

5 The development of new regulations in Croatia

This chapter reviews the processes for developing new regulations in Croatia, with special attention to forward planning and trends; administrative procedures and legal quality; *ex ante* impact assessment; and considering alternatives to regulation.

RIA in OECD countries

Regulatory impact assessment is a cornerstone of regulatory policy. Governments must use evidence-based policy when they choose to use regulation as a policy lever to modify the behaviour of businesses and citizens for the benefit of society.

Governments should be weighing the costs and benefits of proposals extremely early in the development of a policy solution to an identified problem (see Box 5.1). To do otherwise, would be using policy-based evidence – RIA used to justify a policy rather than a key part of the decision making process. Virtually all OECD and EU countries now have some *ex ante* evaluation of policy in place, although the exact process varies substantially.

Box 5.1. The Fourth Recommendation of the Council on Regulatory Policy and Governance

4.1. Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.

4.2. *Ex ante* assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.

4.3. *Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.

4.4. When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.

4.5. Regulatory impact analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.

4.6. *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.

4.7. When carrying out an assessment, officials should:

- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects

- Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets
- Evaluate the impact on small to medium-sized enterprises and demonstrate how administrative and compliance costs are minimised.

4.8. RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: (OECD, 2012^[1]), *Recommendation of the Council on Regulatory Policy and Governance*, <https://doi.org/10.1787/9789264209022-en>.

Rarely, does a full RIA system appear overnight. Even in countries with a long history of RIA, like in the United States, RIA grew from a desire of the government to reduce administrative burdens and to centralise some of the oversight of the quality of regulation (see Box 5.2).

Box 5.2. The US path from the targeting administrative burdens to regulatory quality

The US Congress passed the Paperwork Reduction Act in 1980. The new Act was developed to encourage agencies of the government to reduce the amount of paperwork burden on businesses and citizens. At the same time, it also established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget in the executive to oversee the new requirements, such as if agencies' new information requirements were justified by a need from the government.

The role of OIRA and the policies on regulation from the executive changed over time from focusing on administrative burdens to looking at regulatory quality more generally. In 1995, President Clinton issued EO 12866, which had the objective of introducing "a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society..." From 1995, OIRA has been charged with reviewing regulations to see if agencies have considered alternatives and if agencies have analysed both costs and benefits, among other things.

Since then, presidents have maintained the regime with some modifications to enhance regulatory quality even more. President Bush issued amendments in 2007 that required agencies to have a clear problem statement and to describe the market failure the proposed regulation was to address. President Obama created a new requirement for retrospective reviews (*ex post* evaluation) to reduce the costs of rules and regulations.

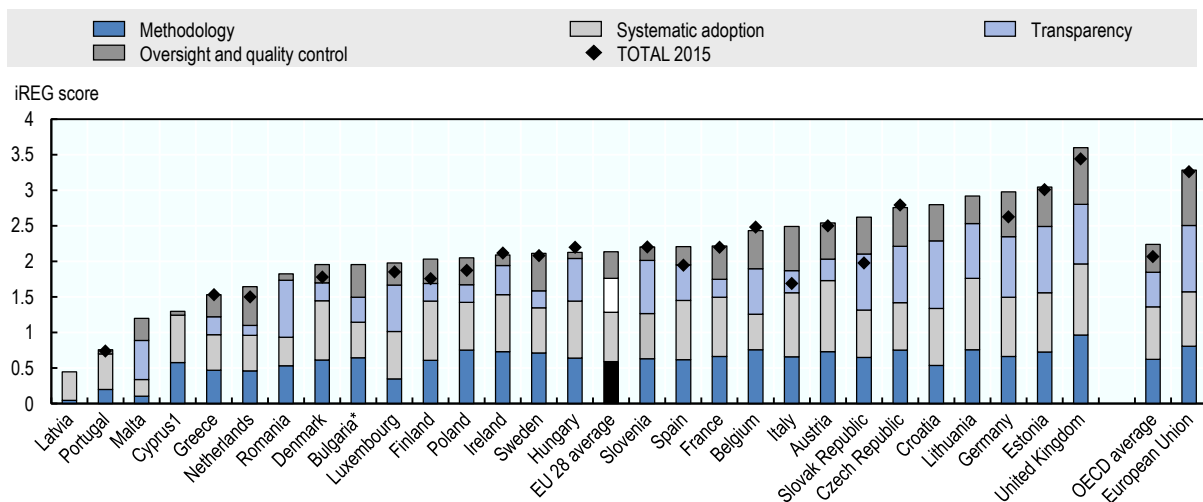
President Trump has strengthened the focus on reducing regulatory compliance costs for business. In 2017, he introduced a requirement for agencies to eliminate two regulations for every new regulation introduced. Proposed regulations that create new regulatory compliance costs for businesses must also offset these costs with reductions elsewhere, similar to policies in Canada and the United Kingdom.

Source: Exec. Order No. 12866 (1995); Exec. Order No. 13422 amendments to Exec. Order 12866 (2007); Exec. Order No. 13563 (2011); Exec. Order No. 13771 (2017).

Croatia actually scores remarkably well in RIA for primary laws on the iREG indicators, especially when compared to its EU peers. As described below, Croatian ministries are required to start considering RIA early in the process and an oversight body located in the centre of government already exists. Overall, Croatia is well above the OECD average for RIA in primary laws. Unfortunately, policy makers are not

analysing subordinate regulations during their development. Most of the RIA procedure in place does not apply to subordinate regulations.

Figure 5.1. Regulatory Impact Assessment for developing primary laws, 2018



Notes: 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,¹ 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.

1. Note by Turkey:

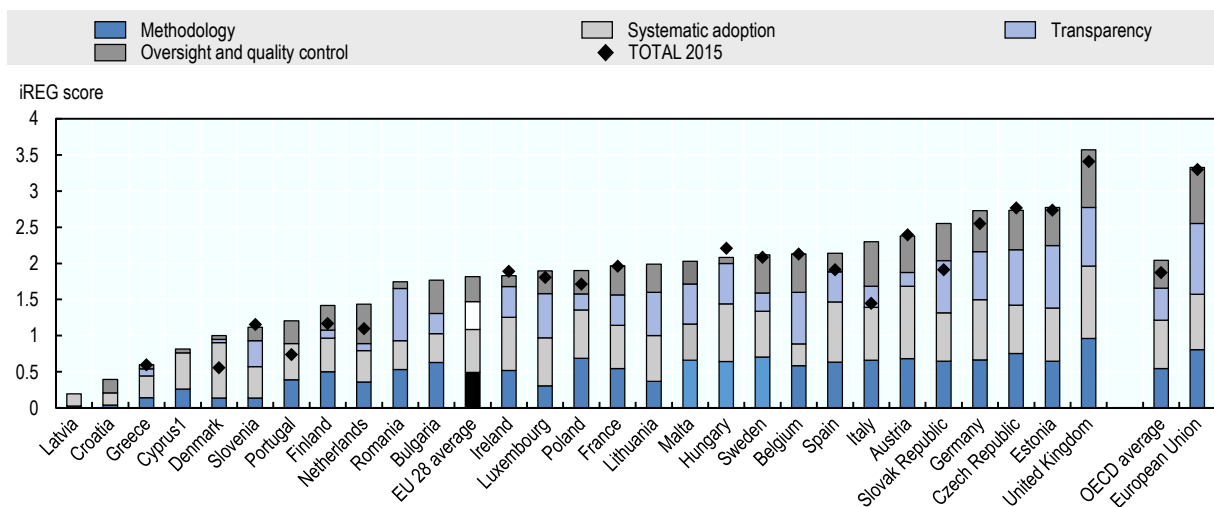
The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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

Figure 5.2. Regulatory Impact Assessment for developing subordinate regulations, 2018



Notes: 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,¹ Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

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RIA has gone through a number of iterations in Croatia. According to a paper from Romić and Vajda Halak, the Government Legislation Office (GLO) under IPA 2007 started implementing and developing RIA in 2007. After several years of effort, RIA received a boost in support through the 2011 Act of RIA (also see Chapter 2 on the context for Better Regulation).

The legislative process in Croatia

The first Constitution of the Republic of Croatia was adopted on 22 December 1990 based on a history of sovereignty dating back to the 7th century (source Preamble of the Constitution). The constitution clearly divides the powers of the parliament, executive and judicial branches of government.

The Constitution stipulates that the Croatian Parliament and people shall directly, independently and in compliance with the Constitution and law decide upon the regulation of economic, legal and political matters in the Republic of Croatia.

The executive branch of the government may propose laws and acts to parliament, subject to Article 114 of the Constitution, which states, “the organization, mode of operation and decision-making of the Government shall be regulated by law and its standing orders.”

The Government of the Republic of Croatia, through the creation of public policies, creates the need to adopt or amend regulations. The procedure for the adoption of regulations (laws, regulations and other acts) is regulated by the Rules of Procedure of the Croatian Parliament and the Rules of Procedure of the Government. The law is passed under the jurisdiction of the Croatian Parliament. The authority of the Government is restricted to the adoption of the Decrees and other acts on issues that are not regulated. It proposes laws to the Croatian Parliament.

The Rules of Procedure of the Government set out the methods of preparing and presenting a law, regulation or other action. According to Article 29 and Article 30 of the Rules of Procedure of the Government, any proposal must contain:

- An overview of all issues necessary for discussion and decision on them and a brief summary of the proposals content
- All the parts prescribed by the Rules of Procedure of the Croatian Parliament, if the proposal is a draft law or amendment
- The opinions of the Legislative Office, the Ministry of Finance and the Ministry of Foreign Affairs and European Affairs, as well as other central government bodies¹
- The opinion of professional associations and associations, if they are within the scope of the issue
- All the objections received. In addition, it is obligatory to submit written comments for the reasons for not accepting objections
- If required, the Statement of Fiscal Impact Assessment

- The opinion on the statement on the RIA by the GLO. The GLO should give its consent together with the draft proposal
- If necessary, a label of secrecy, in accordance with the regulations on data secrecy.

The Act on Regulatory Impact Assessment lays out the explicit requirements for *ex ante* analysis in Croatia. It governs a wide range of activities related to RIA, including:

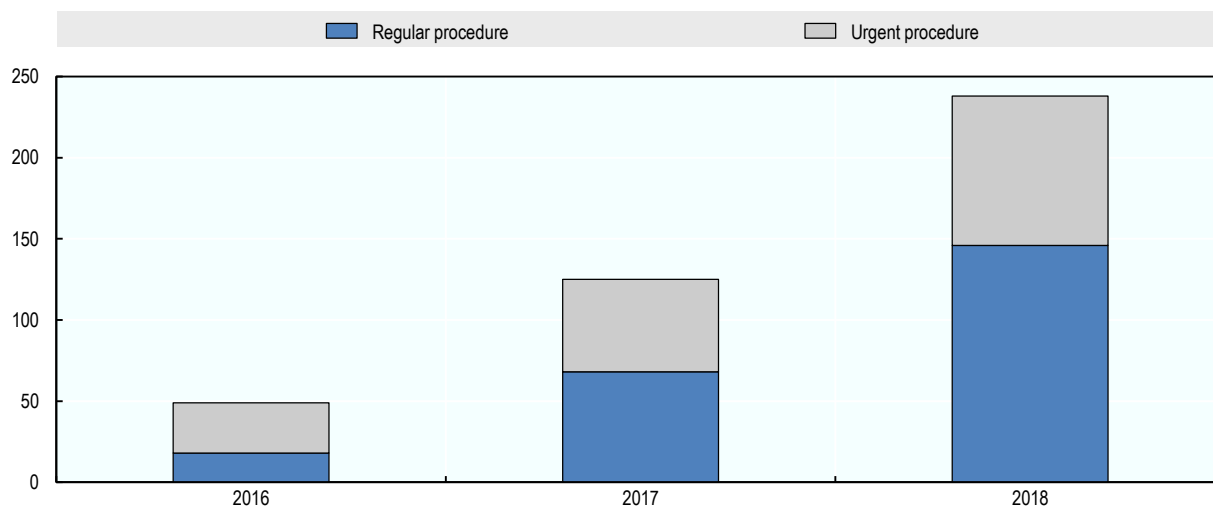
- The process of RIA
- The documents for RIA
- Annual legislative planning
- The bodies in charge of reviewing RIA
- Requirements and methods for public consultation; and
- The training obligations for RIA.

Trends in new regulation

In some countries, the government or policy makers may use an urgent or shortened procedure to shorten the time it takes to put a law in place. Often, the shortened procedure means that the normal legislative process, including RIA and stakeholder engagement, are substantially shortened or eliminated entirely. In cases of real emergencies this is reasonable. For example, the government should use emergency procedure if they need to liberate funds or resources to manage a natural disaster.

In some countries, however, the urgent procedure is misused to evade administrative procedures that assure that legislation is meeting the needs of citizens, namely to protect citizens safety, health and well-being without undue costs to society. Often, ministers feel political pressure to pass legislation without due consideration. They want to appear that they are taking action to solve an issue, and may not want to take the time critically examine a politically appealing but suboptimal solution. A lengthy procedure could also make them appear slow to react to the public at large.

Figure 5.3. Number of laws passed by the current Croatian Parliament, by regular and urgent procedure



Source: Croatian Parliament.

In Croatia, nearly half of all legislation has been passed under an urgent procedure since 2016. In fact, the Croatian parliament passed over two-thirds of laws under an urgent procedure during 2016, although this was most likely due to the national election. Nevertheless, nearly 40% of laws passed in 2018 also fell under urgent procedure. During interviews, representatives mentioned that efforts were underway to discourage the use of the urgent procedure.

The number of laws passed in Croatia has varied quite significantly from a high of 308 laws in 2013 because of the EU accession process to just 72 laws in 2016.

Procedures for new regulation in Croatia

Forward planning

The first RIA Law in 2011 set out the obligation for ministries to create a Legislative Activities Plan. The First Annual Legislative Activities Plan was adopted by the Croatian Government in 2012. In general, this document encompasses draft legislative proposals (but only primary laws) to be sent to the Government of the Republic of Croatia during the calendar year. The expert bodies plan regulations by the quarterly period. The Croatian Government adopts the Integrated Annual Legislative Activities Plan (containing draft legislative proposals of all expert bodies) in December of the current calendar year for the next calendar year.

The process of developing the Annual Legislative Activities Plan starts in September each year. Each body drafts Plan of Legislative Activities from its scope of work and for each draft law contained in the Plan carries out the Initial RIA.

The Legislative Activities Plan as well as the Initial RIA assessment for each of the proposed laws is published for consultation on the central government e-consultations portal during September. Proposals must be posted for at least 15 days. The state administration body then has the obligation to send its Legislative Activities Plan with all the Initial RIAs to the GLO, no later than 31 October of the current year.

The GLO then considers the proposed Legislative Activities Plan and all the Initial RIAs and may request changes. It can send back the submitted assessments and ask for further analyses in regards to the impacts.

The GLO forwards the Initial RIA to the Ministry of Economy, Entrepreneurship and Crafts, which is currently in charge of the SME test and the implementation of the SCM methodology. The Ministry of Economy, Entrepreneurship and Crafts submits an opinion to GLO within eight days on the need to carry out these activities.

The government bodies co-ordinate with the GLO on their proposed plans of legislative activities up to 1 December of the current year. The GLO submits an integrated Legislative Action Plan to the Government, who adopts it by 15 December each year.

Process for developing new regulations in the executive

Ministries, central government offices and state administrative organizations are government bodies. When assessing the need for a new regulation, they are obliged to propose it to the government. All central government bodies establish a plan of legislative activities within its scope for the next calendar year. At the end of the year, the Government adopts an integrated Legislative Activity Plan for the next calendar year.

The central government bodies also form working groups for drafting regulations. Members of the working group are civil servants employed in the central state administration body. Members of the working group may also include other civil servants or external experts dealing with this issue. A representative of the GLO may also join the working group.

Public consultations are conducted on the draft version of regulations. After the comments have been collected, the central government bodies revise the working version of the regulation. They then submit the regulation for opinion of other central government bodies, depending on the issue.

It is mandatory to gather opinions from the Ministry of Foreign Affairs and European Affairs, the Ministry of Finance and the GLO. The Ministry of Foreign Affairs and European Affairs determine the compliance of regulations with EU regulations. The Ministry of Finance determines the financial effect of regulations. The GLO provides an opinion on the compliance of regulations with the Constitution and the legal order of the Republic of Croatia, while respecting the legal system of the European Union. If a regulation relates to administrative proceedings, the regulation is submitted to the opinion of the Ministry of Administration. If the regulation prescribes misdemeanor provisions, it is submitted for opinion of the Ministry of Justice. The Ministry of Economy, Entrepreneurship and Crafts performs the SME Test on the regulation.

After the opinions and declarations of compliance have been collected, the regulation is referred to the permanent working bodies of the Government for further discussion. The government has five permanent working bodies, divided by expert areas, such as Coordination for Economy and Structural Reform, Coordination for Sectoral Policies and so on. Standing working bodies of the Government discuss compliance with the Constitution and the legal order of Croatia, while respecting the legal system of the European Union. When the text of the regulation is in accordance with the Constitution and the legal order of the Republic of Croatia, it is referred to the Government session. The government adopts regulations, as well as other acts such as decisions and conclusions, and passes laws to the Croatian Parliament for adoption. Parliament normally passes regulation after two readings.

All subordinate regulations, which in practice are a major source of administrative burdens, go through the SME Test according to the Ordinance on SME test (OG 43/17) under authority and the supervision of Ministry of Economy, Entrepreneurship and Crafts.

Oversight and inter-ministerial co-ordination

Since January 2013, the GLO has the responsibility for reviewing the extent to which the legal proposals have followed the RIA law in addition its responsibilities to review the legality of legislation. The GLO is responsible for co-ordinating the implementation of the Initial RIA and full Regulatory Impact Assessment as well as reviewing their quality. The GLO also monitors the drafting of the Legislative Activity Plan.

The GLO is also responsible for carrying out training on both legal drafting and RIA. In the RIA Department within the GLO, there are seven advisers involved in the RIA quality control – five lawyers and two political scientists – but no economists or other specialists to thoroughly evaluate quantitative impacts.

In the RIA process, the central government bodies are responsible for the implementation of the Initial RIA, the drafting of the Plan of Legislative Activities within its scope and for the implementation of the Regulatory Impact Assessment in accordance with the RIA Law and RIA Regulation. In order to carry out these activities, each has an appointed RIA co-ordinator responsible to carry out all the activities related to the RIA. The co-ordinator is appointed from the ranks of senior civil servants and may have a deputy. Co-ordinators co-operate with the unit of the expert who drafts the legislative proposal and, if necessary, take part in the work of the draft working group drafting the legislative proposal.

Expert bodies responsible for each of the determined effects² participate in the regulatory impact assessment process by considering and giving opinions within its scope.

Legal quality

Several levels and stages of control ensure the legal quality of regulations adopted by the Parliament and by the Government. The Rules of Procedure of the Government of Croatia define the legislative process in three sequential steps: expert task forces, ministerial co-ordination committees and, finally, review by the Inner Government Cabinet³ prior to the government session. Any draft regulation prior to its adoption must be submitted to the GLO. The GLO is established by the Government Act as an expert legal service, which has the task of reviewing drafts of legislative proposals from the perspectives of constitutionality and coherence with the general principles of law.

Reviews of the quality of legislative proposals are based on the current legal system, the rules of the profession and the multiannual practice created in the work of the GLO.

When the proposal is very complex, the GLO participates in the selection of the most appropriate legal solutions as well as the proper formulation of legal text in the regulations, either individually or as a part of a working group. When obliged by the Government, the GLO in co-operation with the regulatory body makes the appropriate adjustments and corrections in the draft regulation.

The final quality control check and compliance with all the opinions expressed in the drafting process are carried out at weekly meetings of the expert task forces and ministerial co-ordination committees within the Government. Representative of the GLO attends these meetings and, if necessary, provides additional opinions on the legal bases and the correctness of the regulations.

The GLO also reviews the issues of the legal system development and issues of constitutionality and legality of a particular regulation in co-operation with the proposers. The GLO representatives provide professional education and training in regulatory drafting, where civil servants are educated about how to draft constitutional and legally correct regulations.

Ex ante analysis of regulations

The RIA process and methodology apply exclusively to primary legislation that Government proposes to the Croatian Parliament, as stipulated in RIA Law of 2017. This means that legislative proposals from MPs, parliamentary parties and other legitimate proposers are not obliged to follow up with the RIA law. However, parliament only passes about 1% of primary legislation outside of scope of RIA application, notwithstanding the many laws passed under urgent procedure.

The general purpose of RIA in the Croatian legislative framework is to consider regulations or alternatives to encourage the business environment, strengthen the rule of law and reduce the costs of implementing the regulations. At the same time, the RIA law requires that central state administrations ensure the protection of human rights and fundamental freedoms, personal and political freedoms and rights, social and cultural rights.

The specific objectives of RIA process are to ensure openness and transparency of the legislative process, identify obstacles to entrepreneurship and encourage co-operation and inter-departmental co-ordination in the process of legislative drafting. Beyond the RIA regulations, Croatia also has an ongoing strategy to improve RIA in the country.

Central government bodies appear to follow the laws and regulations on RIA closely. All primary laws are posted with a RIA online as part of the consultation process.

It is clear that the RIA programme is well established in Croatia. However, a number of representatives did not believe that RIA was influencing the decision-making process. First, many regulatory decisions are made outside of the legislative planning activities, so once the initial RIA is underway, the decision to

regulate has been made. In addition, certain ministries reported that proposers did not consider their input or feedback on the costs to businesses when designing regulations.

Unfortunately, central government bodies generally only give sparse details on the impacts of proposed laws. For example, assessments of specific impacts are normally limited to a brief statement and a “check box” exercise where those proposing regulations must say if there are negligible, medium, or high impacts. A lack of technical expertise in RIA may result from a combination of factors, including a lack of permanent training on RIA and a lack of competitive wages in the public sector to attract and keep talent.

The situation seems to be unchanged since the reports on RIA from the Government of the Republic of Croatia in 2015 and OECD SIGMA programme in 2014. The authors identified that the institutional framework and the model is mostly established in Croatia for the *ex ante* impact of regulations. However, a key remaining challenge will be to improve the technical quality and usefulness of RIA. Croatia has a strategy to address these shortcomings (see Box 5.3).

Box 5.3. Vision, mission and goals of the RIA strategy for Croatia, 2018 to 2023

The Strategy sets out a vision, mission and three strategic goals for further development of the regulatory impact assessment from 2018 to 2023:

Vision: A modern legislative framework that supports the development of civil society promotes entrepreneurial freedom and ensures the rule of law.

Mission: Ensure the drafting of quality legislative proposals by consistently applying the regulatory impact assessment with the analysis of direct impacts and participation of the public concerned.

Strategic Objectives of Regulatory Impact Assessment:

1. Ensure the implementation of the legislative procedure by drafting legislative proposals in accordance with the applicable regulations in the area of regulatory impact assessment.
2. Ensure the administrative capacity of central administrative bodies to effectively evaluate the regulatory impact assessment when drafting legislative proposals.
3. Ensure the openness and transparency of regulatory impact assessment procedure in advocating public opinion and the public concerned when drafting legislative proposals.

In addition to the vision, mission and objectives, the strategy also outlines what resources will be needed to meet the goals of the strategy.

Source: Government of Croatia, RIA Strategy 2018-2023, Zagreb, December 2017.

As mentioned, the RIA process and strategy does not cover subordinate regulation – an area that may still contain heavy administrative burdens or regulatory impacts – or subnational authorities (see Chapter 8 for more discussion on regulatory policy at the subnational level). However, SIGMA in 2014 noted that “... the RIA Law gives possibility to [the Government of the Republic of Croatia] to require RIA for secondary legislation if the proposed secondary legislation or a draft is likely to bear potential significant impacts on economy, social affairs or on environment. This possibility has not been exercised for the time being” (OECD SIGMA, 2014^[2]).

The RIA process in Croatia in detail

The RIA Law and its associated regulation sets out three important aspects of RIA process: annual planning of government legislative activities; implementation of full RIA stage for those legislative activities that have significant direct impacts; and the process for legislative activities submitted outside of the annual plan.

The RIA regulation contains the specific procedures and forms required for RIA in Croatia. According to the RIA Law, the Government shall adopt a Legislative Activity Plan containing all draft legislative proposals that are envisaged to be approved during the proscribed period.

The need to carry out full RIA is established based on the results of the Initial RIA. A full RIA is required in cases when there is:

- a large direct impact and a small number of impacted stakeholders
- a large direct impact and a large number of impacted stakeholders
- a small direct impact and a large number of impacted stakeholders.

The established combinations are reported for each of the direct impacts of the draft legislative proposal in the Initial RIA form.

If a full RIA is required, the state administration body carries out the following:

- determines in detail the outcomes or changes that are to be achieved by the draft regulation
- analyses in detail the direct effects identified in the Initial RIA
- if necessary, it analyses in detail the direct effects of individual and possible alternative normative solutions from the draft legislative proposal
- selects the optimal solution for achieving the determined outcomes, i.e. changes in the area that is regulated by the draft legislative proposal
- if necessary, performs a SME test
- if necessary, applies measurement based on the SCM methodology
- and establishes the timeline and basic criteria for evaluating draft legislative proposals and other related issues.

The head of the state administration body may set up a working group to draw up the full RIA form and a draft legislative proposal. A public presentation and public consultation of the full RIA and a draft law should be conducted for at least 30 days. At the same time as the public consultation, the full RIA form is submitted to the competent authorities and the GLO for an opinion.

The Ministry of Economy, Entrepreneurship and Crafts is obliged to review the results of the SME test and the SCM methodology, if the analysis has been completed. Following consultation, the full RIA form is again submitted to the GLO for approval and the draft legislative act is submitted to the competent authorities, the GLO and to other bodies in accordance with the Rules of Procedure of the Government.

If during a calendar year, a law is required that is not included in the Legislative Activity Plan, the state administration body carries out an initial RIA. The state administration body must carry out consultations for a period of at least 15 days within the framework of the Initial RIA. At the same time as consultation stage, the state administration body submits an initial RIA form to the GLO. The GLO also forwards the initial RIA form to the Ministry of Economy, Entrepreneurship and Crafts for conducting the SME test and the implementation of the SCM methodology. The Ministry of Economy, Entrepreneurship and Crafts submits an opinion to the GLO within five days of receiving it.

The GLO analyses the Initial RIA form and, if necessary, requests a supplement or a modification. The state administration body is bound to agree the initial RIA form with the GLO prior to the adoption of draft legislative proposals at sessions of the Expert Task Groups and Ministerial Coordination Committees within the Government. Depending on the results of the initial RIA, the state administration body proposing the regulation carries out a full RIA process as above.

According to the RIA law, RIA is not required by the government to:

- ratify international treaties

- implement regulations and other binding legal acts of the European Union that are directly implemented in the territory of the Republic of Croatia
- apply the State Budget of the Republic of Croatia; and
- grant authority to the Government to regulate certain issues within the scope of the Croatian Parliament.

The exemption for international treaties may be overruled. In this case, a RIA may be carried out, based on the conclusion of the Croatian Parliament.

Since 2017, the RIA Law requires that government bodies prepare and draft laws alongside a RIA. The goal is to encourage the executive to select an optimal legal solution or undertaking other activities and measures.

Policy makers must analyse the direct effects of draft legislative proposals on many areas of Croatian society, including:

- the small economy (SMEs)
- labour market
- social welfare and pension system
- health
- environmental protection
- human rights protection
- and market competition.

In the RIA process, a full RIA is carried out, depending on the results of the initial RIA stage. Direct effects are analysed, according to the following types:

- **Economic impact assessment:** Assessment of the expected direct impacts on the macroeconomic environment, investment inflows, market functioning and economic competitiveness, small business, administrative barriers to business, research and development and consumer protection
- **Social impact assessment:** An assessment expected direct impacts on demographic trends, social welfare, social inclusion and protection of groups with special interests and needs, access to public services and the right to health care
- **Impact assessment on labour and labour market:** Estimating the expected direct effects on employment and the labour market, standards and rights on the quality of workplace and on the pension system
- **Environmental impact assessment:** Estimating expected direct effects on climate, quality and use of air, water and soil, management of natural resources, use of renewable and non-renewable energy sources, waste management and recycling
- **Impact assessment on human rights protection:** An assessment of the expected direct effects on gender equality, the right to equal treatment and opportunities, the suppression of discrimination, the violation of privacy, the protection of personal data, access to justice, access to information and other rights guaranteed by the Constitution of the Republic of Croatia and,
- **Impact assessment on market competition:** An assessment of the expected direct effects on competition between market participants on non-discriminatory terms.

Direct effects should be analysed in particular when they affect the following stakeholders:

- micro, small, medium and large entrepreneurs, family farms, co-operatives
- citizens

- families and households
- workers and retired people
- service providers in a particular business area and consumers
- Croatian war veterans
- minorities
- social groups with special interests and needs
- associations and foundations
- various other national and subnational bodies or nationalised industries.⁴

Considering risk and performance-based alternatives to regulation

According to the RIA law, government bodies are obligated as part of the RIA process to consider non-regulatory solutions. At this stage, a state administration body considers alternatives to legislation during elaboration of an initial RIA form. Consideration of non-normative solutions include: do nothing option, information and training, self-regulation and co-regulation particular. Other alternatives such as usage of economic instruments (taxation, transfer incentives to nudge particular behaviour of affected population) could be under consideration, but this will be at the end a legislative proposal as taxation or any other form of budget transfer has to be introduced by a primary legislation.

According to some Croatian authorities, government bodies tend to think about alternatives to regulation just to complete the Initial RIA form, i.e. after a decision on a legislative solution has already been made. Thus, considering alternatives to regulation is still uncommon. An often-reported issue – and one certainly not unique to Croatia – is that a head of a government body decides on an ad hoc basis during a year which activities are adopted, before a complete analysis of options (see Chapter 2 on regulatory policy strategy).

Box 5.4. Six types of alternatives to regulation

Performance-based Regulations: Performance-based regulation specifies required outcomes or objectives, rather than the means by which they must be achieved. Firms and individuals are able to choose the process by which they will comply with the law. This allows them to identify processes that are more efficient and lower cost in relation to their circumstances, and also promotes innovation and the adoption of new technology on a broader scale.

Process-based regulations: These regulations are so named because they require businesses to develop processes that ensure a systematic approach to controlling and minimising production risks. They are based on the idea that, given the right incentives, producers are likely to prove more effective in identifying hazards and developing lowest-cost solutions than is a central regulatory authority. They are particularly useful where there are multiple and complex sources of risk, and *ex post* testing of the product is either relatively ineffective or prohibitively expensive.

Co-regulation: Under co-regulation the regulatory role is shared between government and industry. It is usually effected through legislative reference or endorsement of a code of practice. Typically, the industry or a large proportion of industry participants formulate a code of practice in consultation with government, with breaches of the code usually enforceable via sanctions imposed by industry or professional organisations rather than the government directly. This approach allows industry to take the lead in the regulation of its members by setting standards and encouraging greater responsibility for performance. It also exploits the expertise and knowledge held within the industry or professional association.

Economic instruments: At a theoretical level, the use of economic instruments should a priori be the preferred means of achieving policy objectives in a wide range of situations. This is because these tools – taxes, subsidies, tradable permits, vouchers and the like – operate directly through the market, thus harnessing market incentives and avoiding the substantial potential for distorting market incentives inherent in most forms of regulation.

Information and education: The most widely used alternative approach to regulation in OECD member countries is information and education campaigns. These approaches address information asymmetries and empower citizens and consumers to adopt actions or make informed choices that match their preferences and align their sensibility to risks. While many information campaigns simply seek to inform citizens and enhance consumer choice, some information campaigns are more explicit in seeking to change behaviour.

Voluntary approaches: Voluntary approaches are arrangements initiated and undertaken by industry and firms, sometimes formally sanctioned or endorsed by government, in which self-imposed requirements which go beyond or complement the prevailing regulatory requirements. They include voluntary initiatives, voluntary codes, voluntary agreements, and self-regulation and can vary in regard to their enforceability and degree of voluntarism.

Source: (OECD, 2002^[3]), *OECD Reviews of Regulatory Reform: Regulatory Policies in OECD Countries*, <https://doi.org/10.1787/9789264177437-en>.

Policy makers have some guidance available on considering alternatives to regulation. RIA guidance on the process and methodology contains detailed information on how to consider alternatives to legislation and provides examples of such instruments. Alternatives to legislation are also always part of RIA training curriculum, even if they often are not included in proposals.

Public consultation and communication on RIA

Within the impact assessment procedure, government bodies are obliged to conduct consultations on the RIA and draft regulation (law) proposal for at least 30 days with the public. To support the consultation, proposers must include some brief explanatory text. Consultations are conducted via central state portal “e-Consultations” (e-Savjetovanja) (see more on consultations in Chapter 4).

Guidance, resources and training

As a part of the overall RIA legislative framework, the GLO has developed a RIA guidance document. The purpose of the guidance is to provide additional information about RIA methodology and process. The objective of this guidance is to set a structured step-by-step guide for whoever will draft RIA documents in law making process. Part of the guidance is a technical guide on standard analytical methods applicable to assessing costs and benefits of a legislative proposal, and other non-regulatory solutions. It consists of technical aspects of costs and benefits analysis, cost effectiveness analysis, preparatory work on public consultation stage, details on analysis of provided comments from stakeholders, publication of the feedback to the stakeholders, and a part on identifying milestones for monitoring and evaluation of a legislative proposal.

During the implementation of two twinning projects, Croatia held a set of workshops in RIA methodology. These workshops included the complete basics of RIA methodology from identification of a problem to reaching a decision of a preferred option and setting milestones for policy monitoring and evaluation⁵ (see the section on RIA twinning projects in Croatia).

During the first twinning project in 2011, the three-day workshop was organised with around 100 participants from government, business representatives and civil society organisations. A “train the trainers” course in RIA methodology was also included, in which 20 civil servants attended with the purpose of building additional layer of sustainability to RIA system. During the second twinning project, a set of one-day workshop was designed so that each impact was covered in details. For instance, a one-day workshop was dedicated to environmental impact assessment and then other similar workshops were designed in other respective areas, including the economy and social care. Participant were free to participate in one or all consecutive workshops.

In total, the twinning projects had more than 400 participants. As for the sustainability of RIA legislative framework, a two-day workshop on the RIA process and methodology with focus on application of SME test and SCM methodology has become a part of the curricula of State School of Public Administration. From October 2017 to June 2018, this program had 70 attendees. RIA and the RIA process in general is currently not a part of the curriculum of the State School of Public Administration.

Despite Croatia’s significant efforts in training staff, a lack of human resources remains a challenge for implementing RIA and regulatory policy more broadly in Croatia. Many representatives noted that wages in the public sector compared to the private sector were quite low. Young people, especially those with skills in economics or cost-benefit analysis, are often attracted to the private sector because of higher wages. Even if some people become trained in RIA, the SME Test and SCM methodology, they may leave the public service and take these newly developed skills with them.

The SCM is relatively well established in Croatia. Government bodies have units for measuring administrative burdens that could serve as the basis for more technical units, which could more thoroughly look at measuring regulatory impacts.

Assessment and recommendations

Croatia scores highly on the iREG indicators for a good reason: all the necessary elements of *ex ante* evaluation exist for primary laws in Croatia. RIA starts relatively early in the process and looks at a wide variety of impacts. The RIA process is completed for all primary laws, which covers some 99% of regulations. Crucially, the GLO – a centre-of-government body – has the authority to review RIAs for primary laws. The RIA process also involves a threshold system that determines if a full RIA needs to be completed. Croatia has also made great strides in providing training and guidance on the ex-ante impact of primary laws, including the SCM methodology.

However, policy makers have not used RIA to its full potential. Although the elements are all there on paper, the actual information provided in RIAs seems to be relatively underdeveloped and could be significantly improved. Overall, the main challenge for Croatia is to turn the theory into practice, building and maintaining the analytical capacities in the government. Not only to ensure that ministries developing new regulations are producing good RIAs, but that it really becomes a part of the decision making process in general.

In addition, interlocutors during the fact-finding mission indicated that *subordinate regulations in Croatia are not under the same framework*, although they are responsible for many of the impacts to Croatian society, particularly administrative burdens.

Croatia could take a less is more approach to RIA. Target RIA and analytical resources to those major legislative initiatives that will have a major impact on Croatian citizens. At first, this could be through pilots of a rigorous process as part of the legislative planning. Overtime, Croatia could develop a triage process or threshold test to have two or three levels of RIAs. Under the current system, full RIAs generally contain little analysis. Croatia could pilot a full cost-benefit analysis to a handful of target regulations that are likely to have significant impacts on society. The targeted reviews could demonstrate to the government

decision-makers the value of having a more robust and in-depth RIA. Following a pilot, a third level of RIA could be introduced as part of legislative planning.

It will be very challenging to support a more in-depth analysis with the necessary human resources in ministries. **Croatia could continue to bolster training efforts and hiring to conduct evaluation**, particularly to support a more detailed impact analysis. In a number of reviews on the state of RIA in Croatia, the authors have noted that building capacity in policy makers to make use of RIA is crucial. Croatia should make sure that GLO itself has the necessary human resources to provide an effective service to support high-quality RIA in Croatia. This could involve hiring experts in cost-benefit analysis or economics. Crucially, training on RIA and cost-benefit analysis should become a key part of the State School of Public Service in Croatia, so that the analytical capacities also exist in ministries themselves as well. The small analytical units in state administrative bodies trained in the SCM could serve as the basis for more advanced units on measuring regulatory costs and benefits (see Chapter 3 for more information on the institutional setup).

Croatia should apply RIA to subordinate regulations with significant impacts. Institutionally, it is unclear who would be the oversight body for such a change. The GLO stated in interviews that it could not provide oversight, because that may conflict with its role as an expert service of the government only and not ministries or state administrative bodies. It may be necessary for the Ministry of Economy, Entrepreneurship and Crafts to review impacts as part of the inter-ministerial co-ordination process for subordinate regulation that requires each ministry to review impacts under its purview.

Alternatives to regulation should be encouraged before the issue is included in the Legislative Action Plan. Ministers who direct the legislative plan could be encouraged to analyse issues and identify the problem rather than deciding on the policy lever before they choose it as the solution. This is especially important for regulations that are not a result of an EU directive.

Croatia could consider requiring monitoring and evaluation plans as part of new regulations that have a very large impact on the country. Government bodies should carefully monitor regulations with high impacts on citizens or business to ensure that the regulation is meeting its objectives. It will be crucial that Croatian government bodies are reviewing any legislation passed under urgent procedure.

RIA twinning projects in Croatia

To improve the implementation of regulatory impact assessment (RIA) methodology into national policy-making process, through capacity building of Government Legislation Office (GLO) and regulatory institutions in the public administration and to ensure awareness of the stakeholders and wider public about the implementation of RIA co-ordination system. This was accomplished through:

1. Further development of impact assessment legal framework,
2. Development of administrative capacity in regulatory impact assessment and
3. Development and implementation of public relations campaign for regulatory impact assessment public awareness raising.

This project was of particular interest to those involved in the implementation of the Regulatory Impact Assessment system, particularly for:

- Government Legislation Office
- Government bodies, primarily the ministries
- Business Community and the NGO's.

The project "Development of Regulatory Impact Assessment (RIA) system in the Republic of Croatia" started in January 2011 and lasted for 18 months. The total value of the project was 1 100 000 EUR. This twinning project was implemented with the assistance of Northern Ireland Co-operation Overseas – NI-CO and the Estonian Ministry of Justice (Member State Twinning Partner).

Through the implementation of this project, Government Legislation Office elaborated and developed the legal framework for impact assessment, strengthened the administrative capacities for the regulatory impact assessment and raised the public awareness on the importance of establishing of RIA system.

This was achieved through the following range of results:

- Developed and adopted Act on Regulatory Impact Assessment and the Regulation on the implementation of the RIA procedure with Guidelines on impact assessment methodology
- Developed Strategy and Action Plan for implementation of RIA in Croatia
- Developed administrative capacities of line ministries through elaborate training programmes and implemented pilot projects
- Two study visits to EU RIA agencies
- Successfully implemented public awareness campaign in line with the developed Communication Strategy.

IPA 2011 Strengthening capacity for implementation of Regulatory Impact Assessment Strategy 2013 – 2015

The overall objective of the project was to increase the quality of primary legislation by using regulatory impact assessment (RIA) thus assisting public administration in becoming an efficient service capable of drafting clear and simple legislation. The project purpose was to strengthen capacities of the Government Legislation Office (GLO) and line ministries in regards to implementation of RIA system into law making process with a special focus on building capacities for analysis of economic, environmental and social impacts in drafting legislation. The project was successfully implemented in 2015.

IPA 2007 Development of regulatory impact assessment (RIA) system

The overall objective of the twinning project was to assist the Croatian public administration in becoming an efficient, modern service, capable for conducting impact assessment tools as a part of development of a modern regulatory system. The project's aims were to improve implementation of regulatory impact assessment (RIA) methodology into national policy making process, through capacity building of the Government Legislation Office and regulatory institutions in public administration and to ensure awareness of stakeholders and wider public about the implementation of RIA co-ordination system. The project consisted of three components: i) Further development of impact assessment legal framework; ii) Development of administrative capacity in regulatory impact assessment; iii) Development and implementation of Public Relations campaign for regulatory impact assessment public awareness rising. The project was successfully implemented in 2012.

The second Twinning light project started on 30 April 2015 and lasted for six months. The total value of the project was 250.000 EUR. This twinning project was implemented with the assistance of Northern Ireland Co-operation Overseas – NI-CO and the UK Department for Business, Innovation & Skills.

This project builds on the twinning project: Development of Regulatory Impact Assessment (RIA) System in Croatia (HR/2007/IB/FI/02) completed in 2012. Its purpose was strengthen GLO capacities of the (GLO) and line ministries in regards to implementation of RIA system into legislation making process with a special focus on building capacities for analysis of economic, environmental and social impacts in drafting legislation. This was accomplished through:

1. Further development of RIA methodological tools
2. Strengthening administrative capacity in regard to RIA implementation and
3. Raising public awareness on RIA benefits in legislative procedure.

Through the implementation of this project, Government Legislation Office has reviewed the RIA methodology tools, strengthened the administrative capacities for the regulatory impact assessment and raised the public awareness of their role in the existing RIA system.

This was achieved through the following range of results:

- Developed RIA methodology to include monitoring tools and updated the Guidelines on impact assessment methodology
- improved administrative capacities of line ministries through elaborate training programmes
- One study visit to EU RIA Agency
- Improved the Communication Strategy to raise public awareness and Stakeholder engagement.

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Notes

¹ The same applies to reports, information and similar materials, if they contain suggestions of conclusions that define obligations to state administration bodies or create financial obligations.

² The effects may include, the economy, the small economy (SMEs), labour market, social welfare and pension system, health, environmental protection, human rights protection and market competition.

³ The inner government cabinet includes the prime minister and ministers.

⁴ This may include central state administration bodies, other state bodies, judicial bodies, public institutions, local and regional self-government units, legal entities with public authorities, companies owned by the Republic of Croatia and companies owned by local and regional self-government units.

⁵ Other modules included, setting the objectives and possible policy solutions (regulatory instruments and consideration of alternatives to regulation), identification of likely significant impacts to various areas (economy, environment, social care) and analysis of their positive and negative aspects to affected groups/population.



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