

Regulatory Reforms Require a Closer Focus and a Shift to Overdrive



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Regulatory Reforms Require a Closer Focus and a Shift to Overdrive

Even the most staunch supporter of the minimal state would find it difficult to imagine today’s world without regulation – without any control over the banking sector, without any requirements in the field of construction, without any control over the quality of medicines and alcohol, without any restrictions to the possession and trade of arms, without any information about the content of foods, without any sanitary requirements for restaurants and bars, without any traffic lights and road signs in the cities.

The question is how to build a system of smart regulation, of well-thought and applicable in practice legal acts, which help people and entrepreneurs, instead of burdening them with unnecessary complications and bureaucracy, with administrative protection over certain circles and inconsistencies in the control over the implementation of the law.

The existence of such system is especially vital for Bulgaria – not only from a formal point of view – in terms of the preparation of the new programming period and the development of the new Operational Programme “Good Governance”, but also as an indispensable government response to the important social problems. Without this system the debate over the price of electricity and the role of the electricity distribution companies, over child support payments and who is eligible to receive them, over putting an end to the monopoly of heating providers and the National Health Insurance Fund and etc., would continue forever. That’s why the purpose of this text is to present the context and perspectives for placing the regulatory reform in the focus of attention of the government and the possibilities for its acceleration.

Good regulation is the main source of a good business environment, of economic growth, of healthy competition, of new jobs. Good regulation requires efforts in this respect

and the initiative should not remain only a bullet point in the election platforms and government programs, like it has been the case over the past 10 years. On the contrary – the continuous improvement of the quality of the regulatory environment should be the basis of any program. Among the Bulgarian society there is still doubt whether governments and institutions actually support the initiative for quality regulation, because its implementation could put an end to the possibility of benefiting certain oligarchic and corporate circles. Bulgaria does need quality regulation, because nowadays the level of public trust in key institutions such as the State Energy and Water Regulatory Commission, the Bulgarian National Bank, the Financial Supervision Commission and other major regulatory bodies is low and the European Commission continuously criticizes the country over the insufficient capacity of the regulatory bodies. Regulatory setbacks today are being punished very severely and lead to greater failures, in a time when citizens and entrepreneurs are beginning to lose their patience.

Good Regulation vs Bad Regulation

In my work and during my lectures I have often asked the question “What is good regulation?” This question has led to a wide variety of answers – part of them having to do with the right to good governance as a whole, others with the desire for less state interference in the economy and a third group - with the regulatory burden reduction and increased efficiency of the regulations. If you look at the world through rose-coloured glasses, good regulation is regulation, which stimulates economic growth and the establishment of a stable business environment and it is possible to achieve this within a period of several years. From a pessimistic point of view, on the other hand, good regulation is a bureaucratic initiative of the European Commission, which has led to at least half of the existing burden for businesses.

At EU level smart regulation policy is a top priority, since it is part of the commitment of the Union and the Member States to achieve “smart, sustainable and inclusive growth”, as envisaged in the Europe 2020¹. This Strategy calls for administrative burden reduction both in terms of EU legislation and national legislation, because globalization requires quick actions for improving competitiveness and energy efficiency, for producing safe foods and etc.

On EU level the better regulation initiative started in 2002 and it encompasses the following areas: implementing a system for impact assessment; carrying out a programme for improving the quality of the existing legislation through simplification, codification and etc.; improving public consultations with citizens and businesses and considering alternatives to regulation. Gradually the better regulation initiative evolved into smart regulation² but the goal of the European Commission continues to be mostly to improve the quality of the legislation and to enhance the participation of stakeholders in the process of policy design and development.

The new EC approach for smart regulation requires the adoption of new legislation to be preceded by a thorough analysis of the costs and benefits from the existing legislation. The main idea is to evaluate whether it is possible to simplify the existing legislation, to abolish outdated regulatory regimes or to consolidate and codify the legislation, before adopting new regulations. Compared to the previous better regulation initiative the focus has shifted from ex-ante impact assessment to ex-post evaluation of the acting legislation, where the ex-ante assessment is based upon the results from the ex-post one. Of course, this approach in the EC has become logical due to the fact that there is now a critical mass of already existing ex-ante impact assessments, which can be evaluated with respect to the implementation of the legislation and the modern realities.

¹ http://ec.europa.eu/europe2020/index_en.htm

² See http://ec.europa.eu/smart-regulation/index_en.htm

The broader approach for assessment of legislation and policies was first introduced in 2010 through the so-called regulatory fitness checks. In 2012 the EC initiated the Regulatory Fitness and Performance Programme (REFIT)³, which aims at improving the efficiency and effectiveness of EU legislation for achieving the goals of public policies: by proving clear added value, by achieving maximum benefit at minimal cost and respecting the principles of subsidiarity and proportionality. The final result should be a clear, simple, stable and predictable regulatory framework for businesses, employees and citizens. Through the REFIT Programme the Commission is hoping to determine, assess and adopt initiatives leading to a significant reduction of regulatory costs and simplification of existing regulations.

For more than a decade now the European Union has been trying to reduce bureaucracy but work on amendment of the existing EU legislation is on-going. In Bulgaria there is a practice to sometimes translate the directives of the EU word for word when transposing them into the national legislation, which leads to complications for the Bulgarian companies and results in overregulation beyond the minimum EU requirements, which is called gold-plating. This administrative practice should be ended as soon as possible through consultations with the stakeholders.

There are various examples of bad regulation and regulatory failures around the world, which should be closely studied, so as to decrease the possibility of repeating and multiplying them. Without a doubt one of the biggest regulatory failures in history was the prohibition of alcohol consumption in the USA (1920-1933). The general idea of the introduction of this prohibition was to decrease crime, offences against the law and corruption, as well as to improve the health status of the population. The result of the initiative was a failure in all respects – crime became better organized, the level of corruption increased significantly, businesses were forced to close down and jobs were lost, the grey economy peaked, which led to a reduction of budget income from taxes and fees. Due to these reasons and to the lack of control over the quality of the alcohol, the health system and the general health level of the population suffered a blow. Data shows that alcohol consumption decreased only during the first year following the prohibition (1921) as a result of the shock and the lack of an organized black market, but afterwards increased several-fold and never went back to the levels of 1919, the year before the prohibition.⁴



³ See http://ec.europa.eu/smart-regulation/refit/index_en.htm

⁴ Thornton M., Cato Institute Policy Analysis No. 157: Alcohol Prohibition Was a Failure, 1991

A photo from the internet: a protest against the prohibition of alcohol consumption in the USA, 1933 is the year when the ban was finally lifted.

These lessons are important today, because prohibitions in the contemporary dynamic world and especially in countries at a similar stage of development like Bulgaria usually don't produce the desired effect.

When deciding upon regulatory measures one should always take into account the actual socio-economic environment and also human behaviour, which is sometimes irrational – people know that detrimental effects from smoking are scientifically proven, but a large proportion of the population smokes, they know the negative effects from alcohol abuse, but still some people abuse it. The same is valid for other vices as well. In the developed countries nowadays the total prohibition is not the cure for all problems. It does not lead to a motivated change of behaviour and people find various ways to go around these regulations.

The Organization for Economic Cooperation and Development (OECD) points out several main regulatory and non-regulatory instruments, depending on the intervention upon the free market, which are shown in the table below⁵:

Free market	Market-driven solutions	Competition
Free market governed only by general competition policy		
Mandatory information disclosure (to enhance customer choice)		
Private sector voluntary regulation (voluntary agreements, private standards)		
Market incentives, established by government (taxes, property rights)		
Process regulation (requiring firms to assess risks and take most effective action)	Government-driven solutions	Monopoly
Performance regulation (standard objectives set by government)		
Command and control regulation		
Regulated private activity		
Contracting out monopoly to the private sector		
Corporatised public monopoly		
Public monopoly		

⁵ Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, OECD, 2002

Government ban on economic activity

No
formal
economic
activity

The table illustrates a number of instruments and policies, which include various regulatory interventions, aimed at achieving certain goals. When making a decision one should take into consideration a large number of policy options, suitable for the solution of a given problem and not just a single one. It should be noted that the natural reflex of the institutions and bureaucrats in the field of state governance, when faced with a problem, is to resort to quick legislative amendments. This is usually done without any thorough analysis of the root causes of the problem, which could be the result of non-observance of the existing legal norms or of poor organization of the executive power for properly implementing the law. In this naturally constructed command-control system the worst decision is definitely the one at the bottom of the table – ban on economic activity.

Over the past years, due to group-specific interests, Bulgaria has had some unpleasant experience from the introduction of similar prohibitions, which harm the business environment and send a negative signal to potential investors in the country. One of the most flagrant examples is the ban on the production and trade of cigarette filter tubes (cigarette paper and filters). In the EU this is a strictly legal business worth millions of euro, and factories across the continent produce billions of cigarette filter tubes. In Bulgaria this business was banned in mid-2012, despite the Treaty on the Functioning of the European Union, which introduces a ban for quantitative restrictions and other measures with similar effect between the Member States. Some of the reasons behind the prohibition have to do with limiting the cigarette contraband, putting an end to the illegal production and retail sale, but strong group interests seem to be the main motive. A year later the Ministry of Economy and Energy initiated a public consultation for the removal of the prohibition and on July 7, 2014 the Council of Ministers put forward the legislative amendments, but they have not been passed by the Parliament yet. The imposition of bans on certain economic activities is the worst possible signal towards investors in the long run. Would you invest in a country where a completely legitimate business is banned overnight upon the snapping of one's fingers?

There are many other similar examples of bans on economic activities or of regulatory measures, which harm the economy. In each case the result is loss of jobs, loss of income to the state budget and an increase of the shadow economy. One of the most emblematic regulatory failures in the past several years was the ban on smoking in bars, restaurants and public places. The entertainment and tourism business was forced to invest considerable funds due to lack of political consistency and continuity on the issue of should there be a ban, should it be complete or partial and etc. This lack of consistency lasted for about 7 years, which cost businesses tens of millions of euro in investment. Even worse – despite the introduced in 2012 smoking ban, even today people continue to smoke in restaurants and bars and the level of observance of the prohibition is very low. The lack of political continuity and pre-election promises are the main reason why citizens and businesses do not abide by the law. This creates a favourable environment for corruption, unhealthy competition and distrust in the state's ability to guarantee the rule of law.

Better Regulation Policy in Bulgaria since 2007

21st century Bulgaria – you drive into a medium-sized Bulgarian city, which you don't know very well, looking for the office of your business partner, but at the same time there are construction works in the city, because they are changing the water conduit system. What will happen next? Most probably you will start circling around the city, because road signs directing the “clients” are almost non-existent, electronic GPS maps don't take into account the recent changes and you have to rely on pure luck to get to your destination. It's not a typical example of business regulation but you will lose time, money and waste a lot of nerves. Good regulation requires accurate direction and faster implementation of business ideas with smaller costs. Many entrepreneurs in Bulgaria have faced bureaucracy when trying to start a small business, for example opening a hair salon in their own house, or a small store or a café. Each of these business events requires investing a great deal of time, disproportionate to the scale of the activity, collecting all kinds of documents from various institutions and as a result paying too high a price. The system in place doesn't contribute to improving the competitiveness and the business environment in Bulgaria, which the country desperately needs.

The solution to these problems is good regulation. Good regulation is of key importance, if we want the Bulgarian economy to function effectively, while at the same time achieving the social and ecological goals. Consequently, in terms of the economy one of the most important tasks for politicians and the administration is to remove or decrease the administrative burden for businesses. Bulgaria needs an improvement of the conditions for doing business through a thorough regulatory reform, because the strict legal requirements and inefficient administrative services limit the possibilities for company growth and stifle the development of innovations and competitiveness.⁶

From the viewpoint of official policy the first systematic measures for better regulation in Bulgaria were initiated in 2008 when the government adopted the Better Regulation Programme 2008-2010. In the period before 2007 Bulgaria had invested a lot of efforts in an unseen before that revision and amendment of the legislation, due to the accession to the EU and the need to synchronize the national legislation with the *acquis communautaire*. The main objective was to join the EU and to integrate the country into the free European market. During that period the passing of legislative amendments was not accompanied by an assessment of the costs and benefits for the Bulgarian economy and the business environment. Probably the strategic goal of joining the EU required this approach, despite the additional costs and restrictions incurred by businesses. To a large extent the need to improve business regulation was not in the focus of attention, because the period 2000-2008 was characterized with sustainable economic growth and a boom in the attracted direct foreign investment.

In some areas, during this period the EU legislation was being translated and incorporated directly into the national legislation, without taking into account the national characteristics – for example the existence of 5 clearly defined types of regulatory regimes in Bulgaria, which are regulated in the Limiting Administrative Regulation and Administrative Control on Economic Activity Act (LARACEAA) of 2003. This allowed the adoption of regulatory regimes in contradiction with the national legislation and prevented the flexible adaptation of the European norms in accordance with the needs and characteristics of the Bulgarian businesses. The adoption of the EU legislation in Bulgaria brought a lot of benefits by removing restrictions for the free movement of people, goods, services and capitals, but at the same time created risks for the businesses in the country, which had to deal with the new regulations and to invest a lot of resources in order to meet the new European standards and to compete with the more competitive European economies.

⁶ Bulgaria: Public Expenditures for Growth and Competitiveness, World Bank Report, 2012

In 2008 with the support of international institutions such as the World Bank and the OECD the first Bulgarian Better Regulation Programme 2008-2010 was developed. The goals of the Programme were aimed at: 1. Simplification of administrative regimes, 2. Creation of an institutional structure to implement the better regulation policy, 3. Stimulation of the dialogue with the stakeholders, 4. Implementation of better regulatory policies at the local level. In 2010 the Programme was extended until 2013 and 3 specific goals were set: improvement of the administrative regulation, introduction of regulatory impact assessment and improvement of administrative service delivery through e-governance.

The results from the implementation of the first Better Regulation Programme 2008-2013 are inconclusive but international assessment as a whole shows insufficient efforts for changing the status quo. The progress in improving the regulatory activity at the central and municipal level has been very limited, the necessary stable institutional framework for implementing an effective better regulation policy is still lacking, and the administration in general remains resistant to change and unwilling to remove regulatory regimes. Impact assessment has not been implemented as a governance tool. Bulgaria was unable to use the pressure from the world economic and financial crisis as an impulse for regulatory reform in order to improve the business environment. Arguably the biggest progress has been made in terms of increased transparency in the process of developing new policies and legislation, which is to a large extent result of the creation of the central Public Consultations Portal www.strategy.bg. The portal was distinguished as a good practice of digital democracy by the Parliamentary Assembly of the Organization for Security and Co-operation in Europe.⁷ Despite that the public consultation process needs considerable improvement and negative practices of lack of consultation or fake consultations carried out only on paper should be ended. Over these past years there has been a significant problem with the lack of political leadership of the programme, which is indispensable for the successful implementation of the measures.

As a result of all that businesses today still claim that the volume of the existing legislation is continuously growing and becoming too detailed. They claim that the legal norms and regulatory measures are outdated, ineffective and constantly expanding. They point out the existing fragmentation of the various policies (for example in the field of energy and the environment), the existing ungrounded legislation, the numerous monitoring activities and inspections, the bureaucracy in the face of various agencies that doesn't allow businesses to dedicate their free time to innovations and increasing productivity. Bulgaria demonstrates a low level of adaptation of the bureaucratic institutions to market needs, insufficient funding or strictly fixed budget frameworks of the agencies, which doesn't allow for a more flexible response to the changing environment.⁸ This compels the government to remove all possible obstacles and hurdles in front of businesses, by introducing proportionate regulation, based upon evidence and state regulation only where necessary and when the state has the capacity and the resources to do that – not in all sectors of economic life.

In this respect it could be claimed that in Bulgaria there exists over-regulation. At the central level the total amount of regulatory regimes is 790, in addition to another roughly 400 quasi-regimes, which are administrative services on paper, but in reality regulate certain economic activities (this makes it about 1200 regimes in total). Some of the regimes are unnecessarily overcomplicated, for example it is necessary to have a license for providing professional training services and career orientation, where the monitoring of the market is extremely weak. This is a typical characteristic of regulation in Bulgaria – it is very difficult to

⁷ [Socialscape](http://socialscape.org): New ways that parliaments, governments, and civil society are increasing civic participation, p. 48, 2013

⁸ Tanev, T., Public Policy Analysis, 2008

enter a certain market and start operating, but afterwards there is very limited control over the market. It should be the other way round. In the given example the requirement for obtaining a license is completely unnecessary and contradicts the basic principles, implied in the LARACEAA. This Act, adopted in 2003 and amended 27 times since then, has the potential to change considerably the existing administrative regulation and administrative control system in the country, but this potential remains unexploited.⁹ This is due to the lack of adequate control over its implementation in practice, which is pointed out in several analyses of various international institutions.¹⁰ The majority of the existing regulatory regimes do not correspond to the 5 types of regimes stipulated under the LARACEAA and there are also other discrepancies with the goals set in the Act. It cannot be expected that a high quality piece of legislation like this one is capable of improving the welfare of the society, if it is not effectively implemented in practice.

In addition to the regulatory regimes at the central level, come the ones administrated by the local authorities, which greatly affect the business environment.¹¹ The World Bank Report “Bulgaria: administrative barriers to businesses at the municipal level” shows a lack of consistency in the provision of key municipal services for businesses. For the same municipal services the different municipal authorities apply different procedures, which take a different amount of time, require different documents and the fees for these services do not follow the cost recovery principle. The evidence in the report shows no correlation between the volume of work and the necessary time for the provision of a certain administrative service – sometimes the busier municipalities provide the services faster. There is also a difference in the period of validity of the permits issued by the different municipalities. Some municipalities still require citizens and businesses to provide specific documents, in order to prove certain facts, even though such information is already available in the municipal registers. The level of implementation of e-governance tools is very low and the frequent interactions between businesses and the administration facilitate the development of corruption.

All of these problematic areas clearly indicate the need for a programme for improving regulatory practices at the municipal level, with the participation of the government, the local authorities, the National Association of Municipalities in the Republic of Bulgaria and other stakeholders. The most important municipal services for the businesses should be standardized in terms of procedures, required documents and time for service delivery. The service fees should also be re-calculated, so as to comply with the cost recovery model for determining administrative fees.

It is a well-known fact that excessive legislative and regulatory activity leads to growing corruption and expanding shadow economy. Excessive, quick and disproportionate regulation is one of the main root causes of these two vices of today’s economy. A number of reports and analyses done by international institutions show conclusive evidence that administrative and regulatory burden reduction curbs corruption practices and decreases the share of the shadow economy, which in the case of Bulgaria amounts to 31.9% of GDP – the highest share from all EU member states in 2012¹². As already pointed out, despite the existence of a large number of regulatory regimes in the country, once the company obtains the right to commence business activity the supervision of the market is not up to the required level. The weaker control and

⁹ Managing regulatory regimes – Modern Regulation, Friedrich-Ebert-Stiftung and Bulgarian Industrial Association, 2010

¹⁰ Bulgaria: Investment Climate Assessment: Volume 1, World Bank, Washington, DC, 2008 r.

¹¹ Bulgaria: Administrative barriers to businesses at the municipal level World Bank, Washington, DC, 2013

¹² See [Shadow Economy and Undeclared Work](#), source: Schneider, F., "Size and Development of the Shadow Economy from 2003 to 2012: Some New Facts", 2012

the insufficient joint inspections of the different supervisory bodies lead to poor business discipline and consequently create risks of corruption.

A number of studies over the past several years indicate that the unstable legal environment is the main problem, faced by businesses and foreign investors. The frequent changes of the “rules of the game” turn out to be the № 1 problem for businesses in Bulgaria. Key legislation is being changed between 4 and 5 times a year. A study shows that over the period 2000-2014 the Health Act has been changed 57 times, the Spatial Planning Act - 64 times and the Health Insurance Act a whole 78 times.¹³ According to data provided in the State Administration Development Strategy 2014-2020 the number of acting laws in Bulgaria has increased over the past 15 years by 40% to reach 346 acts today, while the number of secondary legislation acts is nearly 3000. This is a considerable volume of legislation, which needs to be screened for possible simplification and synchronization with the requirements of the best contemporary regulatory practices and the dynamics of the existing public environment. Some analyses show that the total EU legislation exceeds 170 000 pages, 100 000 pages of which has been adopted over the past several years. This is comparable in size with the weight of a small whale.¹⁴ It is estimated that the number of new regulatory measures on the federal level in the USA, adopted after the 1980s is over 100 000. That is why there are continuous efforts to decrease the volume and improve the quality of the acting legislation.

It can be assumed that some of the amendments to key legislative acts come to serve specific lobbyist and economic interests. With time the numerous new legislative norms turn into a serious burden for businesses and citizens – for example the constant amendments to the Spatial Planning Act have harmed the business environment in Bulgaria, which can be seen in the country’s progress in the Doing Business Report of the World Bank, in terms of the indicators “Dealing with construction permits” and “Getting electricity”. The worst indicator for Bulgaria, according to the report, is “Getting electricity” (135th place out of 189 countries), where the necessary time to connect a new building to the electricity network is 130 days and the cost is 320% of the income per capita. In terms of the indicator “Dealing with construction permits” Bulgaria occupies 118th position and the report shows that Bulgaria has been falling back in the ranking constantly over the past years, because procedures in the area of construction have become more complex and more difficult to comply with for investor.¹⁵

As a consequence Bulgaria is losing ground in the overall classification of the World Bank, which measures the progress of 189 countries around the world in accordance with 10 indicators: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency (see figure 1).¹⁶

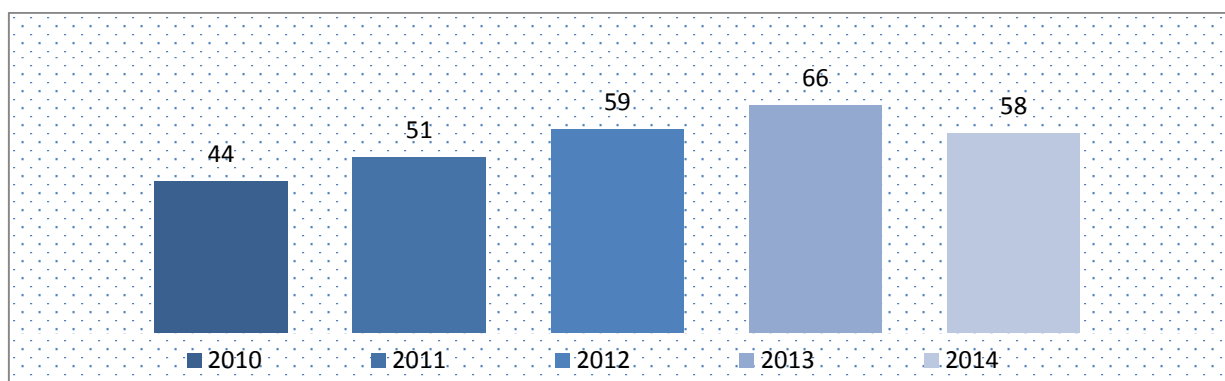
Figure 1: Position of Bulgaria in the Doing Business Report 2010-2014

¹³ Public Administration Development Strategy 2014-2020

¹⁴ Open Europe, [Just how big is the acquis communautaire?](#)

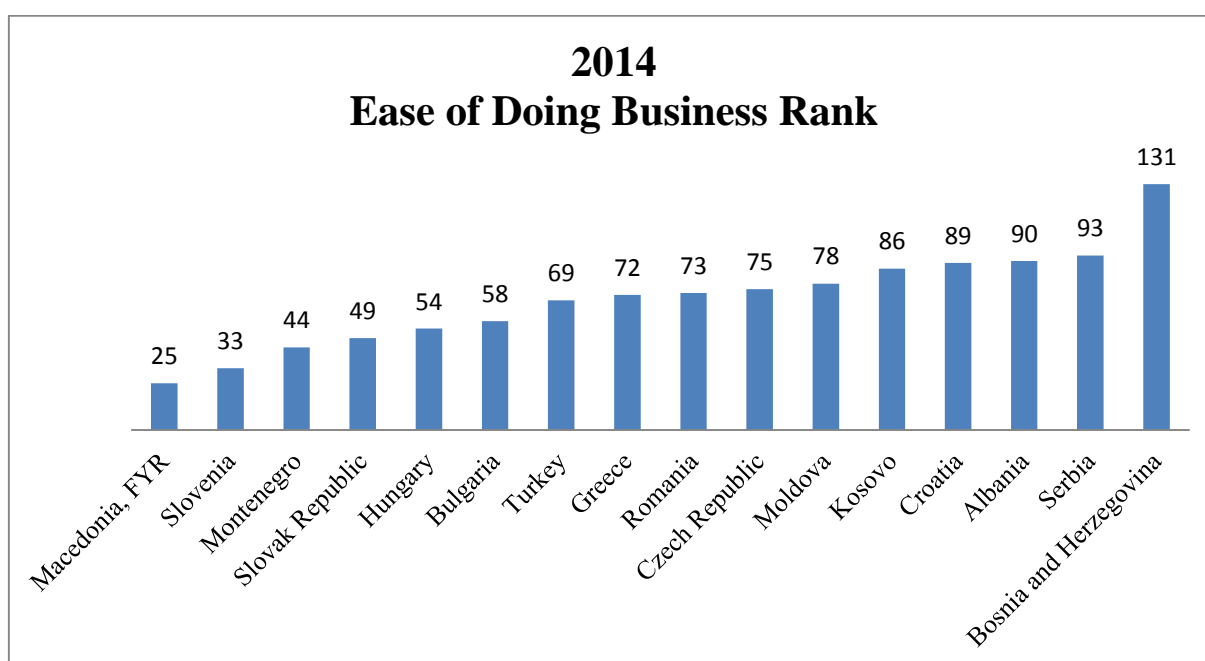
¹⁵ Doing business, [Economy profile Bulgaria](#), 2014

¹⁶ <http://www.doingbusiness.org/data/exploreeconomies/bulgaria>



The improvement in 2014 is due mainly to a change in the methodology, used by the World Bank, and not so much to implemented reforms. Bulgaria is ranked behind countries that are not member of the European Union such as Macedonia and Montenegro (see figure 2).

Figure 2: Ease of Doing Business Rank 2014 for countries from South Eastern Europe



Special Focus: Regulatory Impact Assessment

Despite the clearly defined steps for the introduction of regulatory impact assessment, included in the first Better Regulation Programme, the following efforts over the period 2008-2014 have proven futile. During these years a lot of civil servants have undergone specific trainings, but the lack of a clear political will to change the way of designing and implementing policies still acts as a brake, which doesn't allow the introduction of quality and stable legislation. Administrative and regulatory costs for businesses in Bulgaria will continue to rise, if no corrective actions are taken and if the government doesn't implement the widely-used across Europe interdisciplinary approach to the decision-making process, based upon facts and data.

The Council of Ministers, the National Assembly and the ministers annually adopt a large number of regulatory measures, as shown in tables 1 and 2.

Table 1: Number of adopted ordinances and regulations¹⁷

Number of Adopted Ordinances			
	2011	2012	2013
New ordinances	116	177	85
Total number of amendments to existing ordinances, including new ordinances	341	372	264
Number of Adopted Regulations by the Council of Ministers			
	377	355	313

Table 2: Number of laws adopted by the National Assembly¹⁸

National Assembly	Period	Number of adopted laws	Average per year
40 th National Assembly	11 July 2005 - 31 July 2008	564 (there is no available information for the period from August 2008 till the end of the mandate)	188
41 st National Assembly	14 July 2009 – 11 March 2013	554	138 (not a full 4-year mandate)
42 nd National Assembly	21 May 2013 – 5 August 2014	138	138 (not a full 4-year mandate)

If we leave out 2013, which was a year of political instability, on average 350 ordinances, roughly the same number of regulations and 150 laws are adopted annually, so the total number of amendments to acting legislation is roughly about 850 times per year. A large number of these amendments have direct effects over the economic, social and environment fields on a national scale. This wave of new legislation requires a clear definition and solution to the existing problems in accordance with the characteristics of the market and the actual obstacles faced by businesses. From the tables above it can be deduced that the Bulgarian administration has very wide powers to elaborate secondary legislation, in compliance with the law. This, in its essence, means right to adopt new regulatory measures, which in certain cases may lead to increased administrative and regulatory burden, which the legislator didn't envisage initially. This makes it of utmost importance to introduce a systematic approach for carrying our regulatory impact assessments in the administrative practice.

¹⁷ Source: „State Gazette” of the Republic of Bulgaria and the Legal Information System of the Council of Ministers www.pris.government.bg

¹⁸ Source: www.parliament.bg

This approach is met with resistance among the traditional legal experts and some of the senior civil servants, because the administration “lacks capacity” and is incapable of analytical activities. In spite of the numerous training seminars carried out over the past years this is the main excuse used to slow down the regulatory reform and in particular the introduction of regulatory impact assessment in the Bulgarian administrative practice. In order to build the necessary administrative capacity for preparing good impact assessments you need continuous efforts and support from the highest political level in every single ministry and institution. It seems as if bureaucrats feel affected and even threatened by the introduction of new policy tools, because some of them benefit from the status quo, and politicians prefer other methods for taking political decisions – preferably those where the motives derive from subjective “political” consideration, instead of from objective sources. In the view of other traditionalists these are “whims and contraptions of Western countries” and “EC rubbish”, which contradicts the “tradition”, the national practices and characteristics of the Bulgarian political decision-making model. It seems easier to obtain political dividends and to make decisions based upon strictly political and/or corporate interests, than to follow the public interest. It’s easier, isn’t it? Policies, which offer small rewards for a large number of people, do not attract political support due to the high cost of the necessary political activity, compared to the obtained benefits, while on the other hand the interests of a small and well-organized group have a better chance to be adopted through active lobbying.¹⁹

These are the reasons why the amendments to the Law on Normative Acts, which introduce modern elements of regulatory impact assessment, different from the ones acting in Bulgaria ever since the period 1973-1974, have been continuously blocked since 2008. This resistance does not take into consideration the main strategic documents, recommendations and policies of the European Commission and the World Bank, national development programmes and good European practices. Over the whole period after 2008 there have been only 20-25 considerably good impact assessments prepared in Bulgaria.²⁰ In 2013 there was an attempt to introduce the practice of impact assessments through amendments to the Structural Regulation of the Council of Ministers Administration, but the lack of administrative mechanisms for monitoring and control over the quality of the prepared assessments and of will for carrying out thorough assessments in the separate ministries led to a mechanical exercise to copy-paste the motives into the respective fields of the impact assessment form. Impact assessments are usually prepared after the draft legislation is already finalized, without looking closely at different policy options for addressing the existing problems.

One thing is undisputable – impact assessments are part of the contemporary political process, a new way of doing things. They are a process, but the investment is worth the cost, because the benefits are effective legislation and good governance. Only through the introduction of IAs a process of cultural change in the Bulgarian administration will become possible, so as to protect the public interest more effectively.

I cannot skip another common mistake over the past years – putting the focus on adopting new and amending existing methodological tools and guidelines for carrying out impact assessments, instead of applying institutional pressure and creating the mechanisms for gathering information and compiling the necessary database for preparing quality IAs. This practice should be discontinued and the adoption by the government of new Regulatory Impact Assessment Guidelines²¹ in mid-2014 could contribute to that. The methodological guidelines on a European level are all similar and the efforts dedicated to the constant change of these

¹⁹ Tanev, T., Public Policy Analysis, 2008

²⁰ Source: Public Consultations Portal

²¹ <http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&categoryId=&Id=176&y=&m=&d=>

guidelines are not productive. More investment is necessary to gather data, the lack of which could become an obstacle to the preparation of quality analyses, but here the Open Data initiative may come to good use.²²

A more important obstacle for the introduction of regulatory impact assessments has to do with the extremely short public consultation period in Bulgaria – only two weeks, 10 business days. The short period for consultations is the main reason behind the frequent changes to acting legislation, which is a major problem for businesses in the country. It is of utmost importance for Bulgaria to implement impact assessments parallel with a new effective, transparent and adequate system for public consultations. Bulgarian institutions must ensure that the voice of the citizens will be heard. Good public consultations require purposeful contacts with trade associations and stakeholders, which will lead to an improved business environment, reduced compliance costs for businesses from new legislation and lower risk for doing business in Bulgaria.

The period for public consultations on key legal acts and regulatory measures should be increased to reflect the best practices in this field and become no shorter than 12 weeks. This reform is bound to meet a lot of resistance as well, because it requires a profound change in the policy-making process and the way public interest and needs are taken into consideration. The long-term benefits from this policy will contribute to solving the main problem businesses face in Bulgaria, to create new and quality jobs and to increase the investors' trust that Bulgaria is a stable and predictable place for doing business. The extension of the period for public consultations will enable citizens, businesses and other stakeholders to give their comments and recommendations, which will help decision-makers adopt such policies and regulations, which reflect to a greater extent the needs and expectations of the society.

Currently the risks include, on the one hand, the insufficient time for consultations, necessary for the proposed legal amendments to be considered by the public and the practical implementation of the law, on the other. The more insecure and risky the administrative and legal framework for doing business is, the greater the chance for attracting short-term speculative investment, instead of long-term, sustainable investment by global companies. A lot of legal norms and regulations are dedicated to the protection of public interest, the protection of human rights, personal data, human health and the environment. At the same time they should be well-argued and contribute to the achievement of the goals they are designed to support, without burdening unnecessarily other sectors, such as businesses for example. The high regulatory costs lead to loss of competitiveness and hide risks for investors.

Regulation is a growing function of the contemporary state and the outlook is for new waves of regulation to come.

The adoption of new laws and the practical implementation of the existing ones should be transparent for all stakeholders, because the cumulative costs for businesses from regulation can be very high. This is a serious challenge for Bulgaria, because the country has to deal with the accumulated costs by businesses for compliance with the existing legislation and to reduce the number of regulatory regimes and norms that have become obsolete over the years. A report by the Open Europe Foundation shows that the cumulative costs for businesses over the period 1998-2008 from European and national regulations amounts to 4.3 billion euro.²³

Table 3: Cumulative costs for businesses in Bulgaria for the period 1998-2008

²² Digital Agenda for Europe <http://ec.europa.eu/digital-agenda/en/open-data-0>

²³ Out of Control? Measuring a decade of EU regulation, February 2009, Open Europe, <http://www.openeurope.org.uk/Content/Documents/PDFs/outofcontrol.pdf>

Country	Cumulative costs in billion euro	Costs from EU legislation	Costs from national legislation	% of costs from EU legislation from total costs
Bulgaria	4,265	2,487	1,778	58.3%

This shows the importance on the ex-ante impact assessment, on the one hand, and the continuous ongoing assessment of the acting legislation, on the other. The potential from implementing effective measures for better regulation can lead to a GDP growth of between 1% and 3.5%. Analyses of the OECD, quoted in a World Bank report, show the potential effect from regulatory reforms in the developed countries, which amounts to 3,5% GDP growth in the Netherlands and about 1% in the USA.²⁴ The 25 % administrative burden reduction over the period 2007-2012 across the EU is expected to lead to 1,4% GDP growth in the medium term.²⁵ In countries, such as Bulgaria, where major regulatory reforms have not taken place, it is considered that the costs for compliance with regulations can exceed 10% of the GDP²⁶, which currently stands at around 40 billion euro (2013).²⁷

For the reform to succeed it is necessary to establish a stable mechanism at the central level (the government administration and the Parliament administration) for monitoring the quality of the legislation and of the regulatory impact assessments that are being prepared. The initiative should start gradually by carrying out impact assessments to draft legislation with significant financial effect and public significance, determined by the prime minister and the Council of Ministers, and then we should build upon this and expand it to encompass all key legislative acts. First, the government should try to solve the identified problems in society as a whole or in a certain sector through assessment and revision of the existing regulation and only if the data shows that this is impossible it should resort to legislative amendments. The responsibility should be assumed by the line ministries, which should form teams of experts working on the impact assessments. In this respect it is necessary to involve more actively the universities and the Bulgarian Academy of Sciences, as well as to use outside expert support and consultants, whenever there are grounds for it.

Another way of decreasing the frequency of legislative amendments is to consider the possibility of establishing annual limits to parliamentary sessions for passing new and amending existing laws.

Special Focus: Administrative and Regulatory Burden Reduction

Bulgarian governments have been trying to simplify the administrative regimes ever since 1997. Over that period there have been a number of screenings and reviews of the existing legislation in order to reduce the administrative burden. During the last 4 years alone the government has adopted 8 sets of measures, containing a total of 1055 measures, aimed at decreasing bureaucracy. In spite of all that, the notion persists that the burden has not been changed. An outside observer would point out that the institutions have concentrated on regulatory measures with decreasing importance, for example the abolishment of the license for operating as a customs agent or the hundreds of measures aimed at removing the requirement to provide a certificate of good standing for companies.

²⁴ [Review of the Dutch Administrative Burden Reduction Programme](#), World Bank Group, 2007

²⁵ [Commission initiatives to cut red tape and reduce regulatory burdens – Questions and Answers](#)

²⁶ Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, OECD, 2002

²⁷ Source: National Statistical Institute. Further information can be found [here](#)

A thorough analysis shows that the bureaucratic obstacles, which have been removed, are mainly superficial and inconsequential, of course with some exceptions. They do actually reduce the existing bureaucracy, but don't lead to profound changes. Major reform measures such as the removal of the 5-star system, established for categorizing restaurants and bars and the removal of the requirement for a notary certification of the contracts for selling second-hand cars in Bulgaria, in the end were not adopted by the National Assembly.



Personal archive photo: Bansko, 2013, the yellow arrow indicates the sign, certifying the star category of restaurants and bars – one of the outdated regimes that still exist today

The reason is the enormous resistance to the removal of major administrative and regulatory obstacles. Progress is still blocked by bureaucrats or certain group interests. They staunchly defend the status quo, because the simplification of regulatory regimes translates into a loss of power and influence for them.

As far as bureaucratic burden reduction goes, one is left under the impression that there exists a chaotic and inconsistent approach, dependent upon the will of the most senior officials and not upon institutional mechanisms with clearly defined functions and responsibilities of the respective units in the system of the executive. The approach used so far seeks administrative burden reduction across all sectors and laws at the same time - a general approach aimed at everything, everywhere, without identification of deep changes and support for key economic sectors. The lessons learned show that the country needs to apply a specific, focused and purposeful approach to tackle the issue. Bulgaria needs to prioritize the burden reduction efforts and provide support for specific economic sectors, outlined in the strategic documents for smart specialization and innovations. The stress should be put on maximizing benefits over costs, as well as active support for businesses in the fields they have their biggest problems.

An active partner in the implementation of the reform should be the Ministry of Finance, which currently shows certain resistance due to the short-term reduction of budget income for the institutions. The mid-term and long-term benefits from the administrative burden reduction, though, outweigh significantly the lost income from administrative fees, because the reduced administrative burden comes back to the budget in the form of more taxes from increased economic activity. The implementation of measures for better regulation will bring considerable benefits for the economy and to a large extent it can be claimed that this investment is even more important than the investment in the construction of highways across the country.

In conclusion, there are no real obstacles for Bulgaria to turn into a leader in terms of better regulation policy in South Eastern Europe. The country doesn't suffer from suffocating and excessive adoption of EU legislation, there is a well-prepared political and administrative environment for implementing a real reform. The regulatory reform, nevertheless, requires continuous focus on good legislation and policy making and the allocation of the necessary

resources and time towards this initiative. All prerequisites are present and Bulgaria also has the opportunity to invest money from the European structural and investment funds for achieving good governance. The success of the reform depends on the existence of political support, clear procedures and mechanisms, as well as adequate resources, for bringing change. The experience of other countries shows the need for centralized actions, which at the beginning may cause conflicts, but support from the highest political level, for example the prime-minister, is vital for the success of the regulatory reform.

Patience and investment are necessary. The developed countries have been carrying out this reform for over 20 years now and there is still room for improvement, but they are continuously going forward. Bulgaria needs to shift to overdrive in order to catch up with the best.

All views, expressed in the present article, are the personal views of the author. They do not represent the official position of the Administration of the Council of Ministers.

Pavel Ivanov, September 2014

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