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## GENESIS AND DEVELOPMENT OF IMPACT ASSESSMENT

*In memory of Alfred Allan Schmid*

During the 70s of the twentieth century economists realized that public expenditures and rulemaking have similar effects on resource allocation and equity. Thus, the process of creating regulations entered the orbit of the economic cost-benefit analysis. This article is dedicated to the genesis and development of impact assessment in the United States, the European Union and Bulgaria.

JEL: K00; K20; K30

Keywords: *government regulation; impact assessment*

Impact assessment is a practical technique (a set of approaches, methods and procedures) for analysis and assessment of expected (likely)/actual (real) consequences (costs, benefits and distributional effects) of proposed/existing regulations<sup>1</sup> for society as a whole.

US President Clinton's Executive Order 12866 of September 30, 1993 begins as follows: "The American people deserve a regulatory system that works for them, not against them: 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; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today" (see Executive Order 12866 of September 30..., 1993, p. 1). In meaningful terms, this preamble fits any modern democratic society. The world has a pressing need for *better regulation*.<sup>2</sup>

### **The pioneering experience of the United States**

In the middle of the last century the rulemaking activity of the government reached unknown heights. The regulatory base was growing and getting ever more complicated. The administrative apparatus was getting ever more intricate. The main spheres of government regulation in the developed world were public health, ecology, occupational safety and consumer protection.

Under these conditions, in 1969, Alfred Allan Schmid, professor of agricultural economics at Michigan State University (USA), published a scientific article titled "Effective Public Policy and the Government Budget: A Uniform Treatment of Public Expenditures and Public Rules" (Schmid, 1969). In the short editorial announcement of

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<sup>1</sup> "The normative act contains common rules of conduct that apply to an individually indefinite circle of subjects, has a repeated effect and is issued or adopted by a competent public authority" (Art. 1a of the Law on Normative Acts, 1973).

<sup>2</sup> "Better Regulation" is a slogan from the reform of the rulemaking process in the European Union and a title of the new set of methodological documents for impact assessment of the European Commission.

the article it was written that: “Insofar as both rule-making and expenditure decisions have similar resource allocation and equity effects, there should be a common framework through which both kinds of impacts of both kinds of decisions can be evaluated” (ibid., p. 579). It is the author’s opinion that this publication is “the first swallow” to fly over the problem area, and that Professor Schmid is the father of contemporary impact assessment.

The process of active government regulation encountered decisive opposition mainly from the business sector. Most tense was the situation in the US – a huge amount of complaints, letters of protest and objections flooded the administration. In response, in 1971, President Nixon (1969-1974) set up a confidential group to review the rulemaking process under the so-called Quality of Life Review Program (see OMB, Memorandum for the Heads of Departments and Agencies, 05.10.1971). The focus of the work of this group was environmental legislation, and opinions of the results achieved were controversial. President Ford (1974-1977) took office in 1974. Concerned about the economic situation in the country (stagnation, high inflation, etc.), he organized a series of consultations and conferences on “What to do?” The main practical results of the discussions and the proposals made were:

- a new consultative body in the Executive Office of the President – the Council on Wage and Price Stability (CWPS) (Council on Wage and Price Stability Act, Public Law 93-387, 24.08.1974);

- Executive Order 11821 of 27.11.1974,<sup>3</sup> which obliges the respective executive bodies to complete any draft of a significant (“major”) regulation with an official report (reference) on its inflationary impact (Executive Order 11821 of November 27, 1974, Inflation Impact Statements). For implementation of the Executive Order, the Office of Management and Budget (OMB)<sup>4</sup> published Circular A-107 (4 pages) – the world’s first impact assessment guide (see OMB, 1975).

In 1976, the title of Executive Order 11821 was changed from “Inflation Impact Statements” to “Economic Impact Statements” (see Executive Order 11949 of December 31, 1976...). This was not a formal act, but an expression of a real change. The analysis of (only) the inflationary impact grew into a (full) analysis of the economic impacts. Four years later, under Jimmy Carter’s Presidency (1977-1981), with the Paperwork Reduction Act (Paperwork Reduction Act, 1980) the Office for Information and Regulatory Affairs (OIRA) was set up at the OMB.

The inauguration of President Reagan (1981-1989) provided a powerful impetus to the impact assessment in the United States. Executive Order 12291 of February 17, 1981 set the foundations for a rigorous, comprehensive and highly centralized system. The most important building blocks of this system could be summarized as follows (see Executive Order 12291..., Federal Regulation):

- “Regulatory action shall not be undertaken unless the potential benefits to society of the regulation outweigh the potential costs to society” (Executive Order

<sup>3</sup> The date of birth of impact assessment.

<sup>4</sup> Office of Management and Budget (OMB) – a body within the Executive Office of the US President.

12291..., Sec. 2, (b) – in other words, the main method of impact assessment has to be cost-benefit analysis.

- The OMB's OIRA becomes a specialized body, responsible for overseeing the rulemaking of federal departments and agencies (with very broad powers).<sup>5</sup>

- Preliminary impact assessment is *mandatory for all major rules*.<sup>6</sup> Whether a rule is large or not is determined (initially) by the relevant departments and agencies, however the director of the OMB is entitled “to prescribe criteria ..., to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule” (Executive Order 12291..., Sec. 3, (b)).

- Preliminary impact assessments prepared by departments and agencies are submitted to the OIRA/OMB for *review*.

- Possible contradictions between departments and agencies on the one hand and the OIRA/OMB on the other hand are resolved by the *Presidential Task Force on Regulatory Relief*, established on 22.01.1981.

- Departments and agencies are to launch an ex-post evaluation of the impact of existing major rules (to identify regulations that need to be refined, simplified or repealed) (Executive Order 12291..., Sec. 3, (i)).

Jim Tozzi, the first Deputy Administrator of the OIRA (and a strong supporter of deregulation), qualified Executive Order 12291 as a “regulatory tsunami!” (Tozzi, 2011, p. 63). For implementation of the Executive Order, the OMB issued an Interim Regulatory Impact Analysis Guidance (5 pages) (see OMB, 1981).

Four years later, Executive Order 12498 of January 4, 1985 completed the reform by taking away the leading role of the OMB at the very beginning of the regulatory process – federal departments and agencies were obliged to prepare and submit a draft annual program for all their major regulatory activities to the Director of the OMB (see Executive Order 12498 of January 4, 1985...). The OMB reviews and coordinates individual projects, proposes changes, and finally summarizes them in the *Regulatory Program of the US Government*.<sup>7</sup>

This framework remained in use during the term of office of President George W. Bush Sr. (1989-1993), with the functions of the Presidential Task Force on Regulatory Relief taken over by the Council on Competitiveness, which was set up on March 31, 1989.

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<sup>5</sup> OIRA (in fact) was a successor of the CWPS, which was closed by Executive Order 12288 of January 29, 1981.

<sup>6</sup> According to Part 1 (b) of Executive Order 12291 of 17.02.1981, “major rule” means any regulation that is likely to result in:

(1) an annual effect on the economy of USD 100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographical regions, or

(3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of US-based enterprises to compete with foreign-based enterprises in domestic or export markets.

<sup>7</sup> A (new) Regulatory Impact Analysis Guidance (14 pages) was published in the Regulatory Program of the United States Government 1988-1989. (see Regulatory Program of the United States Government 1988-1989, Appendix V, p. 561-574).

By Executive Order 12866 of 30.09.1993 (Executive Order 12866 of September 30, 1993...)<sup>8</sup> President Bill Clinton (1993-2001):

- shrank the scope of the impact assessment – it became mandatory only for the significant regulatory actions of federal departments and agencies;
- restored the leading role of departments and agencies in the regulatory process;
- limited the power of the OIRA/OMB;
- increased the transparency of federal regulation.

On the basis of Executive Order 12866, an interdepartmental group, led by the OIRA Administrator, prepared and on January 11, 1996 published a document titled “Economic Analysis of Federal Regulations Under Executive Order 12866”. It described the “best practice” for preparing the economic analysis of a significant regulatory action, called for by the Executive Order (see OMB, 1996). In 2000, this document was issued as an impact assessment guide, confirmed by President George Bush Jr. (2001-2009) in 2001.

On September 17, 2003 the current impact assessment guide for the US was published – Circular A-4 (48 pages) (see OMB, 2003). Structurally, the guide includes eight sections, as follows:

- *introduction* – the need for analysis of proposed regulatory actions; key elements of a regulatory analysis;
- *the need for federal regulatory action* – market failure or other social purpose; showing that regulation at the federal level is the best way to solve the problem; the presumption against economic regulation;
- *alternative regulatory approaches* – different choices defined by statute; different compliance dates; different enforcement methods; different degrees of stringency; different requirements for different sized firms; different requirements for different geographic regions; performance standards rather than design standards; market-oriented approaches rather than direct controls; informational measures rather than regulation;
- *analytical approaches* – cost-benefit analysis; cost-effectiveness analysis; the effectiveness metric for public health and safety rulemakings; distributional effects;
- *identifying and measuring benefits and costs* – general issues; developing benefit and cost estimates; discount rates; other key considerations; treatment of uncertainty;
- *specialized analytical requirements* – impact on small businesses and other small entities; information collection, paperwork, and recordkeeping burdens; information quality guidelines; environmental impact statements; impacts on children; energy impacts;

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<sup>8</sup> Executive Order 12866 of 30.09.1993 revoked Executive Order 12291 of 17.02.1981 and Executive Order 12498 of 04.01.1985 and closed the Council on Competitiveness.

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- *accounting statement* – categories of benefits and costs; quantifying and monetizing benefits and costs; qualitative benefits and costs; treatment of benefits and costs over time; treatment of risk and uncertainty; precision of estimates; separate reporting of transfers; effects on state, local, and tribal governments, small businesses, wages and economic growth;

- *effective date* – the effective date of the Circular is January 1, 2004 for the regulatory analyses received by the OMB in support of proposed rules, and January 1, 2005 for the regulatory analyses received by the OMB in support of final rules.

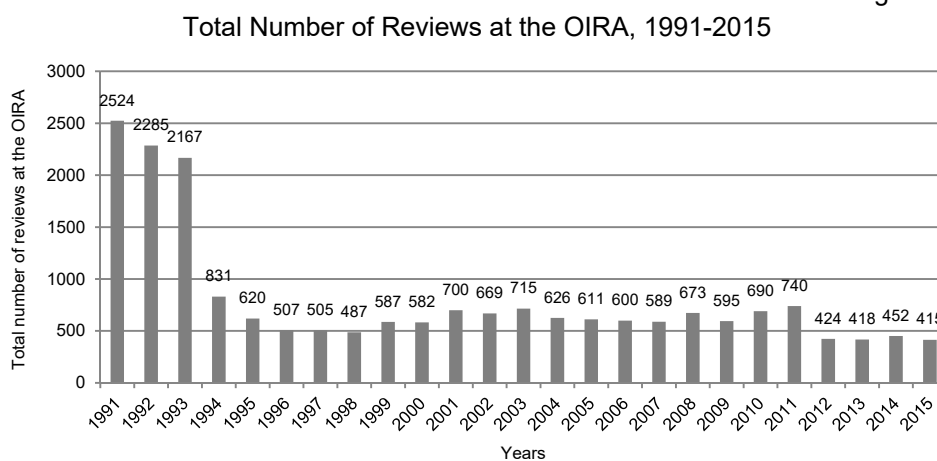
Eight years later, during the first term of President Barack Obama (2009-2017), the OIRA issued a *handbook* on the implementation of Circular A-4 – *Regulatory Impact Analysis: A Primer* – a 16-page document, divided into four sections (see OIRA, 2011):

- introduction;
- key elements of a regulatory impact analysis;
- regulatory impact analysis (in 9 steps: describe the need for the regulatory action; define the baseline; set the timeframe of analysis; identify a range of regulatory alternatives; identify the consequences of regulatory alternatives; quantify and monetize the benefits and costs; discount future benefits and costs; evaluate non-quantified and non-monetized benefits and costs; characterize uncertainty in benefits, costs, and net benefits);

- summary of the regulatory analysis.

Figure 1 shows the total number of reviews made by the OIRA of draft rules accompanied by relevant impact assessments for the period 1991-2015. The dynamics of this specific productivity indicator of the OIRA gives (in general) an idea of the development of impact assessment in the United States over the past 25 years.

Figure 1



Source: <http://www.reginfo.gov/public/do/eoCountsSearchInit?action=init> (24.08.2016)

The total number of reviews at the OIRA includes five components:

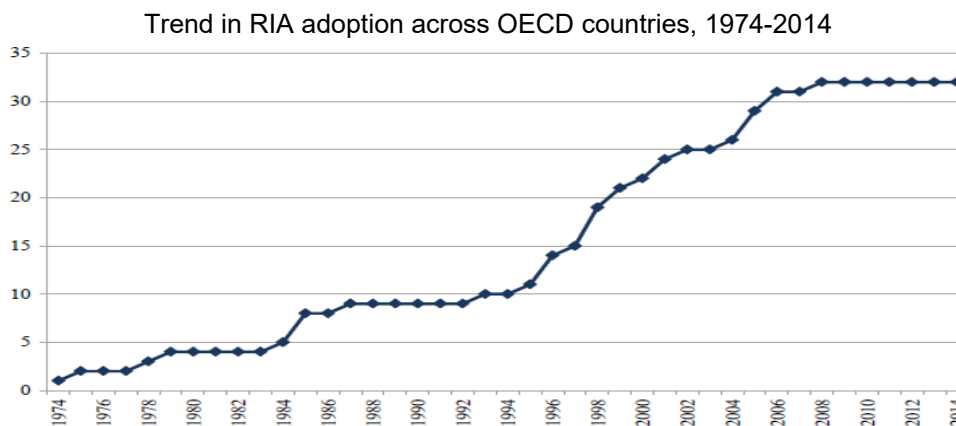
- prerule reviews (less than 4% of all reviews);
- proposed rule reviews (about 40% of all reviews);
- interim final rule reviews (about 10% of all reviews);
- final rule reviews (about 40% of all reviews);
- notice reviews (less than 10% of all reviews).

Several things regarding Figure 1 make an impression:

- Until 1993, OIRA reviewed between 2000 and 2500 draft rules and regulatory impact assessments annually (this has been the case since 1981 – the beginning of Ronald Reagan's first presidential term).
- In 1994, the burden on the OIRA decreased dramatically, resulting from the shrinking of the scope of impact assessment (to significant regulatory actions).
- Since 1994, the number of OIRA reviews has varied in a relatively narrow range.

As can be expected, almost all developed countries were “infected” by the example set by the United States and introduced different forms of impact assessment. Figure 2 presents the trend of RIA adoption within the Organization for Economic Co-operation and Development (OECD) for the period 1974-2014.<sup>9</sup> In 1974, the regulatory impact assessment was made only in the United States. In the span of a decade (the last of the twentieth century), the number of countries applying impact assessment increased from 9 to 22, and in 2014 it was already 32.

Figure 2



Source: OECD. Promoting Inclusive Growth through Better Regulation: The Role of Regulatory Impact Assessment, 2015.

<sup>9</sup> The OECD was established on December 14, 1960 by 20 countries. In 1974, the organization had 24 members, in 1994 – 25 and in 2014 – 34. At present, the OECD member countries are 35 (Bulgaria is not among them).

From an innovative venture, impact assessment gradually turned into a routine, mandatory test of the rules and regulations of modern government (and at the supranational level). Over time, a great amount of practical experience was accumulated, the theoretical foundation was strengthened, and the methodology was developed and improved.

### **The EU – an example of good practice**

Impact assessment in the European Union (EU) started in 1986 with the introduction of a *Business Impact Assessment* (BIA) system.<sup>10</sup> A limited number of regulatory proposals included in the Annual Policy Strategy of the European Commission (EC) were analyzed. The subject of assessment was the costs that firms in the business sector were to bear should relevant regulations be implemented.

The BIA procedure elicited strong criticism due to its:

- extremely narrow scope (focused solely on business);
- very late involvement in the rulemaking process (the subject of analysis are regulatory proposals that are already part of the EC's Annual Policy Strategy);
- lack of theoretical soundness.

In this context, in the 90s of the 20<sup>th</sup> century the EC reinforced the BIA with several new initiatives, including:

- the Simplification of the Legislation on the Internal Market (SLIM) project, aimed at intensifying the following ex-post evaluation of regulations;
- the creation of the Business Environment Simplification Task Force (1997);
- the development of the Business Test Panel (1998).

The results were not encouraging, and in December 2000 a special advisory group (the so-called "Mandelkern Group"<sup>11</sup>) was set up to prepare a work plan for better regulation and a new impact assessment model. The final report of the group was ready on November 13, 2001. In June 2002 the EC presented the Better Regulation Action Plan and the Communication on Impact Assessment. Three months later, the EC published the first guide on the *integrated* impact assessment of EU regulations in two parts:

- Impact Assessment in the Commission – Guidelines (28 pages);
- A Handbook for Impact Assessment in the Commission – How to do an Impact Assessment (41 pages).

The main features of the new model can be summarized in the following way:

- an integrated approach – the analysis takes into account not only the economic impacts, but also the social and environmental impacts of the proposed regulations;

- a "dual stage" procedure:

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<sup>10</sup> The BIA system was introduced during the UK Presidency of the Council of the EU and (to a large extent) copied the UK model of Compliance Cost Assessment.

<sup>11</sup> Named after its chairman M. Mandelkern, a representative of France.

– *preliminary* impact assessment – mandatory for all EC regulatory initiatives (regulations, directives, expenditure programs, white papers, negotiation guidelines for international agreements, etc.);<sup>12</sup> and

– *extended* impact assessment – in-depth analysis of proposals with expected (as a result of the preliminary assessment) significant economic, social or environmental effects.

- an adequate methodology – cost-benefit analysis, cost-effectiveness analysis, multi-criteria analysis and risk analysis.

In a Communication of March 16, 2005 the Commission assessed the achievement (for a relatively short period of time) as “the first steps in what must be a permanent effort” (see European Commission...COM(2005)97, p. 4) and paved the way for further improvement of the impact assessment system.

On June 15, 2005 a *new* impact assessment guide was published.<sup>13</sup> It included:

- Impact Assessment Guidelines (48 pages);
- Annexes to Impact Assessment Guidelines (51 pages).

The *Impact Assessment Guidelines* were structured in the following way:

- Introduction – What is impact assessment? Why is impact assessment important? Answering questions on impact assessment.

- Procedural rules – proposals requiring an impact assessment; training for the impact assessment; planning the impact assessment: the roadmap & the strategic planning and programming (SPP) cycle; the link between the impact assessment and the ex-ante evaluation; proportionate analysis; inter-service steering groups; consultation of interested parties during the impact assessment; collection and use of expertise; presenting the findings: the impact assessment report; inter-service consultation & presentation to the College of Commissioners; using the findings: the impact assessment report in the legislative process; the publication of the final report;

- Key analytical steps in impact assessment – What is the problem? What are the objectives? What are the policy options? What are the likely economic, social and environmental impacts? How do the options compare? How could future monitoring and evaluation be organized?

The list of *annexes* to the Impact Assessment Guidelines includes:

- Format of the roadmap;
- Problems calling for a solution;
- Approaches to problem definition;
- Policy instruments;
- The “Indicators and Quantitative Tools” software;
- How to design a questionnaire;

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<sup>12</sup> Exceptions are very few – green papers, periodic reports, executive decisions, proposals related to international commitments, Commission measures on compliance with Community law.

<sup>13</sup> Less than three years after the first edition (September 2002).



- Quantitative models;
- How to assess cost-effectiveness;
- Assessing impact on growth, competitiveness and jobs;
- Assessing administrative costs imposed by legislation;
- Assessing non-market impacts, in particular on environment and health;
- Discounting;
- Methods of comparing impacts;
- Additional guidance on indicators, monitoring and evaluation;
- The precautionary principle and irreversibility;
- Format of the impact assessment final report.

In the new EC guide a few things deserve particular attention:

- the “dual stage” impact assessment procedure (preliminary and extended)<sup>14</sup> is dropped – the principle of “proportionate analysis” becomes the guiding principle: “The impact assessment’s depth and scope will be determined by the likely impacts of the proposed action...” (see European Commission. Impact Assessment Guidelines..., p. 8);

- the emphasis on the assessment of *economic impacts* (in pursuit of greater competitiveness, employment and economic growth);

- the better integration of the measurement of *administrative costs* in the impact assessment – development and implementation of a model for measuring net administrative costs in the EU;

- the involvement of the *European Parliament* and the *Council of the EU* in the impact assessment process.

On March 15, 2006 the EC updated several fragments of the Impact Assessment Guidelines and Annex 10 “Assessing administrative costs imposed by legislation”.

An independent Impact Assessment Board (IAB) was set up in November 2006. The IAB was designed to “offer advice and support in developing a culture of impact assessment inside the Commission” and to contribute “to ensure that impact assessments are of high quality, that they examine different policy options and that they can be used throughout the legislative process” (European Commission. A Strategic Review of Better Regulation in the European Union..., p. 8). Members of this specialized oversight body for the EC’s impact assessments were the Deputy Secretary-General responsible for smart regulation (Chairman of the Board) and eight permanent officials at Director level (two from each of the four groups of Commission departments by areas, as follows: macroeconomics, microeconomics, environment and social affairs).

On January 15, 2009 the Commission published its *third* guide for integrated impact assessment – Impact Assessment Guidelines (130 pages), which was an improved version of the 2005 guide (updated in 2006), with the following structure:

- Impact assessment basics and procedures;

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<sup>14</sup> In fact, *the roadmap* replaces preliminary impact assessment.

- Key analytical steps in impact assessment;
- Annexes – 14 (in a separate document).

The current legal framework for the impact assessment in the EU is from May 19, 2015 – a “*Better Regulation*” package, and includes:

- Better Regulation Guidelines (91 pages);
- Better Regulation “Toolbox” (414 pages).

Structurally, the Better Regulation Guidelines include *seven key elements*:

- Better regulation in the Commission (What is better regulation? How to regulate better?);

- Guidelines on planning (When can policy preparation begin? Who is involved in the validation process? What needs to be validated?);

- Guidelines on impact assessment (The key questions and principles of impact assessment; Summing it all up: the impact assessment report; From impact assessment to policy-making);

- Guidelines on preparing proposals, implementation, and transposition (Implementation plans; Better drafting of legal acts; The link between EU Law and Member State transposing measures: explanatory documents; Monitoring implementation);

- Guidelines on monitoring (The key principles and questions of monitoring);

- Guidelines on evaluation and fitness checks (Key principles and concepts; Key questions an Evaluation must answer; The evaluation staff working document; Using the evaluation results);

- Guidelines on stakeholder consultation (Scope and definition of stakeholder consultation; General principles and minimum standards for stakeholder consultation; When is stakeholder consultation required? How to prepare and conduct a consultation?).

The Better Regulation “Toolbox” (supplement to the Guidelines) is a set of 59 instruments, divided into 8 groups as follows:

- General principles of better regulation (instruments 1 – 3);

- How to carry out an impact assessment (instruments 4 – 15);

- How to identify impacts in impact assessments, evaluations and fitness checks (instruments 16 – 31);

- Implementation, transposition and preparing proposals (instruments 32 – 34);

- Monitoring the application of an intervention (instrument 35);

- Evaluations and fitness checks (instruments 36 – 49);

- Stakeholder consultation (instrument 50);

- Methods, models and costs and benefits (instruments 51 – 59).

On May 19, 2015 according to the decision of EC President Jean-Claude Juncker, an independent Regulatory Scrutiny Board (RSB) was set up to replace the IAB as of 01.07.2015. (see European Commission. Decision of the President of the European Commission on the establishment..., 2015). The new board consists of:

- a Chair (ranked as Director-General); and

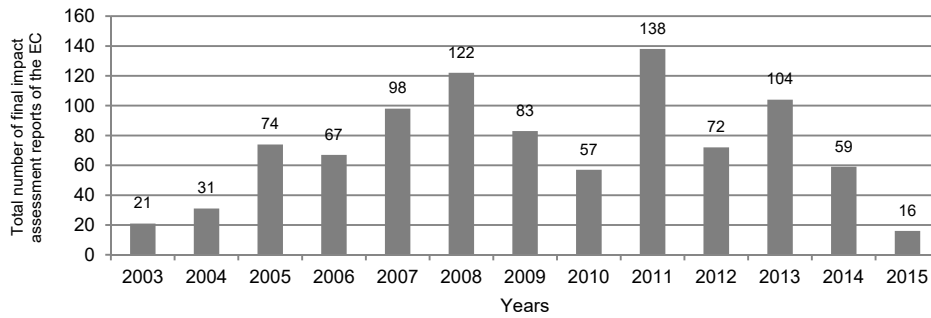
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- six members – three Commission officials and three temporary agents with experience in macroeconomics, microeconomics, social policy and environmental policy, “so as to cover the three pillars of sustainable development” (European Commission. Communication to the Commission, Regulatory..., 2015, p. 3).

Figures 3 and 4 illustrate (in quantitative terms) the development of integrated impact assessment in the EU.

Figure 3

Total Number of Final Impact Assessment Reports of the EC, 2003-2015

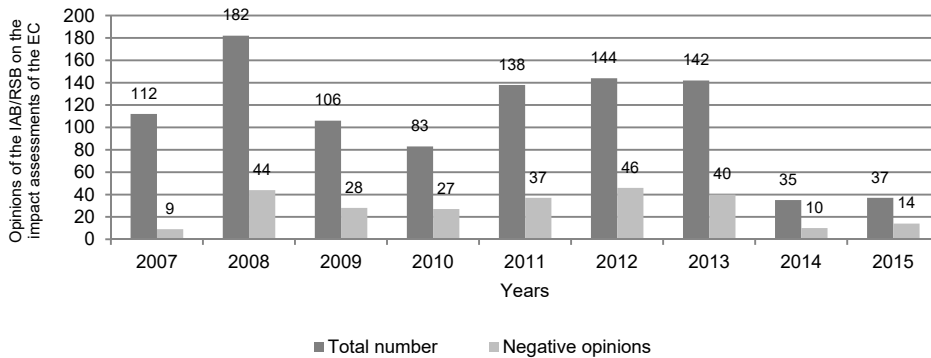


Source: [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/cia\\_2016\\_en.htm](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm) (own calculations, based on information as of 26.08.2016)

Since the introduction of an integrated impact assessment by the end of 2015, the EC has prepared 942 final impact assessment reports of draft legislation (regulations, directives, etc.). This makes an average of 72-73 reports a year, or about 6 reports per month.

Figure 4

Opinions of the IAB/RSB on Impact Assessments of the EC, 2007-2015



Source: Impact Assessment Board/Regulatory Scrutiny Board 2015 Activity Statistics, 2016.

From the beginning of its activity until the end of 2015, the supervisory body (IAB/RSB) prepared a total of 979 *opinions* on EC impact assessments, including 255 *negative ones* (26%). This makes up an average of 108 - 109 *opinions per year*, including over 28 *negative ones*, or about 9 *opinions per month*, including more than 2 *negative ones*.

### Where do we fit?

The Impact Assessment in Bulgaria has been a hot topic since the turn of the third millennium. It is “on fire” mainly because of the efforts of non-governmental organizations,<sup>15</sup> the academic world and some interested parties. The Bulgarian government is definitely a debtor of society in this respect. Formally, as is often the case in our country, a legal framework exists (albeit sparingly), but that does not mean much. By the end of 2015, the regulatory basis of the impact assessment included:

- Law on Normative Acts (Promulgated in State Gazette, No. 27 of 3 April 1973);

- Decree No 883 to Implement the Law on Normative Acts (Promulgated in State Gazette, No. 39 of 21 May 1974);

- Law on Restriction of Administrative Regulation and Administrative Control on Economic Activity (Promulgated in State Gazette, No. 55 of 17 June 2003);

- Rules for the organization and activities of the National Assembly (Promulgated in State Gazette, No. 97 of 25 November 2014);

- Statute of the Council of Ministers and its Administration (Promulgated in State Gazette, No. 78 of 2 October 2009).

Art. 28 of *The Law on Normative Acts* states that:

- “The draft normative act together with the motives, respectively the report to it, shall be submitted for discussion and acceptance by the competent authority” (see paragraph 1, in force until 04.11.2016);

- “The motives, respectively the report, contain:

1. the reasons for the adoption;

2. the goals set;

3. the financial and other means necessary to implement the new regulation;

4. the expected implementation results, including financial, if any;

5. the analysis of the compliance with European Union law” (see paragraph 2);

- “The draft normative act, to which there are no submitted motives, respectively no report, according to the requirements of paragraph 2, shall not be discussed by the competent authority”<sup>16</sup> (see paragraph 3, in force until 04.11.2016.).

In Art. 3 of *the Law on Restriction of Administrative Regulation and Administrative Control on Economic Activity* it is recorded that:

<sup>15</sup> Institute for Market Economy, Center for Regulatory Impact Assessment, etc.

<sup>16</sup> A curious detail here is the fact that (in interpretative terms) these provisions applied only to the bills of the Council of Ministers and did not affect the legislative initiatives of the National Assembly.

- “In the planning or drafting of a bill that provides for the introduction of a regime ..., the body proposing to include it in the Legislative Program of the Council of Ministers, or a body responsible for its preparation, prepares a motivated opinion on the necessity of this regulation and the possibility of achieving the objectives ... without its introduction” (paragraph 4);

- “Upon the submission of a bill to the National Assembly, which envisages the introduction of a regime ... together with the bill and the motives for it, the petitioner also presents a motivated opinion on the necessity of this regulation” (paragraph 5);

- “The motivated opinion under paragraphs 4 and 5 contains an economic analysis and an assessment of the impact the regime exerts on the regulated business. The opinion shall be published on the Internet or in another appropriate manner” (paragraph 6).

According to *the Rules of Organization and Activities of the National Assembly* “In the motives, the petitioner gives an opinion on the expected consequences, including financial, of the implementation of the bill” (Art. 73, paragraph 2).

*The Statute of the Council of Ministers and its Administration* contains a whole set of provisions related to the impact assessment, including:

- “a financial statement approved by the Minister of Finance:

- a) for acts that have a direct and/or indirect impact on the government budget in accordance with Annex 2.1; ...;

- b) for acts that do not have a direct and/or indirect impact on the government budget in accordance with Annex 2.2” (Art. 35, paragraph 1, point 4);

- “a standard impact assessment on economic activity and employment, when the preparation of such is foreseen in the legislative program” (Art. 35, paragraph 1, point 8).

Programs and projects for the introduction of impact assessment, the development of methodological documentation and the creation of administrative capacity are also not missing. Among the most promising initiatives along these lines was the project BG051PO002-1.3.02-0005-C0001 “For better public governance: Institutionalization of the impact assessment process in public administration” under OP “Administrative Capacity” (09.07.2008 - 09.07.2009) at a total value of BGN 2 187 232. The main outcomes of the implementation of the project could be summarized in the following way:

- proposals for legislative regulation of the impact assessment in Bulgaria;

- developing an *impact assessment guide*,<sup>17</sup>

- seven practical *ex-ante* impact assessments (drafts of: Amendments and Supplements to the Law on Measurements, Amendments and Supplements to the Law on Food, Amendments and Supplements to the Law on Waste Management, Law on Irrigation, Amendments and Supplements to the Law on Investment Encouragement,

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<sup>17</sup> Council of Ministers (2009). Guidance on Making Impact Assessment in Bulgaria (55 pages).

Law on Public Libraries, and Amendments and Supplements to the Law on Medical Institutions);

- seven practical *ex-post* impact assessments (Law on Waste Management, Law on Investment Encouragement, Law on Human Medicinal Products, Law on State Fees, Law on Child Protection, Law on Social Assistance, and Law on Local Taxes and Fees);

- improving the *impact assessment capacity* (training of central and local government employees).<sup>18</sup>

Nonetheless, the unprejudiced specialists in the problem area were generally unanimous – a true impact assessment of regulatory acts in Bulgaria (still) *does not exist!* This was also recognized in the “*Impact Assessment of Legislation: Concept of Practical Implementation in the Rulemaking Process of the National Assembly and the Council of Ministers*”, adopted on April 17, 2015 by the Council for Administrative Reform of the Council of Ministers, *which states*: “The objective of introducing an effective and European-based impact assessment in the work of legislative and executive branches has not been achieved. ...Despite the measures, explicitly defined in a number of national strategic and programming documents, to introduce an impact assessment of legislation in the period from 2008 to 2014 and the public funds invested in institutionalizing the impact assessment, commissioning the development of reports and assessments, methodologies and guides, training of administration, etc., the overall objective has not been achieved.”

By Decision of the Council of Ministers No. 549 of 25.07.2014, the *Guidance on making the assessment of legislation* was adopted.<sup>19</sup> This document was “intended for representatives of the central and local administration, who prepare impact assessments of legislation”. The main text of the guide includes three parts:

- *concepts and rules* – nature of the assessment; determining the scope and depth of the impact assessment; gathering information and consulting stakeholders;

- *procedural steps* – planning the impact assessment and forming a team for its preparation; conducting early informal consultations (drillings); drafting an impact assessment report and a summary of the report; presenting of the report and summary to the administration of the Council of Ministers; conducting formal public consultations; finalizing the report, taking into account the possible recommendations from the Council of Ministers' administration for improving the quality of the impact assessment;

- *key analytical steps* – defining the problem; setting objectives; action options; an analysis of the impacts of different options (including an SME-test<sup>20</sup> and

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<sup>18</sup> As a member of the contractor's team, the author was convinced that this project would provide the necessary “*a<sub>0</sub>*” (initial acceleration) of the process of introducing an impact assessment in Bulgaria. The author was wrong (unfortunately).

<sup>19</sup> An updated version of the 2009 Guidance with a volume of (modest) 31 pages, including 10 pages of main text and 21 pages of annexes (4 pieces).

<sup>20</sup> For the impact assessment on small and medium-sized enterprises (SMEs).

a measurement of the administrative burden<sup>21</sup>); comparing options; rules for monitoring and ex-post evaluation.

On April 20, 2016 the 43<sup>rd</sup> National Assembly of the Republic of Bulgaria (finally)<sup>22</sup> adopted the Law on Amendments and Supplements to the Law on Normative Acts.<sup>23</sup> The underlying construction of the Law was the new Chapter 2 “Assessment of the Impact of Normative Acts” (§ 3), which provides:

- an impact assessment carried out by the drafting body of a normative act (Art. 19, paragraph 1);

- ex ante and ex-post impact assessments (Art. 19, paragraph 2);

- partial and full (complete) ex-ante impact assessment (Art. 20, paragraph 1).

This legislative regulation of the impact assessment triggered actions in several main directions:

- Ordinance on the Scope and Methodology for Impact Assessment, adopted with the Council of Ministers' Decree No. 301 of 14.11.2016 (Promulgated in State Gazette, No. 91. of 18.11.2016);<sup>24</sup>

- a series of amendments and supplements to the Statute of the Council of Ministers and of its Administration (Promulgated in State Gazette, No. 78 of 02.10.2009);

- new Rules for the Organization and Activities of the National Assembly (Promulgated in the State Gazette, No. 35 of 02.05.2017).

The “sowing” gave a rich “harvest” even in the first year – for the period beginning on November 4, 2016 and ending on October 31, 2017, “about 365” (see Center for Impact Assessment of Legislation. Report on monitoring results ..., 2017, p. 1) impact assessments were prepared, i.e. on average one per day. However, the quality of the “crop” (definitely) was not good. The main failures at the start of practical impact assessment in Bulgaria could be summarized in the following way:

- explicit and hidden attempts to circumvent the Law on Normative Acts;

- increased preference for form over substance;

- total disregard for the methods for full (complete) ex-ante impact assessment (cost-benefit analysis, cost-effectiveness analysis, etc.);<sup>25</sup>

- rushed public consultations.

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<sup>21</sup> By using the Standard Cost Model and the Interactive Administrative Burden Calculator (see <http://www.strategy.bg>).

<sup>22</sup> The saga for a new Law on Normative Acts / appropriate amendments and supplements to the existing Law on Normative Acts dates back to 2008. (By a Decision of 18.12.2008, the Council of Ministers adopted a Concept for a new Law on Normative Acts).

<sup>23</sup> Promulgated in State Gazette, No. 34 of 03.05.2016, in force as of 04.11.2016. The Draft Law on Amendments and Supplements to the Law on the Normative Acts was developed on the basis of the cited “Impact Assessment of the Legislation: Concept of Practical Implementation in the Rulemaking Process of the National Assembly and the Council of Ministers” from 2015.

<sup>24</sup> According to Art. 19, paragraph 4 of the 1973 Law on Normative Acts.

<sup>25</sup> See Art. 28, paragraph 1 of the Ordinance on the Scope and the Methodology for Impact Assessment from 2016.

In order to improve the impact assessment in Bulgaria, it is necessary to:

- complete the sub-legislative “superstructure” (with emphasis on approaches, methods and procedures for impact assessment);
- create the necessary capacity on a national and local level;<sup>26</sup>
- develop a culture of impact assessment in society.

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Impact assessment emerged in the United States in the 1970s. Subsequently, almost all developed countries introduced different forms of impact assessment.

In the EU impact assessment started with the introduction of a Business Impact Assessment (BIA) procedure in 1986. Sixteen years later, the EC published its first guide to integrated impact assessment.

The impact assessment in Bulgaria has been discussed since the beginning of this millennium. Legislation exists (albeit sparingly), ambitious programs and projects exist as well. However, there is still no true impact assessment! On April 20, 2016 the 43<sup>rd</sup> National Assembly of the Republic of Bulgaria adopted the Law on Amendments and Supplements to the Law on Normative Acts. The underlying construction of the Law is the new Chapter 2 “Assessment of the Impact of Normative Acts”. This legislation inspired a series of regulatory actions and practical experience. The main challenges, however, are yet to come.

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<sup>26</sup> The responsibility falls mainly on the Institute of Public Administration and the respective universities.



Genesis and development of impact assessment

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