

Chapter 3. Institutional framework and capacities for regulatory policy

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. Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Key institutions and regulatory policy oversight of the regulatory process in Slovenia

Oversight 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 (see Box 3.1). In Slovenia, a number of ministries and institutions are involved in oversight, but none of the institutions has the authority or resources to perform a thorough check of the quality of the use of regulatory policy tools.

Box 3.1. Main features of oversight bodies to promote regulatory quality

According to the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance, oversight of regulatory procedures and goals should be promoted through:

A standing body charged with regulatory oversight should be established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.

The authority of the regulatory oversight body should be set forth in mandate, such as statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.

The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making. These tasks should include:

- Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
- Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
- Contributing to the systematic improvement of the application of regulatory policy;
- Co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods;
- Providing training and guidance on impact assessment and strategies for improving regulatory performance. The performance of the oversight body, including its review of impact assessments should be periodically assessed.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, Paris, OECD Publishing, Paris, www.oecd.org/governance/regulatory-policy/2012-recommendation.htm.

General Secretariat of the Government

The General Secretariat of the Government is responsible for preparation of the Legislative Work Programme of the Government of the Republic of Slovenia. The Programme is drawn up on the basis of data entered in the RLAF (Register of Legal Acts

in Force) and submitted to the Government for discussion prior to the beginning of the year for which it will be adopted.

The General Secretariat also ensures that government material conforms to the Rules of Procedure of the Government of the Republic of Slovenia and informs the proposer if something is missing. The General Secretariat may also require the proposer to submit legislative material to working groups or established government councils, if the working group or council has not yet considered the proposal.

If government material has not been prepared in accordance with these Rules of Procedure, the General Secretariat informs the proposer, explaining how the material should be supplemented or corrected. Only corrected material can be published in the Government Information System, while rejected material can only be published if the General Secretariat decides following consultation with the proposer because of the extent or urgency of the material.

If the material deals with issues falling within the scope of work of established government councils or working groups which have not yet considered it, the Secretary General calls on the proposer to submit the material to the competent body for preliminary consideration.

The General Secretariat sends a copy of material to the members of the Government that does not deal with issues requiring the Government to act or take a position, but is important for monitoring a situation or ensuring that members of the Government are kept informed. The Government does not consider such materials.

Government Office of Legislation

The Government Office of Legislation's (GoL) primary function is to examine law proposals and other acts submitted by the Government to the National Assembly and those acts for which the National Assembly seeks the opinion of the Government. If the GoL gives a negative opinion on a proposal, the ministry must amend it.

The Government Office of Legislation, in accordance with Article 10 of the Rules of Procedure of the Government of the Republic of Slovenia, has several roles in examining regulation in Slovenia. The GoL examines new laws in terms of conformity with the Constitution and the national legal system and the *acquis communautaire*, in terms of the rules of legal technique. Additionally, the GoL looks at law proposals and other acts submitted by the Government to the National Assembly of the Republic of Slovenia and those acts for which the National Assembly seeks the opinion of the Government, as well as proposals for legal acts of the Government and draft legal acts of ministers. It also addresses issues related to the development of the legal system and, in co-operation with the Government and line ministries, provides for the implementation of constitutionality and legality. To support the development of regulation, the GoL carries out comparative studies of the law of other countries and international organisations.

Ministry of Public Administration

Oversight of regulatory policy tools is primarily within the Ministry of Public Administration (MPA), which acts as a supervisor that checks the accuracy of the impact assessment in the area of administrative costs.

The Ministry of Public Administration does not only examine administrative costs and burdens, but also the impact on the functioning of local self-government, administrative units, IT. It is also expected to conduct a review regarding the suitability and fit-to-purpose. The MPA draws attention to the barriers still left in the proposal. Proposers of regulation take into account feedback from the MPA through an interministerial consultation process, the same as other ministries.

In addition, the MPA organises training and conferences in regulatory policy for line ministries. It has organised ad hoc training in stakeholder consultation and the new SME test. Training in consultation and on the SME test will become a permanent feature in the Academy of Public Service in 2018 at the latest.

Ministry of Economic Development and Technology

The Ministry of Economic Development and Technology, through inter-ministerial co-ordination, reviews the drafts of regulations in terms of impact on the economy. The not only review impact assessments but also text of the draft of regulation.

The role of the ‘guardian’ of the regulatory impact assessment on SMEs (SME test) has also been taken by the Ministry of Economic Development and Technology, which verifies the adequacy of the assessments during interministerial co-ordination. Prior to the SME test, few RIAs had other costs or benefits quantified in 2011, 2013, or 2015. Generally, regulators simply stated that “no consequences were foreseen” or provided only a description of the impacts. Oversight of RIA in general is quite low (see Chapter 5 for more information).

Ministry of Finance

Line ministries are required to consult and obtain the opinion of the Ministry of Finance for all regulatory proposals.

All government materials, submitted to the government, must include an assessment of the financial implications for the budget, reflecting whether the proposed regulation increases or reduces the revenues or expenditures of the budget.

The financial statement of the government material must contain:

- A projection of changes in revenue and expenditure for the next three years,
- A proposals to cover increased expenditure in the budget, or
- A proposals to offset the reduced revenue budget and
- An opinion of the ministry responsible for public finances.

If the Ministry of Finance finds that the financial consequences for the State budget or municipal budgets are unacceptable, the draft law is sent back to the ministry preparing the regulation for amendments. Other Institutions

Other institutions

Parliament

In accordance with the Article 115 of *Rules of Procedure of the National Assembly* a draft law submitted to the National Assembly must contain the title of the law, an introduction, the text of the articles, and a statement of reasons. An assessment of the impacts by area is only contained in draft laws proposed by the Government.

If a draft law does not contain the required elements, the President of the National Assembly calls upon the proposer to supplement the draft law. If the proposer fails to supplement the draft law within 15 days from being called upon to do so, it is deemed that the draft law has not been tabled.

Court of audit

The Slovenian Court of Audit is the highest body in the country that monitors state accounts, budget and all other public spending. The Court of Audit is independent and its powers are provided by the constitution. Previously, it has conducted an evaluation of regulatory policy in 2006 and followed up on the initial report in 2012.

Judicial branch of government

After the final decision of the administrative authority, the individual always has the right to judicial protection by bringing the case to the Administrative Court or filing extraordinary legal remedies. The Supreme Court in accordance with the Law on Administrative Disputes decides on legal remedies.

The Administrative Court may decide on the legality of acts of bodies, issued in the form of a regulation, insofar as they regulate individual relationships. If the Court deems part of a regulation unconstitutional, it stays proceedings and initiates a review of the regulation's constitutionality.

The Constitutional Court determines the legality and constitutionality of regulations. It may abrogate laws that do not conform to the Constitution. Until a final decision, the Constitutional Court may also suspend the implementation of challenged regulations.

If the Supreme Court deems a law or part of a law unconstitutional, it stays proceedings in all cases in which it should apply such law or part of the law and it initiates proceedings for the review of its constitutionality.

Local governments

Slovenia has a unitary political system with one level of local government, whose powers and duties are laid out in the Local Governments Act. Like the national government, local governments are required to adhere to the GAPA. (See Chapter 2 for a brief overview of the act), which sets out the rights and responsibilities of local governments and citizens. Generally, local governments are in charge of service delivery rather than regulating, although they have some regulatory competencies in utilities, local roads, and town planning (see Annex 3.A for the full detail of the roles and responsibilities of local governments).

According to the Local Government Act, national bodies supervise the lawfulness of the work of municipal bodies. The government and ministries exercise the state supervision of the work of a local community body. The ministries supervise the legal implementation of general acts and individual municipal acts relating to matters that fall under their jurisdiction.

Co-ordination of the Better Regulation policy across government

The Ministry of Public Administration co-ordinates better regulation policy as a whole, but each ministry ultimately decides on its level of co-operation with the ministry.

In 2013, the Government established a permanent inter-ministerial working group of the Government to ensure better regulatory and business environment and increased competitiveness. The main task of the working group was the implementation of

measures and commitments to improve business environment and competitiveness, and regular reporting to the government on the objectives achieved. In addition to the working group, a Strategic Council was also established. The members of the Strategic Council are: minister responsible for public administration, minister for economic development and technology, Secretary General of the Government of the Republic of Slovenia, State Secretary from the Ministry of the Finance, Director of the Government Office for Legislation, State Secretary from the Government Office for Development and European Cohesion Policy.

The Strategic Council is responsible for managing, co-ordinating and supervising the field of better regulation and administrative burden reduction and has the following tasks:

- leads, co-ordinates, directs and supervises activities in the area of better regulation;
- considers and approves strategic guidelines in the area of better regulation;
- endorses the proposals for measures to complement the Single Database, action plans and other implementing acts on better law enforcement;
- discusses and approves the proposals submitted by the operational working group for consideration;
- and directs and supervises the work of the operational working group.

However, Slovenia does not have a working group or body that could help co-ordinate the practical implementation of better regulation policies, e.g. through experience and practice sharing in stakeholder engagement or RIA.

Interministerial co-ordination during the development of regulation

According to the Slovenian whole-of-government policy on regulation, inter-ministerial co-ordination should happen at the second stage of the proposal, after the initial draft of the legislation and stakeholder consultation via eDemocracy portal, which is connected to the Information support for the legislative procedure (IPP) system. At this stage, the minister in charge with the proposal discusses the draft with other units within the administration and collects their comments. The document may also be sent to other interest groups at this stage.

In accordance with *Article 10 of the Rules of Procedure of the Government of the Republic of Slovenia*, government materials must be co-ordinated with the ministries and government departments concerned before they are submitted for government consideration. Interministerial co-ordination is conducted through the Information support for the legislative procedure (IPP) system, which allows ministries to view and comment on other ministries' proposals.

Implemented in April 2010, the IPP system is used by ministries and government agencies to co-ordinate and inform each other during the preparation of regulation. A draft regulation is sent via the IPP system to the Government Information System. The Government can then in turn, send a regulation via the IPP system to the e-Democracy portal to keep interest groups, citizens and relevant ministries informed about the situation, including the text of the regulation.

All relevant ministries – not only the Ministry of Public Administration, Ministry of Finance and Ministry of Economic Development and Technology – review the drafts of regulations in the light of their work area during the inter-ministerial consultation. For example, the Ministry of Public Administration does not only examine administrative

costs and burdens, but also the impact on the functioning of local self-government, administrative units, IT. It is also expected to conduct a review regarding the suitability and fit-to-purpose.

Proposers are not required to consider other ministries feedback, but usually positions are co-ordinated until a consensus is reached between the ministries.

According to the Rules of Procedure of the Government of the Republic of Slovenia the Minister or Director of the Government Office may request the material to be submitted to the Government for consideration, even if agreement in inter-ministerial co-ordination could not be achieved.

In the request, the minister or the director of the government service shall indicate the ministry or the government service, with which the reconciliation cannot be reached, the unco-ordinated questions and arguments for its decision.

Figure 3.1. Inter-ministerial co-ordination via the IPP System Sample

ID NUMBER OF DRAFT REGULATION	RESPONSIBLE MINISTRY	REGULATION	SZ	Faza	Zaznamek
2017-2611-0047	MDDSZ; REPUBLIKA SLOVENIJA, MINISTRSTVO ZA DELO, DRUŽINO,	Pravilnik o spremembi Pravilnika o izboru in sofinanciranju programov javnih del	21-08	V Med Usk In Na Svz.	LINK TO ALL RELEVANT INFO, DOCUMENTS, DRAFT TEXT
(1) Pravilnik o spremembi Pravilnika o izboru in sofinanciranju programov javnih del, 14.09.2017 [MDDSZ]					
(2) Mnenje - OAO, 15.09.2017 [MDDSZ]					
2017-2330-0052	MKGP; MINISTRSTVO ZA KMETIJSTVO, GOZDARSTVO IN	OPINION OF THE MPA ON THE REGULATION SENT TO THE RELEVANT MINISTRY VIA IPP	1	21-08	V Med Usk In Na Svz.
(1) pravilnik o evidenci za sektor mleka in tržno informacijskem sistemu, 14.09.2017 [MKGP]					
2017-2611-0038	MDDSZ; REPUBLIKA SLOVENIJA, MINISTRSTVO ZA DELO, DRUŽINO,	Resolucija o družinski politiki 2018-2028 "Vsem družinam prijazna družba"	21-08	V Med Usk In Na Svz.	
(1) Predlog Resolucije o družinski politiki, 12.09.2017 [MDDSZ]					
(2) Skupno mnenje NOE (pripravlja M. Čankovič) [MJU]					
(3) DI-brez pripomb, 13.09.2017 [MDDSZ]					
(4) Mnenje DSP, 15.09.2017 [MINISTRSTVO ZA JAVNO UPRAVO]					
(5) Skupno mnenje SPJS, 15.09.2017 [MDDSZ]					
2017-3130-0042	IPP - MJU; MINISTRSTVO ZA JAVNO UPRAVO; TRŽAŠKA CESTA 021; 1000;	Uredba o spremembi Uredbe o plačah in drugih prejemkih javnih uslužbenecv za delo v tujini	233-11	V Med Usk In Na Svz.	

Source: Example provided by the Ministry of Public Administration.

In practice, the second stage of inter-ministerial co-ordination is sometimes skipped, although certain ministries (Finance, Public Administration, Economic Development and Technology and Office of Legislation) must be consulted. It happens occasionally that inter-ministerial co-ordination is not comprehensive because of the fear that it would prolong the whole process. Therefore, individual ministries are sometimes not consulted.

Similarly, in the 2012 public governance review of Slovenia, the OECD found that inter-ministerial co-ordination in practice was done late in the process (the third stage), although co-operative and collaborative capacity at the inter-ministerial level works well for the most part (OECD, 2012b). Furthermore, in workshops held in Ljubljana on December 2016, participants echoed that inter-ministerial co-ordination challenges continued to stymie the regulatory-making process in Slovenia.

Resources, training and guidance

As of October 2016, fifteen officials were responsible for reviewing government documents, co-ordination with and between departments, and monitoring the implementation of government decisions. At the Ministry of Public Administration, there are six officials involved in better regulation activities.

The MPA does provide some training on particular regulatory tools. However, ministries themselves do not have specific internal organisational units or contact points responsible for better regulation. Consequently, activities related to regulatory policy co-ordination and management are diversified across different authorities.

In early May 2015 the MPA in co-operation with Centre for Information, Cooperation and Development of NGOs (CNVOS) organised a national conference titled *Co-operation with the public – together towards good legislation*, the ceremonial closure of the project was titled *Strengthening capacity to implement regulatory impact assessment and public involvement in preparation and implementation of public policies*. Public officials received training on the planning and implementing consultation between February and May 2015. More than 130 public servants and 18 trainers, who are responsible for the training of public servants in ministries where they are employed, participated in the training.

In the context of the project, a new “Manual for planning and implementation of consultative processes” and “Guidelines for stakeholder involvement in the preparation of regulations” was prepared. Although Slovenia has a well-defined regulatory framework regarding the implementation of transparent regulatory process, it is often not taken into account sufficiently.

Furthermore, since 2015 the MPA has provided some training on the SME test and administrative burden reduction in Slovenia. The SME Test is similar to the Standard Cost Model to small businesses and looks at measuring not just administrative burden costs but also regulatory compliance costs. It includes a calculator with data built-in on population and statistics to simplify the administrative burden calculation (See Chapter 5 for more information on the SME Test).

The Slovenian government provides no permanent training in consultation, impact assessment, alternatives to regulation, or risk management. There are, however, plans to make permanent training modules on the SME Test available at the Administrative Academy in 2017.

The Ministry of Public Administration and Government Office of Legislation have prepared several guides to help regulators develop new proposals.

In 2004 the Government Office of Legislation produced the legal drafting guidelines for regulation. In the 11 chapters of this publication there are guidelines on the internal structure and constituent elements of a regulation, on linguistic expression, on the definition of obligations and exceptions, on legal terminology, referencing within regulations, consolidated texts, and they include recommendations for “plain language” drafting.

In 2011 the MPA developed the Handbook for Impact Assessment (aka The Manual for the implementation of the Environmental Impact Assessment Legislation and Policies), which has detailed guidance on how to develop and analyse new regulations. In 2015 the MPA also prepared the Manual for planning and implementation of consultative

processes and guidelines for stakeholder involvement for the preparation of regulations. The guide contains illustrative and practical demonstrations and best practices.

Assessment and recommendations

The regulatory policy oversight in Slovenia is diffuse across a number of line ministries. Parts of the RIA impact process are checked individually by the MPA, Ministry of Economic Development and Technology, and Finance. As a result of the relatively weak authority to give guidance or check the quality of the use of RIA and stakeholder engagement, these tools continue to often not meet the standards set out in the Rules of Procedure.

At the centre of government, the GoL does check the legal quality of submission, but can only issue an opinion and recommend that proposals are updated. The Secretariat-General does check if RIA and stakeholder consultations are done, but lacks the human resources capacity and authority to check them for quality.

Co-ordination across ministries also remains a challenge. Line ministries that may have a stake in draft regulations are often consulted late in the process when a proposal is posted online. Ministries are also left to their own devices with respect to regulatory policy. As a result, the implementation of regulatory policy remains uneven across ministries.

The Government of Slovenia should establish a high-level body to facilitate inter-ministerial co-ordination on regulation. A high-level body including ministers or deputy ministers from line ministries, the Government Office of Legislation and the Secretariat-General could help identify strategic priorities for Better Regulation and facilitate inter-ministerial co-ordination when developing legislation. Earlier inter-ministerial co-ordination done within this body would help solve potential conflicts in policy objectives. Additionally, it would allow for a whole-of-government approach to prioritise policy objectives.

The Government of Slovenia should centralise oversight into one body and give the oversight body stronger powers. Currently, the General Secretariat checks RIAs and regulatory management tools for structure but not quality. It could add capacity to check the quality of RIAs and stakeholder engagement and could be able to send inadequately analysed proposals back to the ministries. Alternatively, this oversight function could be placed in the centre of government – in the General Secretariat or Government Office of Legislation – or as a separate arm's length body, like the UK Regulatory Policy Committee (even though this option does not seem to be ideal for Slovenia at this stage). Consolidating controls on the quality of impact within a lead institution and giving them a gate-keeping function would greatly improve the quality of RIA and thus policy. In addition, this oversight unit could also provide advice on how to analyse the impacts of regulation early on in the development of policy and could also ensure that ministries are doing *ex post* evaluation of laws and regulations passed under emergency procedure.

Line ministries in conjunction with the Ministry of Public Administration could establish a network of Better Regulation champions within each line ministry to act as a contact point when they have questions on how to implement regulatory management tools or the principles of better regulation. Each Champion would receive special training in deploying the principles of Better Regulation in general, but would also be able to bring his or her own experience in his or her particular sector. Champions could share experiences in overcoming challenges to implementing regulatory through bi-annual or quarterly meetings.

The Ministry of Public Administration could expand training and guidance to other regulatory policy tools. Currently, the Ministry of Public Administration only offers regular training on the SME test and administrative burden reduction. Adding training modules on cost-benefit analysis, data collection, and survey methods could greatly increase the information on methodology available to regulators and thus the quality of RIA. Similarly, the MPA could also develop regular training modules on methods for identifying and engaging with external stakeholders.

Training can often be expensive and resource intensive. To reduce strain on the government resources, the MPA could help ministries who already implement good regulatory policy practices share their experiences with other ministries, encouraging good practice through government. The MPA could also provide easy access to publically available tools from other countries and if necessary could have them translated. Furthermore, Slovenia could take advantage of examples, guides, and trainings that are available publically from other countries.

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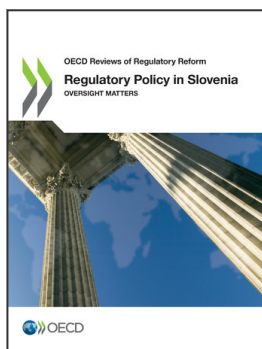
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Annex 3.A. Roles and responsibilities of municipalities in Slovenia

Local matters of public interest (of the original tasks) determined by law or by the general act of a municipality shall be independently performed by the municipality. In order to satisfy the needs of its inhabitants, a municipality shall perform primarily the following duties and functions (Local Government Act, Article 21):

- manage the assets of the municipality;
- provide the conditions for the economic development of the municipality and in accordance with the law carry out tasks in the areas of catering, tourism and agriculture;
- plan spatial development, carry out tasks in the areas of encroachments in physical space and the construction of facilities in accordance with the law, and shall ensure the public service of the management of building land;
- create the conditions for the construction of housing and provide for an increase in the rent/social welfare-housing fund;
- regulate, manage and provide for local public services within its jurisdiction;
- promote the services of social welfare for pre-school institutions, for the basic welfare of children and the family, and for socially threatened, disabled and elderly people;
- provide for protection of the air, soil and water sources, for protection against noise and for collection and disposal of waste, and perform other activities related to protection of the environment;
- maintain water supply and power supply facilities;
- create conditions for adult education, important for the development of the municipality and for the quality of life of its population;
- promote activities related to upbringing and education, information and documentation, associations and other activities on its territory;
- promote cultural/artistic creativity, ensure accessibility to cultural programs, ensure library activity for general education purposes, and shall be responsible for preserving cultural heritage in its territory in accordance with the law;
- promote the development of sports and recreation;
- construct, maintain and regulate local public roads, public ways, recreational and other public areas; regulate traffic in the municipality and perform tasks of municipal public order;
- exercise supervision of local events;
- organise municipal services and local police, and ensure order in the municipality;
- provide for fire safety and organise rescue services;
- organise the performance of cemetery services;
- determine offences and fines for offences violating municipal regulations and inspect and supervise the implementation of municipal regulations and other acts, which it shall adopt to regulate matters falling under its jurisdiction, unless otherwise determined by law;

- organise primary health care;
- organise municipal administration.



From:
Regulatory Policy in Slovenia
Oversight Matters

Access the complete publication at:
<https://doi.org/10.1787/9789264291690-en>

Please cite this chapter as:

OECD (2018), "Institutional framework and capacities for regulatory policy", in *Regulatory Policy in Slovenia: Oversight Matters*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264291690-7-en>

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