Council of Ministers' Modernization of the Administration Directorate, the Administrative Reform Council and the Impact Assessment Working Group. The MoA Directorate is responsible for quality control of RIA, while the Administrative Reform Council prepares guidelines on RIA. The Impact Assessment Working Group provides support to ministries on the RIA process and serves as a forum to exchange best practices, but is currently inactive. The Ministry of the Economy developed an SME test as part of the impact assessment; however, it does not oversee its implementation or support ministries with the assessment.

Where a law is initiated by a Member of the National Assembly or a group of MPs to the National Assembly, an opinion on the quality of the assessment is not required. While this is the case in most other EU and OECD countries as well, it is particularly relevant in the Bulgarian case as a majority of laws is introduced by Parliament and therefore effectively not subject to any scrutiny.

The *Directorate for the Modernization of the Administration* is responsible for quality control of RIAs. There are three different types of scrutiny processes depending on the type of impact assessment:

- Quality control of partial impact assessments for draft legislation that is part of the legislative plan. The Directorate issues a single opinion within 14 days;

- Quality control of partial impact assessments for draft legislation that is not part of the legislative plan. The Directorate issues a single opinion within 7 days;
- Quality control of full impact assessments. The Directorate issues two opinions within 7 days each.

In case the Directorate's first opinion on a full RIA is negative, it is returned to the responsible ministry for revision. The Directorate does not have the power to stop the draft from going forward should the second opinion be negative as well.

The Directorate can recommend that a full RIA is carried out, should the analysis provided in the partial impact assessment be incomplete, i.e. not fulfilling the requirements. Alternatively, it can ask the issuing ministry to revise the partial assessment.

For *new* laws and regulations, a full RIA is automatically required. There are no formal criteria in place to mandate when a full RIA should be carried out when laws and regulations are amended, this decision is at the discretion of the MoA.

The Directorate provides advice formally, i.e. through official opinions in the co-ordination process, after an impact assessment is carried out but before the official public consultations. According to the organisational rules of the Council of Ministers, the Directorate should also provide support and methodological assistance informally through the Impact Assessment Working Group, before or during the impact assessment process. Such support is currently not provided in practice due to the temporary inactivity of the Working Group.

The MoA Directorate's scrutiny focuses on the following aspects of the RIA:

- Are the problems correctly defined?
- Are the objectives SMART and suited to address the identified problems?
- Have relevant stakeholders been identified correctly?
- Have alternative regulatory and non-regulatory options been identified? Has the "No Action" option been considered?
- Are the costs and benefits of the options correctly assessed, including for the "No Action" option?
- Have the options been compared?
- Have the administrative burdens of new regulation and the impacts on SMEs been assessed?

**In practice**, the Directorate's control function is limited to a formal review of the RIA document. Rather than scrutinising whether costs and benefits have been assessed correctly or the objectives are suited to address the identified problems, the Directorate reviews the completeness of the RIA document, i.e. whether all categories have been considered.

This lack of actual quality control is partly due to a lack of resources and time constraints. The Directorate is contacted by ministries very late in the regulatory process and receives the RIA documents shortly before the draft is submitted to parliament. At this stage, there is not sufficient time to carry out a complete review and comments on the quality of the cost benefit analysis are not implemented by ministries.

A lack of resources also poses difficulties to an effective oversight process. The Directorate currently has only three staff members assigned to quality control of impact assessments. The Directorate's staff is also analytically not sufficiently equipped to carry out a quality review of cost and benefit assessments.

The National Assembly does not scrutinise the quality of the executive power's impact assessment. It has the general authority to reject the draft if the impact assessment is missing. However, parliamentary committees and the plenary comment on and criticise the quality of impact assessments on an *ad hoc* basis.

## Assessment and recommendations

*Regulatory impact assessment takes place too late in the regulatory process to actually inform the choice of the most appropriate government intervention.* The likely implications of the proposal tend to be highlighted once the course of action is already decided and, most commonly, the related legal text has been drafted to a large extent. When it happens, such practice is not conducive to systematically elaborating and comparing possible alternative options, and appraising the resulting impacts, to inform the choice of the most appropriate government intervention. Instead, RIA is largely considered a mechanistic “tick-the-box” exercise. There is limited appreciation of the benefits associated with using RIA as a process to facilitate policy integration and proportionate interventions, and rationalising government decision-making.

*RIA quality is not up to standards.* Often, the analysis of costs and benefits is of low quality or incomplete. Regulators are not making use of the tools and different options they have available to assess regulatory impacts. Quantitative analysis is almost always missing. Alternatives to regulation and costs and benefits of different policy options are not assessed. The lack of high quality impact analysis means that RIA cannot be used as a tool to provide an evidence base for decision making.

*The RIA requirement for legislation initiated by parliament, while good practice, is not achieving the desired effect.* This is due to the comparatively lower quality standards applied to RIAs for laws introduced by the legislature, and the lack of regulatory oversight. The progressively increasing share of laws introduced by parliament exacerbates the need for effective impact assessment and scrutiny to ensure high quality regulations.

*Following international best practice, a proportional approach to RIA has been introduced, albeit not formally.* It however currently does not allow for targeting scarce resources to the most impactful proposals. The level of analysis required for partial assessments is more extensive than in many other OECD countries and a full RIA is required for all new laws and regulations, regardless of impact. There is a risk that the initial assessment stage is perceived too burdensome by ministries and, as a result, is not carried out to a satisfactory level. In light of the scarce analytical resources available in line ministries, introducing a more balanced threshold and requirements for partial impact assessments will be crucial to ensure the level of analysis is justified by the expected impacts.

*Effective quality control of RIA, in particular cost benefit analysis and measurable objectives, is missing.* The MoA Directorate is responsible for scrutinising the quality of impact assessments, yet is not equipped to do so effectively as it is lacking analytical resources and operates under severe time pressure. The Directorate is involved too late in the regulatory process for quality control to have an impact. As a result, the review is carried out only formally. Issues such as subpar analysis or unsuitable objectives have not been addressed in the past. Ministries are not receiving sufficient support in the impact assessment process, also with regards to the SME-test developed by the Ministry of the Economy.

**Recommendation 3.1. The Government should promote effective RIA implementation in practice by putting in place measures to strengthen analytical capacities, extending the RIA requirement to include ministerial acts and revising the targeted approach to RIA.**

Implementation guidance:

- Sufficient analytical capacities in line ministries will be crucial for the effective implementation of RIA in practice. To this end, the dedicated RIA units already present in a number of line ministries should serve as “RIA champions” to support analytical capacities. These centres could combat the lack of analytical capacity in ministries and therefore improve problematic quality of regulatory management tools. They would act as “knowledge centres” staff from other ministries could turn to for guidance on regulatory policy tools. The champions would receive special training on regulatory



impact assessment and could share experiences in overcoming challenges through bi-annual or quarterly meetings;

- RIA can only be effective when applied systematically. For this reason, ministerial acts – legislation issued by ministers which poses substantial burdens and is excluded from the RIA requirement – should be included in the *Law on Normative Acts* and the *Ordinance on the scope and methodology of the impact assessment* as required to undergo impact assessment;
- A targeted approach to RIA helps to support implementation in practice by effectively targeting analytical resources to the most impactful pieces of legislation. The existing, unofficial threshold in Bulgaria should be formalised and revised to bring down the level of analysis required for partial assessments. A formal burden threshold for full impact assessments should be introduced to provide clear criteria for when a full impact assessment is required and to reduce the burden posed on ministries. New laws and regulations should not automatically require a full impact assessment.
- Similarly, to effectively target analytical resources, parallel structures should be avoided where possible. For this reason, the budget review carried out by the Ministry of Finance in parallel to the regular RIA process should be integrated in RIA, as suggested during the better regulation reform process in 2016.
- The Government should also determine the objective cases when a RIA is a priori not necessary (exclusion criteria) and when a RIA may not be carried out (exemption conditions), and establish the related arrangements to ascertain and manage such cases; exclusions and exceptions should be kept at a minimum and based on clear criteria against which they should be justified.

### Box 3.2. Proportionality in RIA: Country examples for quantitative RIA thresholds

**Austria:** For all new laws and regulations, an impact assessment is mandatory. The regulation underpinning this instrument provides an explicit list of impact dimensions that have to be assessed. Nevertheless, only impacts above a certain threshold have to be assessed in further detail. Thresholds are mostly quantitative and vary depending on the impact dimension, e.g. for environmental impacts it exceeds 10 000 tons of CO<sub>2</sub> per year. Other relevant (sub-)dimensions include impacts on the business cycle (threshold 500 enterprises) and financial impacts like impacts on access to finance (threshold EUR 2.5 million or 10 000 enterprises). As a consequence, only for about 35% of new laws have a full scale RIA and resources can be directed to proposals where high quality impact assessments are needed.

**Canada:** Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionality, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors.

- Low impact, cost less than 10 million dollars present value over a 10-year period or less than 1 million annually;
- Medium impact: Costs 10 million to 100 million present value or 1 million to 10 million annually;
- High impact: Costs greater than 100 million present value or greater than 10 million annually.

**United States:** RIA is required for significant and economically significant regulatory actions as defined under Executive Order 12866 and Executive Order 13563. An economically significant regulatory action is one that:

- Likely to impose costs, benefits, or transfers of USD 100 million or more in any given year;

- Adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Source: (OECD, 2019<sup>[8]</sup>), A closer look at proportionality and threshold tests for RIA, OECD.

**Recommendation 3.2. Ministries should systematically introduce performance indicators and considerations for future monitoring and evaluation in full RIAs to improve RIA quality and foster a closer link between ex ante and ex post impact assessment.**

Implementation guidance:

- Proposed regulations in Bulgaria currently have no indicators to track the impact and progress of new regulations and objectives are rarely measurable. The Government should consider the development of performance indicators for high-impact regulations. Given the resource constraints on proposers, the Government should prioritise which regulations will need a more extensive performance management and tracking plan based on how big the societal impacts are expected to be. This requirement could be tied to the new procedure for prioritising RIA as discussed in Recommendation 3.1. To ensure that resources are spent on impactful regulations, a full set of performance indicators should have to be developed for full RIAs only.
- Over the long-term, indicators for high-impact regulations should be integrated into *ex post* evaluation and amendments to those regulations. The government should have a long-term strategy for integrating indicators and performance management data into *ex post* evaluation to inform new regulations and when modifying old ones. This approach should be formalised in existing guidelines.
- To support future *ex post* evaluations, ministries should make arrangements for future monitoring and evaluation of regulation in the *ex ante* impact assessment. Proposers should anticipate how the data needed will be collected. See Box 3.3 for the European Commission's approach.
- Ministries should be supported in this effort with targeted trainings and specific guidance. The oversight body should provide support if necessary and ensure measures are carried out according to guideline standards.

**Box 3.3. Arrangements for future monitoring and evaluation of regulation in the European Commission**

The impact assessment guidelines of the European Commission require that new regulatory proposals “Identify core progress indicators for the key objectives of the possible intervention, provide a broad outline of possible monitoring and evaluation arrangements, and ensure that evaluations are designed and timed in a way that the results can be used as input for future impact assessments”.

They also state that where a preferred option has been identified, the agency should:

- Describe briefly how the data needed for monitoring are to be collected;
- Outline the nature, frequency and purpose of subsequent evaluation exercises.

Questions to be addressed in the impact assessment include:

- What will the monitoring data and evaluation findings be used for?

- To what extent do monitoring/evaluation structures already exist? Does new capacity need to be put in place?
- Is the baseline situation sufficiently well-known or will further data collection be necessary once the proposal has been adopted?
- Who are the key actors in providing and using such information? (e.g. the Commission, Member States, Intermediaries such as Agencies, operators/beneficiaries, etc.)?
- In general terms, what will be the roles of these actors? How will information be shared and eventually aggregated?
- What will be the additional use for gathering this information? If they imply administrative burden which is significant, it should be measured through the Standard Cost Model as part of the IA.

Source: Adapted from the European Commission impact assessment guidelines, <https://ec.europa.eu/info/sites/default/files/better-regulation-guidelines-impact-assessment.pdf>.

**Recommendation 3.3. The Government should improve regulatory oversight of the impact assessment process by giving the oversight body stronger powers and re-establishing the existing support system for ministries.**

Implementation guidance:

- The body should be given the authority to address cases of non-compliance with RIA requirements (unjustified shortening of time periods, lack of quality analysis, circumventing RIA requirement by introducing new regulatory requirements as part of unrelated draft legislation, etc.) in an appropriate manner. Bulgaria should consider the “gate-keeping” authority that the body is going to exercise within the regulatory process. In this respect,
  - the body’s opinion may have a more or less binding status on the proposing ministries, ranging from purely advisory to being a formal pre-requisite before submitting the proposal to the Parliament’s deliberation;
  - a so-called “traffic light approach” could be designed to modulate the type of response imposed by the ministries; and
  - a transition phase could also be envisaged, according to which the binding character of the body’s opinions is progressively enforced in line with the arrangements established in the Action Plan in Recommendation 1.2.
- The quality control function should be complemented with analytical support provided to ministries. To this end, the incoming Government should consider promoting the activity of the Impact Assessment Working Group, which serves as a forum for ministries to share experiences and best practices regarding the RIA process.

## Notes

<sup>1</sup> SMART = **S**pecific, **M**easurable, **A**chievable, **R**elevant, **T**ime specific.

<sup>2</sup> <https://parliament.bg/bg/ncpi>.

<sup>3</sup> The study reviewed the quality of impact assessments for the period 2017-19 and covered 44 draft primary laws initiated by Parliament and 50 subordinate regulations prepared by the Ministry of Justice.

<sup>4</sup> For all available reports, see <https://parliament.bg/bg/ncpi>.

# 4 Stakeholder engagement and transparency

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This section reviews the processes in place in Bulgaria for consultation and dialogue with affected stakeholders and the general public and to what extent the outcomes can influence policy makers. It describes and evaluates the regulatory and institutional framework for stakeholder engagement and the role of stakeholder engagement in *ex ante* and regulatory impact assessment.

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The stakeholder engagement system in Bulgaria compares well to many other EU countries. Early stage consultations are carried out on an *ad hoc* basis and stakeholders are systematically consulted on draft legislation. However, procedural requirements are sometimes not respected in practice and clear criteria for when exceptions are justified are missing. Legislation introduced by Parliament is not yet prepared in a transparent manner. Therefore, this section recommends that the Government engage at the early stage more systematically, and introduce stronger regulatory oversight.

**Traffic light snapshot on “Stakeholder Engagement and Transparency”**

	<ul style="list-style-type: none"> <li>• The public consultation portal <i>strategy.bg</i> is designed in a user-friendly and intuitive manner and provides clear instructions on how to provide comments.</li> <li>• Ministries are required to respond to feedback received and all comments are publicly available.</li> </ul>
	<ul style="list-style-type: none"> <li>• Early stage consultations are mandatory for legislation requiring a full RIA and are carried out on an <i>ad hoc</i> basis in practice.</li> <li>• The late stage public consultations for laws introduced by the executive are following good practice. Laws and regulations introduced by Parliament are not subject to the same stringent requirements.</li> </ul>
	<ul style="list-style-type: none"> <li>• Stakeholders are often not aware of opportunities to participate in the legislative process and are not actively informed in advance of consultation processes planned to take place.</li> <li>• Procedural requirements are sometimes not respected in practice and clear procedures for enforcement by a regulatory oversight body are missing.</li> </ul>

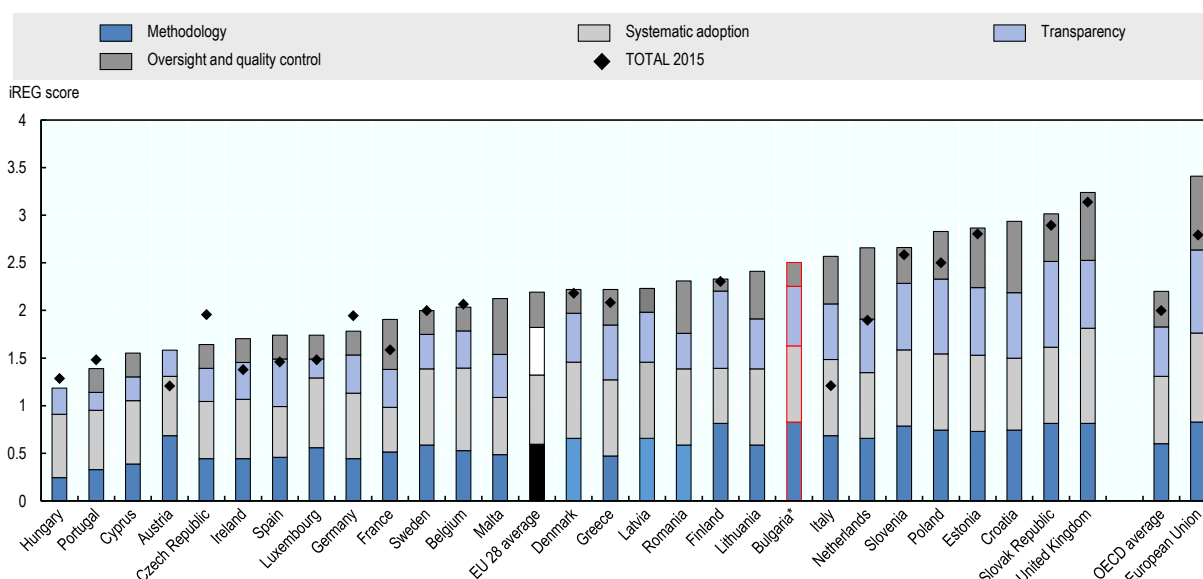
Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. This important objective can only be achieved with help from those interested in and affected by regulations – the “stakeholders”. Stakeholders should not only be consulted when new regulation is being proposed and developed, they should also have an opportunity to participate in subsequent phases of the “regulatory governance cycle”, such as regulatory delivery or reviewing the regulatory stock.

According to the 2012 OECD Recommendation on Regulatory Policy and Governance, “Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place. Governments should be actively engaging all relevant stakeholders during the regulation-making process and designing consultation processes to maximise the quality of the information received and its effectiveness.”

In Bulgaria, public consultation is mandatory to inform the development of all primary laws and subordinate regulations initiated by the executive according to Art. 26, *Law on Normative Acts*. Unlike most EU member states, where consultation systems are generally less developed than they are for primary laws, Bulgaria has similar consultation requirements and practices for primary and subordinate laws (OECD, 2019<sup>[9]</sup>), (Figure 4.1), (Figure 4.2).

**Figure 4.1. Stakeholder engagement in developing primary laws in the EU**

Composite indicators 2018

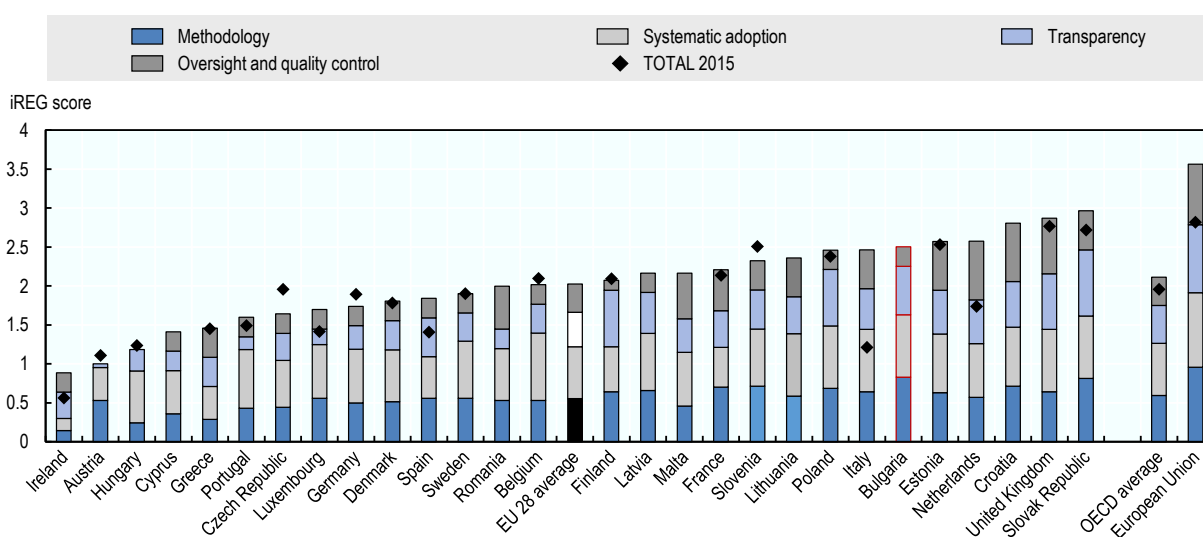


Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. \* In the majority of EU Member States, most primary laws are initiated by the executive, except for Bulgaria, where a higher share of primary laws are initiated by the legislature.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

**Figure 4.2. Stakeholder engagement in developing subordinate regulations in the EU**

Composite indicators 2018



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.



The 2016 reforms introduced significant improvements to the stakeholder engagement landscape, which are reflected in Bulgaria's above average score in the *IREG* composite indicators for stakeholder engagement. Most importantly, the publication of draft legislation on the central consultation portal *strategy.bg*, which was established in 2008, was made mandatory. Through the portal, sponsoring ministries are now required to provide direct feedback to participants that explains how their submission has helped shape final regulatory proposals. The public consultation process is not considered complete until such feedback has been provided and published.

Other changes include the revision of the government-wide policy on consultation processes in drafting, implementing and reviewing regulations, resulting in the 2019 guidance document *Standards for Holding Public Consultations*.<sup>1</sup> The 2016 reforms also introduced extended minimum consultation periods with stakeholders to 30 calendar days.

### Early stage consultations

Early stage consultations, i.e. discussing the policy issue and rationale for the intervention before a regulatory or non-regulatory solution has been identified, is mandatory in cases where a full RIA is required as per Art 24. (1) of the *Ordinance on the Scope and Methodology for Impact Assessment*, but is rarely carried out in practice.

During the period of the 44<sup>th</sup> National Assembly (April 2017 – March 2021), early stage consultations have taken place for 6.6% of all laws and regulations introduced according to a study<sup>2</sup> by the National Centre for Parliamentary Research.

They mostly take place in the form of informal consultations with selected interested stakeholders and advisory groups. Ministers, the chairpersons of state agencies and directors of executive agencies can establish consultative bodies with the option to include representatives of civil organisations according to the *Administrative Procedure Code*.

Reportedly, feedback received in early stage consultations very rarely informs the draft proposal. This and the fact that early stage consultations are carried out rarely in the first place mean a missed opportunity for the Government to collect valuable information from stakeholders at a point in the process where their input could still significantly inform the policy solution.

### Late stage consultations

Late stage consultations refer to stakeholder engagement to inform regulations where the preferred solution has been identified and the text of the regulation has been drafted. Requirements and practices differ depending on whether the draft legislation is introduced by the executive or the legislature.

#### **Executive**

Late stage public consultations are obligatory for all laws and regulations initiated by the executive according to Art.26 of the *Law on Normative Acts*. Ministries are required to publish all regulatory drafts along with the RIA statement and the MoA Directorate's review for public consultation for at least 30 days on the consultation portal *strategy.bg*. In exceptional cases, which are not further defined, this period can be shortened to 14 days. Civil servants are obliged to respond to feedback received (i.e. whether or not proposals have been accepted) and publish the response in the form of a report.

**In practice**, the system for public consultation to inform draft legislation works comparatively well in Bulgaria. The public consultation portal is user-friendly and intuitive, with clear instructions how comments can be provided. All comments and responses are publicly visible.

Tripartite consultations are considered useful by business associations. Reportedly, feedback provided by businesses has informed draft legislation on several occasions, for example for the law on money laundering, where changes suggested by the Confederation of Employers were implemented fully.

There are however a few shortcomings to the Bulgarian consultation system. Most importantly, requirements concerning time periods are not respected systematically. The 30 days minimum period is often shortened and the public is also not actively informed in advance of consultations planned to take place. The 2020 RIA report states that “in a significant number of consultations, deadlines are set shorter than what is provided for in the Law on Normative Acts. This was the case for 220 or about 34% of national public consultations.” In roughly 25% of cases, no reasons were provided to justify the shorter term, as is required by Art. 26 of the *Law on Normative Acts*.

Following a negative assessment in the 2018 RIA report, the Government had already tried to address the issue by threatening to abolish legislation in cases of non-compliance with the time period requirement, albeit to no avail.

Moreover, according to a recent report by the Bulgarian RIA Centre (Dimov, 2021<sup>[10]</sup>), stakeholders (especially citizens) are not sufficiently aware of the possibility to participate in the regulatory process. This lack of awareness is reflected by the low number of comments provided on regulatory drafts on the portal.

Not granting sufficient time to provide comments and not giving advance notice can effectively exclude smaller stakeholders such as small businesses and civil society organisations that are not organised in associations and lack resources to participate with little time to prepare.

### **Parliament**

Public consultations are mandatory for laws initiated by Parliament since 2008, according to Art. 26 of the Law on Normative Acts.

The bills initiated by MPs are published on the website of the National Assembly and all interested parties may express an opinion. This process is not governed by the same rules as the consultation process for legislation initiated by the executive. The National Assembly can proceed with the draft law at any time, and the minimum consultation period of 30 days (or 14 in exceptional cases) cannot be enforced. Also, the National Assembly rarely actively reaches out to stakeholders to inform the public of the ongoing consultation. Unlike the executive, the Assembly is not required to provide feedback to stakeholders on their comments provided and whether or not their feedback was used to inform the draft bill.

Unlike in most OECD countries, citizens and businesses in Bulgaria can participate in the meetings of parliamentary committees and provide feedback on draft legislation (sent in advance or presented in person) – an approach that is viewed as a step towards open and transparent regulation making.

### **Regulatory oversight of stakeholder engagement**

The Council of Ministers' Modernization of the Administration Directorate is responsible for oversight and quality control of consultation processes carried out by the executive. The quality of public consultations is controlled only when a full impact assessment has been carried out.

For partial impact assessments, the opinion of the Modernization of Administration Directorate may criticise the comprehensiveness of the stakeholder identification and, for full impact assessments, its opinion may also comment on the quality of the public consultations carried out. In this case, the Directorate scrutinises if the consultation processes are in line with the Council of Ministers *Ordinance on the scope and methodology of impact assessment*. The Directorate's opinion is not binding for the sponsoring ministry.

When submitting draft legislation for review, ministries are required to provide the results of the public consultation, as well as a justification, should the period for public consultations have been shorter than the mandatory minimum period of 30 days. There are no clear criteria in place to determine under what

circumstances the minimum period may be shortened and the Directorate does not have the power to review and potentially challenge this decision.

## Assessment and recommendations

*Stakeholder engagement in Bulgaria is comparing well to other EU countries.* Draft legislation is published on the public consultation portal *strategy.bg*, which is designed in a user-friendly and intuitive manner and provides clear instructions on how to provide comments. Ministries are required to respond to feedback received and all comments are publicly available.

*Early stage stakeholder consultations is carried out on an ad hoc basis in the form of working groups and/or informal meetings and workshops.* There is a requirement to consult with stakeholders prior to a regulation being drafted where a full RIA is required, but it is rarely carried out in practice. This is a missed opportunity for the Government to effectively engage with stakeholders at a point in the process where stakeholder input can still have a significant impact.

*The late stage public consultations for laws introduced by the executive are following good practice, but legislation initiated by Parliament is not yet prepared in a transparent manner.* Any member of the general public can provide feedback on laws and regulations developed at the level of the executive. The public is however not informed in advance of upcoming consultation procedures. The significant share of laws that are introduced by Parliament are not subject to the same stringent requirements. As a result, they are not yet prepared in a transparent manner.

*In practice, requirements concerning minimum time periods are not systematically respected and clear criteria for enforcement are missing.* A shortened time period is granted under “exceptional circumstances”, which are not further specified, and the oversight body does not have the power to challenge this decision. This lack of formal criteria makes effective enforcement of the requirement impossible. Stakeholders must be granted sufficient time for them be able to participate in a consultation. This is particularly important as to not exclude civil society organisations and small businesses with fewer resources or marginalised groups of society that are not organised in associations.

***Recommendation 4.1. Bulgaria should strengthen stakeholders’ access to public consultations by introducing a requirement to inform stakeholders in advance of planned consultations and engaging with stakeholders more systematically earlier in the process.***

Implementation guidance:

- The public should be informed with sufficient time in advance of upcoming consultation processes on the Government’s consultation portal and ministries should actively reach out to particularly affected stakeholder groups ahead of the consultation process. Notifying stakeholders in advance of an upcoming consultation process would help improve awareness among stakeholders of what is in the pipeline in the regulatory sphere. It would also enable better identification of potential stakeholders to be engaged early in the legislation-making process;
- The requirement for stakeholder engagement in the *Ordinance on the scope and methodology of the impact assessment* and the *Standards for holding public consultations* should be expanded to explicitly include early forms of consultations with certain interest groups, as well as legislation for which only a partial impact assessment is conducted (in which case engagement should have to be carried out publicly).

***Recommendation 4.2. Regulatory oversight should be strengthened by introducing clear threshold criteria mandatory to be reviewed by the oversight body.***

Implementation guidance:

- The Government should introduce a set of formal, clear threshold criteria that have to be met to justify shortening the 30-day minimum consultation period. Such criteria should be included in the *Ordinance on the scope and methodology of the impact assessment* and the RIA methodology.
- The oversight body should be tasked with reviewing the justification provided by ministries based on the threshold criteria. To encourage compliance with the oversight body's opinion, overall compliance rates should continue to be published in the annual RIA report and complying ministries could be mentioned as part of a "naming & praising" reporting mechanism.

## Notes

<sup>1</sup> See <https://www.strategy.bg/publications/view.aspx?lang=bg-bg&categoryid=18&id=296&y=&m=&d=>.

<sup>2</sup> For more information see <https://www.parliament.bg/pub/nciom/2021>.

# 5 *Ex post* evaluation

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This section examines whether Bulgaria has put in place processes for monitoring and reviewing the existing stock of regulations and laws, including how it undertakes reforms to improve regulation in specific areas or sectors to reduce administrative burdens or evaluate the overall effectiveness of regulation.

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**Systematic *ex post* evaluation is yet to be introduced in Bulgaria. A statutory obligation for all new laws and regulations to be reviewed within five years was introduced in 2016, but analytical capacities to fulfil this new requirement are missing. There is no body responsible for systematically supporting and controlling the quality of *ex post* evaluations. Therefore, this section recommends that the Government engage with stakeholders to identify the most burdensome areas of regulation, run pilot tests in selected line ministries to inform the new evaluation methodology, strengthen analytical capacities, and introduce regulatory oversight.**

***Traffic light snapshot on “ex post evaluation”***

	<ul style="list-style-type: none"> <li>• Bulgaria has taken an important step to introduce systematic <i>ex post</i> evaluation by putting in place a strong formal requirement.</li> </ul>
	<ul style="list-style-type: none"> <li>• <i>Ex post</i> evaluations so far have been carried out on an ad hoc basis, using external sources.</li> <li>• Efforts to reduce administrative burdens of regulations have been carried out, but effect has been limited.</li> </ul>
	<ul style="list-style-type: none"> <li>• There is no body responsible for systematically supporting and controlling the quality of <i>ex post</i> evaluations.</li> <li>• Necessary efforts to build capacities within the administration are not sufficient.</li> </ul>

OECD best practice suggests that regulations should be periodically reviewed to ensure that they remain fit for purpose. Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. Most OECD countries have enormous stocks of regulation and administrative formalities that have accumulated over years or decades without adequate review and revision. The accumulated costs of this in economic or social terms can be high.

*Ex post* evaluations complete the “regulatory cycle” that begins with *ex ante* assessment of proposals and proceeds to implementation and administration. The importance of using *ex post* evaluations to assess the ongoing worth of regulations is recognised in the OECD 2012 *Recommendation on Regulatory Policy and Governance*, which advises governments to “Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost-effective and consistent and delivers the intended policy objectives” (OECD, 2012<sup>[2]</sup>).

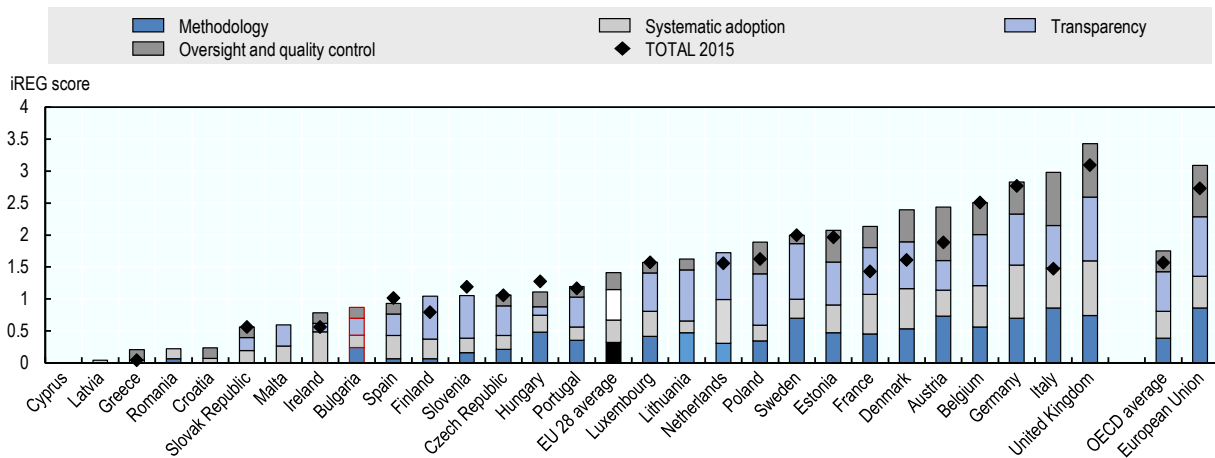
In Bulgaria, the amendment to the *Law on Legislative Acts* in 2016 introduced a statutory obligation for *all* new laws, codes and sub-statutory acts of the Council of Ministers to undergo *ex post* evaluation within five years of their respective commencement. The requirement is general and applies not only to all existing legislation, but also to both central and local authorities, meaning that municipal authorities are expected to review municipal regulations as well – a requirement that goes beyond what most OECD countries have in place.

Despite the fact that the first laws and regulations have reached the five year mark in 2021 and are due for review, there are no systematic *ex post* reviews carried out. There is also no formal system for reviewing the quality of regulations in particular sectors or programmes of work.

As a result, Bulgaria scores quite poorly in the OECD iREG indicators for *ex post* reviews. In fact, it scores below EU28 average and performs worse than peers such as Slovenia and the Czech Republic, according to a recent study by the OECD (Figure 5.1 and Figure 5.2).

**Figure 5.1. Ex post evaluation of primary laws in the EU**

Composite indicators 2018

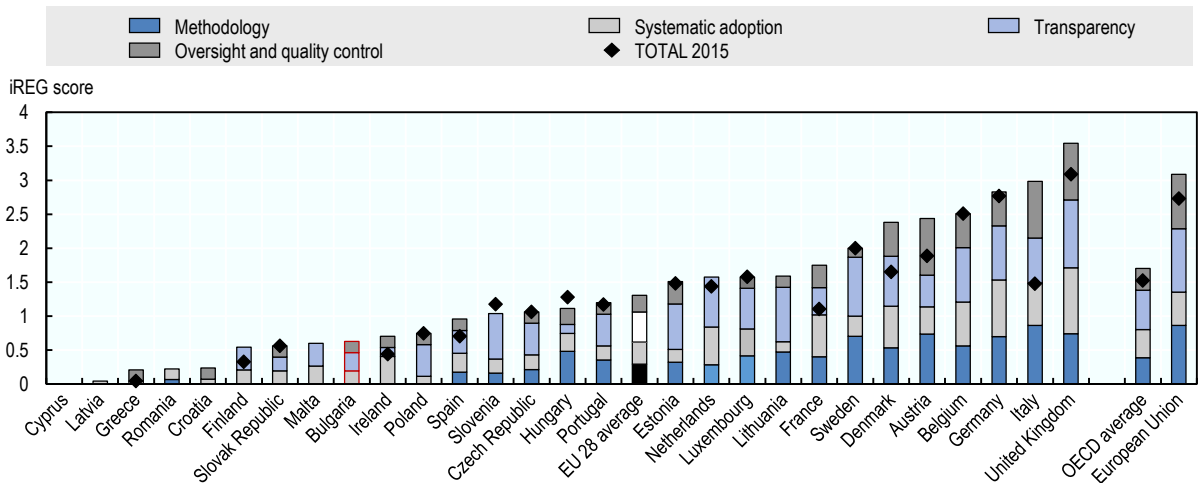


Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

**Figure 5.2. Ex post evaluation of subordinate regulations in the EU**

Composite indicators 2018



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 21 of the current 28 EU Member States. The OECD average is based on the 34 member countries at the time of the survey. Data for 2018 includes the remaining EU Member States of Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Recognising this relative weakness, Bulgaria has put in place some measures to promote *ex post* evaluation of existing legislation.



In December 2020, a guidance document for *ex post* evaluation was adopted to help inform future evaluations. The newly introduced document has been described as comprehensive and is broadly in line with the OECD *Best Practice Principles for Ex Post Evaluation* (OECD, 2020<sup>[11]</sup>). However, according to the National Institute of Public Administration, the guidance is too complex for civil servants and should be simplified to encourage its use in practice.

A number of *ex post* evaluations have been conducted on an ad hoc basis by external consultants. They are limited in number and in scope,<sup>1</sup> focussing on administrative burdens for businesses. In 2019-21, the Association of Eurolex and Delchev consultants carried out *ex post* evaluations of selected primary laws, such as the *Law on Labour Migration and Labour Mobility*.<sup>2</sup> In addition, the *Anti-Corruption, Conflict of Interest and Parliamentary Ethics Committee* of the 44th National Assembly commissioned the National Centre for Parliamentary Studies to *prepare an ex post evaluation of the Anti-Corruption and Unlawfully Acquired Assets Forfeiture Act*.

Such *ad hoc* evaluations of existing legislation carried out by external sources help the Government fulfil the *ex post* evaluation requirement partly. However, their value in evaluating the effectiveness and efficiency of laws and regulations and, in turn, to feed suggestions for improvement back into the policy process, is unclear. According to the Government's evaluation report of the *Strategy for the Development of the State Administration*, the "systems and procedures for monitoring and evaluation of policy interventions are not used in ways that lead to increased efficiency of public activities".

In addition, relying on external sources for carrying out evaluations cannot be considered a long-term, sustainable strategy, as they do not contribute to capacity building within the administration. Civil servants in ministries remain unequipped to conduct the important number of evaluations that will come due, triggered by the five year requirement introduced in 2016. The Government has so far not undertaken sufficient measures to build analytical capacities in line ministries to fulfil the requirement. There is an urgent need for a targeted capacity-building program equipping evaluators with the necessary skills and providing support in the process.

### Box 5.1. Building capacity and providing support to evaluators

In **Canada**, The TBS Regulatory Affairs Sector initiated a number of measures to assist in building evaluation skills across federal departments and agencies, including:

- The development of a core curriculum by the Canada School of Public Service, which features also a course on "Regulatory performance measurement and evaluation";
- The creation of the Centre of Regulatory Expertise (CORE), which provides technical support concerning cost-benefit analysis, risk assessment, performance measurement and evaluation of regulations; and
- The establishment of the Centre of Excellence for Evaluation (CEE), which serves as a help-desk body in the planning and implementation of evaluations. This includes supporting the competent departments and agencies in the implementation and utilisation of evaluations, and helping to promote the further development of evaluation practices, not least through guidelines and manuals.

In the **European Commission**, in the framework of the Smart Regulation strategy, central support and co-ordination is ensured by the Secretariat-General. The latter issues guidance; provides in-house training; and organises dedicated workshops and seminars. The Secretariat-General oversees the EC's evaluation activities and results and promotes, monitors and reports on good evaluation practice. Evaluation units are present in almost all Directorates-General. Several "evaluation networks" dedicated to specific policy areas are also at work (for instance in relation to research policy or regional policy).

In **Switzerland**, despite the fact that there is no central control body for the implementation and support of evaluation in the federal administration, experiences and expertise is shared thanks to an informal “evaluation network”. The network exists since 1995 and is directed at all persons interested in evaluation questions, and comprises around 120 members from various institutions.<sup>3</sup>

Source: European Commission (2021), “Evaluation”, Better Regulation, [https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/evaluating-laws\\_en](https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/evaluating-laws_en) (last update 2021); Australian Productivity Commission (2011); Prognos (2013), “Expert report on the implementation of *ex post* evaluations: Good practice and experience in other countries”, report commissioned by the National Regulatory Control Council, Berlin, [www.normenkontrollrat.bund.de/webs/nkr/content/en/publikationen/2014\\_02\\_24\\_evaluation\\_report.pdf?\\_blob=publicationfile&v=2](http://www.normenkontrollrat.bund.de/webs/nkr/content/en/publikationen/2014_02_24_evaluation_report.pdf?_blob=publicationfile&v=2). In (OECD, 2018<sup>[12]</sup>).

## Administrative burden reduction

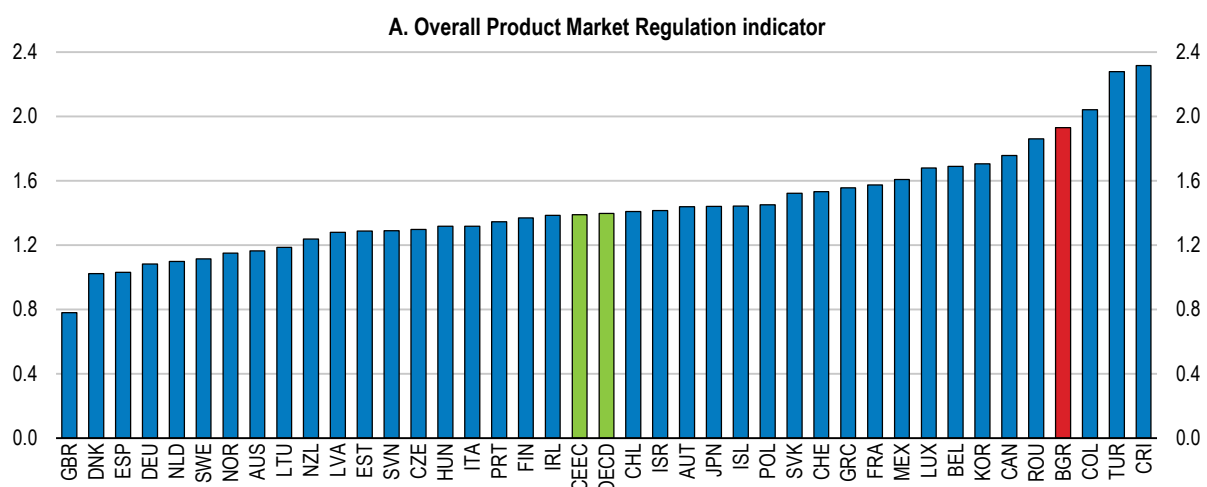
The quality of the regulatory environment in Bulgaria can, among other things, be determined by the ease of doing business.

According to the *Restricting Administrative Regulation and Administrative Control over Economic Activity Act* “state authorities and local self-government may not impose requirements, restrictions and burdens that lead to competition restriction or which are not necessary to achieve the objectives of the law”.

Regulatory barriers to competition in Bulgaria are higher than for all OECD countries, with the exception of Colombia and Turkey, based on the results for the economy-wide 2018 product market regulation indicators (see Figure 5.3). Breaking down the economy-wide measure indicates that Bulgaria is notable for high administrative requirements and an onerous licensing regime for new businesses and extensive public ownership of large operators in network sectors. Regulatory compliance costs stemming from the time it takes to fulfil administrative requirements are the reason why Bulgaria is scoring poorly. Estimates are that it takes 23 days for somebody to complete the necessary procedures versus 9.2 days on average in advanced OECD economies (OECD, 2021<sup>[13]</sup>).

### Figure 5.3. Bulgaria stands out for its high regulatory barriers to competition

Index scale of 0-6 from least to most restrictive, 2018



Note: Information for OECD countries refers to laws and regulation in force on 1 January 2018, while for the five EU member states that are not OECD members refers to laws and regulation in force on 1 January 2019. The OECD average does not include the United States.

Source: OECD, 2018 Product Market Regulation Indicators database. In (OECD, 2021<sup>[13]</sup>).

Several bodies share the responsibility for developing and implementing measures for reducing administrative burden: the Modernization of the Administration Directorate, the Economic and Social Policy Directorate, the Administrative Reform Council, the Ministry of Economy, and the Ministry of Finance all have administrative burden reduction in their area of competence. Co-ordination between those bodies is limited.

To date, six packages of measures to reduce administrative burdens have been adopted in Bulgaria. Citizens and businesses were consulted with in the process of identifying the most burdensome regulations to better target the Government's efforts. 1528 measures for transformation of the model of administrative service delivery were adopted by *Decision No. 704/2018 of the Council of Ministers*. The measures focused on the following two objectives:

- Simplify and consolidate access to government services for business in accordance with the general principles of the *Limitation of Administrative Regulation and Administrative Control on Economic Activities Act*,
- Introduce integrated administrative services (following the “once-only” principle, i.e. businesses should not have to provide the same information several times) by providing services through different channels and by automatising processes.

One thousand one hundred administrative regimes were reviewed in light of the above objectives and amended accordingly.

In addition, the Ministry of Economy initiated and co-ordinated three consecutive action plans for administrative burden reduction on businesses in 2010, 2012, and 2015 respectively. According to the ministry's reporting, the action plans have led to a reduction of administrative burdens to businesses by BGN 461.5 million (approx. EUR 235 million) per year.

The *National Economic Council* serves as a forum for businesses and government representatives to discuss administrative burdens stemming from legislation and propose changes to the legislation.

## Regulatory oversight of ex post evaluation

There is no body responsible for systematically supporting and controlling the quality of *ex post* evaluations. Introducing such an oversight role will be crucial for the effective rollout of *ex post* evaluation in Bulgaria.

## Assessment and recommendations

*Bulgaria has taken an important step to introduce systematic ex post evaluation by putting in place a strong formal requirement.* However, the requirement is lacking a proportional approach to ensure scarce resources are targeted towards the most impactful regulations. Moreover, the new requirement does not cover the existing stock of legislation before 2016, which will require sectoral in-depth reviews.

*Ex post evaluations so far have been carried out on an ad hoc basis, using external sources.* There is no systematic approach for reviewing the quality of regulations in particular sectors or programmes of work. In addition, efforts carried out so far have focused on regulations' costs and administrative burdens, rather than evaluating their overall effectiveness and efficiency. Despite those efforts, regulatory barriers are still hindering business activity in Bulgaria. Greater embedding of *ex post* evaluation would help enhance Bulgaria's competitiveness and ensure regulations meet economic, social and environmental objectives.

*Necessary efforts to build capacities within the administration are not sufficient.* An *ex post* evaluation methodology was developed to support ministries and introduce a systematic approach to *ex post* evaluation across the administration, but has been described as lengthy and too complex. In addition, the Institute of Public Administration has provided (few) trainings on *ex post* evaluation techniques to civil

servants. This effort will have to be significantly expanded in order to meet the substantial demand for analytical capacities in the face of the number of evaluations that will have to be carried out to meet the new requirement.

*Efforts to reduce administrative burdens so far have shown limited effect.* Bulgaria has more regulatory barriers to business than most other OECD countries. The limited success of burden reduction efforts in the past could partly be due to the ineffective institutional framework for regulatory burden reduction, with several bodies sharing the responsibility to prepare and implement measures without a formal co-ordination mechanism. Projects aiming at reducing administrative burden prepared by different bodies reportedly have been contradicting in the past.

*There is currently no body responsible for quality control of ex post evaluation and providing support.* Introducing such an oversight role will be crucial for the effective rollout of ex post evaluation in Bulgaria.

**Recommendation 5.1. – The Government should engage with stakeholders to identify the most burdensome areas of existing legislation.**

Implementation guidance:

- Considering the substantial regulatory barriers to doing business, Bulgaria would benefit hugely from identifying the sectors of the economy and society with the most burdensome regulations. Such an exercise would also help generate some momentum behind a more systematic approach to carrying out ex post reviews. Bulgaria could run a series of workshops to identify together with stakeholders major policy areas and sectors together with the corresponding ministries. This will later enable Bulgaria to implement pilot in-depth reviews of these problematic areas of regulation (see Recommendation 5.3.);
- This programme of identifying the most salient regulatory burdens could draw upon the public consultation portal *strategy.bg*. The portal could provide an open channel for complaints and suggestions concerning existing legislation from the public;
- For a long-term, systematic approach to engaging with stakeholders to identify burdensome regulation, Bulgaria should build on and extend the use of existing platforms such as the National Economic Council;
- Implementation of this programme should be co-ordinated and monitored by the Council of Ministers. However, line ministries should have the prominent role in running the programmes of engagement with their key stakeholders, for the respective areas of regulation they oversee.

**Recommendation 5.2. – The Government should strengthen capacities within the administration and target resources on high-impact regulations.**

Implementation guidance:

- Given the limited capacities within the administration for carrying out evaluations, the Government will need to put in place large-scale, targeted training programmes for civil servants. Such training efforts should include the different approaches for selecting areas of regulation for review, or how to use different tools (e.g. cost-benefit analysis);
- A complementary strategy to support analytical capacities can be to consult external analysts, as has been done in the past. It is crucial that these external consultants work hand in hand with the ministry and that their analysis informs the processes (and not vice versa);
- The current requirement includes *all* primary laws and subordinate regulations. To avoid evaluation fatigue, resources for evaluation could be focused on high-impact regulations. This would require introducing a threshold and support from the regulatory oversight body.

**Recommendation 5.3. – The Government should carry out pilot tests of the new methodology in selected ministries and use the results to inform the gradual roll-out of more systematic ex post evaluations across ministries.**

Implementation guidance:

- Bulgaria should focus initial pilots and subsequent, systematic *ex post* evaluation efforts on priority areas as identified in Recommendation 5.1. This will be crucial as OECD experience has shown that the “Pareto principle” can be applied to regulatory burdens – 20% of regulations usually cause 80% of the administrative burden (OECD, 2010<sup>[14]</sup>). Beyond looking at regulations in isolation, regular review of regulations and policy measures in key policy areas and sectors that are identified to be of particular economic or social importance can have very high returns. Bulgaria may consider establishing a standing capacity that regularly reviews priority areas to inform reforms and require the Government to respond to the findings of major review;
- Pilot evaluations should be carried out in 2-3 line ministries with support from the oversight body. Results should inform the existing *ex post* evaluation methodology. All pilot evaluations and subsequent evaluation reports should be published online in a central place that is easily accessible to the public;
- To support implementation of the new methodology in practice, for initiatives of significant importance, *ex post* evaluation working groups could be established containing representatives from the key line ministries, as well as the oversight body, to leverage policy integration and structurally sharing multi-disciplinary expertise.

**Recommendation 5.4. – Bulgaria should support the effort of introducing ex post evaluation in practice by putting in place an oversight mechanism that helps ensure quality and implementation in practice.**

Implementation guidance:

- A central oversight body should co-ordinate *ex post* evaluation efforts to identify priority areas for review together with stakeholders within and outside government. In a first step, the body could support ministries in evaluating key policy areas. The body could also help to build capacity and provide assistance to ministries for evaluation;
- Similarly to RIA, a central body with sufficient power and independence in its technical assessment could provide quality control of evaluations conducted in ministries. In order to avoid duplication, reduce transaction costs, and improve the link between *ex ante* and *ex post* evaluation; Bulgaria may consider assigning responsibility for quality control of *ex ante* and *ex post* evaluations as well as consultation to a single body;
- The new oversight function should be exercised with flexibility in relation to the type and level of support that the body provides to ministries and to the stringency with which evaluation reports are scrutinised. In the beginning, the body should focus its oversight function on providing support to ministries tasked with preparing an evaluation and promoting the use of the standardised evaluation techniques;
- The oversight body should co-ordinate and monitor the pilot evaluations as suggested in Recommendation 5.3.;
- The oversight body should also evaluate the whole *ex post* evaluation system for efficiency and effectiveness, once it is running in practice and results should be published in the annual RIA report.

### Box 5.2. Examples linking *ex ante* and *ex post* regulatory oversight

**Austria** has established the system of “*Wirkungsorientierte Folgenabschätzung*”, which introduces systematic requirements for both *ex ante* and *ex post* assessments, and requires major regulations to be evaluated after five years. The Federal Performance Management Office is responsible for ensuring the quality of both *ex ante* and *ex post* assessments. In its 2017 report, a regulatory proposal relating to Funding Alpine Infrastructure was highlighted as it explicitly stated that in order to assess the regulation’s actual success, impact-orientated data would be required that would allow for progress to be accurately measured. The evidence base would then be expected to form the basis of the *ex post* evaluation when the regulation was due for review.

The Regulatory Scrutiny Board of the **European Commission** conducts reviews of *ex ante* impact assessments, as well as selected *ex post* evaluations. Its 2017 annual report analysed how impact assessments and *ex post* evaluations were assessed when regulatory proposals were subject to an informal “upstream meeting” early in the review process with staff of the Commission’s services. It generally found that the final impact assessment result had improved where upstream meetings took place – which also tended to be in more complex regulatory areas. The same could not be said for *ex post* evaluations and it was queried whether the limited impact was due to the upstream meeting taking place too late in the evaluation process.

Source: (OECD, 2019<sup>[9]</sup>), Better Regulation Practices across the European Union, OECD Publishing, Paris.

### Notes

<sup>1</sup> Between 2009 and 2018, 12 *ex post* evaluations were carried out by with the support of external consultants. <https://strategy.bg/Publications/View.aspx?lang=bg-BG&categoryId=16&Id=234&y=&m=&d=>

<sup>2</sup> For the *ex post* evaluation report, see <https://www.strategy.bg/filehandler.ashx?fileid=25438>.

<sup>3</sup> [www.bj.admin.ch/bj/de/home/staat/evaluation/netzwerk\\_evaluation.html](http://www.bj.admin.ch/bj/de/home/staat/evaluation/netzwerk_evaluation.html).



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