

## **INSTRUMENTS FOR BETTER REGULATION. A COMPARISON OF THE REGULATORY IMPACT ASSESSMENT (RIA) LEGAL FRAMEWORK IN ROMANIA AND IN FRANCE**

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### **Abstract**

*The aim of this paper is to make a comparison on the way in which it is regulated in Romania and in France the RIA – Regulatory Impact Assessment instrument. The analysis is starting for the assumption of the European Commission that "better regulation is about designing EU policies and laws so that they achieve their objectives at minimum cost". An instrument in achieving this goal is the RIA, which it was introduced and used not only for the EU administration, but also, as required by the European Commission, at the EU member states level. Through the comparison research method used in this paper it is expected to understand the way in which the two countries designed their legal framework for implementing the RIA instrument. By doing this, it could be observed if the two states subject to the analysis achieved one of the goals for having better regulation.*

**Keywords:** *legal framework, institutional framework, legislation, European Commission*

### **1. Introduction**

Nowadays we are living in an emergent politico-administrative systems changing constantly and permanently in order to be adapted and to resonate to rapidly transforming environment. In this context these systems have suffered a legislative inflation, and the drafting of a series of quality standards is based on the desire for simplification and legislative coherence, understanding and compliance with laws by all legal subjects, which are presumed and have the obligation to be aware of all the regulations. To achieve better results, the politico-administrative systems and rule makers are opening up policy and law-making and listening more to the people it affects. In this regards, it can be stated that better regulation relies on evidence and a transparent process, which involves citizens and stakeholders (for example, businesses, public administrations and researchers) throughout.<sup>1</sup>

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<sup>1</sup> See for more details, European Commission, *Better regulation: why and how*, available online at: [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en) , accessed: 06.09.2019.

The European Commission published its Better Regulation Guidelines in its May 19th 2015 - Better Regulation Package, where it is stating that "Better Regulation is about designing EU policies and laws so that they achieve their objectives at minimum cost". This can only be achieved through: open and transparent procedures; the use the best evidence that is available; and the proactive involvement of relevant stakeholders in decision-making.<sup>2</sup>

Regulatory Impact Assessments was originally adopted in OECD countries but is now used in a growing number of economies in transition and developing countries. Regarding the EU Member States, the RIA implementation it is directly linked with the European Commission recommendations for better regulations. According to the European Commission - Impact Assessments are carried out on initiatives expected to have significant economic, social or environmental impacts. These can be: legislative proposals, non-legislative initiatives, implementing and delegated acts. RIA was implemented varied from country to country in the EU, reflecting differences in the objectives chosen, institutional capacity and resource constraints.

The aim of this paper is that, through the comparative analyses to observe how was regulated the RIA in Romania and France, taking into consideration that both countries have similar politic-administrative systems and they are part from the same juridical system- the Roman -German system.

## **2. A comparison of the Regulatory Impact Assessment (RIA) legal framework**

### **2.1. Romania**

Romania has gradually developed its regulatory policy since the early 2000s in order to achieve the standards imposed to the country by the process of accession to the European Union<sup>3</sup>. Regarding the legal framework, there can be underlined several steps for creating a RIA system in Romania.

One of the first step for establishing minimum standards on the ex-ante regulatory impact assessment was done by the adoption of the *GD (Government Decision) no. 775/2005 approving the Regulation on procedures for developing, monitoring and evaluation of public policies at central level*<sup>4</sup>, respectively the *GD no. 1361/2006 on the content presentation tools and motivation of draft normative subject to Government*

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<sup>2</sup> See for more details, European Commission, *The need for impact assessments: why and how*, available online at [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en), accessed: 06.09.2019

<sup>3</sup> Romania it is not a country member of the OECD. Romania has formally applied for membership of the OECD on previous enlargement exercises, respectively in April 2004 and November 2012, and renewed it in 2016 and 2017 and it is still ca candidate country. See for more details the official website of the Romanian Ministry of Foreign Affairs, at: <https://www.mae.ro/node/18539>, accessed: 08.09.2019.

<sup>4</sup> Text published in the Official Gazette of Romania, Part I, no. 865 from July 29, 2005, with subsequent amendments and completions.

*approval*.<sup>5</sup> The two acts cover regulatory impact assessment in terms of social, economic, business, budget, environment, EU and national legislation.

By the adoption by *GD no. 1226/2007 of Regulation procedures to the Government for the development, approval and presenting of draft legislation and draft policy documents*<sup>6</sup>, the public policy documents Government announcement will go through the same procedures, consultation, approval and adoption as its normative acts.

Draft laws on social, economic, on environment, general government or legislation is develop only on the basis of policy documents approved by the Parliament or the Government. Regulation improves the consultation ministerial and ensures transparency of decision making by publishing on the websites of ministries, that General Secretariat of the Government-SGG, draft regulations.

Regarding the consultation process was published *Law no. 52/2003 on decisional transparency in public administration*.<sup>7</sup> It establishes minimum procedures on ensuring decisional transparency in public administration central and local government financial resources used in relation to recipient's laws. ministries to publish all regulations for comments on their websites. Romania recently established a central consultation portal where all consultations of ministries are listed. However, the minimum period for submitting comments is limited to ten days and no feedback on the outcomes of consultations is currently provided to participants.

The draft law amending *the Law no.24/2000 on drafting the legislative acts* was prepared by the General Secretariat of the Government, with the support of technical assistance provided under PHARE Twinning RO2003/IB/OT /10, 2003/005-551.03.03 "Strengthening the institutional capacity of the Romanian Government policy management and decision-making". The main aspects regarding RIA in the law are (Article 7):<sup>8</sup>

- Preliminary assessment of the impact of bills, legislative proposals and other normative acts is a set of activities and procedures performed in order to

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<sup>5</sup> Text published in the Official Gazette of Romania, Part I, no. 843 from October 12, 2006, with subsequent amendments and completions.

<sup>6</sup> Text published in the Official Gazette of Romania, Part I, no. 716 from October 10, 2007, with subsequent amendments and completions. In force from February 1, 2008 to May 13, 2009, being repealed and replaced by Government Decision 561/2009.

<sup>7</sup> Text published in the Official Gazette of Romania, Part I, no. 70 from February 3<sup>rd</sup>, 2003, with subsequent amendments and completions.

<sup>8</sup> Republished under art. II of Law. 60/2010 approving Government Emergency Ordinance no. 61/2009 amending and supplementing Law no. 24/2000 on rules of legislative technique for drafting laws, published in the Official Gazette of Romania, Part I, no. 215 of 6 April 2010, giving the texts a new numbering. Law no. 24/2000 on rules of legislative technique for drafting laws was republished in the Official Gazette of Romania, Part I, no. 777 of 25 August 2004 and was subsequently amended and completed.

ensure adequate substantiation legislative initiatives. Preliminary impact assessment involves the identification and analysis of economic, social, environmental, legislative and budget proposed regulations they produce.

- Preliminary assessment of the impact of draft legislation is considered to be the foundation for how the proposed legislative solutions and must be made prior to the adoption laws.

- Substantiation new regulation must take into account both the impact assessment specific legislation in force at the time of writing the draft law, and public policy impact assessment of the draft bill implements.

- Preliminary impact assessment is made by the initiator of the draft law. In case of complex draft legislation, impact assessment can be performed under a contract for the provision of services by scientific research institutes, universities, companies and NGOs, in accordance with the legal provisions in force concerning public procurement.

- Applications of the provisions stipulated above are not mandatory for legislative initiatives of Deputies and Senators, as well as those based on the citizens' initiative.

One of the most important act in creating the legal framework of RIA in Romania is the *GD no. 1361/27.09.2006 regarding the content of presentation instrument and motivation to draft legislation subject to Government approval*<sup>9</sup>. This Decision established that the Instrument of presentation and motivation, called *explanatory notes* is binding on both the draft bills proposed by the Government to the Parliament, the draft ordinance and emergency ordinance projects and for Government Decision that has an impact on areas social, economic and environmental, of the general budget or on the legislation in force (See, Article 2). The GD provides in the annex a structure of the content of the instrument of presentation and motivation which all the legislative acts with social, economic, environmental, budgetary or legislative impact should contain.

Regarding the institutional framework of RIA the main institution which is currently in charge of RIA is the General Secretariat of the Government (SGG). Part of the General Secretariat of the Government is the Department for Coordinating Policies and Priorities (DCPP), which is responsible for the implementation of the Romanian Better Regulation Strategy and the development of the Romanian RIA system. Romania does not have central oversight of the quality of RIA in place. Some ministries, such as the Ministry of Finance or the Ministry of Justice, review specific sections of explanatory notes as part the endorsement procedure of regulations.<sup>10</sup>

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<sup>9</sup> Text published in the Official Gazette of Romania, Part I, no. 843 from October 12, 2006, with subsequent amendments and completions.

<sup>10</sup> OECD, *Indicators of Regulatory Policy and Governance EUROPE 2019 - Romania*, 2019, available online at: <https://www.oecd.org/gov/regulatory-policy/indicators-of-regulatory-policy-and-governance-2019-romania.pdf>, accessed: 08.09.2019.

Agencies and authorities subordinate to the Government regulation and control is an important interface between the public and the business community and citizens. These institutions have a direct impact on economic operators that are generated by the regulations and the collection of information and control on how those rules were applied. In recent years, the number of agents increased both currently being held in coordination with the Prime Minister's Office or under the ministries coordination. The Ministry for Public Consultation and Social Dialogue is responsible for the development of the central consultation platform as well as for monitoring and evaluating the consultation process.

## 2.2. France

France has been one of the first OECD countries aware that struggling against overruling and law instability required carrying out impact assessments<sup>11</sup>. The steps for implementing the RIA legal framework were carried out under the suggestions of the Council of State. In 2006 it stated that only one way to succeed in making impact assessments compulsory was to grave it at the high level of the hierarchy of norms. This recommendation has been considered by both the Government and Parliament in the constitutional reform of July 23rd, 2008 discussion. As a result the RIA approach has been established in the *Constitution (Article 39)*<sup>12</sup> and more specifically in the *Institutional Act of April 15th, 2009* as a significant piece of the legislative process and decision making.

This was the first major step in the legal framework for IA in France. Thus, the Institutional Act of April 15th, 2009 for the implementation of article 39 of the French Constitution provides for IA for draft government bills, finance bills and social security financing bills but it excludes bills amending the Constitution and bills at the initiative of Parliament.

Article 8 of this Act provides that:<sup>13</sup> "Bills are subject to an impact assessment. Documents detailing this impact assessment are appended to the draft legislation as soon as it is communicated to the Council of State. They are submitted to the bureau of the first assembly called upon to give its opinion at the same time as the

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<sup>11</sup> See the following reports: Council of State, Rapport public 2006 - Sécurité juridique et complexité du droit, 2006, online available at: <https://www.ladocumentationfrancaise.fr/rapports-publics/064000245/index.shtml> , accessed: 08.09.2019 and Picq, Jean, L'Etat en France : servir une nation ouverte sur le monde : rapport au Premier ministre, 1995, online available at <https://www.ladocumentationfrancaise.fr/rapports-publics/954026900/index.shtml> , accessed: 08.09.2019

<sup>12</sup> Article 39. French Constitution: *Legislative initiative is exercised by the Prime Minister and by Members of Parliament. Government Bills are considered in the Council of Ministers, after consultation with the Council of State and laid before one of the two assemblies. Finance Bills are submitted first to the National Assembly.*

<sup>13</sup> Loi organique no. 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution, JORF no. 0089 du 16 avril 2009 page 6528, available online at: [https://www.legifrance.gouv.fr/eli/loi\\_organique/2009/4/15/PRMX0827219L/jo/texte](https://www.legifrance.gouv.fr/eli/loi_organique/2009/4/15/PRMX0827219L/jo/texte), accessed: 08.09.2019.

bill to which they relate.” These documents lay down the objectives pursued by the bill, list the possible options, excluding the intervention of new legal regulations, and present the justification for recourse to new legislation. They specifically detail:

- the way the bill dovetails with European legislation in force or being prepared, and its impact on the domestic legal system;
- the status of application of the law at national level in the area(s) covered by the bill;
- the conditions of application over time of the envisaged provisions, the legislative and regulatory texts to be abrogated and the transient measures proposed;
- the conditions of application of the envisaged provisions in the local authorities governed by Articles 73 and 74 of the Constitution, in New Caledonia and in the French South Seas and Antarctic Territories, justifying, where applicable, the adaptations proposed and the absence of application of the provisions to some of these authorities;
- the evaluation of the economic, financial, employment and environmental impact and the financial costs and benefits expected from the provisions envisaged for each category of public administration and natural and legal persons concerned, indicating the calculation method used;
- the evaluation of the consequences of the provisions on public-sector employment;
- the consultations carried out prior to the Council of State being called upon; and the provisional list of implementation legislation necessary.

IA are thus examined by the Council of State, the Council of ministers and then by Parliament.

Another legal step in creating the RIA framework in France was done in 2011 to include regulations that have an impact on local governments and on companies<sup>14</sup>. There were undertaken in the last years, simplification measures, like a “one-in, two-out” regulatory offsetting approach in 2017. When transposing EU legislation, the adoption of requirements going beyond those set by the EU measure is prohibited.<sup>15</sup>

Regarding the institutional framework, the IAs are carried out in the government department responsible for the policy proposal. So, in principle, each department should have a unit dedicated to the making of IAs. More specifically, two institutions should be mentioned: the General Secretariat of the Government

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<sup>14</sup> Circulaire du 17 février 2011 relative à la simplification des normes concernant les entreprises et les collectivités territoriales , JORF no.0041 du 18 février 2011, available online at: <https://www.legifrance.gouv.fr/eli/circulaire/2011/2/17/PRMX1104783C/jo/texte>, accessed: 08.09.2019, p. 3025.

<sup>15</sup> OECD, *Indicators of Regulatory Policy and Governance EUROPE 2019 - France*, 2019, available online at: <https://www.oecd.org/gov/regulatory-policy/indicators-of-regulatory-policy-and-governance-2019-france.pdf>, accessed: 08.09.2019.

and the commissioner in charge of simplification. The Council of State also plays a role in regulatory policy, both upstream (through its consultative function for the government, including in the area of RIA, and its control of legal quality) and downstream (as the administrative judge of last resort).<sup>16</sup>

### 3. Conclusions

An OECD (Organization for Economic Co-operation and Development) study on the RIA system in the EU member states conducting RIA within an appropriate systematic framework can underpin the capacity of governments to ensure that regulations are efficient and effective in a changing and complex world<sup>17</sup>.

From the comparative analysis it can be observed that both countries implemented RIA at the legal, administrative and technical level.

In Romania, it can be observed that in difference as in France, the legal framework of RIA was draft and it is regulated in principal by a numerous Government Decisions, which are not primary legislation and which change could be done very easily by the government.

In comparison, France regulated the RIA and the level of primary legislation and the RIA approach has been established in the Constitution. The difference of the French system in comparison with Romanian one, lies not only in the fact that IA concerned first statutes, it lies also in the fact that the Constitution provides for an enforcement mechanism. There is first a political control: in case the Conference of Speakers of the assembly to the bureau of which the draft bill has been submitted determines non-compliance with the rules on IA it can refuse to include it on its agenda (article 9). Then a judicial control is provided for: the disagreement between the Conference of Speakers and the government is decided by the Constitutional Council.

From the analysis, comparing the two countries, it can be observed the similarity of the institution in charge for coordinating the impact assessments at the national level. For both countries, the Secretariat-General of the Government coordinates this work at an interdepartmental level but also provides a methodological support and monitors impact assessments quality in connection with the Prime Minister Cabinet Office. As a difference, in France, a key role is played by the Council of State (an – regarding the quality of the norm, while in Romania, this role is reserved to the Ministry of Justice, and in some areas to the Ministry of Finance.

Even if the process is still undergoing of making RIA an instrument that could, together with other reforms, contribute to better regulations, at the end, the

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<sup>16</sup> OECD, *Indicators of Regulatory Policy and Governance EUROPE 2019- France*, 2019 available online at: <https://www.oecd.org/gov/regulatory-policy/indicators-of-regulatory-policy-and-governance-2019-france.pdf>, accessed: 08.09.2019.

<sup>17</sup> OECD, *Regulatory Impact Analysis*, available online at: <https://www.oecd.org/regreform/regulatory-policy/ria.htm>, accessed: 08.09.2019.

objective of the RIA process should contribute to reduce uncertainty of the decision-making process more than assess scientifically economic impacts. The more accurate on the assessments of the implications new laws are, the better they will be and the better the conditions will be for business and society in general to prepare for their implementation.

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