



SOUTH EAST EUROPE INVESTMENT COMMITTEE

THIRD MEETING OF THE REGULATORY REFORM WORKING GROUP

SUMMARY AND CONCLUSIONS

EVENT HOSTED BY THE REGIONAL COOPERATION COUNCIL
IN SARAJEVO ON 22 OCTOBER 2009



Introduction

The Regulatory Reform Working Group was established after the OECD Investment Compact for South East Europe's (IC) publication of the Investment Reform Index 2006 and held its first meeting in October 2007. The Working Group functions under the auspices of the South East Europe Investment Committee (SEEIC), which is a high level coordination body set up to support the implementation of policies promoting foreign and domestic investment in SEE¹.

The Regulatory Reform Working Group assembles senior government officials responsible for regulatory reform, as well as parliamentarians, of economies participating in the South East Europe Investment Committee and initiates discussions on regulatory reform and issues of parliamentary cooperation. The Third Meeting of the Regulatory Reform Working Group took place in Sarajevo on 22 October 2009 at the headquarters of the Regional Cooperation Council (RCC). The meeting, which was organised by the IC and the RCC is part of the two organisations' efforts to improve the investment environment by, amongst other things, promoting high quality regulatory policy in the region and enhancing parliamentary processes and cooperation. The participants included representatives from nine South East European economies (parliamentarians and government officials), the European Commission Delegation in Bosnia and Herzegovina, the International Finance Corporation (IFC), the Economics Institute, and the representatives of Switzerland, Austria and Slovenia – all members of the SEE Investment Committee.

Objectives

The objectives of the meeting were threefold:

- Update the working group on current regional initiatives in the field of regulatory reform and parliamentary co-operation:
- Present, validate, and discuss the preliminary findings of the Investment Reform Index (IRI) 2009's dimension on parliaments and regulatory reform:
- Focus on specific challenges faced by governments and parliaments in South East Europe during the process of economic reform legislation.

¹ The SEE Investment Committee comprises deputy ministers or state secretaries from each of the SEE countries. Members of the international community including the EC, IFIs and bilateral donors are also members of the Committee as are representatives of the private sector. However decision making authority resides with the SEE members. The Committee meets twice a year, sometimes at ministerial level and to date has established five working groups on specific policy areas.



Session 1 – Update on current regional initiatives in the field of regulatory reform and parliamentary cooperation.

The first session of the meeting was moderated by Ms. Jelica Minic and was structured around two presentations.

The IFC updated the working group on the recently established *network of economic committees of parliaments* from SEE, which was formally established at a regional conference on regulatory reform in March 2009. So far Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia are part of this network. The IFC has found that regulatory reform has progressed significantly over the last five years in the region, and remains a key determinant of foreign direct investment (FDI). It is in this context that a network of parliamentarians can enable peer learning for reforms. According to the IFC, peer learning drives positive emulation and disseminates good practices, because messages from peers are trusted and are comprehensible. The IFC also highlighted its work with students and various youth groups, emphasising the need to ensure that future generations are well informed on these issues.

Several countries, as well as the OECD and RCC, commented on the usefulness of such a network and the importance of regional cooperation and development of common regulatory tools. The requirement to translate the work of the network into all the languages of the region was highlighted, as well as the need to communicate the important role of parliaments in the economic reform process more clearly to civil society.

The Economics Institute informed the Working Group about its study on the comparative analysis on regulatory reform in the European Union (EU) and SEE. Whereas regulatory reform in the EU is implemented both at EU and at national level, it is predominantly developed at country level in SEE, with the exception of sporadic regional initiatives launched by the international community. For example, the Better Regulation Agenda in the EU was launched in 2002 and is an EU-wide strategy to simplify and improve the regulatory environment; or the White Paper on European Governance set up a comprehensive and consistent agenda for the establishment of better regulation standards in the EU. These common initiatives and platforms have allowed for a constructive exchange of experiences between EU countries and have led to a harmonisation of regulatory practices and the regulatory environment as a whole. Although this EU Better Regulation agenda was strictly related to the EU institutions and EU member states, it had an indirect impact on the Western Balkan countries, which have started to reproduce certain elements such as the simplification of the existing legislation or regulatory impact analysis. The EU approach has also increased the awareness about the necessity for a strategic approach in the field of regulatory reform.

The presentation confirmed the importance of the EU as the main benchmark for regulatory reform in SEE and the importance of the EU accession process as a driver of the overall reform process.

Both presentations highlighted the necessity of regulatory reform for (i) competitiveness, (ii) the transition to a market economy and (iii) the EU accession process.

Session 2 – Preliminary results of the OECD Investment Reform Index 2009

The second session of the meeting, which was moderated by Ms. Mary O'Mahony, focused on the preliminary results of the Investment Reform Index (IRI) 2009. The IRI aims at independently assessing investment-related policy settings and reform in SEE against international best practice, based on a scoring system from 1 to 5. The IRI report will be published in early 2010. One chapter of the IRI focuses on regulatory reform and the role of parliaments in the economic reform process. The preliminary results of this chapter were presented at the meeting by the OECD.

These preliminary results can be summarised as follows:

- Most economies of South East Europe have made marked progress in establishing institutional and legal frameworks for regulatory reform and in implementing regulatory reform programmes.
- The majority of the SEE economies have conducted comprehensive “Regulatory Guillotine” reviews, frequently with the support of international donors. These reviews have led to extensive elimination of redundant legislation and regulations. The main exception is Bosnia and Herzegovina.
- The use of Regulatory Impact Analysis, while systematically applied to draft legislation in Moldova, Romania, and Serbia, is still in its infancy in many SEE economies. This is problematic for SEE economies that require extensive and rapid adoption of EU laws and regulations to comply with the *Acquis Communautaire*. This context enhances the importance of establishing a review system of draft legislation.
- SEE economies have developed the foundations of forward legislative planning. However, progress needs to be sustained, as many parliaments are overburdened with complex legislative proposals often submitted at short notice.
- Parliaments/assemblies in the region made progress as regards their activity and their communication with stakeholders
- In many cases, clear and coordinated communication between parliamentarians and civil society is lacking.
- Important normative acts are still missing from the assessed economies such as the Transparency Law.
- Consultation and dialogue between parliamentarians and civil society is often occurs in an ad hoc manner; legislative and institutional structures are not formalized, adding to the communication burdens that hinder sound and transparent decision-making.
- Parliaments are perceived as very slow in decision-making and the adoption of legislation. However this is partly due to the amount of normative acts they receive from the government that need to be adopted, allowing for very little time to draft new normative acts.

- There is limited coordination between Parliaments and Governments and for most Western Balkan economies the oversight of the Parliament on Government activity is still weak. Parliaments/assemblies need to streamline their internal procedures, as weak coordination is in part due to a lack of codification of internal parliamentary procedures and internal political parties' discussions or negotiations.
- Parliaments are perceived as distant and slow when adopting normative acts (due also to the important volume of draft normative acts that arrive from governments, often via ordinances and emergency ordinances that slow dramatically the legislative role of the Parliament).
- The civil society lacks unified structures while engaging the dialogue with the Parliament – several types of private sector representative organisation, including NGO structures and/or branches of industrial businesses associations engage in communication with the Parliament, however without any coordination with the other structures.
- Civil society is sometimes perceived by the Parliament as disinterested in contributing to the continuity of dialogue with the public sector. Dialogue is promoted only for specific domains or pieces of legislation in economic fields.
- When adopting normative acts, Economic Commissions within Parliaments in SEE need to improve dialogue and communication with external users (stakeholders, representatives of the private sector and civil society).
- Legislative improvements are foreseen in many SEE economies as regards consultations with interested parties. These are aimed at achieving greater discipline and accountability in the public sector.
- The private sector in SEE economies needs to develop centralized structures for consultation, allowing for a common voice when communicating with representatives of parliament.
- On-line consultation processes need to be developed at national level. A single website containing all draft normative acts would reduce the time and costs required.
- An awareness campaign needs to be envisaged within parliaments as regards the adoption of normative acts that would bring benefits for both the parliamentarians' internal activity and for the private sector (i.e. a Transparency Law and/or a Lobby Law).

Participants approved the preliminary results. In several cases, participants agreed to provide further information or clarifications on specific aspects of information presented and the OECD will follow-up with the different representatives in the upcoming weeks.

A second presentation by the OECD IC's Croatian country office, reported on implementation issues that have arisen during Croatia's regulatory reform process. The presentation pointed out the difficulties that were faced by the Croatian government during their regulatory simplification process known as HITROREZ. Most notably, efforts to simplify many laws and regulations that were identified as being obsolete were delayed and in some cases unsuccessful due to reluctance on the part of officials that did not want to lose their influence in a certain field. Frequently the EU accession process was used as a motive to avoid making changes to laws. It was also noted that the sheer scale of legislation being

adopted has also led to an upsurge in the number of regulatory bodies. It has been estimated that 67 independent agencies have been created under different ministry portfolios as part of the EU accession process. This is giving rise to concern regarding sustainability, including the rise in the number of public employees, particularly in light of the economic crisis and the subsequent budgetary cuts. This has already affected regulatory reform in Croatia as the office for Regulatory Impact Analysis established in 2008 was closed down in July 2009 for budgetary reasons as an anti-crisis measure. The complex structure of the parliament was also highlighted as a potential area for reform: the Croatian parliament holds 30 different committees, on average every Croatian parliamentarian is member of 2.5 committees. The resulting problems of such a complex structure could include a lack of focus on specific policy areas by parliamentarians and a lack of competencies and expert support to make use of the committee structure for more thorough and evidence-based discussions of legislative proposals.

Several economies expressed that they have experienced similar problems during the implementation of their respective regulatory reform programs. Additional points mentioned by working group members in this session included the need for politicians to outline the need for regulatory reform and analysis more clearly and attractively to the wider public in order to generate momentum. Furthermore, governments should avoid solely focusing on conducting a full Regulatory Impact Analysis, which is difficult to implement. A limited cost-benefit analysis, focusing predominantly on the fiscal impact of a legislative proposal can also be beneficial. Participants advocated a regional exchange on how to best handle these different issues.

Session 3 – Identification of challenges and ways of improvement regarding the dialogue between the governments and parliaments

In the final session of the meeting, chaired by Erhard Busek, the Working Group heard two presentations by parliamentarians from SEE (Montenegro and Serbia) on issues related to the dialogue between the government and the parliament. Parliaments are still overburdened with large and sudden influxes of legislative proposals from the government, especially in countries that are on the EU accession path.

The important role of parliamentarians in SEE was highlighted: Parliaments have a key role to play in the process of economic reform, which civil society is not always aware of. Parliaments' task is to enact or amend legislation, which provides the legal framework for economic activities. Their challenge is to establish rules which are coherent, effective and stable. Again, the regulatory and legislative processes in the EU were mentioned as a potential model for more coherent policy making across SEE and for sharing experiences and practices between SEE countries. Political instability can also represent a major impediment for regulatory reform: Serbia mentioned its 17 elections in the last 8 years as one such example.

In Montenegro, the EU accession process has served as a catalyst for improving regulatory practices and government-parliamentary cooperation. Harmonising the national legal framework with the requirements of the *Acquis Communautaire* has entailed significant changes of rules and procedures for regulations adoption and has led to a gradual build-up of a modern legal framework, which will be able to respond to the requirements of EU membership. In this context the Montenegrin National Program for Integration of Montenegro into EU for the period 2008-2012 has served as a constructive forward planning mechanism for the government and hence a communication platform between the government and parliament. However the process still suffers from time lags and on occasion parliamentary

committees have to review large quantities of new legislation in a short period of time. The end of year budgetary process, for example, is always cumbersome.

Several relevant points were made in the ensuing discussion. Firstly, parliamentarians come from a wide variety of backgrounds and the suitable provision of information on legislative proposals by the government is therefore of great importance. Secondly, given the often relatively low profile and detachment of SEE parliaments vis-à-vis civil society, there is a need to use different channels of communication – such as TV, media, and internet – more effectively to promote the role of the parliament. Finally, the lobby process in SEE remains inefficient: this is in part due to the parliaments, which often lack the capacity to take all lobbying calls into account. Nevertheless, civil society and the business community need to adopt a more pro-active, structured, and professional approach in their lobbying activities.

Conclusions and next steps

The key conclusions from the Working Group meeting can be summarised as follows:

The Working Group has undergone a shift in focus from the long-standing emphasis on regulatory tools such as the regulatory guillotine and regulatory impact analysis to a focus on issues related to parliamentary processes and cooperation. This was welcomed by the Working Group members and is in line with the findings of the IRI where countries now score well in the sub-dimension of regulatory reform and more poorly in the sub-dimension on parliaments and transparency.

The Working Group will explore synergies and avenues of cooperation with the IFC network of economic committees of parliaments from SEE. Organising meetings back-to-back with this network could provide good opportunities for best practice and information sharing.

Regulatory practices and parliamentary processes of the EU represent the key benchmark for SEE countries. The Working Group will continue following developments of regulatory reform at EU level and take them into account when shaping its work plan. One such development is the potential creation of a European Commissioner post for Better Regulation within the European Commission.

There is a need for parliaments to (further) build partnerships with universities, NGOs, think tanks in order to enhance their capacity and supplement their often modest resources.

Based on the discussions of the meeting, it would appear that for future meetings of the Working Group a facilitation of regional exchanges of good- and bad-practices of parliamentary processes, specifically on government-parliament dialogue and on harmonisation of legislation with the EU acquis would be useful. Particularly pertinent policy areas identified were labour legislation, energy security, and environmental policy. There a need to define the future work plan of this Working Group and to decide on what areas it will focus on as well as the most appropriate meeting schedule.

The draft IRI chapter on regulatory reform and the role of parliaments in economic reform will be circulated for comments to Working Group member for review and validation of the results in December 2009.