REPORT 1.1.1: CURRENT GAPS OF THE RIA SYSTEM IN ROMANIA*

Report prepared in the framework of the World Bank Project "**Strengthening the Regulatory Impact Assessment Framework in Romania**"

23 July 2014

* This report was prepared by a World Bank team composed of Dr Lorenzo Allio, Dr. Delia Rodrigo, Pedro Andres Amo and Dr. Diana Iancu. The report benefitted from helpful comments and discussions with Mariana Iootty, Arabela Sena Aprahamian, Alexandru Stanescu, and Paloma Anos Casero.

Proiect cofinanțat din Fondul European de Dezvoltare Regională prin POAT 2007-2013

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EXECUTIVE SUMMARY

I. **This report outlines the result of the diagnosis exercise carried out by the World Bank (WB) team in relation to the organization and performance of the current Regulatory Impact Assessment (RIA) system in the Government of Romania (GoR).** The findings included in this report result from two distinct but inter-connected fact-finding activities – direct interviews and literature review. The report has moreover benefitted from regular dialogue with the Department for Coordination of Policies and Programs (DCPP) of the Chancellery as well as from WB internal advice.

II. **RIA has been promoted in Romania, but it has not yet become a tool to support evidence decision-making. Fundamental positive features of an evidence-based approach to decision-making are present in Romania and should not be overlooked.** Among them are the basic understanding of the importance of evidence-based decision-making; the existence of a network unit for potential coordination and guidance at ministerial level; elements of formalized inter-ministerial coordination; and the attempt at systematizing the flow of Government (regulatory) decisions through the introduction in 2014 of the Government Annual Work Plan (GAWP)[1].

III. **However, a number of shortcomings were identified. They encompass both structural and analytical challenges.** The diagnosis has nonetheless highlighted a number of shortcomings. These are presented in this report in terms of structural challenges (i.e. related to the organization of the Substantiation Note (SN) process) and analytical challenges (i.e. pertaining to the way analyses are carried out).

IV. **Regarding structural challenges, lack of systematization, personalization of decisions and insufficient traction within the regulatory process are the general negative features of the organization and functioning of the current SN system in Romania**. Specific challenges include:

- ***Regulatory bias***: Both the political elite and the public administration are embedded in a normative interventionist culture;
- ***Legal base***: The existing legal base concerning evidence-based justification of Government decisions in general, and the SN system in particular, lends itself to ambiguity or possible contradiction;
- ***Scope of application and planning***: The current SN system does not seem to be sufficiently supported by a systematic, consistent and strategic approach to planning the initiatives; and the scope of application is indiscriminately broad;
- ***Internal coordination***: While the general principle of inter-ministerial consultation is established, not all ministries and State bodies are equally rigorous in systematically sharing information and data; pooling expertise and knowledge; and circulating draft analyses;

[1] Plan Anual de Lucru al Guvernului (PALG).

- ***Steering, oversight and synthesis function***: These tasks do not enjoy explicit legal recognition and have suffered from disrupting institutional and political turbulence both centrally and in the line ministries;
- ***Transparency and consultation***: The SNs are not used by the Government as a means to make the interface with the public more porous and interactive; and
- ***Reporting and institutional learning***: Also because of the lack in demand for RIA, the system has not been designed to self-diagnose gaps and, on the other hand, build on recognized good practices.

V. Analytical challenges encompass a number of issues that are presented below:

- A general lack of skilled human resources across the Government's administration that can deploy the know-how and skills necessary to apply the minimum RIA analytical steps and implement the related methodologies;
- A wide-spread incapacity to establish objective, factual causal relationships between clearly established and prioritized causes, the set objectives and targets, and the possible policy options;
- The (objective) difficulty to collect and the incapacity to validate relevant data in support of the analyses leads to deficiencies in identifying and characterizing the problem and in presenting qualitatively sound and quantified estimates of the likely impacts;
- The generally little awareness among the drafters of SNs of the need to "think-outside-the-box" and to embrace a multi-sectoral perspective;
- The problematic definition of measures (action plans) designed to frame the implementation of the regulatory proposal, and with the identification of performance indicators allowing the measurement of future implementation results.

I. INTRODUCTION

1. **The project "Strengthening the Regulatory Impact Assessment Framework in Romania" seeks to support the Government of Romania (GoR) in its efforts to align its regulatory interventions to key principles, practices and instruments of the Smart Regulation Agenda of the European Union**. In that sense, one of the priorities of the GoR is to streamline and improve the Regulatory Impact Assessment (RIA) framework that currently seems weak and insufficient to achieve its goals.

2. **This report is one of the deliverables of the WB project. It outlines the result of the diagnosis exercise carried out by the WB team in relation to the organization and performance of the current RIA system in the GoR.** As such, the report constitutes the *basis* for the formulation of recommendations that will be presented in the Report 1.2.1 ("Recommendations For a New Institutional and Legal System of RIA in Romania").

3. **To that end, the report has three main objectives.** First, it briefly provides an overview of the current design and functioning of the current RIA system. Second, it recapitulates the main legal base underpinning the system. Third, it identifies the main weaknesses and areas for improvement, notably with regard to legal, organizational, procedural and capacity-related considerations.

4. **The report expressly focuses on the set of legal initiatives launched by the central administration and other parties, which require a formal adoption by the GoR.** These are the initiatives that are currently regulated by Government Decision (GD) 1361/2006,[2] for which a Substantiation Note (SN) is required), GD 561/2009,[3] GD 775/2005,[4] and GD 870/2006.[5]. Discussion will be made also on the provisions of the Law 24/2000[6] and Law 62/2014.[7]

5. **The findings included in this report result from two distinct but inter-connected fact-finding activities. First, information and data collection relied on an interview program designed and conducted by the WB Team.** Targeted discussions were carried out with various stakeholders intervening at different stages and in various capacities in the

[2] Governmental Decision no.1361/27.09.2006 on the content of the instruments for presentation and motivation pertaining to legal drafts pending for Government approval, published in the Official Gazette of Romania no.843/12.10.2006, as modified. The last amendment taken in the consideration by the Report was made by the Government Decision no.219/24.03.2010, published in the Official Gazette of Romania no.227/12.04.2010.

[3] Government Decision No. 561 of 10 May 2009 approving the Regulation on the procedures, at Government level, for elaboration, endorsement and presentation of draft public policy documents, of draft legislative acts, as well as other documents, for adoption/approval, published in the Official Gazette of Romania no.319/14.05.2009.

[4] Governmental Decision no.775/14.07.200 approving the Regulation on the procedures of elaboration, monitoring and evaluation of public policies at central level, published in the Official Gazette of Romania no.685/29.07.2005, as rectified and amended.

[5] GD no. 870/2006 that approves the Strategy for improving the development, coordination and planning of public policies at central government level, published in the Official Gazette of Romania no.637/24.07.2006.

[6] Law no. 24 of 27 March 2000 on the legislative technique norms for drawing up legislative acts, ppublished in the Official Gazette of Romania no.139/31.03.2000, as modified.

[7] Law no. 62/2014 amending the Law on the stimulation of SMEs, published in the Official Gazette of Romania no.328/06.05.2014 (which introduced the SMEs Test).

decision-making system. A fact-finding mission was organized between 5 and 16 May, 2014 in Bucharest, which included meetings with representatives of different institutions of the GoR.[8] The objective of the discussions was to collect experiences and perspective from various typologies of actors – in relation to function; seniority; role and responsibility in the RIA system. Annex 1 presents a list of institutions interviewed during the fact-finding mission.

6. **Second, the WB Team has also collected and reviewed relevant documentation.** Documents considered by the Team are of three types: i) legal acts regulating the internal administrative procedures for the formulation of public policies and normative acts; ii) past analyses and recommendations produced by services within the Government and by Romania's international partners, including studies resulting from past projects; iii) recent position papers as well as academic contributions and commentaries pertaining to public administration reform and regulatory reform in Romania.

7. **The report has benefitted from regular dialogue with the Department for Coordination of Policies and Programs (DCPP) of the Chancellery.** The initial findings from the diagnosis and the subsequent recommended plans for action were discussed with the DCPP on a mission to Bucharest on 10-12 June 2014. This interaction has allowed for both general feedback and punctual clarifications and, at the same time, for the calibration of the envisaged recommendations to the specific challenges, needs and expectations faced by the Romanian Government.

8. **The remainder of this report is structured as follows.** Section II provides an overview of the RIA system in Romania, while Section III presents a diagnostic of the main gaps in the system. Section IV concludes.

[8] The statements and arguments provided by those participating in the meetings are reflected in this report but are not directly attributable. None of the persons interviewed is to be considered responsible for the analysis contained in this report. The responsibility of the analysis lies with the authors only.

II. IMPACT ASSESSMENT IN ROMANIA – AN OVERVIEW

9. **References to impact assessment in Romania date from early 2000 and were firstly included in the framework of the elaboration of legal acts (Law 24/2000).**[9] At the time, drafters were compelled to base their legal proposals on the results of preliminary documentation regarding the social, economic and historical realities and compliance with foreign legislation (article 20, Law 24/2000). A demand was made to also complement the final draft with a Substantiation Note (SN) (see Box 1), whose content included:

1) *Problem definition* was actually a section meant to include the reasons which led the drafters to consider the legal intervention;
2) The *impact* covered the socio-economic, financial and legal areas;
3) *Consultations* made possible the identification of different interests in stakeholders;
4) Ensuring the *public access* to the act and its implementation was also considered;
5) The *action plan* included institutional and functional measures to be taken at central and local level; and finally,
6) The Legislative Council provided *endorsements*, and where applicable, so did the Supreme Council for State Defense, the Court of Auditors and the Economic and Social Council.

Box 1 – Substantiation Note (SN)

According to Law 24/2000, *substantiation* refers to "instruments of presentation and substantiation" and is a umbrella concept for (Article 30.1):

- Reason note: accompanying legal drafts and legislative proposals;
- Substantiation note, in the case of government decisions and ordinances;
- Approval report, for all other legal acts;
- Impact study, supporting legal drafts of "high importance and complexity".

Although various in name, all the documents above share a fairly identical content and one single difference: they accompany acts of distinct nature. Deriving for this, and for the scope of this Report, a unitary concept will be used to address the issue of substantiation: SN. The need of simplifying the terminology applicable to RIA will be explored further in the *Recommendations for a new Institutional and Legal System* the team has elaborated for the purpose of this Project.

10. **A similar structure (see Figure 1) was reinforced by the Government Decision 1361/2006.** This required legal acts pending for Governmental approval to include the impact

[9] Law no. 24/27.03.2000, published in the Official Gazette of Romania no.139/31.03.2000, as modified. The last amendment considered by this Report was made by Law no.29/11.03.2011, published in the Official Gazette of Romania no.182/15.03.2011.

on competition, state aid and, if applicable, on environment and references to the consultation of the associations of local governments[10] and inter-ministerial committees.[11].

Figure 1: Structure of a SN for a legal draft (Law 24/2000 and GD 1361/2006)

11. **Currently, SN still accompanies legal drafts, but impact assessment seems superfluous.** This is a major problem, as SNs only justify the decision-making process because they are conducted late in the process and they do not reflect specific discussions on possible options to solve a problem.

12. **Despite the fact that SNs are prepared using a single template that includes the requirement to assess impacts, current practices show that limited quantification is conducted in Romania.** Even if the WB mission team was not able to review the quality of the SNs thoroughly, discussions with DCPP reflected on the fact that current SNs are commonly descriptive, lack information and data, and do not offer sufficient information to provide a serious basis for decision-making.

13. **By 2005, the public policy proposal (PPP) was introduced.[12]** It was used to describe the document that resulted out of the substantiation activity and was generated by technical departments under the coordination of the Public Policy Units (PPUs) (article 10, GD 775/2005). The structure of the PPP is to some extent similar to that of a SN, but includes clear references to alternative solutions and selection of the optimal one, while establishing that impact is to be assessed socially, economically and environmentally (Article 4.7, GD 775/2005, see Figure 2).

Figure 2: Structure of a PPP (GD 775/2005)

[10] As provided by Government Decision no.521/9.06.2005 on the consultation of associative structures of local governments, published in the Official Gazette of Romania no.529/22.06.2005, as modified. The last amendment taken in the consideration by the Report was made by the Government Decision no.925/27.11.2013, published in the Official Gazette of Romania no.749/03.12.2013.

[11] Government Decision no.750/14.07.2005 on inter-ministerial committees, published in the Official Gazette of Romania no.676/28.07.2005, as rectified and modified. The last amendment taken in the consideration by the Report was made by the Government Decision no.6/07.01.2014, published in the Official Gazette of Romania no.23/13.01.2014.

[12] Governmental Decision no.775/14.07.2005, published in the Official Gazette of Romania no.685/29.07.2005, as rectified and amended. The last amendment taken in the consideration by the Report was made by the Government Decision no.561/10.05.2009, published in the Official Gazette of Romania no.319/14.05.2009 and Law no.62/30.04.2014, published in the Official Gazette of Romania no.328/06.05.2014 (which introduced the SMEs Test).

14. **However, the PPP in the form presented above could only have suggested a legal intervention (article 2, GD 775/2005).** In other words, in order for drafters of a PPP to comply with GD 775/2005, they should have known beforehand that the optimal solution to their problem would be drafting a legal text (article 2).

15. **Current provisions generate an ever changing maze, confusing regulatory with normative interventions, while failing to offer a pertinent RIA framework.** To provide one example: in 2006, the Strategy on improving the system of elaboration, coordination and planning of public policies at central level (GD 870/2006) [13] argues for the need to differentiate public policy documents from other types of acts, introduces strategies and plans as public policy documents, but fails to clearly distinguish between a PPP and a SN. Be it as it may, this Strategy led to the modification of GD 775/2005 (in 2007), a modification annulled two years later (by GD 561/2009 on the Governmental procedures for elaboration, endorsement and presentation of PPP, legal and other acts pending for approval or adoption). However, GD 870/2006 was left intact and is currently still advocating for changes that never took place.

16. **The complexity of the current RIA system is described in Annex 2.**[14] Graphics 1 and 2 in the Annex offer an overview of the current RIA system in Romania and they point to the actors involved.

[13] Government Decision no.870/28.06.2006, published in the Official Gazette of Romania no.637/24.07.2006.

[14] The team adapted the graphics in this Annex after the flow chart presented by A. Suciu, during the fact-finding mission in May 2014.

III. A DIAGNOSIS OF THE MAIN GAPS

17. **Fundamental positive features of an evidence-based approach to decision-making are present in Romania and should not be overlooked.** Weaknesses and challenges of the current system are at the core of this report. That reflects the main thrust the report is set to provide, as a building block for the formulation of possible ways forward in making evidence-based decision-making in Romania more pervasive, accountable and transparent. However, this should not distract the analyst from a series of valuable features and virtuous practices characterizing the policy formulation process. Such features and practices are already at play and should not be overlooked (see Box 2). On the contrary, there is merit in building upon them when elaborating improved solutions.

Box 2 – Evidence-based decision-making in Romania – A good basis to build a strong SN system

The Romanian Government acknowledges the importance and value of grounding decisions on evidence, based on the best data and information available. As Section II above illustrates, since the early 2000s the Government has issued a number of procedural rules and launched several administrative practices that are geared towards achieving high quality standards for decision-making justifications.

A good basis therefore already exists upon which to build the reform of the SN system. Among others, the main positive elements include:

- the notion of evidence-based approach and policy integration enshrined in the law;
- elements of formalized inter-ministerial coordination, which includes the possible establishment of inter-disciplinary internal working groups as well as the final) endorsement procedure;
- the creation over time of network of units within the line ministries, which can potentially be instrumental for coordination and guidance at ministerial level); and
- the attempt at systematizing the flow of Government (regulatory) decisions by introducing the Annual Work Plan (AWPG) in 2014.

18. **RIA has to be conceived as both a process and a tool.** Successful reform strategies start with an assessment of the organization, functioning and performance the current system governing RIA in Romania. The WB Team approached this diagnostic exercise by differentiating aspects of the RIA system that pertain to the "process" underling RIA from aspects strictly related to the "regulatory tool" as such. In the first case, the analysis addresses the question "who does what, when and how" when SNs are planned and produced in regulatory decision-making. In the second case, by contrast, attention is put on the type of analyses normally carried out in Romania and the underlying capacities available within Government. The remaining parts of the report reflect this dual investigative line and are structured accordingly.

III.1. Challenges related to the RIA organization and process

19. **Lack of systematization, personalization of decisions and insufficient traction within the regulatory process are the general negative features of the organization and functioning of the current SN system in Romania.** As often is the case, no individual factor can be singled out as the primary root of the relatively weak performance of the system.

Rather, it is a constellation of factors that, taken together, are responsible for that – covering a wide array of domains. On the one hand, they reflect cultural and traditional paradigms in Romania about the place and role of the State and public administration in society, affecting also the interface between the political sphere and the bureaucratic (civil service) sphere. One the other hand, factors are the result of deliberate design choices made over time by the GoR in its attempt at building an evidence-based system for public policy and normative interventions. Among the underlying factors, the following general can be highlighted.

20. **There is a regulatory bias, as both the political elite and the public administration are embedded in a normative interventionist culture.** Drafting legal acts is generally considered the starting point of decision-making. The acts are seen as the result of bureaucratic procedures centered on the refinement of legal texts rather than of policy analysis. The related SNs take place mainly at the end of the process in order to justify decisions already taken. The lack of an evidence-based and results-oriented approach in public policy leads to considering the SN as a burden, an imposed additional procedural requirement. The SN is not used to curb the regulatory inflation, which brings the Government to adopt more than 1300 legal acts annually.

21. **The existing legal base concerning evidence-based justification of Government decisions in general, and the SN system in particular, lends itself to ambiguity or possible contradiction.** This does not help counter the above-mentioned regulatory bias.

22. **A number of considerations support this standpoint. First, the GD 775/2005 broadly regulates public policy decisions while not differentiating them from legislative and regulatory decisions.** While GD 775/2005 concerns the fundamental activities of design and evaluation (requiring the assessment of social, economic and environmental impacts), it broadly regulates "public policy" decisions and does not differentiate them from legislative and regulatory decisions. Many public policy decisions (such as strategies or programmatic policy documents) are adopted in the form of legal acts.

23. **Second, the confusion resulting from applying the "Public Policy Proposal" model also to the normative activity of the Government is only partly addressed by GD 1361/2006 introducing the SN system.** The latter only establishes that SNs must be presented together with the draft legal text. The silence of the Regulation as to when the drafting of the SN shall start does not create legal and procedural requirements for reversing the "draft the bill first" instinct.

24. **What more, the very fact that the legal base mentions the obligation to produce a SN when a draft legal text is proposed, only, implies that the decision to undertake an impact assessment in the form of a SN is informed by the assumption that the resulting analysis is going, by default, to find translation into a legal proposal.** The legal base, in other words, as currently stated justifies the above-mentioned regulatory bias and is one of the main reasons why SNs are carried out as an *ex post* justification of decisions already taken (and for the busy desk officer hence as a burdensome tick-box exercise).

25. **Finally, none of the legal bases regulating the regulatory process of the Government explicitly anchors the SN within the various stages of the decision-making cycle**, i.e. strategic planning, public consultation, ex post evaluation.

26. **The current SN system does not seem to be sufficiently supported by a systematic, consistent and strategic approach to planning the initiatives; and the scope of application is indiscriminately broad.** Annual (legislative) work plans clearly constitute an important step in the right direction but they were introduced very recently only. Ministries and State bodies have not internalized and mainstreamed that tool in their modus operandi. Practice so far has been characterized by a general weak capacity both at the central and the ministerial level to design normative interventions strategically. Insufficient importance seems to have been attributed on allocating resources for policy formulation efficiently.

27. **Work agendas are often disrupted by initiatives launched under permanent urgency or for emergency that challenge established calendars, deadlines and priorities.** As a result, not only are human resources not deployed optimally but administrators must work under excessive time pressure, to the detriment of sound analyses. The reactive nature of their work affects their capacity to maintain the necessary autonomy from the political decision-makers which is a pre-condition for better informing decision through evidence.

28. **On the other hand, the generalized requirement set out in the legal base to carry out a SN on all items included in the agenda for Government adoption – irrespective of their type and likely impacts – appears to disregard the proportionality trade-off.** Not only is it very difficult to ensure proper regulatory impact analysis across the board of Government action, but is actually also not desirable since, besides being disproportionality costly, it creates fatigue and distorts incentives. If sloppy, such generalized approach favors bureaucratic slack and inertia; if implemented to the letter, it ends up with the infamous "paralysis by analysis" scenario. In any event, efforts to enhance evidence-based decision-making would produce the opposite of what they strive towards.

29. **While the general principle of inter-ministerial consultation is established, not all ministries and State bodies are equally rigorous in systematically sharing information and data; pooling expertise and knowledge; and circulating draft analyses.** The regulatory process does not appear yet to be geared towards a pro-active, regular and structured inter-ministerial and intra-departmental coordination and collaboration. Procedural arrangements in this respect are poorly designed and most "horizontal" activities are left up to individual initiatives and to personal or fiduciary relationships. Coordination appears to be an issue also with regard to the interface between the center and the periphery of the Government. The network of Public Policy Units (PPUs), for instance, is relatively loose and also the DCPP is not fully in control of "who is who and does what." Data collection challenges (for instance because of poor statistical systems and the partial inter-operability of the existing public databases) are both a result and an aggravating cause of the deficient coordination. When it takes place, internal coordination tends to seek comments on and constructive inputs to the draft legal text directly, whereas the SN (and the analysis underpinning it) is rarely given adequate attention.

30. **The tasks in relation of steering, oversight and the synthesis function do not enjoy explicit legal recognition and have suffered from disrupting institutional and political turbulence both centrally and in the line ministries.** Over the years, no responsibility was clearly allocated to ensure the systematic enforcement of the procedures and the quality of the analyses produced. The stringency and rigor in enforcing procedural requirements is rather weak across the Government (it is reported that to date only two ministries regularly produce evidential reports on policy impacts). By the same token, there does not seem to be oversight of the quality of the analyses produced.

31. **At the ministerial level, the oversight function is attributed on an irregular, if not discretionary basis.** As it is the case of the DCPP centrally, the role and responsibility of the ministerial PPUs are not grounded in the law. The PPUs were originally conceived to consolidate public policy (planning and evaluation) tasks within a ministry and coordinate horizontally across the government. Over time, these tasks have progressively blurred and the actual involvement of PPUs in the policy formulation process varies significantly from a ministry to the other. Uniformity is not ensured also in other relevant respects, such as the relative place of the PPU in the ministry's organogram; the status and role of the PPU's head; and the staffing and expertise. When it comes to the regulatory process, the role of the PPUs appears to be even patchier and ad hoc. They have no specific, clearly defined mandate and powers.

32. **At the stage of the final endorsement, sector specific screening is carried out by the Ministry of Finance, the Competition Council and, in future, the Ministry of National Economy in relation to the SME Test**. However, reported practice suggests that such bodies compensate the absence of enforced clear coordination mechanisms through either soft power (e.g. through persuasion; by offering help desk service; and by leveraging on the credibility of the support provided); or through bilateral protocols and memoranda of understanding with individual ministries. The deadlines set for such quality checks are moreover reported to be often prohibitively short (especially if the respective impact analyses were originally not carried out by the proposing departments and calculations have to be made anew). Such screening is moreover narrow and partial by nature and it is not clear where and on which ground the necessary gauging of the cost and the benefits takes place so as to ensure that Government regulatory decisions maximize net societal welfare.

33. **The DCPP should be the central body naturally charged with these tasks. Nonetheless, its mandate and powers in this respect are not spelled out in the relevant legal base.** The DCPP has moreover no expert human resources explicitly and uniquely dedicated to the screening the SN system and the resulting reports. The recent split of the organization and portfolio between the Chancellery and the General Secretariat of the Government has not contributed to clarifying its competences and has not provided enhanced political leverage. The Chancellery, moreover, does not enjoy autonomous legal status and own budget. Despite these difficulties, the DCPP has carried out procedural screening of SNs in the past.

34. **As a result, SN drafters have de facto quite different understanding of what "RIA" is and how the procedure should unfold government-wide with the related roles and responsibilities.** There is flexible interpretation of both the extent to which available guidance material is to be followed and the expected quality standards to be met. The instructions on how to do a SN (contained in GD 1361/2006) are not actively mainstreamed and explained widely across the government.

35. **In terms of transparency and consultation, the SNs are not used by the Government as a means to make the interface with the public more porous and interactive.** There is broad awareness that the dialogue with stakeholders external to the public administration enriches decision-making by allowing a better understanding of existing problems; by providing more comprehensive and relevant evidence; and by involving those actors that are then requested to implement the regulatory decisions. However, in the current framework of SN such dialogue does not fully meet standards for transparency and accountability. The interface with representatives of the private sector such as business

associations and individual corporations, as well as of other forms of organized interests such as trade unions, consumer associations and NGOs, remains limited and to a certain extent also sporadic and selective.

36. **While required by law, public consultations mainly take the form of univocal information (through online notification) whereas the actual period in which the public can actively input comments is relatively short (10 days).** It is questionable whether, in the light of the digital divide in the country, all categories of stakeholders *de facto* face equal opportunity to organize, prepare and provide their contributions adequately – especially if there is little possibility for them to know sufficiently in advance the flow of regulatory decisions about to be finalized at a given moment.

37. **At the same time, practice of inviting stakeholders to preparatory workshops and hearings is informal and rather voluntary. Above** all, it is not subject to scrutiny, reporting requirements, and checks and balances. Without insinuating at all that this is the natural corollary, the system as it currently is does not seem to minimize the risk of regulatory capture or risk of corruptive practices.

38. **In relation to reporting and institutional learning, and also because of the lack in demand for RIA, the system has not been designed to self-diagnose gaps and, on the other hand, build on recognized good practices.** The DCPP is not in a position to keep regular track and it does not report on the flow of the SNs received and screened. Neither is it systematically aware of the impact of its opinions upon the proposing department and, more generally, the course of the regulatory process. No indicators are in place to monitor the evolution of the quality of the SNs produced over time, and it is not possible to methodically identify (and hence correct) underlying causes of under-performance – or success factors to foster and mainstream.

39. **One of the reasons is because, as mentioned above, nowhere in the legal and procedural rules is such requirement stated.** Another reason is the objective shortage of staff within DCPP. Yet a further important cause is the lack of demand from both the Government and the stakeholders (civil society and the private sector alike) for evidence of the performance of the system in producing better and better analyses. Any initiative in this respect has relied on the commitment of dedicated individuals. The Government has not been consistent in requiring that SNs of agreed quality standards must be integral part of the file accompanying any project (draft legal act) submitted for deliberation. External stakeholders do not seem to have grasped fully the importance of a well-functioning and dynamic SN system as a means to enhance accountability; legal predictability; proportionality; and participation in Romania.

40. **These elements, together with the poor general understanding of the tool (see the remarks in Section III.2. below), fail to instill in all actors involved the necessary incentives and willingness to engage in making the system work.** There is, on the other hand, no particular sanction for formalistic and partial compliance.

III.2. Challenges related to the RIA tool and analysis

41. Weak points related to the second dimension (RIA as a "tool") encompass five main issues.

42. **First, general expertise.** There appears to be a general lack of skilled human resources across the Government's administration that can deploy the know-how and skills necessary to apply the minimum RIA analytical steps and implement the related methodologies required to meet good quality standards. Pockets of such expertise certainly exist in the ministries, but they are reported to be relatively small and not to be actively and systematically involved the regulatory process.

43. **Second, causal linkages. In particular, there is a widespread incapacity to establish objective, factual causal relationships between clearly established and prioritized causes, the set objectives and targets, and the possible policy options.** This is a direct consequence of the mentioned "draft the bill first" approach, which in practices renders such unfolding of logical and analytical steps irrelevant; but it is also due to the weak penetration of adequate guidance material and the ineffective and uncoordinated training and capacity-building program.

44. **Third, quantification. The (objective) difficulty to collect and the incapacity to validate relevant data in support of the analyses leads to deficiencies in identifying and characterizing the problem and in presenting qualitatively sound and quantified estimates of the likely impacts of proposed public policy choices.** The figures and amounts reported in the SN template are often not accompanied by any underlying analysis, so that it is difficult for reviewers to check the validity of the assumptions; the adequacy of the models; and the pertinence of the data presented.

45. **Fourth, policy integration. There generally is little awareness among the drafters of SNs of the need to "think-outside-the-box" and to embrace a multi-sectoral perspective.** Such conditions are on the other hand the more important nowadays, when governments are called upon to address issues that need to be tackled from various dimensions (for instance, energy sustainability and defense security; human health safety and product innovation; economic growth and social equity, etc.). To date, the Romanian SN system is not yet used for that purpose

46. Fifth, policy implementation. Problems appear to arise also with the definition of measures (action plans) designed to frame the implementation of the regulatory proposal, and with the identification of performance indicators allowing the measurement of future implementation results. The use of ex-post monitoring and reporting and the use of feedback decision-making remain exceptional.

IV. CONCLUDING REMARKS

47. **From what has just been outlined and what concluded previously in relation to the organization and process, it appears clear that there is no specific order or priority of these causes that lead to a current weak RIA system in Romania.** Rather, each one of them is the result and, at the same time, the origin of the other ones. More generally, SN-related problems appear to be closely correlated to the type of relations the Romanian civil service has with the political leaders, and the overall accountability of the administrative procedures within the executive.

48. **Therefore, it is necessary to address the whole system currently in place and design a wide-ranging reform.** This will be the purpose of the second report on the recommendation for a new legal and institutional RIA system in Romania, which will provide guidance on its implementation as well.

ANNEX 1. INTERVIEW PROGRAMME

The following institutions participated in the interview program organized in May 2014:

- Competition Council
- General Secretariat of the Government
- Ministry of Agriculture and Rural Affairs
- Ministry of Economy
- Ministry of European Funds
- Ministry of Internal Affairs
- Ministry of Labor
- Ministry of Public Finance
- Ministry of Regional Development and Public Administration

ANNEX 2. ACTORS AND PROCESS OF RIA IN ROMANIA

Figure 1. Preparation of legal drafts

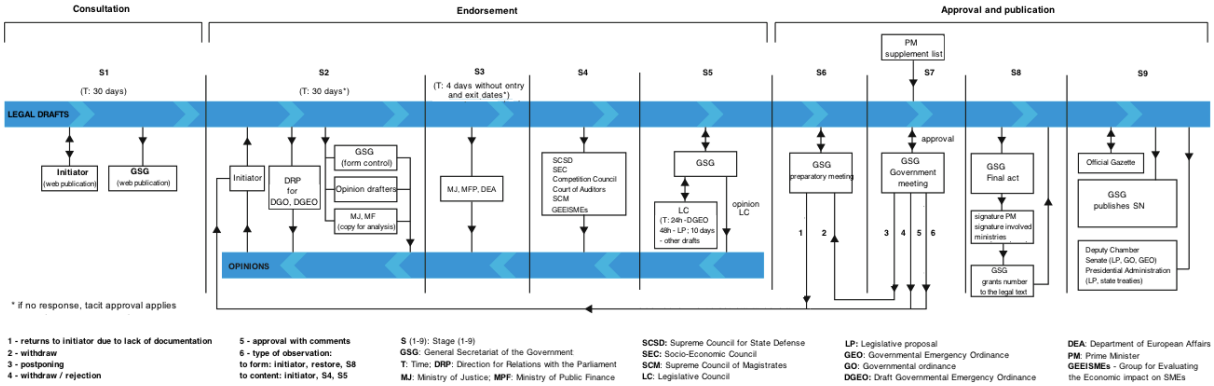
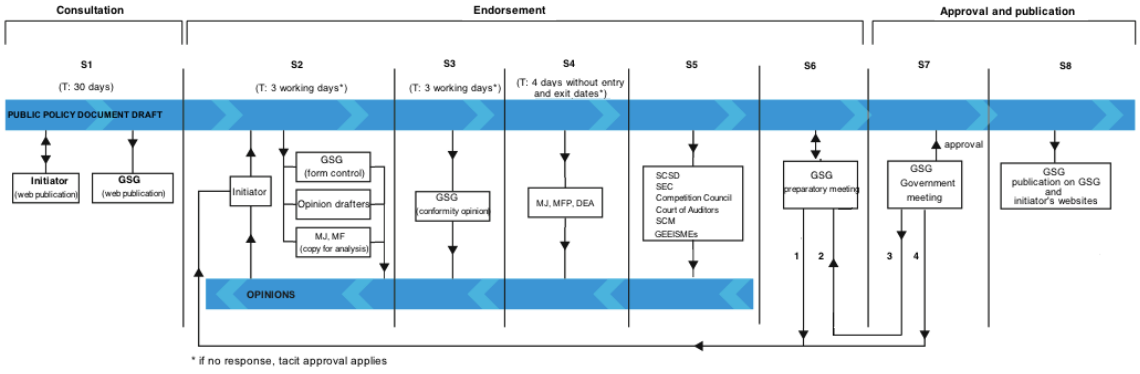


Figure 2. Preparation of public policy documents



Titlul proiectului: Consolidarea cadrului de evaluare a impactului reglementărilor în România

Title of the project: Strengthening the Regulatory Impact Assessment Framework in Romania

Editor: Secretariatul General al Guvernului Romaniei/ General Secretariat of the Romanian Government

Data publicării/ Publication date: _____

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Proiect cofinanțat din Fondul European de Dezvoltare Regională prin POAT 2007-2013