

5 The development of new regulations in the Slovak Republic

This chapter reviews the processes for developing new regulations in the Slovak Republic, with a particular focus on forward planning, administrative procedures and *ex ante* impact assessment. The framework for developing regulations is well-established in the Slovak Republic, although the practical implementation needs reinforcement. Analytical units in many ministries are a unique asset to the policy development system in the Slovak Republic.

RIA in OECD Countries

Regulatory impact assessment (RIA) is a fundamental process for ensuring that regulations meet the needs of businesses and citizens. The RIA process itself is a systematic approach to weigh the benefits and costs of various regulatory and non-regulatory options for the government to address a specific problem in society. Governments must make decisions for new laws based on a sound rationale and evidence; otherwise, regulations and policies will not be fit-for-purpose and, in the worst case, may do more harm than good. RIA is a fundamental part of the 2012 *Recommendation on Regulatory Policy and Governance* from the OECD that all OECD members ought to adhere (see Box 5.1).

Box 5.1. The fourth recommendation of the 2012 Council on Regulatory Policy and Governance

4. **Integrate Regulatory Impact Assessment (RIA) into the early stages** of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

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, Paris, <https://dx.doi.org/10.1787/9789264209022-en>.

The RIA process should include, at the very least, the following phases (OECD, 2015^[2]):

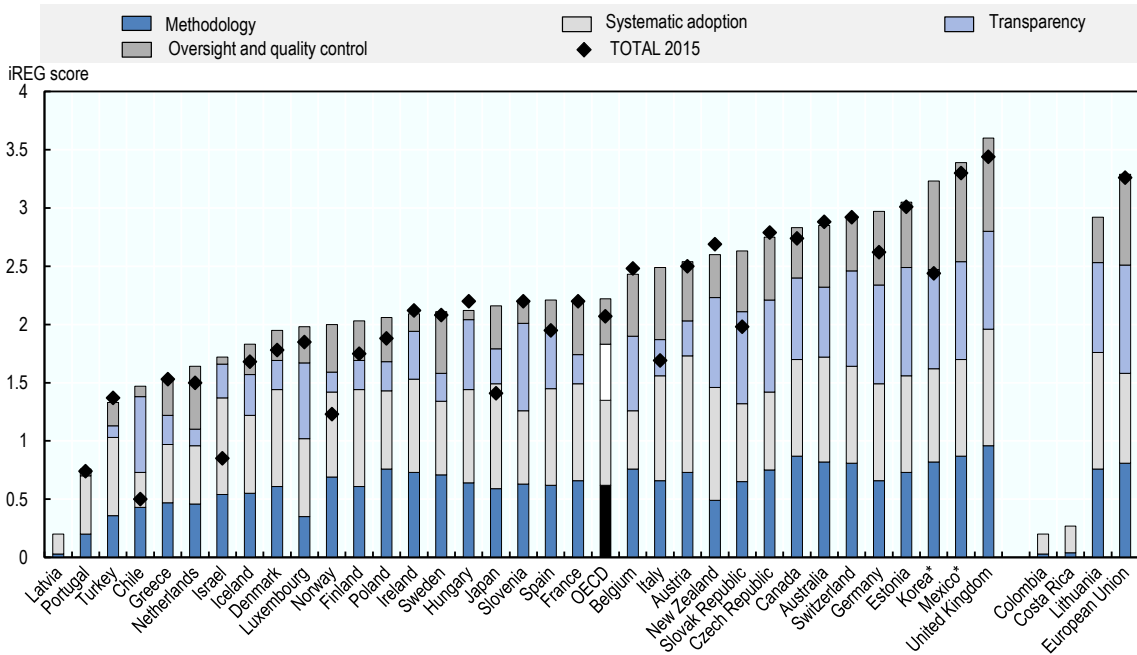
- **Problem definition:** A thorough analysis to understand the policy issue at hand, so that any solutions tackle the actual causes of the problem.
- **Identification of both regulatory and non-regulatory options:** The government should present and analyse different options to address the particular causes of the problem, which should always be weighed against doing nothing.
- **Data collection:** Collecting data to analyse the different policy options
- **Assessment of the alternative options:** A critical assessment of the different policy options that looks at the pros and cons and their impact on different stakeholder groups.
- **Identification of the preferred policy option with reasons**
- **Provisions for monitoring and evaluation (including indicators)**

Virtually all OECD countries now have an RIA process in place in some form. However, they are not all at similar stages of development. It often takes decades and strong political support across many administrations to firmly establish RIA as part of the regulatory process in a country.

Slovakia has an above-average score for RIA in the iREG indicators. RIA has been a requirement for regulatory proposals since 2008 according to the first version of the *Unified Methodology on the Assessment of Selected Impacts*.¹ The methodology became effective in 2010 and requires proposers to include an Annex of Selected Impacts in dossiers submitted to the inter-ministerial commenting procedure. The Ministry of Economy, responsible for the Better Regulation program, has instituted several reforms to entrench RIA in the development of regulation further since 2014.

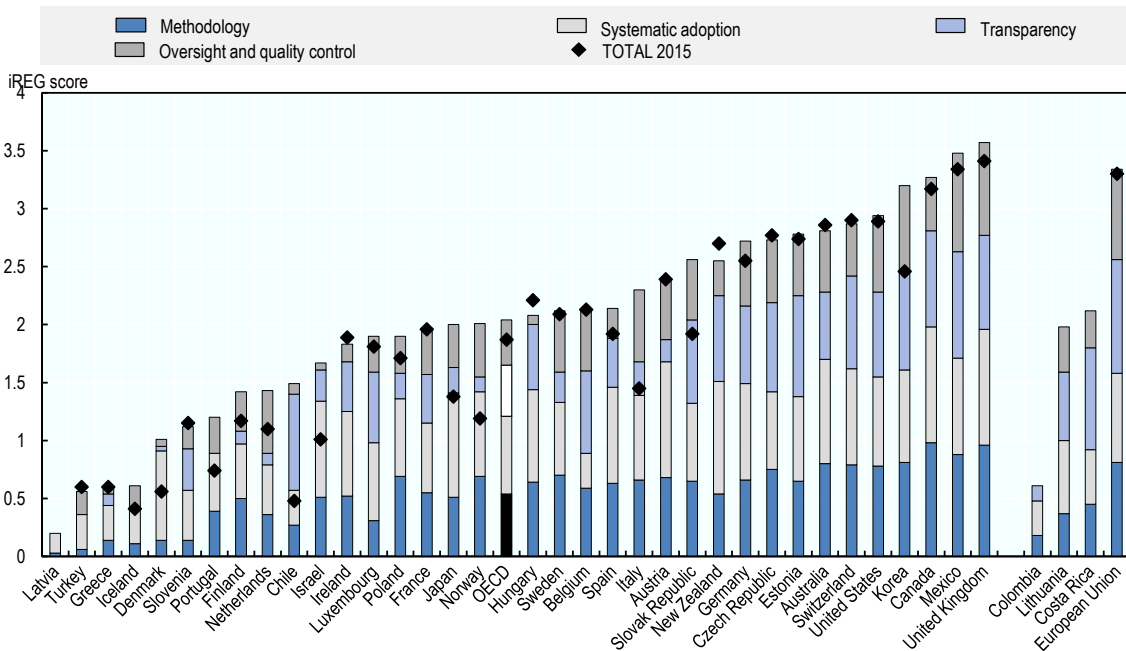
In 2014, the Ministry of Economy of the Slovak Republic led the development of a methodology for assessing selected impacts, known as the *Unified Methodology on the Assessment of Selected Impacts* (or “Unified Methodology”). The purpose of this methodology is to improve the impact assessment system in Slovakia. The Unified Methodology became effective on 1 October 2015 and introduced several changes to the assessment process, including creating the RIA Commission in the Slovak Republic and reinforcing the consultation process with a new business and SME Test.

Figure 5.1. Composite indicators: regulatory impact assessment for developing primary laws, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. *In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature. Source: (OECD, 2018_[3]).

Figure 5.2. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. Source: (OECD, 2018_[3]).

The legislative process in Slovakia

Forward planning

Each year, the Government approves and publishes the “Plan of Legislative Works”. It is usually approved at the end of the year and contains laws that should be created or amended over the next year. The Plan includes only the name and description of the primary legislation (laws and regulations), the responsible body and a brief rationale for the proposal. In case the responsible ministry or government body is not able to submit the regulation draft by the deadline, it must make a request to the Prime Minister for postponement or removal of the draft with proper reasoning.

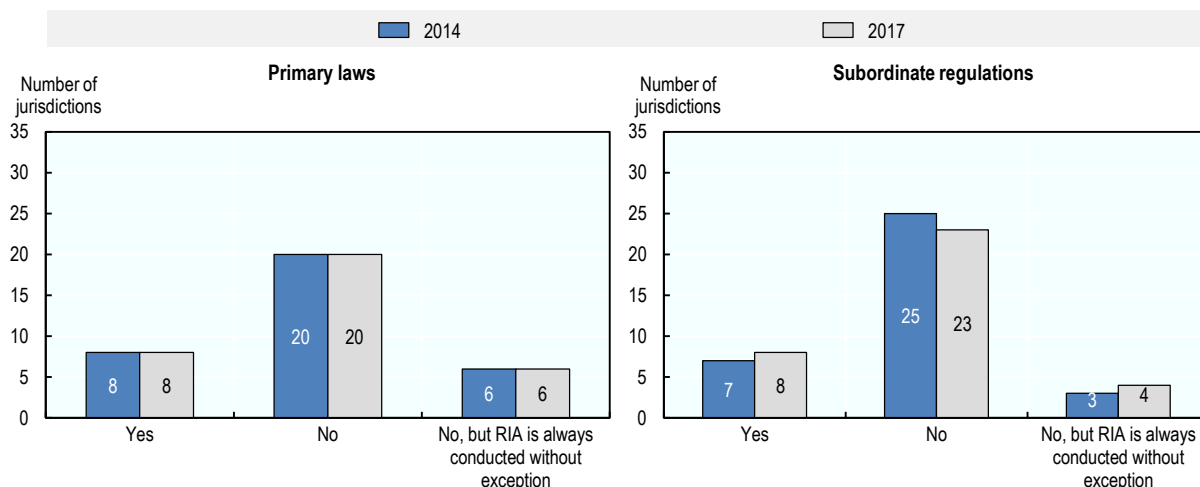
The Government Office prepares the “Plan of Governmental Tasks” – a list of non-legislative materials that will be approved during the year. The Government Office publishes both plans on its website (Government of the Slovak Republic, 2019^[4]).

Trends in new regulations

Business leaders are concerned that the government often uses the shortened procedure that avoids both RIA and extensive consultations. In the Slovak Republic, the shortened procedure is used too often, according to some representatives of the business sector. A short survey conducted by the Ministry of Economy’s Department for Business Environment showed that out of 512 dossiers submitted to the inter-ministerial commenting procedure between January and October 2019, in 141 cases (28%) the commenting period was shortened to 7 days or less. The Ministry of Agriculture stated that approximately 5-7% of legislation are passed each year using a shortened procedure.

To compensate for a lack of impact assessment and/or stakeholder engagement in the design stage of a legislation, some countries put in place post-implementation reviews. In eight OECD countries, regulators are required to evaluate the regulation within one or two years after implementation, if the ministry ought to have done a RIA (see Figure 5.3). Slovakia has not implemented the institute of post-implementation reviews so far.

Figure 5.3. If RIA does not take place, is a post-implementation review required?



Note: Data is based on 34 OECD member countries and the European Union.

Source: (OECD, 2018^[3]), Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

The following documents govern the development of new regulations:

- Legislative Rules of the Government
- Rules of the National Council of the Slovak Republic for drafting laws
- Guidelines for preparing and submitting materials to the Slovak government
- Unified Methodology for the Assessment of Selected Impacts

The *Legislative Rules of the Government* stipulate the step-by-step law-making process. The Legislative Department of the Government Office should follow and enforce all the statutory procedures, not just the legal quality.

According to the Unified Methodology, the RIA Commission should have information about the preparation for every new regulation. With this information, the RIA Commission makes the ultimate decision if consultation (based on opinions from stakeholders) and *ex ante* RIA is necessary.

The Unified Methodology sets requirements for consultations with stakeholders in preparatory stages (before preliminary commenting). If impacts on the business environment are identified, an analysis on the impact on the business environment needs to be prepared. This analysis, which is part of every document submitted to the government, contains a statement of whether consultations were made, what were the points for discussion, and what the outcome was the outcome or what was agreed. Further consultations run during the ministerial commenting period, where all ministries, central-government bodies, stakeholders and the public may submit their comments.

The legislative process itself consists of seven successive stages. Each stage can only start after the previous one has been completed through the Slov-Lex portal.

1. Information on material preparation – This proposing ministry or government body prepares material based on the approved plan of legislative tasks of the government or initiative material of one of the ministries. In the second case, the proposing ministry informs the Ministry of Economy in advance to ensure consultation with businesses, if required.
2. Consultation with business entities – The stage is not a mandatory phase of the impact assessment procedure and is only used if the material could have an impact on the business environment. The Ministry of Economy decides on the necessity of consultations with businesses.
3. Internal approval of material within the ministry or government body – This is the so-called internal comment procedure, in which individual departments of the proposing ministry or government body have the opportunity to express their views on the material.
4. Preliminary comments procedure – The assessment material is submitted to the RIA Commission upon completion of the internal comments procedure within the department in those cases where the ministry or government body has identified at least one of the possible effects. The result is the opinion of the RIA Commission, which may be positive (no comments), positive with suggestions (minor comments) or negative (substantial comments). The ministry or government body is obliged to incorporate the opinion of the RIA Commission into the material itself. A negative statement or suggestion for finalisation is not an obstacle to further steps in the legislative process.
5. Inter-ministerial and public consultation procedure – Individual ministries or government bodies as well as civil society and the general public might comment on the material as a whole and make their comments and proposals for changing the proposal.
6. A final assessment of selected impacts – This assessment takes place should there be substantial changes made to the draft legislation following the consultation procedure or if the draft had not been submitted to the preliminary comments procedure.
7. Approval of the Government of the Slovak Republic – The final assessment and approval of the submission by the proposer. The proposal is approved as follows: 1) Minister, in the case of a decree (edict) and measures, 2) Government, in case of Government regulation, 3) Government

and then the Parliament in case of a law. The RIA Commission provides the Government with information in a final statement.

The Ministry of Economy is responsible for managing the RIA process and ensuring it is carried out in line with the Unified Methodology (see Chapter 3).

Ex ante analysis of regulations

RIA has been a long-standing part of the regulatory development process in the Slovak Republic. The government first instituted an RIA process as part of the Legislative Rules of the Government in 2001, after a review by the OECD SIGMA programme² (OECD, 2001^[6]). In 2009, Katarína Staroňová reviewed the early years of implementation of RIA in Slovakia and found that most (over 70%) of all RIAs had determined that there were no significant costs or benefits. When ministries did identify impacts, they tended to focus on financial consequences, potentially because of the strong influence of the Ministry of Finance (Staronova, 2009^[6]) (Staronova, 2016^[7]).

The current process

The obligation to conduct RIA according to the Unified Methodology has been in place since 2008. Reforms since then have instituted a comprehensive methodology for assessing economic, social and environmental impacts, including an SME Test³ and the effects on innovation in 2015. A new impact area on marriage, parenthood and family was introduced in 2018 by Act No. 217/2018, but is not yet reflected in the Unified methodology.

The Unified Methodology serves as the methodology for RIA. It is a governmental guideline and thus mandatory to follow for the ministries and other central government bodies. The IA is divided into two stages, although, unlike in several OECD countries, there is not an extended or more in-depth RIA required for proposals with more substantial impacts.

There is a shortened procedure for emergencies that pose significant risks to citizens. The shortened procedure does not include RIA and has a much shorter consultation period if any. The OECD *Best Practice Principles on Regulatory Impact Assessment* outline why a proportional approach to RIA should be adopted and what aspects should be considered for threshold design (Box 5.2).

Box 5.2. Best Practice Principles on RIA: Proportionality

RIA should be **proportional** to the significance of the regulation. Resources invested in RIA must be carefully targeted. Policymakers should target RIA towards regulatory proposals that are expected to have the largest impact on society, and ensure that all such proposals be subject to RIA scrutiny. The depth of the analysis should depend on the significance of the regulation being analysed. Not all legislative proposals should go through the same level of analysis. Possible alternatives for sorting out which legislative proposals have to go through a certain level of analysis are

- Setting quantitative thresholds (e.g. potential impacts over USD 100 mil. in the United States);
- Introducing a set of criteria (on issues such as the extent of the impact on competition, market openness, employment, productivity, innovation, investment as well the number of people affected by the proposed regulation.);
- Multi-criteria analysis or

- A general principle of proportionate analysis (such as the one used by the European Commission). The choice of how deep should the RIA can be left to the administration itself, based on a principle of proportionality. At the same time, such choice requires the scrutiny of an oversight body able to intervene and suggest a more in-depth analysis in case the proportionality principle has not been applied.

It is very important that the application of the threshold is transparent, and that the results of the application of the threshold are publicly shared.

Many OECD countries have set **quantitative thresholds** based on common economic indicators or tools to determine whether a proposal needs a thorough or less thorough review. For example, the Treasury Board Secretariat in Canada has a tiered system for low, medium and high impact proposals based on total impacts of less than CAD 5 million, CAD 5-10 million and over CAD 10 million.

Quantitative threshold tests have an advantage that an oversight body and regulator can relatively easily observe which category a new proposal falls into and then guide the level analysis. Nevertheless, the amount of effort that goes into developing and analysing a new regulation should be **proportionate to the size of the impacts**. The additional benefit of more analysis declines with the amount of effort, so policymakers should in theory stop when their analytical resources would no longer improve the policy or could be better used in another area.

OECD countries have not always increased the number of proposals that are given greater scrutiny. In 2016, the National Audit Office (NAO) in the UK. found that the government could achieve better value for money by increasing its rate. In 2018, the Better Regulation Executive increased its business impact threshold from GBP 1 million to GBP 5 million for the full RIA and scrutiny threshold. In the U.K., over 90% of the GBP 10 billion regulatory cost reductions claimed during the period 2010-15 were achieved through just 10 regulatory changes. Therefore, the NAO and suggested that the BRE and UK Regulatory Policy Committee should focus on the few most important regulations per year.

Source: (OECD, 2020^[8]).

Under the standard procedure, if the law drafting authority identifies impacts in at least one of the RIA Commission's impact categories (as outlined in Chapter 3) during the preparation of a new law or regulation,⁴ the law-maker is obliged to conduct a full impact assessment. Once drafted, the law-maker sends the impact assessment along with the legal text of the law or the non-legislative material to the RIA Commission. The RIA Commission reviews the preliminary RIA in ten days. In case the law-maker asks for a shortened period, the RIA Commission may decide to shorten the period to three days. This happened 92 times in 2019.

The RIA Commission provides three types of opinion: without comments (green light), opinion with minor comments (yellow light) and opinion with substantial comments (red light). This system is similar to the one employed by the UK RIA oversight body, the UK Regulatory Policy Committee (See Box 5.3). The opinion does not stop a regulation from proceeding. However, if the law drafter makes any significant changes after ministerial commenting procedure, then there is a second round of comments by the RIA Commission.

Box 5.3. The three kinds of impact assessment ratings from the UK Regulatory Policy Committee

The UK RPC provides the following guidance to ministries on its traffic light system for opinions on RIA

Table 5.1. Opinion ratings: for final stage IAs in the United Kingdom

Initial review notice (IRN)	Red-rating	Green-rating
The IA, as first submitted to the RPC, is not fit for purpose. If major concerns over the quality of evidence and analysis are not addressed after an IRN has been issued to a department, this could result in a formal red rating. IRNs contain informal advice and are, therefore, not published.	The IA is not fit for purpose following the department's response to an IRN. The RPC retains major concerns over the quality of the evidence and analysis, and the overall quality of the IA, that need to be addressed. Red-rated opinions are formal and are published once the corresponding IA has been published.	The IA is fit for purpose. The RPC has no significant concerns or where some minor issues could be improved. There may be many points for improvement, which the department should consider. Green-rated opinions are formal and are published when the corresponding IA has been published. ⁵

Source: UK RPC, RPC opinions guidance, <https://www.gov.uk/government/collections/rpc-opinions> (Government of UK, 2019^[9]).

Although the RIA Commission does not have the formal power to stop or slow the passage of laws and regulations in development, government representatives reported that ministries want to avoid presenting RIAs with a negative opinion from the RIA Commission. Still, the majority of RIA statements had unresolved substantial comments in the final commenting stage in 2019 (see Table 5.2). This means that the Commission's quality control function is not working effectively. The high number of laws and regulations presented also limits the depth of review for each of the areas. In some countries, the role of the oversight body has been limited to ensure that only high-impact proposals are sent to the oversight body for review.

Table 5.2. Opinions issued on RIA Statements by the RIA Commission 2016-19

	2019	2018	2017	2016
Total number of opinions issued	258	310	326	257
Preliminary commenting				
No comments	36	58	67	51
Minor comments	73	91	95	60
Substantial comments	104	128	127	70
Total	213	277	289	181
Final commenting				
No comments	15	11	13	16
Minor comments	13	14	11	18
Substantial comments	17	8	11	27
Total	45	33	35	61

Source: Information received from the Slovak Government.

Once a year, the RIA Commission publishes an Annual Report with an evaluation of its work, opinions issued and overall quality of *ex ante* impact assessment process. In the OECD, it is still relatively uncommon for the oversight body to publically release a report on all of its opinions annually. The Commission further publishes all of its opinions on the website of the Ministry of Economy on a monthly basis.

In addition to its oversight roles, the RIA Commission, alongside the Ministry of Economy, acts as a support service for ministries to complete the RIA process. For the measurement of business costs, the Ministry of Economy has prepared a regulatory compliance cost calculator. However, there is no formal training for RIA in place as of late 2019. The Ministry of Economy, through the new RIA 2020 Strategy, plans to provide more training opportunities for IA and Better Regulation in general in the future (described below).

Despite on-going improvements, in many cases, Slovak ministries still struggle with the quantification of broader impacts, focusing mainly on impacts to the budget and, to a lesser extent, on business.

Data availability is often a challenge for law-makers. Many law-makers do not have a clear picture or approximate numbers about an environment they regulate. On the other hand, certain regulators, primarily financial or network regulators, have very detailed statistics on their stakeholders. The Ministry of Economy, who is responsible for the Better Regulation programme, may provide law-makers with some numbers on the business environment from the Statistical Office or help them calculate the costs and benefits.

Law-makers are required to provide an objective that the regulator could, theoretically, use to evaluate the regulation at a later date. However, the targets are often qualitative only. The Slovak Republic also has no program for the systematic review of legislation, which creates little incentive at present for ministries to plan on how to evaluate regulations later. Ideally, the objectives found in RIAs should follow a SMART framework so that they may be reviewed against earlier expectations.

Box 5.4. SMART Objectives for regulation

The use of the acronym for SMART objectives first originated in 1981 by George T. Doran in 1981. (Doran, 1981^[10]). An adapted version of the original idea exists in many fields, including business and academia. However, the OECD Regulatory Policy Committee and the Secretariat have defined SMART criteria for regulation as:

Specific: The objective should be as specific as possible and relate directly to the outcome of the proposed legislation. Ideally, the objective of the proposed law should connect directly to the overarching strategy and plan of the government.

Measurable: The objective should be quantifiable and measurable. Ministries that proposed regulations should have an idea of the expected size of the impacts. For particularly significant laws with economy-wide effects, it may be necessary for the government to put resources into developing the indicators and data to track the impact of the proposed regulation.

Attainable: The objective should be achievable within the life of the regulation.

Responsible: The ministry should ultimately be held accountable for the effect of the regulation based on the quantified indicator. The purpose of the objectives is so that the rule may be reviewed for its efficacy after a reasonable amount of time.

Time-bound: The objective should be time-bound, so that the ministry may ultimately review if the regulation had the expected effect in the expected time-frame.

Source: (OECD, 2018^[11]); (Doran, 1981^[10]).

Of course, it is not always possible to create a new indicator or data collection for every new regulation. Whenever possible, the effects of a regulation should be tracked through existing indicators.

The RIA 2020 Strategy

The RIA 2020 Strategy is an ambitious programme to reinforce evaluation in the Slovak Republic. It will introduce an explicit whole-of-government policy for regulatory quality to fill some of the gaps in the current approach for both *ex ante* analysis and *ex post* evaluation. The strategic objectives are based on the assessment of better regulation in Slovakia, OECD recommendations, Slovak institutional history and modern trends. For further information, see Chapter 2.

With regards to RIA, the Strategy foresees an improvement of the quality of the *ex ante* phase of the assessment process. To this end, the development of bespoke methodologies is planned for the consideration of different regulatory- and non-regulatory options as well as for internal processes of the RIA Commission and the assessment of gold-plating and regulatory benefits. The Strategy also envisages targeted RIA trainings.

Skills and capacities in Slovakia

In several OECD countries, the government has a well-established *ex ante* evaluation process, codified in a law, resolution or other government documents. However, ministries across the OECD often lack the technical abilities actually to measure impacts and to use the results to inform the policymaking process. This situation is not entirely the case, however, in the Slovak Republic. Many ministries have established analytical units (AU) with significant expertise in policy analysis. The most prominent is the AU of the Ministry of Finance – the Institute for Financial Policy (IFP) – which has the mandate to act as an “initiator” of key economic and fiscal topics within the Slovak economy (Burokina, 2017^[12]). In addition to the requisite skills, these AUs may act somewhat independently of their ministry, although they are ultimately responsible to their minister.

In practice, the professional makeup and the capacities of the AUs vary across ministries, as does their involvement in supporting the development of new laws. During interviews, some representatives reported that they were unaware that these units could support the development of new regulations. Representatives of several other departments, however, noted that these units provided crucial input in their process.

Notably, many positions within the AUs are funded in part through EU grants. The continued success of the AUs relies on continued financing that may eventually need to come from government coffers. Additionally, public sector wages are relatively low compared to the private sector in the Slovak Republic.

The Slovak Republic has significant challenges in hiring and maintaining capabilities in its public sector staff. Slovakia has one of the most substantial skill gaps between the civil service and private sector compared with all OECD countries (OECD, 2019^[13]). In recent years, annual pay raises were lowered from 4% to 1%, making it much harder for the public administration to attract and maintain talent (OECD, 2015^[14]).

Right now, there is no standard training for Better Regulation, the development of laws or RIA in the Slovak Republic. Nevertheless, the Ministry of Economy, as part of its national project, will begin with several short training sessions. The first activity of the project includes sessions to raise education and awareness of public servants and other relevant entities on the process and content of impact assessment of regulatory frameworks and non-legislative proposals. For further information, see Chapter 3.

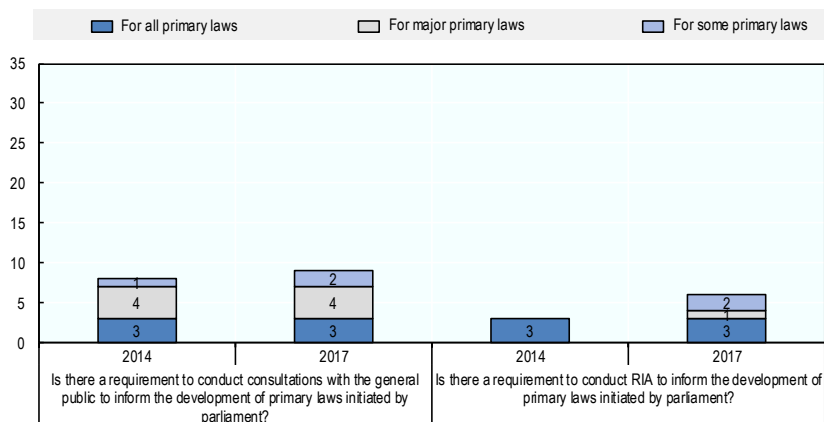
More training sessions are planned within the framework for 2020. There are eight types of training planned, including intensive workshops (for regulators and RIA analysts), seminars (less detailed training for other officials), sessions on the Unified Methodology training for the RIA Commission and also sessions for deputies and their assistants, representatives of local governments and separate meetings for the public as well.

The use of RIA in parliament

RIA is well established for regulations produced by the executive branch of government across the OECD and EU. However, only six OECD countries have any RIA process at all for laws introduced directly in parliament. The EU parliament has frequently used IA over the past five years. The specialised Impact Assessment Unit produced 188 analyses between July 2014 and June 2019, a marked increase from the previous period (Hiller, 2019^[15]). In Canada, laws adopted in parliament must be prepared with a memorandum to cabinet (MC) that must include a rationale for the proposal, an analysis of options and estimates of the cost to the government (Government of Canada, 2018^[16]).

In most countries, members of parliament are not required to produce any analysis when presenting laws for adoption in parliament, although significant work may take place behind the scenes as part of regular committee work. A significant difference in the administrative requirements might encourage “forum shopping” – governments may introduce laws directly in parliament because the process is much faster and requires less analysis. Secondly, the regulation proposed by the executive may end up significantly altered in parliament, but the RIA done by the executive will not be updated to reflect what could be substantial amendments to the proposed legislation. In the EU parliament, committees may request substitute impact assessments that review the analysis after significant changes.

Figure 5.4. Consultation and RIA requirements for laws initiated by parliament, 2018



Note: Data is based on 34 OECD member countries.

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

In the Slovak Republic, parliament (the National Council) initiates about 2% of legislation (OECD, 2018^[3]). Most legislation is initiated by the government and passed by parliament and undergoes the procedure above. The National Council does not regularly use IA during its assessment of proposals. However, according to Section 68 of the *Rules of Procedure of the National Council*, all bills should be accompanied by a written justification including an objective and purpose of the bill, and an evaluation of the current social, economic and legislative background. Already, the Ministry of Economy reports that many proposals in parliament include an objective and some analysis.

The work of the committees of parliament is supported by the Parliamentary Institute of the Chancellery of the National Council of the Slovak Republic, although they often focus research efforts on international legal comparisons and often lack the time and resources for a more thorough socio-economic analysis of laws in parliament.

Sometimes, legislation may move through the entire process in the National Council in as little as three days, according to reports from business representatives, which is not enough time for a proper analysis.

The National Council may also make substantial amendments to legislation proposed by the executive without updating the initial IA. Recognising these challenges, the Ministry of Economy under the RIA 2020 strategy will attempt to improve the level of analysis in the National Council and will include members in forthcoming training sessions.

In order to capture changes in the effects of the regulatory proposals after approval by the Government of the Slovak Republic, the Ministry of Economy will draft a methodology for assessing the impact of the legislative proposals brought by the National Council. However, the government cannot bind members of the National Council to a mandatory procedure, so it will be used voluntarily with the possibility to consult the government.

Oversight and inter-ministerial co-ordination

As outlined in Chapter 3, the RIA Commission is responsible for overseeing the quality of regulatory impact assessments. Several ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs, Ministry of Environment, Ministry of the Interior and Deputy Prime Minister's Office for Investments and Informatisation) are represented in the Committee as well as the Government Office and the Slovak Business Agency. They share competencies for checking the quality of RIAs with each one focusing on their area of competences. The Commission reviews the regulation's impacts on the general government budget, business environment (including SME test), social impacts, environmental impacts, impacts on the informatisation of society and impacts on public administration services for the citizen as presented in the RIA statement.

The co-ordination within the RIA Commission is limited to the RIA process only. A new co-ordination mechanism was created in the scope of the RIA 2020 strategy, but, at this time, the RIA Commission has no firm mandate and operates as a "working group."

Some representatives consider a lack of communication and the low number of meetings of the RIA Commission as obstacles to supporting the RIA process. However, the Commission is regularly in touch with ministries via e-mail communication. Otherwise, co-ordination happens during the inter-ministerial commenting phase, when external line ministries may comment on the quality of the RIA analysis.

The RIA Commission also does not comment on the overall costs and benefits of the proposal. Instead, it reviews the quality of individual impacts in the portfolio of individual institutions represented in the Commission in isolation. This means that total impacts on the welfare of the society, including whether the overall benefits justify the potential costs stemming from regulatory drafts, are not reviewed.

Legal quality

The legislative department at every ministry or central-government body prepares legislative proposals in conjunction with the proposer. Ultimately, the Legislative Council of the Government of the Slovak Republic is responsible for checking the final legal quality of regulations.

Like ministries, the Section of Government Legislation in the Department of Approximation of Law has an opportunity to intervene during the inter-ministerial commenting procedure on behalf of the Government Office of the Slovak Republic.

Considering risks and alternatives to regulation

In practice, ministries do not consider many alternatives to regulation in the Slovak Republic. Representatives identified a lack of experience and knowledge as the main impediment to more innovative policy solutions. As a result, the RIA Commission is also not very strict on this part of the RIA.

In most cases, there is not sufficient time or analytical resources available to consider different regulatory and non-regulatory options in the RIA process. Unofficially, ministries consider alternatives to regulation during early-stage consultations or while drafting laws.

Systematic risk management does not form a part of RIA or any other better regulation tool yet. Nevertheless, a risk assessment may be conducted with specific regulations but only on an ad hoc basis.

Under the RIA 2020, the Ministry of Economy will create clear guidelines on considering alternatives that should encompass more on theory and practice, including case studies. These guidelines will become an educational unit in the upcoming training programs.

Part of RIA 2020 (Goal 4: Implement innovative approaches to regulation) is to create a new set of guidelines on risk assessment when drafting regulations and when evaluating them. A methodology for the risk assessment of regulations will also be prepared under the RIA 2020 strategy by the end of 2020.

Assessment and recommendations

All of the elements of RIA are in place in the Slovak Republic. Ministries and government bodies are required to submit RIA as part of the legislative process. The RIA Commission provides oversight of the process, even if their opinions on the quality of RIA are non-binding. The Analytical Units are particularly useful in supporting sound, evidence-based law and regulation development, even if they are not always integrated fully into the process. The AUs are a crucial resource for ministries and, in some cases, are already involved in the review of regulations and policy (e.g. the IPF of the Ministry of Finance).

To date, the RIA process does not appear to have had a significant impact on the decision-making process in many ministries. In some cases, representatives were not aware of AUs or the potential benefits of RIA. The RIA process itself is staged, but the level of analysis is effectively the same regardless of the actual impact on citizens and businesses.

The Slovak public administration has challenges in maintaining staff with expertise in analysis. Although the AUs are an integral feature of the public administration, policy makers outside of the AUs will also need continuous training in developing and analysing regulations. The analytical institutes are a unique source of analytical capacities only in few line ministries. Particularly institutes that have been established recently are not involved in the impact assessment process and co-operation between institute and ministry staff does not happen on a systematic basis. The level of involvement in the decision making process is at the minister's discretion, there is no formalised process in place.

Currently, the same RIA process and form are used for all regulations. Unlike in several OECD countries, there is not an extended or more in-depth RIA required for proposals with more substantial impacts. Introducing such a targeted approach could help allocate scarce resources where they are most needed.

The OECD Secretariat makes the following policy recommendations:

- **The Slovak Republic should offer continuous training for RIA and analysis to policymakers** that covers all possible stages of a sound evidence-based RIA process. Training should include employees from the parliamentary research service, who would likely support efforts to introduce IA in parliament.

- **The Slovak Republic could develop a simplified process for regulations with minor impacts.** A threshold could be introduced outlining criteria that allow legislation to undergo a simplified RIA process. This effort would have to be supported by the oversight body scrutinising the decision to conduct a simple RIA.
- **Furthermore, the Slovak Republic should consider having the RIA Commission only look at proposals with impacts above a certain threshold, once the methodology supports it.** The RIA Commission should have a mechanism to focus their reviews on draft legislation with the most significant effects on society.
- **Setting clear and measurable objectives that relate to the broader government strategy should be a regular part of the legislation development process.** Policymakers should be required to provide a SMART quantitative objective as part of the RIA. In cases where the impact of the regulation will be high and the data or indicator does not exist, the ministry could be required to develop or find such data, if possible. This policy is already a planned part of the RIA 2020 Strategy. So, the Slovak Republic should ensure that the RIA Commission adds it to their review of the RIA.
- **The shortened procedure should only be used in cases of an actual emergency.** As part of the RIA 2020 Strategy plans to introduce *ex post* evaluation, the Slovak Republic could make an *ex post* impact assessment a requirement for regulations past under a shortened procedure. The RIA Commission could provide a statement about whether the regulation is appropriate for the shortened procedure.
- **Ministries should be encouraged to better integrate the AUs in the process of developing legislation.** The RIA Analysts present in AUs should be involved at an early stage when the analysis of the AU has a chance to affect the form of the final law and, ultimately, the beneficial impact regulation has on citizens. The Slovak Republic should find a way to guarantee continued financial support for AUs and policy development in general.

Notes

¹ Version 2008: approved by the resolution of the Slovak Government No. 329/2008; Version 2010 (pilot projects): resolution No. 112/2010; Version 2015: resolution No. 24/2015; Version 2016 (amendment of 2015): resolution No. 76/2016.

² SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the OECD and the European Union. Its key objective is to strengthen the foundations for improved public governance, and hence support socio-economic development through building the capacities of the public sector, enhancing horizontal governance and improving the design and implementation of public administration reforms, including proper prioritisation, sequencing and budgeting (SIGMA - OECD, n.d.^[17]).

³ The EU actively encourages EU members to implement an SME Test as part of its “Think small first” principle, which is part of the Small Business Act (Kitching, 2016^[18]).

⁴ Both primary laws and subordinate regulations must comply with the Unified Methodology.

References

- Burokina, J. (2017), *MINISTRY OF FINANCE OF THE SLOVAK REPUBLIC Measuring the gap for CIT-The case of Slovakia*, <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38173&no=2> (accessed on 17 February 2020). [12]
- Doran, G. (1981), *There's a S.M.A.R.T. way to write management's goals and objectives* | Middlesex University, <https://mdx.rl.talis.com/items/6A89AF27-BFF7-9B08-C37F-ED5425DD4445.html> (accessed on 17 February 2020). [10]
- Government of Canada (2018), *A Drafter's Guide to Cabinet Documents*, <https://www.canada.ca/en/privy-council/services/publications/memoranda-cabinet/drafters-guide-documents.html> (accessed on 14 February 2020). [16]
- Government of the Slovak Republic (2019), *Lán Legislatívnych Úloh Vlády Sr Na Rok 2019 (2019 Legislative Plan of the Slovak Republic)*. [4]
- Government of UK (2019), *RPC Opinions - GOV.UK*, <https://www.gov.uk/government/collections/rpc-opinions> (accessed on 21 February 2020). [9]
- Hiller, W. (2019), *Impact Assessment and European Added Value work during the eighth legislative term, 2014-2019*. [15]
- Kitching, J. (2016), "Between vulnerable compliance and confident ignorance: Small employers, regulatory discovery practices and external support networks", *International Small Business Journal: Researching Entrepreneurship*, Vol. 34/5, pp. 601-617, <http://dx.doi.org/10.1177/0266242615569325>. [18]
- OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://dx.doi.org/10.1787/7a9638cb-en>. [8]
- OECD (2019), *OECD Economic Surveys: Slovak Republic 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eco_surveys-svk-2019-en. [13]
- OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264303072-en>. [3]
- OECD (2018), *Regulatory Policy in Slovenia: Oversight Matters*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264291690-en>. [11]
- OECD (2015), *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241800-en>. [2]
- OECD (2015), *Slovak Republic: Better Co-ordination for Better Policies, Services and Results*, OECD Public Governance Reviews, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264247635-en>. [14]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264209022-en>. [1]

- OECD (2001), "Improving Policy Instruments through Impact Assessment", *SIGMA Papers*, No. 31, OECD Publishing, Paris, <https://dx.doi.org/10.1787/5kml60vnhc6h-en>. [5]
- SIGMA - OECD (n.d.), <http://www.sigmaweb.org/>. [17]
- Staronova, K. (2016), "Regulatory impact assessment in Slovakia: performance and procedural reform", *Impact Assessment and Project Appraisal*, Vol. 34/3, pp. 214-227, <http://dx.doi.org/10.1080/14615517.2016.1176410>. [7]
- Staronova, K. (2009), *Better Regulation and Regulatory Quality: The Case of Slovakia*. [6]



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