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**SIGMA - A JOINT INITIATIVE OF THE OECD AND THE EUROPEAN UNION,
PRINCIPALLY FINANCED BY THE EU****REGULATORY MANAGEMENT CAPACITIES OF MEMBER STATES OF THE
EUROPEAN UNION THAT JOINED THE UNION ON 1 MAY 2004****SIGMA PAPER NO. 42**

The European Commission requested Sigma to carry out a study on the regulatory management capacities of the ten countries that joined the EU on 1 May 2004 to learn more about their Better Regulation practices, exchange good practices and make suggestions for further improvements. This study was carried out by way of peer reviews taking place between March 2005 and October 2006.

The topics examined were notably: the origins of EU Better Regulation policy, regulatory management processes, the tools used in these processes (impact assessment, consultation, simplification, alternatives and accessibility), enactment processes and the enforcement and compliance of laws in the NMS, with reference to intellectual property law and environmental laws.

Each peer reviews led to a country report that was sent to the Commission and the Member State in question. Publication of each country report was left to the discretion of the Member State in question. A synthesis was drawn up summarizing all findings and making recommendations addressed to all new Member States in general.

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SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

REGULATORY MANAGEMENT CAPACITIES OF MEMBER STATES OF THE EUROPEAN UNION THAT JOINED THE UNION ON 1 MAY 2004

SUSTAINING REGULATORY MANAGEMENT IMPROVEMENTS THROUGH A BETTER REGULATION POLICY

SIGMA PAPER NO. 42

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, and do not necessarily reflect the views of the OECD and its member countries or of the beneficiary countries participating in the Sigma Programme.

THE SIGMA PROGRAMME

The Sigma Programme — Support for Improvement in Governance and Management — is a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the European Union, principally financed by the EU.

Working in partnership with beneficiary countries, Sigma supports good governance by:

- Assessing reform progress and identifying priorities against baselines that reflect good European practice and existing EU legislation (the *acquis communautaire*)
- Assisting decision-makers and administrations in setting up organisations and procedures to meet European standards and good practice
- Facilitating donor assistance from within and outside Europe by helping to design projects, ensuring preconditions and supporting implementation.

In 2007 Sigma is working with the following partner countries:

- **New EU Member States** — Bulgaria and Romania
- **EU candidate countries** — Croatia, the former Yugoslav Republic of Macedonia and Turkey
- **Western Balkan countries** — Albania, Bosnia and Herzegovina (State, Federation of BIH, and Republika Srpska), Montenegro, Serbia and Kosovo (governed since June 1999 by the UN Interim Administration Mission in Kosovo – UNMIK)
- **Ukraine** (activities financed by Sweden and the UK).

The Sigma Programme supports reform efforts of partner countries in the following areas:

- Legal and administrative frameworks, civil service and justice; public integrity systems
- Public internal financial control, external audit, anti-fraud, and management of EU funds
- Public expenditure management, budget and treasury systems
- Public procurement
- Policy-making and co-ordination
- Better regulation.

For further information on Sigma, consult our website:

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The reviews of the regulatory management capacities of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia, on which this synthesis report is based, were undertaken in the context of the Sigma programme.

Sigma is a joint initiative between the OECD and the European Commission, principally funded by the European Commission.

In Sigma, the project was managed by Mr. Edward Donelan, Senior Administrator, who also acted as lead drafter of the report. He was assisted by Ms. Diane de Pompignan, Junior Administrator, with administrative support being provided by Ms. Sandra Philippe.

The project was managed in the European Commission by Mr. Manuel Maria Santiago dos Santos, DG Enterprise who was assisted by Ms Debby De Roover, Regulatory Advisor, and with the financial support of DG Enlargement managed by Mr, Alan van Hamme and Ms Ewa- Anna Stadnik.

The process was undertaken with the assistance of a team of peers, with a group of three peers being taken to each country reviewed.

Country experts also provided background information.

The synthesis was circulated and commented on by a core group of peers chosen on the basis of geographic representation, number of countries reviewed by them or particular expertise.

The peers involved in commenting on the synthesis were: Dr. Luigi Carbone, Professor Alan Mayhew, Mr. Dieudonné Mandelkern, Mr. Charles Henri-Montin and Mr. Henrik Wingfors.

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EXECUTIVE SUMMARY

Better Regulation to Enhance Europe's Competitiveness

Enhancing the competitiveness of its economy through increased productivity growth is one of the main challenges recognised by the European Union in the original Lisbon strategy and the renewed Lisbon strategy for growth and jobs (adopted in 2000 and 2005 respectively). The improvement of the regulatory environment and regulatory processes at the level of the Institutions of the EU and its Member States is a key factor in creating a business environment conducive to productivity growth.

This policy is known as 'Better Regulation.' This policy does not mean more regulation or less regulation but involves the putting in place of processes which ensure that all regulations are easy to understand, apply, comply with and are of high quality.

Regulation plays a central role in the functioning of economies and is essential to address market failures, foster competition, promote safety, health and welfare and facilitate the protection of the environment. High quality regulation achieves these objectives at least possible cost. Low quality regulation may have the opposite effect.

Review of the Regulatory Management Capacities of Each of the NMS

Much is known about the implementation of Better Regulation policy in the Institutions of the EU and in some Member States of the EU. Less is known about the implementation of Better Regulation policy in the 10 countries that joined the EU on the 1st May 2004 (NMS). In order to learn more about developments in Better Regulation in the 10 NMS, the European Commission requested Sigma to study this issue.

The studies were designed, primarily, as fact finding exercises and did not judge the quality of their regulations and were used as a means to encourage the development of Better Regulation policy. This report is a synthesis of these studies which were conducted between March 2005 and October 2006.

The studies examined: the origins of EU Better Regulation policy to provide a context for the studies, regulatory management processes, the tools used in these processes (impact assessment, consultation, simplification, alternatives and accessibility), enactment processes and the enforcement and compliance of laws in the NMS, with reference to intellectual property law and environmental laws.

The NMS are geographically and culturally diverse but share the experience of adopting the *acquis communautaire* in a remarkably short period and now face the pressure of interpreting it and applying it to their own conditions. Eight of these countries experienced an acceleration of history as they moved from command and control economies to free market economies. This meant not only the adaptation of their economies but also significant and substantial changes to their administrative cultures and political institutional environments.

Conclusions

1. Political leadership will be necessary to encourage sustained attention to Better Regulation policy, accordingly, Better Regulation Units need to engage political attention

through seminars and debates which promote an understanding of Better Regulation issues.

2. The development of a Better Regulation policy and the improvement of regulatory management capacities is an issue which is competing with a significant number of other issues, all of pressing importance. NMS need time to absorb the changes they have experienced as a result of their application for EU membership, in particular the incorporation of the *acquis communautaire* and for many of them the switch to an open market economy. The responsibility for the development of Better Regulation in the NMS falls on the shoulders of a dedicated but small number of officials. The challenge for the NMS is to recognize that this is not just as a 'one shot' policy but is something which requires sustained commitment to improvement.
3. There is a widespread understanding in all NMS of the necessity to use Better Regulation tools. However, many NMS enacted laws to oblige officials to prepare impact assessments for all new legislation. These laws were rarely underpinned by adequate methodologies or institutional arrangements to oversee the quality of assessments. As a result, the potential benefits from the use of this tool were lost.
4. Most NMS are addressing this problem but the approach to impact assessment is an example of a wider problem, namely, the belief that the enactment of a law is a sufficient activity for the solution of a policy problem. As well as enacting laws, NMS need to address the necessity to support new laws with adequate institutional arrangements to ensure that they are enforced or complied with.
5. All NMS recognise the need to measure the size of administrative costs and, where possible, take steps to reduce them. Progress may be seen across the NMS in both measuring the costs and reviewing administrative procedures, frequency of inspections and related official activities to ensure the burden on people, and small businesses in particular, is kept to a minimum. This is a very positive development which should be encouraged and supported, where possible, by the Institutions of the EU.
6. In addition, the executive and legislative branches of government need to work together and follow common policies to achieve Better Regulation. Many of the NMS have experienced recent political turmoil. Participants in all parts of the political process need to develop a deeper understand that priority should be given to a good regulatory environment to safeguard and encourage the competitiveness of their economies. In the review of the quality of regulations both branches of government need to adopt a more multidisciplinary approach where regulations are reviewed against the application of Better Regulation principles as well as legal effectiveness issues.
7. In all NMS, there is a need to review enforcement and compliance policies to discover if there are better ways of ensuring that, once laws, are enacted they are enforced or complied with in a manner that achieves the result intended. This is also an issue that may be usefully addressed at the level of the Institutions of the EU and offers a rich field for future cooperation.

Recommendations Common to all NMS

The report makes recommendations that are common to all NMS:

1. Political support is essential to develop and maintain a policy on Better Regulation.
2. A policy to achieve Better Regulation works best when there are appropriate and adequately-funded arrangements in place to support and maintain it.
3. Regulatory management capacities may be developed through the effective use of Better Regulation tools.
4. Executive and legislative branches of government must cooperate in a constructive way to ensure wise governance.
5. More attention needs to be paid to enforcement and compliance.

1. INTRODUCTION

This Report is a synthesis of assessments of the regulatory management capacities of the 10 New Member States that joined the EU on the 1st May 2004 (the NMS).

This section sets out the background to the report, describes the methodology used and explains what the report covers and what it excludes.

It provides a brief overview of the NMS and explains the subject matter of the report.

Background to Report

Enhancing the competitiveness of its economy through increased productivity growth is one of the main challenges recognised by the European Union in the original Lisbon strategy and the renewed Lisbon strategy for growth and jobs (2000 and 2005). The improvement of the regulatory environment and regulatory processes at the level of the Institutions of the EU and its Member States through developing a Better Regulation policy is a key factor in creating a business environment conducive to productivity growth.

Regulation plays a central role in the functioning of economies and is essential in addressing market failures, fostering competition, promoting safety, health and welfare and facilitating the protection of the environment. High quality regulation achieves these objectives. Low quality regulation may have the opposite effect. The European Commission has developed a Better Regulation policy designed to improve its regulatory management capacities. The policy functions at the level of all institutions to improve the flow of new regulations and the existing stock of regulations.

OECD Reports on Regulatory Reform

The OECD has published a series of Reports on Regulatory Reform for most OECD countries. These Reports include a chapter on the capacity of these countries to produce high quality regulations. From these studies, some understanding may be gleaned about the regulatory management capacities of certain EU Member States. However, no such studies existed for the NMS, except the OECD reports on regulatory reform in the **Czech Republic, Hungary and Poland**.

The European Commission wanted to get a better understanding of the regulatory management capacities of the NMS and to promote the adoption of a Better Regulation policy in all Member States, similar to those adopted by the Institutions of the EU. With this objective, the European Commission requested Sigma to assess the regulatory management capacities of the NMS. A report setting out the assessment for each NMS was prepared and given to each NMS and the European Commission.

The individual NMS reports were not published by the European Commission as they are documents internal to them and to the governments concerned. However, the NMS were free to translate and publish the reports or to adapt the material in them for their own policy needs. The reports for the **Czech Republic, Lithuania, Poland, the Slovak Republic and Slovenia** were translated and made available in these NMS.

Issues Examined

The assessments were undertaken by reference to a baseline, set out in **Annex 2**, created for the purpose of the 10 assessments. The assessments sought to examine 5 areas:

1. The existence of a policy as regards regulatory management and the extent to which it has developed into a policy to improve regulation (Better Regulation).
2. The formulation of policy, drafting of regulations¹, the process for assuring regulatory quality for both 'flow' of new regulations and 'stock' of existing regulations.
3. The enactment process.
4. Enforcement and compliance mechanisms.

The baseline was drawn up specifically for this project and does not appear in any other literature on the subject.

Issues not Examined

The assessments of the regulatory management capacities of the NMS, upon which this synthesis is based, did not seek to judge whether regulations made in the Member States concerned were well or badly made or whether legislation in NMS is of high quality. Nor did the process seek to judge whether Member States were overregulated or not. The assessments were concerned with identifying the extent to which the regulatory management capacities of NMS measured up against a baseline designed for this study and to what extent Better regulation type policies were developing in those countries.

The assessments made recommendations for reforms to each NMS, most of which were accepted as being in line with their own actual or planned policies.

Methodology

The preparation of the report on the NMS followed three phases: set up, peer review and fact checking. The set up phase included the development of a benchmark or baseline against which the regulatory management capacities of the NMS would be studied. A questionnaire (**Annex 3**) was also drawn up and submitted to each NMS.

Each New Member State was visited by a peer team for five consecutive working days. A panel of peers was selected for the process (**Annex 4**). The peers were selected on the basis of their knowledge, experience and standing in relation to Better Regulation issues and were drawn from the Directors of Better Regulation Network² and the OECD Working Party on regulatory management.

Three peers were selected for each mission to a NMS. The particular peers selected for each mission were chosen to provide a mix of skills, knowledge and experience in relevant fields: administration, legal systems and economic policy issues. They were also selected to achieve a geographic spread and a balanced representation of different administrative and legal systems. A

¹ The word 'regulation' is used throughout the text to mean legal or administrative instruments to achieve policy objectives. The term 'regulation' is in more common usage by economists and political scientists in the wide sense of achieving policy outcomes. Lawyers use the word 'regulation' to refer to secondary legislation. The study reflects much of the thinking that has taken place in the OECD on this subject and reports written in this field use the word 'regulation' more frequently than 'legislation'. Hence, the word 'regulation' is used as often as possible. However, from time to time, this report for clarity uses 'legislation' and this is the term most familiar to officials with legal qualifications. 'Legislation' is further classified into primary laws (made by parliaments) and secondary laws (made under the authority of primary legislation).

² An informal grouping of EU's governments' Directors of Better Regulation, which meets twice annually.

report was drafted in respect of each NMS, agreed between the peers, and submitted to the NMS for fact checking.

Process

The peer review process used was designed to develop a policy dialogue within the NMS and between the NMS and the peers as well as to examine and to identify potential strengths, weaknesses or gaps in the institutional, policy and policy tools framework for regulatory management. This process resulted in a lively exchange of views in most NMS and a spirit of exchanged successes and failures. Given the importance of Better Regulation to the Lisbon Agenda, the assessment of each NMS sought evidence of regulatory management capacities generally and, particularly, the capacity to adopt, implement and develop a Better Regulation policy. The exercise was also designed to highlight policies that have worked well in NMS and, through the peers, to provide information to NMS as well as to identify areas where improvements could be brought about.

Related to this process, seminars were organised in six NMS,³ which enabled experts to be brought from other Member States and enabled a wide number of officials to hear about Better Regulation and the review process. In addition, the Ministry for the Economy in **Poland** organised a successful and well attended conference on Better Regulation in the NMS.

NMS — Overview

The NMS share many matters in common as regards regulatory management policy. All have engaged in one way or another with the development of policies that are similar in objectives to those adopted by the Institutions of the European Union, and other countries as part of a world wide trend towards a Better Regulation agenda. Much progress has been made and many developments have taken place between the initiation of the project and its completion. The following Table gives a flavour of what has happened and is intended to be illustrative of progress rather than a comprehensive overview, which would require regular updating.

³ See, for example, **Cyprus, Czech Republic, Latvia, Lithuania, Malta** www.mcmp.gov.mt/newsdetail.asp?i=126) and the **Slovak Republic**.

Some Examples of Best Practice and Proposed Developments

NMS	Best Practice ⁴	Proposed Developments
<p>Czech Republic (Fact check 11 December 2006)</p>	<p>The Government of the Czech Republic adopted an Action Plan of Reducing Administrative Burden on Businesses in April 2005, as well as a Methodology of Measurement of Administrative Burden, based on the Dutch Standard Cost Model.⁵ According to the plan, the Head of the Office of the Government was responsible for the drawing up of a report (<i>Analysis of Administrative Burden on Businesses</i>) based on results of measurements undertaken by particular ministries and central state administration authorities.</p>	<p>The Czech Republic has strengthened its capacity to deliver its Better Regulation policy and has developed a new methodology for impact assessment.</p>
<p>Cyprus (Fact check Cyprus 5 June 2006)</p>	<p>The first 'One-Stop-Shop' for citizens was opened in December 2005 so as to deliver better access to certain categories of government information and a range of services. It brings together the following services: identity documents, car registration, health and social benefits. It is an additional facility provided for the convenience of the public and services continue to be offered in the specific offices of each ministry. The One-Stop-Shop is staffed with seconded staff from the various relevant ministries. It is intended as a showpiece of the government's policy to make administration more accessible to the public.</p>	<p>Cyprus has appointed a Working Party to investigate the means by which impact assessment may be incorporated into the policy-making process. A second 'One Stop Shop' was opened in October 2006 and a third is planned to be opened by February 2007.</p>
<p>Estonia (Fact check 15 June 2006)</p>	<p>An e-government tool to facilitate consultation, called Web 'Talk along',⁶ has been developed. It permits the involvement of citizens in the formulation of policy and the drafting of legislation.</p>	<p>Businesses may now be established in less than two months and consideration is being given to the development of an explicit policy on Better Regulation. Two new Standards Cost projects (transport and structural funds) and a simplification programme are planned.</p>
<p>Hungary (Fact check 15 August 2006)</p>	<p>In 2004, two initiatives to provide training for officials in modern administration, including Better Regulation, were introduced. The first is in Budapest; the second in Perch University, which started a Better Regulation curriculum for local authority lawyers. Training aims to give officials the capacity to undertake and manage an impact assessment project.</p>	<p>Project to assess effectiveness of regulatory impact assessments underway. Decision taken to assess regulatory burdens internal to Ministry of Justice.</p>

⁴ The information set out in this table was correct at the time of the completion of each country report.

⁵ Resolution (No. 421/2005).

⁶ www.mkm.ee/index.php?id=8252.

<p>Latvia (Fact check 17 May 2006)</p>	<p>A distinctive feature of the Latvian system of governance is that a representative of NGOs and professional associations may attend the State Secretaries' meetings as an observer. This feature ensures that civil society can be made aware, through a network of NGOs and professional associations, of developments in policy and proposals for new regulations. The process is structured so that NGOs and professional associations may submit comments on draft policies and draft regulations.</p>	<p>It is planned to develop a standard cost model and an ad hoc simplification programme is underway.</p>
<p>Lithuania (Fact check 19 Sept 2005)</p>	<p>A crucial factor in regulatory management is the speedy resolution of disputes. The Chief Administrative Disputes' Commission hears claims and resolves disputes in respect of the legality of administrative decisions.</p>	<p>Lithuania translated and published the Sigma report into Lithuanian and is heading towards the development of a substantial Better Regulation policy.</p>
<p>Malta (Fact check 28 July 2006)</p>	<p>There is a Management Efficiency Unit in the Office of the Prime Minister. The Unit includes the newly established Better Regulation Unit and is an interesting model to drive Better Regulation reforms as it is at the centre of Government and at the same time an integral part of the Public Service as a whole.</p>	<p>Proposed development of RIA policy.</p>
<p>Poland (Fact check 10 October 2006)</p>	<p>There is an inter-ministerial working group (the Task Force for Modern Economic Regulation) to develop Better Regulation policy; a team in the Ministry for the Economy and an official in each Ministry is responsible for the development of Better Regulation in that Ministry.</p>	<p>As of 2006, an explicit Better Regulation strategy is being developed in Poland. On 19 August 2006, the Council of Ministers adopted the Regulatory Reform Programme. It is the first comprehensive regulatory reform programme in Poland defining an integrated approach to regulatory management policy.</p> <p>The programme includes a three-stage plan for the implementation of the Standard Cost Model (SCM) for measuring administrative costs of regulation. On 10 October 2006, a revised RIA methodology was adopted by the Council of Ministers – the <i>Guidelines for Regulatory Impact Assessment</i>.</p>

Slovak Republic (Fact check 4 Sept 2006)	A novel feature of its impact assessment system is to assess the impact of proposed legislation on households.	Review of its impact assessment policy and development of a new methodology.
Slovenia (Fact check 8 December 2006)	There is a Programme of Measures for Reduction of Administrative Burdens which aims to reduce administrative barriers, ensure that public administration is friendly, effective, open and transparent, and provide impetus for the rapid development of e-government. All ministries are preparing work plans for the 2007-2008 period to reduce administrative burdens.	The establishment in 2006 of a special group to oversee Better Regulation was a significant move towards the development of a comprehensive Better Regulation policy.

Period of Rapid Change

The NMS formerly under communist influence have undergone a period of rapid and substantial change in their adaptation from 'command and control' economies to free market and have undertaken the changes necessary to adopt the *acquis communautaire*.

In a relatively short period of time, those NMS had to build new institutional capacities or develop and adapt old ones. **Cyprus** and **Malta** did not have to address the issues associated with developing a free market but had to address the challenge of adopting a substantial volume of new legislation so as to comply with the *acquis communautaire*, without the benefit of the kind of aid and assistance made available to the other NMS.

Cyprus and **Malta** had the advantage of legal systems and institutional structures which had developed over a long period of time. This advantage had to be weighed against the fact that they were small NMS with an administrative capacity already stretched to cover domestic needs.

All NMS faced an acceleration of history. An assessment of the full impact of this acceleration will be needed later, in the light of whether it succeeds or fails and why. At the time the assessments were undertaken, all NMS were breathing a sigh of relief that the challenge of adoption of the *acquis communautaire* had been met.

The peer teams shared the experience of, on the one hand, seeing a rich harvest of administrative, economic, political and social change and, on the other hand, seeing fields that had just been seeded needing time for the seeds to sprout and grow.

A new generation of officials has emerged in these countries and it is fortunate that the challenge of improving regulatory management is being taken up by that generation.

General Challenges

Five broad challenges face all NMS: the need to sustain political support; the need to undertake impact assessment in substance as well as in form; efficiency, as well as legal effectiveness is a key determinant of good quality regulation; parliaments need to pay attention also to Better Regulation issues and enforcement policy needs more consideration.

Political Support Needs to be Sustained

Political support for Better Regulation is present in all the NMS studied. However, further support and encouragement will be needed to sustain progress. Political support for the introduction of policies on Better Regulation is more visible than tangible political support for its implementation.

Some NMS (**Czech Republic** and **Poland**) had adopted explicit policies on Better Regulation before the peer review process.

Estonia, Lithuania, Malta, and Slovenia were in the process of adopting such a policy and the other states were either considering the adoption of an explicit policy or believed that what they were doing was sufficient to provide high quality regulation.

However, experience from OECD countries suggests that the development of Better Regulation is not a 'one shot' policy but is one which needs continuing monitoring and usually needs to go through a number of iterations to make it successful. Even in NMS where there is a policy in place, it will require continuous effort to maintain it.

Impact Assessments Need to be Undertaken in Substance as well as in Form

All NMS, except **Malta** and **Cyprus**, have laws requiring the undertaking of regulatory impact assessment (RIA) as part of new regulatory policy development.

However, inadequate institutional arrangements, particularly as regards the quality review of assessments, lack of clear methodologies and training meant that the process became an empty formula and RIA existed in name and not in substance.

These problems are being, or have been, addressed (**Estonia, Czech Republic, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia**). In these countries progress is being made to improve institutional support for RIA, to develop effective methodologies and train officials.

Efficiency, as well as Legal Effectiveness, is a Key Determinant of Good Quality Regulation

The policy formulation and regulation drafting process in all NMS is inevitably influenced by cultural, legal and administrative traditions and practices. There is no doubt that legal certainty is an essential part of regulatory effectiveness. However, experience from OECD studies suggests that not only do regulations have to be legally effective but they must also be efficient. Regulations need to be complied with easily or enforced and they must operate without unintended consequences. To achieve these ends, a purely legalistic approach to regulation making is not enough. There must be a multidisciplinary approach to the formulation of policy and the drafting of legislation and recognition of the need to put appropriate structures in place.

The administrative structures in all NMS focus on legal effectiveness. Many laws are enacted in the NMS without sufficient attention being paid to how they will work in practice and how they will be applied. Progress is being made in this area but it is uneven and may not be sustained.

Parliaments Need to Pay Attention also to Better Regulation Issues

Effective regulatory regimes need effective parliamentary supervision. Many Parliaments in the NMS have developed good research capacities but have not yet engaged fully with the potential improvements to regulatory quality that can be brought about by the use of Better Regulation policies. In most NMS there is some evidence being shown by officials in the executive branch of government in improving regulatory management capacity through Better Regulation. However, this interest is not being matched in the NMS by the legislative branch of governments. Suggestions made in particular Sigma reports given to the NMS included the idea that there should be an annual debate in parliaments on Better Regulation issues.

Enforcement Policy Needs More Consideration

All NMS claim to have a 'zero tolerance' approach to enforcement, but capacity challenges limit this approach. Given the importance of this issue to European integration, more attention needs to be paid by NMS to developing a more realistic approach to enforcement, such as the development of a risk-based policy or a policy that imposes fees for inspections.

2. ORIGINS OF EUROPEAN UNION POLICY ON BETTER REGULATION

What are the Origins of Better Regulation?

Better Regulation derives from a concern by governments to keep the cost of government to a minimum and to ensure that regulation is efficient as well as legally effective. It derives also from a concern that regulatory costs should not exceed benefits conferred by legislation. The roots of Better Regulation can be traced to regulatory reforms in the United States, which were aimed at reducing the size of government and the interference by government in the market.

A range of regulatory reforms and deregulation activity first in the **United States of America** and then in other countries led to better functioning markets, according to OECD reports. However, regulatory reform and deregulation led, in many cases, to an increase in regulation. This was because when state-run monopolies existed there was no need for rules on market entry and exit. However, when the state moved out of areas such as telecommunications and other utilities, rules had to be introduced to ensure equity in markets and the number of regulations increased. In the United States, concerns about too much regulation and bad regulation were met with policies to improve the quality of legislation, including the use of impact assessment.

In the **United Kingdom**, a White Paper in 1985 *Lifting the Burden* addressed concerns about the burden of legislation on small business. Other European countries developed similar policies. The Institutions of the European Union began to develop a Better Regulation policy in the same period. Similar developments took place in other Member States of the EU, notably, the **Netherlands, Denmark** and **Sweden**. Some countries, such as **France**, undertook similar reforms in the context of modernisation of their public services. **Ireland** adopted a policy entitled Regulating Better.

OECD and Regulatory Reform

The OECD has studied over 23 countries from the point of view of regulatory reform and observed that countries that performed better economically paid attention to the quality of the management of their regulatory processes. In the OECD studies, three stages of reform are visible. In the first phase, classified as Deregulation, what takes place is the elimination of regulations that impede competition and trade, and the reduction of a number of regulations. The process also includes the reduction of the burden on business and cost of regulations as well as the simplification of procedures and the streamlining of the administration. All of the countries studied fall into this category though the degree to which all reforms have been completed vary in degree between and within those countries.

In the second phase of the development of this subject, classified as Regulatory Reform, there is an effort made to produce high quality regulations by improved policy-making processes which make use of tools such as impact assessment, better consultation and more effective planning of regulatory arrangements. This stage may also involve the updating and review and modernisation (i.e., coherence with political objectives in the areas of economy, environment and social standards) of existing regulations. All of the countries studied fall into this category though the degree to which all reforms have been completed vary in degree between and within those countries

Finally, the third phase of reform is classified by the OECD as regulatory management, which is concerned with long-term, systematic perspectives concerned with improved institutions and regulatory performance. None of the countries have reached this phase fully.

A key development in thinking, contributed by the OECD, was the adoption in 1995 of the *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*⁷. This recommendation set out the first internationally accepted set of principles on ensuring regulatory quality. It included the 10 point OECD Reference Check List for Regulatory Decision Making. In a seminal report *From Interventionism to Regulatory Governance*⁸, the OECD identified three key drivers for regulatory effectiveness. These were regulatory policies (i.e., policies to improve the regulatory process), regulatory tools and regulatory institutions. The OECD Regulatory Reform Programme, which has involved a series of studies of regulatory reforms in OECD member countries, is aimed at helping governments improve regulatory quality. Its focus concentrated on reforming regulations that raise unnecessary obstacles to competition, innovation and growth, while ensuring that regulations efficiently serve important social goals.

Policy on Better Regulation (European Union)

An initial step towards improving the regulatory environment in the Institutions of the EU was taken when the European Union Institutions adopted the drafting guidance recommendations contained in the Inter-Institutional Agreement of December 1998. The purpose of this was to improve the quality of draft legislation⁹. The Edinburgh European Council of 1992 made the task of simplifying and improving the regulatory environment one of the Community's main priorities. However, it was not until the mid-nineties that the search for better quality regulation became systematic. Better Regulation is also referred to in a protocol attached to the Treaty of Amsterdam.

The issue was further addressed in the context of efforts to counter the relatively poor economic growth performance of many Member States – an issue of recurring concern to European policy makers. To address the concern, the Heads of State and Governments of the European Union met in Lisbon in 2000 and launched a series of ambitious reforms at national and European level as part of an overall strategy. By establishing an effective internal market, by boosting research and innovation and by improving education, to name only a few reform efforts, they aimed to address the challenges posed to the European Union by the impact of demographic change and globalisation.

The development of Better Regulation in the European Union accelerated further with the EU White Paper on Governance. The White Paper suggests that there are links between good governance and the drive for Better Regulation.

Mandelkern Group Report

One of the practical measures taken to deliver this policy was the establishment of a group, representative of Member States, under the Chairmanship of a judge of the Council of State in France, Mr. D. Mandelkern¹⁰, to examine ways in which policy-making and regulation drafting could be improved in the Institutions of the EU. The group reported in November 2001 and produced a blueprint for Better Regulation in the European Union. The report was met with universal acclaim and its recommendations were largely adopted by the EU Institutions.

⁷ OECD/GD/ 95(95) OECD, Paris (1995).

⁸ OECD Paris, [PUMA(2002)3].

⁹ Declaration 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty, 1997.

¹⁰ <http://ec.europa.eu/governance/impact/docs/mandelkern.pdf>.

The Group drew from many sources, including reports on regulatory reform in almost 20 OECD countries¹¹. The conclusions of the Group were, essentially, that to achieve Better Regulation, there is a need for high level and cross-government political support, the allocation of appropriate resources and an explicit Better Regulation policy. That policy should use tools such as: impact assessment, simplification, and consultation; it should promote a change in culture in the formulation of policy and the drafting of regulations.

The report argued that Better Regulation is a drive to improve the policy-making process through the integrated use of effective tools and not an attempt to impose additional bureaucratic burdens. The report proposed an Action Plan, which was closely followed by the EU Institutions, and set out 7 core principles for Better Regulation. These principles are: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity.

The Mandelkern Group report was followed by the European Commission with a Communication in 2002, introducing a new integrated impact assessment system, roadmaps, instruments which provide an alternative approach to legislation (e.g., co-regulation, self-regulation), minimum standards for consultation of interested parties and guidelines for gathering and using expert advice¹².

Renewal of the Lisbon Process

Progress has been made on each of these fronts by the Institutions of the European Union and, with the renewal of the Lisbon strategy in 2005, emphasis was put on the development of Better Regulation policy in the Member States of the European Union. Having reached the half-way stage of the Lisbon process started in 2005, the Commission decided to re-launch the strategy with a focus on growth and jobs and a streamlined process to enhance Member States' ownership of their reform programmes. The implementation of Better Regulation policy is central to the efforts to enhance productivity in the context of the Lisbon Strategy. The European Union on its own, however, cannot boost productivity and employment. Member States also must play their part through, for example, developing and implementing Better Regulation policy and using Better Regulation tools effectively.

Member States are expected to recognise that action at EU level alone will not be enough to achieve Better Regulation. The transposition by the Member States of EU legislation and national regulatory initiatives have consequences, not just for national administrations and for citizens but also for businesses, particularly SMEs, from across the Union. The development and implementation of Better Regulation policy is, therefore, a priority to be addressed in the context of implementing the Lisbon strategy. The importance of Better Regulation is mirrored in *the Integrated Guidelines for Growth and Jobs*¹³, where it is provided that Member States are recommended:

“To create a more competitive business environment and encourage private initiative through Better Regulation, Member States should:

1. *Reduce the administrative burden that bears upon enterprises, particularly on SMEs and start-ups;*

¹¹ <http://www.oecd.org>.

¹² European Commission, Action plan – “Simplifying and improving the regulatory environment”, COM (2002) 278 final, http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2002/com2002_0278en01.pdf; General principles and minimum standards for consultation of interested parties by the Commission, COM (2002) 704 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0704en01.pdf; Communication from the Commission on Impact Assessment, COM (2002) 276 final, http://ec.europa.eu/governance/impact/docs/key_docs/com_2002_0276_en.pdf

¹³ Guideline No. 14 for period 2005-08.

2. *Improve the quality of existing and new regulations, while preserving their objectives, through a systematic and rigorous assessment of their economic, social (including health) and environmental impacts, while considering and making progress in measurement of the administrative burden associated with regulation, as well as the impact on competitiveness, including in relation to enforcement;*
3. *Encourage enterprises in developing their corporate social responsibility.”*

As agreed at the European Council in March 2005, Member States are committed to drawing up under their own responsibility, National Reform Programmes (NRP) based on the Integrated Guidelines for Growth and Jobs which encompass the economic, social and environmental dimensions. The reform programmes should be geared to their own needs and specific situation, allowing for the diversity of situations and policy priorities at national level. NRPs should be conceived as forward-looking political documents setting out their 3 year strategy to deliver growth and jobs. These programmes, together with their implementation reports, allow the Commission to assess the policies and progress identified by Member States.

The Commission has done so in its last two Annual Progress Reports from January and December 2006. In the latter one, the Commission issued country-specific recommendations and pointed out that reforms begin to deliver benefits. At the same time, it emphasized that reforms are at an early stage and will need to be fully followed through to make a lasting economic impact.

Development of EU Better Regulation Policy

To assure the success of Better Regulation and to strengthen these initiatives, the Commission presented in June 2002, a series of measures in the field of Better Regulation¹⁴.

A further Communication in 2003¹⁵ was aimed at streamlining and simplifying the regulatory environment by reducing the volume of existing European Union legislation and presenting the *acquis communautaire* in a more ‘user-friendly’ way.

In December 2004, the Ministers of Finance and Economic Affairs of six Member States (Ireland, Netherlands, Luxembourg, the UK and Austria and Finland) signed a letter aimed at lending new impetus to the process of Better Regulation.

The Six Presidencies’ Joint Statement followed and built on the earlier Four Presidencies’ Joint Initiative of January 2004, setting out the Presidencies’ objectives for regulatory reform in the coming years.

In March 2005, the Commission adopted a new Communication ‘*Better Regulation for Growth and Jobs in the European Union*’. While ensuring coherence with the ongoing action for Better Regulation and in the context of the renewed Lisbon strategy, the Communication proposed three key action lines:

- By further promoting the design and application of Better Regulation tools at the EU level, notably in so far as impact assessments and simplification are concerned.
- By working more closely with Member States to ensure that Better Regulation principles are applied consistently throughout the EU by all regulators. Action at EU level alone will

¹⁴ COM (2002)278 final, *ibid*.

¹⁵ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Updating and Simplifying the Community *Acquis* {SEC(2003) 165} com/2003/0071 Final.

not be enough: the transposition of EU legislation by the Member States and national regulatory initiatives have consequences as well, not just on national administrations and on citizens but also on businesses, particularly SMEs, from across the Union.

- By reinforcing the constructive dialogue between all regulators at the EU and national levels and with stakeholders.

In line with that Communication the European Commission¹⁶ has:

- Endorsed revised impact assessment guidelines¹⁷;
- Adopted a Communication on a common methodology for assessing administrative costs imposed by legislation¹⁸;
- Adopted a Communication on the outcome of a screening of pending legislative proposals¹⁹;
- Adopted a Communication on a strategy for the simplification of the regulatory environment²⁰;
- Launched the group of high-level national regulatory experts²¹.

The Communication outlines the purpose of the European Union's Better Regulation policy:

"The European Union's Better Regulation policy aims to improve regulation, to better design regulation so as to increase the benefits for citizens, and to reinforce the respect and effectiveness of the rules, and to minimise economic costs—in line with the European Union's proportionality and subsidiarity principles"²².

Strategic Review of Better Regulation in the EU²³

On 14 November 2006, the European Commission presented the results of a wide-ranging Strategic Review of Better Regulation in the EU. The review assesses the progress to date and makes an ambitious set of proposals.

One of the initiatives concerns the launch of an ambitious strategy to reduce the administrative burden of existing regulation. The European Commission put forward a proposal to cut, jointly, with Member States, the administrative burden for companies by 25% by 2012.

This, it is argued, could lead to an increase of an estimated 1.5 % in EU GDP and subsequently more investment for growth and new jobs, amounting to €150 billion. To achieve this target, Member States and regional and local authorities must also give a new political momentum to their own efforts to cut red tape.

In March 2007, the Spring European Council underlined that **reducing administrative burdens** is an important measure for boosting Europe's economy, especially through its impact on SMEs,

¹⁶ [COM(2005)97 final], http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0097en01.pdf. See also reports from the Commission on Better Lawmaking 2005, for example, (13th Report), COM (2006) 289 Final, http://ec.europa.eu/governance/impact/docs/SEC2005_791_IA%20guidelines_annexes.pdf

¹⁷ SEC (2005) 791, http://ec.europa.eu/governance/impact/docs/SEC2005_791_IA%20guidelines_annexes.pdf.

¹⁸ COM (2005) 518 final, http://ec.europa.eu/governance/impact/docs/key_docs/com_2005_0518_en.pdf

¹⁹ COM (2005) 462 final, http://ec.europa.eu/enterprise/regulation/better_regulation/docs/en_br_final.pdf.

²⁰ COM (2005) 535 final, http://ec.europa.eu/enterprise/regulation/better_regulation/docs/simplification/COMM_PDF_COM_2005_0535_F_EN_ACTE.pdf.

²¹ The mandate of the group is to advise the Commission on Better Regulation issues in general and to provide an efficient interface between the Commission and key government authorities for the development of better regulation at EU and national levels.

²² See page 2 [COM (2005) 97 final], *ibid*.

²³ COM (2006) 689, http://ec.europa.eu/enterprise/regulation/better_regulation/docs/en_689.pdf.

and that a strong joint effort is needed. It therefore agreed that administrative burdens arising from EU legislation should be reduced by 25% by 2012. It also invited Member States, taking into account their different starting points and traditions, to set their own national targets of comparable ambition within their spheres of competence by 2008.

Also, the system for impact assessment of all major new proposals for legislation will be improved to ensure quality and objectivity through the establishment of an Impact Assessment Board. Furthermore, 43 new initiatives have been added to the simplification rolling programme covering the period 2006-2009. These arise in a broad spectrum of policy areas.

On 17.03.2006, the Commission confirmed its intention to withdraw 67²⁴ proposals as an outcome of the screening of 183 proposals for EU laws pending at the European Parliament and Council. The list of withdrawn proposals was published in the Official Journal²⁵. These proposals were withdrawn because some were inconsistent with the objectives of the new "Partnership for Growth and Jobs" or did not meet better regulation standards. Others were not advancing in the legislative process, or were simply outdated.

The 2006 screening exercise examined 79 pending proposals adopted by the Commission between 1.1.2004 and 21.11.2004, using the same criteria. Final results were announced in the Strategic Review Communication. The Commission informed Parliament and Council as required, providing a justification for withdrawal for ten proposals in total²⁶. As a reasonable time elapsed without any reactions from their part, the list of withdrawals was published in the official journal of 22.03.2007.

²⁴ Proposal 2003/0160/AVC included among those 68 originally selected for withdrawal has since been adopted by the Legislator and has, therefore, been removed.

²⁵ [OJ C 64 of 17.03.2006](#).

²⁶ Framework Agreement of 26 May 2005 on relations between the EP and the Commission (paragraph 32).

3. REGULATORY MANAGEMENT

This section examines regulatory management in the NMS.

Regulatory management is the process whereby problems facing a country are selected for policy analysis, decision and drafting into legislation. The decision to formulate policy and draft legislation is taken by government or a minister, if delegated to do so. The focus in this Chapter, therefore, is on regulatory management process.

Introduction

In some countries and in the institutions of the European Union, the principles underpinning regulatory management are expressed in an explicit policy document designed to bring about improvements in policy formulation and the drafting, enactment and enforcement of legislation.

The basic indicators for a regulatory management policy include:

- A policy on Better Regulation
- Strategy for action and a process for prioritisation
- Coherent and consistent process to formulate policy and draft legislation
- Quality assurance
- An appropriate number of suitably qualified personnel.

Policy on Better Regulation

Explicit Better Regulation Policy

During the assessments of the NMS, a number of NMS began to develop an explicit policy on Better Regulation. These included **Lithuania, Malta, Poland** and **Slovenia**. In some countries, between the time of the initiation of the project and the completion of particular country reports, the governments concerned had set up reform programmes that explicitly refer to Better Regulation within the context of the Lisbon strategy.

In the **Czech Republic**, the government has developed, and at the time of the report was improving, a policy which equates broadly to the Better Regulation policy of the EU. A Government Resolution²⁷ was adopted on Reducing the Administrative Burden on Businesses. It includes an Action Plan for Reducing Administrative Burden on Businesses as well as for the Methodology of Measurement of Administrative Burden, based on the Dutch Standard Cost Model²⁸.

Poland developed an impressive programme that reflects a wide range of influences. The priorities for its Better Regulation reform programme are:

- Identification and implementation of legislative solutions for simplification of domestic regulation and that of the *acquis communautaire*.

²⁷ No. 421/2005.

²⁸ See also the Standard Cost Model Manual pages 6 and 7 www.administratievelasten.nl/default.asp?

- Improvement of the system of transposing EU Directives.
- Reduction of administrative burdens.
- Improvement of the RIA system.
- Strengthening the regulatory management capacities of government.

Implicit Better Regulation Policy

In **Hungary** and the **Slovak Republic**, a Better Regulation policy may be seen from a study of governance practices. Some Better Regulation tools are in place. The policy sets out the manner in which policies are formulated and legislation is drafted and is primarily set out respectively in the Organizational Order of the **Slovak Republic** Government Office and in the 1987 Legislation Act in **Hungary**.

In **Lithuania**, the Strategy for Public Administration Development²⁹ stated that priority will be given to areas and activities mentioned in the Medium Term Programme 2004-2005, adopted by EU Ministers of Public Administration. One of the areas mentioned is *Better Regulation*. The Action Plan for Implementation of the Strategy for year 2005-2006³⁰ contains the actions designed to simplify decision making procedures. There have been further developments in **Lithuania** since the completion of the assessment and an explicit Better Regulation policy was being developed at the time of the writing of this report.

In **Latvia**, Better Regulation is mentioned in the National Development plan 2007-2013 as a priority area³¹.

In other countries, there is an implicit reference to Better Regulation policy in many aspects of the management of government activities.

All NMS participate in Better Regulation expert groups. These include the High Level Group on Better Regulation established by the European Commission³², the Directors of Better Regulation³³ and, where appropriate, the OECD Working Party on regulatory management. Some countries, **Poland**, for example, have participated in benchmarking exercises in order to exchange practices and benefit from the experience of OECD or EU member countries that have already established a Better Regulation policy. Many of the countries studied (**the Czech Republic, Cyprus, Estonia, Hungary, Latvia, and Poland**) are members of the Standard Cost Model Network: steering committee³⁴.

Political Support for Better Regulation

One of the factors critical to the success of Better Regulation is political support. This factor is mentioned frequently in OECD reports³⁵ and political support for Better Regulation in the Institutions of the European Union is, frequently, underpinned by speeches from Commissioners and senior officials and is now extending to more specific areas of policy such as a move to simplify the Common Agricultural Policy³⁶.

²⁹ 2004 – 2010, approved by Government of Lithuania, Resolution No. 488 (*Official Gazette* 2004, No. 69-2399).

³⁰ Resolution No. 197 (*Official Gazette* 2005, No. 26-830).

³¹ Following the terminology used in Latvia until 2006, Better Regulation activities were designated under the term 'impact assessment'.

³² Commission Decision of 28 February 2006 setting up a group of high Level National regulatory Experts (2006/210/EU).

³³ Group of National experts undertaking work on Better Regulation in each Member State meet twice a year to exchange information.

³⁴ See footnotes 107 and 108.

³⁵ See in particular OECD (1997), *Regulatory Impact Analysis. Best Practice in OECD Countries*, Paris; *Taking Stock of Regulatory Reform*, 2005.

³⁶ See europa.eu/agriculture/simplification/index_en.htm and for papers from a conference on the subject.

Responsibility for Better Regulation policy is conferred on different ministers in different countries. The table below provides a representative cross section of how responsibility for Better Regulation is spread in the NMS.

NMS	Ministry
Cyprus	Ministry for Finance
Czech Republic	Ministry of Interior ³⁷
Estonia ³⁸	Ministry for Justice
Latvia ³⁹	Shared between State Chancellery, Ministry of Justice and Ministry of Finance with the Ministry for the Economy taking responsibility for entrepreneurs.
Lithuania	Ministry for the Economy
Malta	Prime Minister's Office
Poland	Ministry for the Economy
Slovak Republic	Ministry for the Economy
Slovenia	Ministry for Public Administration

The problem, put succinctly by one political figure in the **Slovak Republic**, is that the outcomes from Better Regulation are too abstract to deliver clear political kudos. On the other hand, regulatory failures are clearly visible. If a minister takes responsibility for Better Regulation and if things go wrong he will get blamed. If things go well there will be no shortage of candidates to claim the success as theirs.

Government Programmes and Similar Documents

Specific political support for Better Regulation-type policies may also be found in government declarations or national reform programmes. These tend to be formulas. Without express dates for delivery or defined outcomes, their value is questionable.

The *National Reform Programme of the Republic of Cyprus* laid down priorities for the implementation of a regulatory management reform. In that case, priority was attached within that programme to the development of a policy on impact assessment and the reduction of the regulatory and administrative burden.

In **Estonia**, the 2003 Coalition Agreement mentioned regulatory impact assessment and proposed that the impact of each draft regulation on economic growth and the demographic situation should be assessed. Another priority mentioned in that Agreement was the proposed policy to simplify business start-up rules and the necessity to review regulations that restrict business activity unnecessarily. The current coalition agreement in Estonia refers to the need to simplify the procedures related to dealings with local authorities by businesses.

In the **Czech Republic**, the commitments made to implement the Better Regulation agenda, relating in particular to the integrated impact assessments and the reduction of the administrative burden imposed on businesses, were renewed in the *National Reform Programme of the Czech Republic* (2005-2008) and in the *Strategy for Economic Growth of the Czech Republic*.

³⁷ In the Czech Republic, responsibility for Better Regulation was transferred from the Government Office to the Ministry of Interior following a Government decision of October 2006.

³⁸ However, besides the Ministry of Justice, other ministries are involved.

³⁹ The implementation of the Better Regulation policy in Latvia remains with the State Chancellery. However, other ministries, including the Ministry of Justice, the Ministry of Finance and the Ministry of Economy are also involved.

In **Hungary**, the 2006 programme for Government: New Hungary – Freedom and Solidarity: the Programme of the Government of Hungary for a Successful, Modern and Just Hungary (2006 – 2010)⁴⁰ commits Hungary to progress and recognises the growing number of small and medium sized enterprises and the need to simplify a number of laws to facilitate competitiveness of small businesses.

In **Latvia**, the Government Declaration, an important national policy statement, includes a commitment to improving competitiveness⁴¹ and identifies a number of policy issues characteristic of a Better Regulation policy. These include, in particular, “simplification of decision making” relating to small businesses⁴².

In **Malta**, a general outline of a Better Regulation policy is set out in the ‘National Reform Programme: *Malta’s strategy for growth and jobs for the period 2005 to 2008*’⁴³. In addition, the 2006-2010 Pre-Budget Document refers also to regulatory reform and to the necessity to reduce regulatory burden on business.

In the **Slovak Republic**, support for the implementation of Better Regulation policy may be found in the National Reform Programme of the Slovak Republic (2006 – 2008) and in the document *The Strategy of Competitiveness in Slovakia by 2010 – the National Lisbon Strategy*, which presents four top priorities of the Slovak government, one of them being increasing the quality of the business environment.

Structures to Implement a Better Regulation Policy (NMS)

Better Regulation policy is most likely to be effective when there is a structure to implement it. Three main approaches to the development of structures to implement Better Regulation policy may be seen; a task force, a person or a central coordinating body or a combination of these approaches.

Task Force

In **Cyprus** a group representative of a wide range of ministries and interests has been appointed to develop a policy on impact assessment and determine what other aspects of a Better Regulation policy can be developed. In **Poland** an inter-ministerial working group (the Task Force for Modern Economic Regulation) was established in February 2006 to develop the policy so as to enable it to be submitted for Council of Ministers approval. This Task Force will build on the work done by the team appointed in 2000 (the Inter-ministerial Regulatory Quality Team) and will deal with similar issues, but with a stronger focus on both improving the regulatory environment for business, and making use of the regulatory tools more effectively. In **Slovenia**, an inter-ministerial working group was established to develop and manage a Better Regulation policy.

Person or a Central Coordinating Body

In **Estonia**, responsibility for Better Regulation policy is spread across the Ministry for the Economy, Ministry for Justice, Ministry for Social Affairs and Ministry for the Environment. However, one official is primarily responsible for receiving and disseminating information about Better Regulation policy. She attends international meetings on Better Regulation issues and ensures that information on international developments is passed on to the rest of the public service.

⁴⁰ www.miniszterelnok.hu/domain2/files/modules/module15/1461461FB7EDBA8C3.pdf.

⁴¹ Declaration of the Council of Ministers 1 December 2004. The Declaration is the basis for Government work: see later in the text.

⁴² Declaration of the Council of Ministers 1 December 2004; www.mk.gov.lv.

⁴³ Paragraph 14.3.

In the **Czech Republic**, a Better Regulation Unit was established within the Department for Central State Reform and Regulatory Reform of the Government Office. It has, since November 2006, been moved to the Ministry for the Interior. It is responsible for coordinating Regulatory Reform across the state administration as well as the preparation of strategy papers in this area.

In **Hungary**, an independent Department was established in the Ministry of Justice, called the Department of Impact Analysis, Deregulation and Registration of Law, to provide professional support for quality legislation and improve the quality of impact assessment. However, this Unit was abolished in July 2006 as part of the cut backs in the size of the public sector. Its functions were partially transferred to another part of the Ministry for Justice.

In **Latvia**, the Policy Coordination Department of the State Chancellery is responsible for designing and implementing the policy and strategic planning system, which includes the Better Regulation policy. The latter are prepared in cooperation with line ministries, which are in charge of checking the quality of impact assessment, according to their respective areas of competence.

In **Malta**, Better Regulation is the responsibility of the Better Regulation Unit within the Management Efficiency Unit (MEU). The MEU operates in the Office of the Prime Minister and plays a unique role of an in-house management consultant to the Government. It has developed some experience of impact assessment. The Better Regulation Unit established in December 2005 in Malta forms part of the MEU and is, therefore, part of the Office of the Prime Minister. The mandate of the Unit is to monitor regulatory developments and reduce unnecessary bureaucracy.

A Combination of These Approaches

In **Poland**, an inter-ministerial working group (the Task Force for Modern Economic Regulation) was established in February 2006 to develop the Better Regulation policy so as to enable it to be submitted for Council of Ministers approval. There is also a strong, well managed Department in the Ministry for the Economy and added competencies were given to the Office of the Prime Minister to oversee impact assessments. It is also proposed to appoint an official in each ministry, with responsibility for Better Regulation.

The Polish model reflects the need to have coordination mechanisms in place and the need is recognised to share responsibilities for implementing the Better Regulation policy with line ministries in order to create a sense of ownership of Better Regulation amongst all civil servants.

Strategy for Action and a Process for Prioritisation

Government consists of institutions responsible for formulating policies and taking collective decisions for society. These decisions may be taken in accordance with a fixed, centrally controlled plan, a flexible, strategic plan or decisions can be made ad hoc without any planning reacting to circumstances as they arise. All NMS operate with a mix of these arrangements. Governments, usually, come into office with a plan which is a version of manifestos compromised to fit in with a coalition partner's needs.

Government plans, or strategies to identify problems for action, need to be underpinned by three main elements: a clear set of policy priorities, planning procedures and institutions involved in planning co-ordination and dispute resolution process when there are conflicts to be resolved. The latter is of most importance when there are coalitions.

Policy Priorities

In all NMS, the implementation of EU law is considered to be the highest priority. The next level of priority is Government programmes. **Lithuania** is unique in that a strategy is decided for the country that stays in place regardless of the political parties in power.

In **Latvia**, the overarching strategies are set out in the Government Declaration and the Single Strategy of National Economy.

In the **Slovak Republic**, the overall strategic plan for policy activities is set out in the Slovak Government Programme Proclamation. This type of approach is broadly similar for all countries.

Planning Process

A well-structured policy planning process is an essential part of regulatory management. It ensures that government strategy for collective action is implemented. Priorities may be identified, initially, by government on the basis of political programmes or may result from an administrative planning procedure. Overarching policy documents exist in all NMS, though the approach to compilation varies and the extent to which they are adhered to is dependent on factors such as party discipline within government.

In **Hungary, Poland**, and the **Slovak Republic** party discipline is weak and planning is less effective. Alternative policy proposals arise frequently in Bills and amendments, which move the national agenda away from its overall plan. In these countries Bills, or amendments to government Bills, can be proposed even by members of the same party as the government. This increases the unpredictability of legislation and distorts the planning process.

In the **Czech Republic**, planning priorities are identified following two processes. A Government Policy Statement is prepared on the basis of a list of strategic priorities for the forthcoming 4-year legislature, reflecting priorities selected by each ministry for areas of competence. In addition, *the Annual Plan of Legislative Actions of the Government* and *the Annual Plan of Non-Legislative Actions of the Government* are prepared by the Government Office, on the basis of the Government Policy Statement, and are approved by the Government each year. In **Slovenia**, a similar process is followed that separates out the strategic plans from the more tactical, biennial budget plan and the annual legislative plan.

In **Hungary**, policy priorities are, mostly, determined on the basis of the government programme (generated from party programmes) or as a consequence of day – to – day issues arising. In addition, each ministry has a programme which sets out with greater particularity its approach to the implementation of the Government programme. There is also a six-monthly legislation list which sets out the legislative programme of the government. In Hungary, in practice, a dynamic political system throws up issues regularly not foreseen in any plans and as much as 50% of the legislative output arises from proposals not set out in the Government programme.

In **Lithuania**, these plans include long-term (more than 7 years), medium-term (3 to 7 years) and short-term (1 to 3 years) planning. It operates from bottom to top and from top to bottom. The long-term State Development Strategy is at the top of the pyramid of the different planning documents and serves as the basis for development of sectoral strategies for three to seven years. Vice versa, sectoral strategies can lead to changes in the long-term State Development Strategy.

When preparing their three-year strategic plans, ministries and other public institutions take into account the objectives set out in sectoral strategies. The Action Plan to implement the Government Programme adopted by a newly appointed government, within 3 months of the approval of the Government Programme, outlines specific Government actions to be taken within a four-year period following its publication. The strength of the planning process lies in the fact that, irrespective of the Government in power, there is a continuity of strategy as regards national goals, including regulatory management goals. There is a high level of transparency at every level of the planning process, from the macro plan for the Government as a whole to the micro plans in Departments within ministries which also have plans to give effect to the objectives of these ministries.

In **Malta**⁴⁴, proposals arise from consultation with departments, agencies and commissions, and priorities are determined on a case by case basis, depending on the importance and urgency of the matter.

In the **Slovak Republic**, strategic planning for policy activities is set out in the Slovak Government Programme Proclamation, as a macro tool, and in the Plan for Legislative Tasks of the Government, as a micro tool. However, a sizeable number of legislative proposals is based on proposals originating outside government. These may even include proposals made by members of the political party in Government.

An Effective Structure to Coordinate Policy Planning

The efficiency of a policy planning system is strengthened whenever a body or ministry is entrusted with policy planning coordination, but coordination at the centre of government needs to be effective.

In **Cyprus**, responsibility for the planning of strategic and developmental policy activity is vested in the Cyprus Planning Bureau. Planning of other policy initiatives rests with individual ministries. The Planning Bureau was established following a decision of the Council of Ministers and placed under the Minister of Finance. In cooperation with the Ministry of Finance, it is responsible for the 5-year strategic plans laying out all the development projects and coordinates the planning procedures for the country.

In **Latvia**, the planning of Government actions, at the time of the Sigma review, was managed by the Policy Coordination Department of the State Chancellery.

In **Lithuania**, government priorities are usually set in March along with the budget formation process. When developing cross-cutting policies to implement priorities, all the necessary policy documents have to be discussed with interested parties and institutions. The majority of strategic documents are discussed by the Government Strategic Planning Committee, before their approval by the Government. It is a platform for policy review as well as a suitable format to negotiate and solve contentious issues and coordinate priorities.

Procedures to Resolve Conflicts Between Priorities

A clear strategy to identify problems for collective action and a process for prioritisation by means of policy or regulatory intervention is necessary to ensure a smooth regulatory management.

The deciding factor for resolution of political priority conflict is often the extent to which the proposals must be within budgetary limits. For example, in **Cyprus**, priority is given to policies which are budgeted for in the annual budget. In **Hungary**, the Ministry of Finance has emerged as a dominant ministerial Department, since the far reaching reforms in the system of public budgeting that took place in Hungary in the 1990s. In **Latvia**, medium term government priorities are established by a Government decision. In **Malta**, differences of opinion between ministries on priorities, or on the allocation of resources, are resolved bilaterally or in consultation with the Ministry for Finance.

In all NMS, conflicts that can not be resolved at ministerial level in relation to planning and prioritising of policy issues are submitted to meetings of the government (Council of Ministers) for resolution. The ultimate authority to arbitrate and resolve disputes varies in accordance with the constitutional structure of the country concerned. This function is performed by the President of the Republic (**Cyprus**) or the Prime Minister (**Lithuania**). In all NMS, the relevant authority,

⁴⁴ Malta has three overarching policy documents: 'A Better Quality of Life: 2006-2010 Pre-Budget Document' and the 'National Reform Programme: Malta's Strategy for Growth and Jobs for the period 2005 to 2008 – Public Consultation Document' and the 'National Strategic Reference' which was drafted to address issues related to the distribution of 'Objective One' Structural Funds.

President or Prime Minister, receives regular reports on progress and oversees the development and implementation of plans.

In the **Czech Republic**, the government represents the most important coordination mechanism at the level of the central state administration. If a settlement on a particular issue cannot be achieved at a lower level, it is raised to the level of deputy ministers and then presented to the Cabinet as an “unsettled issue”, if any disagreement still remains. The latter shall decide such cases.

In **Hungary**, in 2000, a new system of policy coordination, called the Referatura, was created in the Office of the Prime Minister. This special body, modelled on one existing in the German Chancellery, is composed of a group of experts who shadow each ministry’s activities. Together with a lawyer from the Prime Minister’s Office Legal Department, they prepare a joint note on all submissions. The joint note describes the proposal, the outcome of inter-ministerial consultations, unresolved issues, and proposals for improvement.

In **Latvia**, key draft policy documents and draft regulations, for which a special working group has been set up⁴⁵, are circulated to ministries before they are submitted to a weekly meeting of the State Secretaries (the highest ranking civil servants of all ministries). Following the Rules of Procedure of the Government, a summary of all ministry proposals, including arguments for accepting or rejecting each proposal is prepared, and accompanies the draft document when it is returned to the meeting of the State Secretaries and forwarded to the Government for approval.

In addition to meetings of the Government in **Lithuania**, regular inter-ministerial meetings are used as an important structure to resolve conflicts between priorities before policy proposals are submitted to the government for a final decision. In Malta, inter-ministerial meetings at technical and political level are regularly held but there are no formalised procedures⁴⁶.

A similar procedure exists in **Hungary**, where the penultimate stage of the legislative process is a meeting of the Administrative State Secretaries. In this case policy documents are circulated to ministries before the State Secretaries’ meeting if a special working group is set up to draft a policy document.

Many coalition governments in **Latvia** have had an alternative body for deliberations, called the Coalition Council. It consists of equal representation of all parties represented in the governing coalition and under some governments it has acquired an unofficial, yet key, place in the decision-making process. The Coalition Council can be used as a place to resolve politically sensitive issues, and to reach decisions, which are then officially adopted in the Cabinet of Ministers’ meetings. The issues discussed at the Coalition Council are draft policy proposals and draft legislation already consulted at ministerial level. This alternative forum operates outside official channels, does not follow procedures set out for policy-making, and is not open to public scrutiny.

In **Poland**, all draft legislation must be subjected to scrutiny within the permanent Cabinet Committee at the Secretary of State level before it is submitted to the Cabinet.

⁴⁵ The word regulation is used here to include primary and secondary legislation. Policy documents for which no working group has been set up are circulated to ministries only after the State Secretaries’ meeting.

⁴⁶ At the Technical level there are: monthly meeting of Permanent Secretaries chaired by the Principal Permanent Secretary, weekly meeting of EU Affairs Directors. Other regular meetings: Forum for Corporate Services Directors (Human resources, finance), Forum for Policy Development Directors, Forum for Programme Implementation Directors, ICT Forum. Discussions held within these fora are reported to the Permanent Secretaries.
At the political level, there is a: weekly meeting of the Cabinet on the basis of Cabinet papers circulated beforehand, weekly meeting of the Prime Minister, Permanent Secretaries for Finance and the Principal Permanent Secretary. Monthly meeting of Cabinet Committee support units: there is one cabinet committee for each key sector (environment, tourism, capital projects, competitiveness). The Prime Minister chairs these Committees, which gather key ministries, e.g., the Principal Permanent Secretary, Cabinet Secretaries and some stakeholders.

In the **Slovak Republic**, differences of opinion between ministries, as regards draft legislation, are resolved by bilateral discussions or upon a meeting of the Directors General. Legislation can not be submitted to the Council of Ministers until these disputes are resolved. However, in the case of substantial comments, the conflict may be resolved by the Council of Ministers.

A Transparent and Well-structured Process

All of the NMS reviewed had a transparent and well-structured process for policy formulation and legislation drafting. They all have rules or systems in place to formulate policy, draft legislation and submit the outcome to government. All NMS have adopted a framework broadly similar to that recommended in the OECD Reference Checklist for Regulatory Decision Making⁴⁷, namely, that the following questions should be asked when formulating policy:

- Is the problem correctly defined?
- Is government action justified?
- Is regulation the best form of government action?
- Is there a legal basis for regulation?
- What is the appropriate level (or levels) of government for this action?
- Does the benefit of the regulation justify the costs?
- Is the distribution effect across society transparent?
- Is the regulation clear, consistent, comprehensible and accessible to users?
- Have all interested parties had the opportunity to present their views?
- How will compliance be achieved?

The decision to develop a policy may be taken by government or an individual minister. The nature of the decision (government or ministerial decision) depends on the size and complexity of the problem to solve and the extent of resources required. In the case of the former, government decisions are, usually, preceded by a process that includes consultation within and across ministries. In the case of secondary legislation, the process is simpler and inter-ministerial consultation is, usually, not necessary.

However, in **Malta** proposals for secondary legislation must be notified and approved of by the Office of the Prime Minister. This approach avoids ministers making regulations that are in conflict with the policies of the government as a whole or the making of regulations that conflict with regulations made by other ministers. In **Cyprus**, secondary legislation is subject to a more detailed review in the parliament than is usual in any other NMS.

Iterative Sequence

In all NMS, the policy formulation process begins with a decision in principle, at a political level, to initiate the policy development cycle. The decision may originate from any one of a number of sources. Policy sources are similar in all countries, though the mix varies. Policies may derive from government manifestoes, coalition agreements, court cases, short-term emergencies, international obligations.

Following the decision, in principle, to initiate the policy-making cycle, policy formulation follows a similar iterative sequence in all NMS. The official concerned with the policy, initially, conducts desk research on the problem and identifies if the problem has been dealt with domestically or internationally, and develops a solution, in consultation with colleagues within and across

⁴⁷ OECD, Recommendations of the OECD on Improving the Quality of Government Regulation (Adopted 9 March 1995). See also OECD Guiding Principles for Regulatory Quality and Performance, endorsed by Council of OECD 28 April 2005, OCDE/GD/95(95).

ministries, and with interested stakeholders. In **Slovenia**, the Government Rules of Procedure require officials to make a comparative study of three other countries as part of this stage of the process.

Distinction between Policy Formulation and Regulation Drafting

The most striking difference between policy formulation and regulation drafting procedures in the NMS could usually be traced to whether the countries had been influenced by common law or civil law traditions. In addition, countries that had formerly fallen within the communist sphere of influence have also undergone significant modernisation of their structures and processes and even had experienced complete turnover of personnel. In some NMS, notably **Estonia and Latvia**, the levels of experience and institutional memory were considerably less than in others. However, in most NMS there is a limited number of officials with experience of legislative drafting. This problem is understood and is being addressed in **Poland and Hungary**, where there are some facilities for training officials to draft legislation.

Other than the **Czech Republic** and the **Slovak Republic**, there is little formal distinction between policy formulation and regulation drafting. This is reasonable in the case of simple policy activities, as there is often little need to separate out the two processes. However, for substantial policy issues, it is generally regarded as useful to separate the policy formulation activity from law drafting. In practice, most knowledgeable people interviewed, in all of the NMS, were of the view that there should be some form of division of labour or, at the very least, a separation of the two tasks.

In the **Czech Republic** and the **Slovak Republic**, there is a very distinct division between the policy formulation stage of the process and the regulation drafting stage, in relation to the more significant policy issues. In the first instance, a decision in principle is taken by the government to proceed with a proposed policy and, when that decision has been taken, the drafting of legislation begins.

None of the countries in this study has a central body dealing exclusively with law drafting.⁴⁸ This is not surprising in the civil law countries, where officials who formulate policy are also expected to be able to draft legislation.

In some countries, for example, the **Czech Republic, Hungary and Slovakia**, the legal department in a ministry is frequently expected to draft legislation for which a different official has formulated the policy. However, no general conclusion may be drawn from the variation in practice in any of these countries. The practice varies in accordance with the officials concerned and their familiarity with the subject matter of the policy to be legislated for and their capacity to draft legislation.

Few NMS adopt a multidisciplinary approach to the preparation of legislation. In **Estonia and Latvia** regulations, especially when they rule on complex issues, are drafted in multidisciplinary working groups which may include representatives from outside experts and NGOs. The use of working groups is common to all NMS, particularly where the issue is complex and requires specific, technical knowledge which may not be available within the public sector but may be available in the private sector.

Civil and Common Law Traditions: Procedural Rules and Customs

In the civil law countries, the policy formulation and legislation drafting process is undertaken in accordance with a set of written rules. Some civil law countries, **Estonia**, for example, have constitutional requirements to identify the authorities entrusted to initiate laws.

⁴⁸ For an analysis of the arguments for and against a central body see SIGMA (1997), *Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe*, SIGMA Paper No. 15, <http://www.oecd.org/dataoecd/42/21/1823473.pdf>.

Various rules in NMS prescribe how policies are to be prepared and presented to government and to parliament. There are some subject-specific general rules for the development of policies and drafting of regulations⁴⁹. Special rules are laid down also for implementing certain types of strategy and action plans, e.g., in the energy sector, forestry and agriculture.

In **Hungary**, the legislative procedure is regulated by the Constitution and the Legislation Act 1987. Chapter two of that Act provides that proposals for new laws should be subject to preliminary studies and use clear language and that identical or similar issues should be regulated in the same laws. It also prescribes that citizens should participate in the formulation of legislation. A Government Decision relating to Governmental Procedures⁵⁰ prescribes, among other matters, the details of the intra-governmental consent mechanism and the content, required by law in **Hungary**, of any proposals to be submitted to government.

Latvia has enacted an Administrative Procedure Law⁵¹ which sets out general provisions for the functioning of the administration. The Rules of Procedure of Government⁵² regulate the procedures of government. Policies must be drawn up in accordance with these rules which include, for example, the classification and structure of policy documents as well as the Procedure for Filling in Annotations of Draft Regulations⁵³. The annotations are the explanatory materials that accompany a draft regulation sent to the Cabinet of Ministers and to the parliament. They include an assessment of the economic and social impacts of the draft regulation considered, as well as the impact it may have on the state budget.

Similar materials in Lithuanian law are to be found in the Law on Government, which sets out how the government programme is to be implemented. There are also guidelines prepared by the Ministry of Justice, which specify the structure to be followed to present proposals for regulations⁵⁴. Rules for inter-ministerial consultation and co-ordination are prescribed by the Government Rules of Procedure approved by a government resolution⁵⁵. Paragraph 49 of the Rules on Consultation 'Requirements for legislation Drafting and Approval' contains a list of institutions with which regulations have to be discussed prior to submission to government.

In Poland, the procedure for the development of government draft primary legislation is set out in the Law on Organisation and Rules of Procedure of the Council of Ministers and in the Sphere of Competence of Ministers of 8 August 1996, together with its implementing regulations. Officials formulating policy and drafting legislation also need to have regard to the Principles of Legislative Technique set out in a regulation of the Ordinance of the Prime Minister on Principles of Legislative Techniques⁵⁶.

The Organisational Order of the Slovak Republic Government Office lays down basic principles for the overall management of state administration. Further details regarding the role of the Government Office in this regard are set out in the Statute of the Slovak Republic Government Office. However, the Slovak Republic is a special case as the division of labour between officials

⁴⁹ For example, the Aarhus' Convention requires a Strategic Environmental Impact Assessment.

⁵⁰ No. 1088/1994.

⁵¹ November 2001.

⁵² March 2002.

⁵³ Council of Ministers of the Republic of Latvia, 18 September 2001. See also amendments July 12 2002 and June 11 2004.

⁵⁴ Structure to be followed: there should be a legal basis for the law; there should be a proper legal evaluation of the proposal; there should be a reference to related laws and steps taken to avoid conflict with other laws or duplication of laws; there should be an explanation of why the law is needed; there should be a description of how the problem has been solved in other countries; there should be a reference to relevant E U or international laws, if any; the proposal should explain fully its purpose; the financial, economic and other impacts of the proposal should be assessed and referred to; reference should be made to the structure of the law when fully drafted; reference should be made to any other law to be amended.

⁵⁵ No. 728 (OG 1994, No. 63-1238).

⁵⁶ 20 June 2002.

who prepare policy papers and those who draft the legislation mirrors the procedure followed in countries with a common law tradition or which have been influenced by such tradition, where legislation is drafted by lawyers who have specific skills in drafting legislation.

The Rules of Procedure of the Government of **Slovenia** and the Rules of Procedure of the **Slovenian** National Assembly regulate, respectively, the organisation of the government and the parliament. The former provide, among other matters, for the role of the Prime Minister, organisation of the work of government, working parties of government, government councils, format of government documents and the usual matters relating to the organisation of government.

This pattern is followed in most of the civil law countries studied, though the terminology varies and a range of legislative titles covers this field, including Administrative Procedures Acts, Law on Government or Organisational Orders.

In NMS which have been influenced by common law traditions, there are, usually, no standardised administrative procedures required by law to ensure that policy action takes place at the appropriate level of government. Much of the policy-making process is regulated by custom or by procedures developed by ministries.

In **Cyprus and Malta**, the operation of the policy formulation and legislation drafting process is a matter of custom, or circulars issued for internal use, rather than something which is regulated by rules of law or procedure, as is the case in the civil law world.

Quality Assurance — Institutions

Experience in OECD countries suggests that good regulatory management requires a quality assurance process that validates the flow of proposed regulations against good regulatory principles. Regulatory management should also address the stock of regulations. This is a particularly important issue for all NMS, due to the pace and pattern of the implementation of the *acquis communautaire*. It can not be assumed that unnecessary regulatory burdens have not been imposed or that all new laws enacted post-independence are a perfect match with regulations that were already in place. Officials in all of the NMS acknowledge that the *acquis* was adopted at a very high speed and that a period of review and reflection is needed so as to confirm that the *acquis* has been adopted effectively.

It is arguable that a quality assurance process needs to function horizontally, as regards the implementation of an overarching policy on regulatory management and vertically, within each body responsible for making regulations. The quality assurance process may be generalised for the flow of regulations and may be generalised for the stock of regulations or may be undertaken in particular sectors.

There are two main models of quality review in the NMS. The first is where quality review is undertaken by a series of reviews within ministries, and across ministries, and sometimes with outside bodies. These include reviews by:

- Office of the Prime Minister (however called).
- Ministry of Justice.
- Ministry of Finance.
- Inter and intra-ministry reviews.
- Courts.

The second model is where reviews are undertaken by a specially designated committee or body. The former approach predominates and the latter tends to be confined to technical, legal issues. No NMS review the quality of legislation specifically to ascertain the extent to which the

flow of new legislation complies with Better Regulation principles. In all NMS, the bodies involved in regulation quality checking have very heavy work loads, which result in delays in the preparation of legislation.

Review by the Office of the Prime Minister or other body at the centre of government

Typically, the Office of the Prime Minister is involved from the point of view of the consistency of the proposals with government policy. The role varies in accordance with the extent to which the Prime Minister is a powerful figure in the system. In some NMS at the time of the Sigma review, for example, in **Hungary, Latvia, Lithuania, Malta and Slovenia**, the Prime Minister and the Prime Minister's Office were very powerful.

In **Hungary**, a special unit composed of advisers, and established in February 2006 within the Office of the Prime Minister, is responsible for summarising the opinions expressed on regulations proposed by the government during the technical, policy reconciliation process. This is designed to filter out problems relating to the quality of, or the necessity for, the proposed legislation. Inadequately prepared proposals are rejected at this stage.

In **Latvia**, the State Chancellery plays a very central role in a number of ways, notably in reviewing draft laws to ensure their conformity with strategic plans, political priorities and legal technicalities. In addition, it controls the quality of legislation through the 'Annotations' process. The State Chancellery is the body responsible for enforcing procedures and rules as regards policy-making and strategic planning. Proposals not completed in accordance with the law are sent back to ministries and are not dealt with until they are in the proper form.

In **Lithuania**, the Office of Government plays an important role in the quality assurance process. These tasks are shared in the Chancellery by a number of directorates, including the Strategic Planning Directorate, the European Directorate and the Legal Directorate.

The review by the Office of Government ensures conformity with national plans and strategies. The Office of Government, Legal Division, also reviews drafts from the point of view of legality and legal technicalities. The Legal section, however, has the advantage that it is represented at the weekly meeting of the State Secretaries which reviews proposals before they are finally submitted to Government. This gives the Legal Section the influence, if not the power, to block a proposal if, potentially, it could give rise to legal problems.

Ministry of Justice

In all NMS except **Cyprus**, the Ministry of Justice is involved from the point of view of constitutional and legal issues. In **Estonia**, for example, the Ministry of Justice is the ministry responsible for legal quality at the start of the drafting process. Once the concept of a draft law is approved by the Ministry of Justice it may be drafted into legislation. The Legal Chancellor also has a role in the quality assurance process.

In **Hungary**, the Ministry of Justice has a role in Better Regulation issues though this was reduced during the assessment process. In 2005, a special unit was established in the Ministry (Department of Impact Analysis, Deregulation and Registration of Law). That Unit was to be responsible for assuring the quality of impact assessments; however, it was abolished in July 2006.

In **Latvia**, the Ministry of Justice reviews drafts from the point of view of legal technicalities, consistency with the Constitution, with the general principles of law and with existing regulations and conformity with strategic plans, with political priorities and with norms of international law. This responsibility includes also a review of drafts to ensure compliance with European norms. The State Chancellery, together with the Ministry of Justice, ensures clarity and coherence of drafts.

Review by the Ministry of Finance

In all NMS, the Ministry of Finance reviews drafts from the point of view of budgetary issues so as to ensure that the proposals are within budgetary limits. For example, in **Cyprus** draft laws submitted to the Council of Ministers must be accompanied by a written opinion of the Ministry of Finance, except in cases where there is no connection with budgetary issues. The Constitution provides that every bill submitted to Parliament must be accompanied by a report called "Objects and Reasons" signed by the Attorney – General of the Republic.

Inter and Intra-ministry Reviews

In some NMS, legal departments within each ministry have a role in reviewing the quality of legislation drafted within the ministry and in other ministries.

In **Hungary**, the Legal Department of a given ministry is obliged to ensure that the regulation produced by the ministry is compatible with the legal system and rulings of the Constitutional Court. In addition, within a ministry there are Operational Rules designed to ensure consistency within a ministry. The inter-ministerial cross-review, for example, in the **Czech Republic**, **Hungary** and in the **Slovak Republic** is a form of quality review. In theory, the ultimate review of quality is undertaken by the government (Council of Ministers) when it examines draft legislation.

In **Estonia**, the circulation of drafts is organised by an electronic system called e-law (*e-õigus*), administered by the Ministry of Justice. The system enables a comprehensive circulation of all relevant materials and a straightforward process of commenting on drafts. From the moment that the ministry has prepared a concept of a draft law, it is inserted into the electronic coordination system and sent to the Ministry of Justice, electronically, through that system for approval. Later in the process, when a draft law needs the approval of line ministries, the draft, the explanatory letter and any annexes may be inserted into the electronic coordination system, which automatically sends a message to the ministry which is required to send its opinion on the draft. From this moment, all relevant documents may be consulted by the public.⁵⁷

In **Latvia** the interministerial consultation process is organized by the electronic circulation of documents using the government web page. From the moment of the 'announcement' of a draft in the Meeting of State Secretaries, each draft and annotations of Bills and other legal instruments are made available for public consultation. Ministries now only use the electronic form of documents in the process of analysing and giving opinions on proposed drafts. Government meetings are also organised around the electronic circulation of documents (e-portfolio).

A similar system is to be introduced in **Slovenia** with an editorial function similar to a spell check which will enable officials to verify style usages.

In **Poland**, the Permanent Cabinet Committee (KRM) may delay the consideration of proposed draft legislation by asking the department to remedy formal defects, such as the absence of the list of differences, EU compatibility assessment, and public consultations. If these problems are not addressed within 14 days, the secretary has the authority to stop the document from being considered at the KRM.

Role of Courts

In all NMS, the Constitution provides for a mechanism ensuring the constitutionality of laws, through the establishment of a Supreme Court or Constitutional Court. It examines the Constitutionality or compatibility of the law with international treaties and European law. Its decisions of a policy nature are taken into consideration and policies and legislation adapted accordingly.

⁵⁷ This also contrasts with the secrecy and formality that surrounds this type of process in older democracies.

In **Cyprus**, a problem arose which resulted in the Supreme Court declaring unconstitutional a legal provision introduced while implementing a Directive. This problem has now been solved by law 127 (I) of 2006 which has amended the Constitution of the Republic of Cyprus, so as to establish the supremacy of the *acquis communautaire* over the constitutional provisions.

An unresolved issue in **Hungary**, in relation to the role of the Supreme Court is its jurisdiction as regards the control of the transposition of directives into the Hungarian legal system.

In **Hungary**, the Constitutional Court plays a very active role in the quality review of regulations. Decisions of the Court have a significant effect on the content of regulation in that officials drafting legislation need to take into account decisions of the Constitutional Court. Its quality control role has evolved since its creation. During the first 8-9 years, the primary task was to facilitate the transition from one legal regime to another. In the second phase of the development of the court, the two main areas of activity were: the constitutional control of proposed legislation and the supervision of the operations of state organs, from a constitutional point of view.

The Hungarian Constitutional Court also issued rulings supporting the use of Better Regulation tools, contributing, indirectly, to strengthening the quality check of legislation. It has been asked to consider the consequences of a failure to consult on a piece of legislation. The case concerned environment legislation which included a compulsory statutory requirement to consult. The consultation did not take place and the Constitutional Court was called on to determine whether a regulation made without the necessary consultation taking place might be declared unconstitutional⁵⁸. The court held that the failure to consult with the Environmental Council, in accordance with the law, invalidated the law made without the proper consultation process being followed. However, in another case, the Court ruled that for Acts of the National Assembly, the failure by the government to consult a particular group did not invalidate the law.

Specialist Bodies Responsible for Quality Review

In some countries, there are designated bodies to review draft laws from the point of view of consistency of a draft with the Constitution and the general principles of law.

In **Cyprus**, by virtue of the Constitution, the Attorney General of the Republic is the legal adviser of the Government. All drafts of proposed legislation must be seen by the Attorney General before they are submitted to the Council of Ministers. All draft legislation must pass through the Office of the Attorney General. In some cases, this results in redrafts by that Office to assure the legality and constitutionality.

In the **Czech Republic**, the quality review process is assured by the Legislation Council of the Government (LCG) which reviews the legal aspects of the draft. Some criteria are laid down in the Legislative Rules of Government. These ensure that attention is given to the quality of the legal text and to matters such as organisation, clarity and comprehensibility of the drafts.

The LCG is an independent committee, consisting of civil servants, independent experts and academics, chaired by the minister responsible for legislation. The Council is divided into several working groups, each responsible for a respective area of public, private or criminal law. It is supported by a permanent Secretariat called the Government Legislation Office, which is a part of the Government Office.

In **Malta**, the Attorney General has a role similar to that of the Chief Law Officer in **Cyprus** and reviews all drafts of primary and secondary legislation from the point of view of constitutionality and consistency with the general principles of law. Once drafted, legislation must be referred to the Office of the Attorney General for review and to be translated into Maltese before submission

⁵⁸ Resolution No. 30/2000.

to Government (primary legislation) or signature by a Minister (secondary legislation). All legislation is drafted in Maltese and English. In case of conflict, the Maltese version prevails.

In **Poland**, there are two bodies concerned with legislative quality: the Government Legislation Centre (GLC) and the Legislative Council. The GLC was originally established within the Chancellery of the Prime Minister but it was made into an independent body in 2000⁵⁹. It is, nevertheless, answerable to the Prime Minister.

The GLC coordinates the government's legislative activity, provides legal advice to government, prepares government drafts and advises on parliament's drafts⁶⁰. Its head participates in the meetings of the Standing Committee of the Council of Ministers and his office is consulted on a day-to-day basis by the Socio-Economic Affairs Division, Department of the Prime Minister's Chancellery⁶¹.

The Legislative Council is the senior legal advisory body to the Prime Minister⁶². It advises on the enactment of draft primary and secondary legislation and evaluates the condition of the law, particularly in terms of alignment with the Constitution and EU law. Evaluation reports are regularly issued⁶³. However, in practice, the Legislative Council may be consulted by the Cabinet Committee and the Cabinet only if a collective decision is taken to that effect⁶⁴. Approximately 60% of the draft Bills are submitted to it but its opinion does not bind the department.

In the **Slovak Republic**, after the inter-ministerial amendment procedure, Bills are submitted to the Legislative Council of the Government, which is a constituent part of the Office of the Prime Minister. It addresses technical, legal issues, such as lack of conformity with the Constitution and reviews drafts to improve their quality. The Secretariat of the Legislative Council drafts an opinion on each Bill, which is prepared following discussion with the official in the Ministry responsible for the Bill.

In addition, from time to time, there is a two-day meeting, where the Legislative Council reviews its work and the Chairman meets with officials who are involved in the process of drafting legislation, and the Secretariat of the Council, to identify ways in which legislative drafting can be improved. Close attention is also paid to the conformity of laws with the Constitution and the general principles of law. The Institute for Approximation of Law screens the compatibility of Bills with EU law.

In **Slovenia**, all legislation must be submitted for review by the Government Office for Legislation to examine it in terms of its conformity with the Constitution, general principles of **Slovenian** law, the *acquis communautaire*, and its compliance with the style of **Slovenian** legislation.

Quality Assurance – Tools

In most countries, explanatory reports must be submitted to the reviewing bodies and the parliament in order to enable them to carry out their quality assurance role. As a result, in some countries, draft regulations may be returned to the drafting ministries where the information provided by the supporting documents is not sufficient (**Latvia, Slovenia**).

The reports may be described differently in the various countries: policy documents, annotations, covering letters, law concept papers, explanatory reports, and legal check lists. However, the

⁵⁹ OECD (2002), *Reviews of Regulatory Reform, Poland – From transition to new regulatory challenges*.

⁶⁰ OECD (2002), *ibid.*

⁶¹ Goetz K.H., Zubek R. (2005), *Law making in Poland: rules and patterns of legislation*, Report commissioned by Ernst & Young Poland within the framework of the Ernst & Young Better Government Programme, April 2005.

⁶² K.H. Goetz, R. Zubek, *ibid.*

⁶³ OECD (2002), *ibid.*

⁶⁴ K.H. Goetz, R. Zubek, *ibid.*

content of these reports is, in general in the NMS, quite similar and they usually include information such as the justification, scope of the proposal and the certification that it complies with EU law. Some reports may contain an assessment of the various impacts that the draft regulation may have, including, very often, the financial impacts (**Latvia, Slovak Republic, and Slovenia**). In theory, in all countries except **Cyprus** and **Malta** all proposals submitted to government should be accompanied by an impact assessment but in practice the quality of these varies substantially.

In some countries, the requirement to support a draft regulation with an explanatory note does not apply to all legislation. In **Malta**, the legal check list must be filled in only for secondary legislation. In addition, some specific check lists or reports may be required in the case of primary or secondary regulations transposing EU directives (**Cyprus** and **Lithuania**).

In countries where policy-making and regulation drafting are clearly separated, there may be two kinds of report, one policy paper and one explanatory report, as is the case in **Estonia** and **Latvia**. However, in most countries, a single document accompanies the draft law from the drafting stage to its presentation before the parliament.

Material required for the information of the Attorney General in Cyprus

The work undertaken in the Office of the Attorney General is facilitated by it getting good instructions to draft or clear instructions as to what issues need attention. Its task is made easier by the requirement that officials sending to it draft legislation must always send with the drafts sufficient information to enable it to perform its functions effectively. This information includes:

- ▶ Adequate information on the history of the problem, a detailed explanation of the legislative proposal aimed to rectify (e.g., discussions that have taken place, ad hoc committee proposals, judicial decisions etc.).
- ▶ The main goal(s) of the legislative proposal, with a report on the necessity for any possible reservations or transitional clauses.
- ▶ The means with which the main goals of the legislation shall be accomplished (e.g., the mechanisms anticipated to come into force, competencies and powers deemed necessary to grant, etc.).
- ▶ All known difficulties and ramifications (legal, social, administrative) that could possibly be caused by the legislation, as well as the expected costs of its application publicly and/or privately.

Model Law Concept and Explanatory Letter in Estonia

In **Estonia**, two documents are submitted at different stages of the rule making process to the reviewing bodies. The Law Concept Paper is drafted at the stage of initiation of policy and the explanatory letter is circulated at the stage when the legislation is drafted.

At an early stage in the policy formulation process, a ministry proposing to introduce new legislation must send the broad outline of the proposal, in the form of a Law Concept Paper, to the Ministry of Justice for approval of the proposal in principle.

Model law concept and explanatory letter (Estonia)

The Law Concept Paper is based on a circular letter sent to all ministries indicating that draft regulations for consideration by government should set out:

- 1) Description of the situation of the area.
- 2) Purpose of the proposed regulations.
- 3) Potential means to achieve the policy goals.
- 4) The scope of the law.
- 5) Impacts of the proposed regulations.
- 6) Financing.
- 7) Presumable time limit for preparing the draft law and the name and contacts of the official responsible as well as the name and contacts of the official who has some legal expertise.

In addition, a draft law must be accompanied by an explanatory letter.

The government regulation on technical rules also deals with the structure of the explanatory letter of a draft law and requires that the explanatory letter shall include the following parts:

- 1) Introduction.
- 2) Purpose of the draft.
- 3) Content and comparative analysis of the draft.
- 4) Terminology of the draft law.
- 5) Conformity of the draft to the law of the European Union, effects of the regulation.
- 6) Expenses necessary for the implementation of the regulation, implementation acts of the regulation, enforcement of the draft.

Annotations in Latvia

In **Latvia**, draft laws and draft regulations which have a socio-economic impact or an impact on the environment or on the state budget must be accompanied by a document called 'annotation' which summarises the impacts they may have. The annotation ensures that drafts submitted to the State Secretaries' meeting and, ultimately, to government are supported by research and policy analysis. A description of the annotation process is set out in the box below.

Annotations (Latvia)

Annotations are required by law and drafts submitted without the required degree of annotation may be returned to the ministry by the State Chancellery for revision. Participants in the State Secretaries' meeting may also request that an annotation be prepared for a draft law in case there is none.

The purpose of the annotation is to ensure evaluation of the socio-economic impact and fiscal impact on the state budget and on the budgets of local governments of proposed policies or regulations and to prevent adoption of conflicting regulatory enactments.

The annotation sets out:

- ▶ The current situation and a description of the problem to be solved
- ▶ A description of the main socio-economic indicators
- ▶ Current legal regulations and necessary amendments
- ▶ Reference to Government Declaration or a policy document authorising or requiring proposal
- ▶ Purpose of proposal and brief summary of it
- ▶ Medium-term financial impact assessment
- ▶ Reference to the EU legal instruments and international agreements
- ▶ Communication with NGO`s relevant social partners
- ▶ Institutional arrangements for the implementation of the draft regulation

A properly completed annotation should show an analysis of the impact on the development of society and national economy, indicating possible changes in macroeconomic environment, business environment and simplification of administrative procedures, social and environmental situation and an analysis of the impact of the proposal on the observation of human rights and on opportunities for men and women.

More specifically, the impact must be assessed on a range of factors, including:

- ▶ The volume of the production of goods and services
- ▶ The employment rate
- ▶ The unemployment rate
- ▶ Prices
- ▶ Volume of exports
- ▶ Competition.

Legal Check List in Malta

A legal notice check list has been in force since 2004. It applies, however, only to secondary legislation. The function of the check list is to ensure that the Prime Minister and the Cabinet are informed about what secondary legislation is made and why it is needed. The check list covers the following areas:

- General aspects (proposed legal notice title and Act in virtue of which it is being issued; objectives, scope and compelling reasons for publication).
- Drafting exercise (whether consultation with stakeholders and a regulatory impact assessment were carried out).
- Impact (impact on the private sector – envisaged new or increased burdens and procedural or administrative impacts; impact on government – bearing on other Ministries and entities and whether proposals impact on government priorities and mainstreaming policies).

- Outcomes (positive and negative outcomes; mitigation measures in case of negative outcome).
- Deadline for publication.

Explanatory Statement in Poland

Bills should be accompanied, when submitted to government and to parliament, with an explanatory statement which must indicate, amongst other matters, the estimate of its social, economic and financial effects, sources of finance, a statement of whether the Bill proposes to impose a burden on the State Budget, and a declaration about the compliance of the Bill with the law of the European Union. Bills presented by the Council of Ministers should be accompanied by proposals of basic secondary legislation.

Following the Legislative Rules of the Government of the **Slovak Republic** and the Methodological Instructions, draft Bills must be accompanied by:

- A cover report containing a general justification for the legislation, the draft government resolution, the draft resolution of the parliament, the actual draft regulation;
- An explanatory report containing a justification for each section of the draft, details on the compatibility of the law with the Constitution, other laws, international treaties; as far as EC legislation is concerned, the report shall contain a specific clause explicitly certifying the compatibility of the draft law with the law of the European Union; an evaluation of the inter-ministerial comment procedure and the evaluation of the financial, economic, environmental and social impacts of the draft law.

Explanatory Letter in Slovenia

The Rules of Procedure of the Government of **Slovenia**⁶⁵ require that all primary legislation be accompanied by a covering letter which includes:

- Data referring to identification and procedure for the consideration of the government document.
- Government decision proposal. If amendments to an implementing regulation are proposed, the document shall include a proposal for the adoption of government decision on determining the consolidated text.
- Assurance of the proposer that the impact assessment of proposed government decisions was carried out and that required inter-ministerial coordination and consultation with the representatives of civil society was held; the impact assessment shall be carried out in the area of public finance, compliance with the *acquis*, removal of administrative barriers, as well as in the area of public administration, judiciary, economy, environment and social situation of individuals. The proposer shall be accountable for the accuracy of the part of the assurance under their competence.
- The explanation of proposed decisions, including the explanation of effects of the proposed measures and other data required for the quality decision-making of the government, which shall be set by the Government Secretary General.
- All elements prescribed by the National Assembly of Slovenia Rules of Procedure if the draft is submitted to the National Assembly.

The Secretariat General issued an instruction⁶⁶ including in Annex a form which is to be filled in by officials when drafting regulations and refers to all the elements of the explanatory report that needs to accompany a draft text according to the Rules of Procedure.

⁶⁵ Article 8.

⁶⁶ Instruction No. 10 for implementing the provisions of Rules of Procedure of the Government of the Republic of Slovenia.

Specific Check List and Table for Transposing EU Legislation in Cyprus, Lithuania and Malta

In **Lithuania**, a table of concordance, provided with each draft to give effect to an EC Directive, shows the derivation from the Article of the Directive and the destination to the article in the draft legislation. This table also provides a degree of transparency which is of value to those who have to interpret the legislation and to the European Commission who ensure that Member States comply with their obligations.

In **Cyprus**, the laws transposing EC Directives follow the same path as ordinary laws. However, the explanatory report sent to the Council of Ministers, together with these transposing laws as well as their drafting procedures, differs to some extent from the one sent for ordinary laws.

The report that accompanies a Bill to parliament is presented in accordance with a structured questionnaire about the purpose of the transposition. This document includes a specific checklist drafted by the Office of the Attorney General before the accession period and which the relevant department is required to fill in on the basis of guidance issued by the Ministry of Finance.

Check list that must accompany Bills submitted to Parliament (Cyprus)

The checklist mentions the following elements:

- ▶ Purpose – scope of new legislation
- ▶ Reference – analysis of certain EU legislation
- ▶ Timely commitments for adoption
- ▶ Possibilities of derogation/*acquis*
- ▶ Easiness/flexibility for any transitional arrangements
- ▶ Competitive reference to existing legislation in Cyprus and to which extent affected by new legislation
- ▶ Capacity of the country to implement the provision re: staff mechanisms
- ▶ Economic evaluation of the expected effect on citizens — organisation or other interests of the country (general, economic, social or other of the proposed legislation)
- ▶ Reference to meetings organised
- ▶ Contacts with organizations — people interested
- ▶ Direct course of implementation in the long-term

In addition, in the case of EC Directives, a timetable is also filled by the relevant department in order to ensure a timely transposition; this mentions the following elements:

- ▶ Legislation title
- ▶ Relevant EC Directive
- ▶ Transposition period
- ▶ Department responsible
- ▶ Date of completion of drafting
- ▶ Legal vetting: date of submission – date of completion
- ▶ Council of Ministers: date of submission – date of approval, date of signature by the Minister (for Orders)
- ▶ Parliament: date of submission — date of approval
- ▶ Date of sending to the government — printing off
- ▶ Reference of publication

In **Malta**, in addition to the check list prepared for use by Ministries in preparing secondary legislation, the Malta Environment and Planning Authority (MEPA) has drawn up a check list for drafting secondary legislation implementing EU directives.

In accordance with the MEPA Guide, a transposition team is set up for each new item of legislation, comprising the policy officials, MEPA's legal advisor, MEPA's EU Coordinator and technical specialists from other agencies, as required. The team must then draw up a transposition plan, laying down the timing and resources required in order to transpose the legislation properly and on time. The project plan should identify who is involved in this process. It sets out the objectives of the transposition and a precise time schedule for internal and public consultation, as well as for post-consultation evaluation. It should also determine what risks and difficulty may need to be faced during the process of transposition.

Appropriate Number of Suitably Trained Personnel

There is no rule on the ideal number of suitably trained personnel. The efficiency of a given system may depend on the qualifications, experience and attitude of the officials and the way they are managed. There are many variables in levels of ability, education and systems and exact quantitative comparisons are difficult if not impossible.

In many countries, personnel with the level of competence to formulate policy and draft legislation may be in demand in the private sector and are not inclined to stay in the public sector. This was noticeable, particularly, in **Latvia** and the **Slovak Republic**. In most NMS, the lack of skilled people available to draft legislation was mentioned by officials interviewed.

In **Cyprus**, the Office of the Attorney General has a staff of 80 [lawyers and support staff]. Ministries do not have a separate legal service but most of the people working in ministries have a legal background. However, the levels of staffing in that Office were set to be improved.

In the **Czech Republic**, the Legislative Council of the Government (LCG) is an independent committee, consisting of civil servants, independent experts and academics, chaired by the minister responsible for legislation. It is composed of some 25 members. Working groups (namely for public law, private law and criminal law) are composed of 10 to 15 people who are not full-time civil servants. The Members of the LCG are appointed at the discretion of the government and should be eminent and well-respected public or private sector lawyers and not actively involved in party politics.

In **Hungary**, at the Ministry of Justice, there are around⁶⁷ 250 lawyers and, typically, two officials are in charge of a draft regulation: one prepares the draft and the other supervises. However, there are only 10 officials in the Law Department of the Ministry of Economy and Transport. This number was reduced by 50% on the basis that there was no need for jurists in the ministry, and the ministry's legal affairs issues could be contracted out to lawyers.

In **Lithuania**, the Legal Department of the Office of Government employs 9 lawyers to review all proposals to government. Although 3 have over 15 years experience, this seems to be a light capacity considering that only 4 days (7 for substantial proposals) are allowed to examine legislative proposals, which suggests that either this requirement is interpreted flexibly or the staff of the Office of the Government has a very heavy work load.

In **Poland**, the Government Legislation Centre employs 100 lawyers. Most of these lawyers have at least a three- year drafting experience within a line ministry. However, the Legislative Council is made up of 10 eminent lawyers, who perform their tasks within the Council, in addition to other professional activities. Recently, as its membership was renewed, the staff of the Legislative Council was reduced. In its recent composition, it has no support staff to assist its members.

In the **Slovak Republic**, for example, there is a Legislative Council composed of 18 members, each chosen by the Chairman of the Council on the basis of their expertise across a wide range

⁶⁷ The word 'around' was used in response to questions at interviews and is to reflect that, from time to time, officials are absent for vacation, maternity leave and other reasons.

of legislative subjects. Members of the Council are not remunerated and continue to undertake professional responsibilities in their respective fields. The Council is supported by a full-time Secretariat, composed of 15 lawyers and some additional support staff. The Legislative Council works under considerable time pressures and has to examine a substantial volume of legislation.

Some NMS (**Latvia**) have engaged in a process to increase staff numbers in this regard and to reform the civil service so as to introduce more flexibility in departments responsible for law drafting.

In **Estonia**, experts from other ministries or non-governmental bodies may be invited to participate in the drafting process. The system demonstrates a high degree of flexibility which helps compensate for weak capacity relative to larger public services. There is a list of experts with a description of their competencies⁶⁸, which enables working groups for impact assessments to source knowledgeable experts.

In **Malta**, the Office of the Attorney General has a small number of lawyers, some of whom are primarily engaged in reviewing and redrafting legislation. More staff are being recruited to that Office and it is to be established as an agency to provide more flexibility as regards recruitment and remuneration. 40 lawyers were working at the Ministry of Justice at the time of writing the report, only two to three people were responsible for reviewing all legislation and one person was responsible for translation.

Need for Training in Drafting

In most countries, officials responsible for drafting do not receive specific training in drafting. In the common law world, it is said that it takes between 5 and 10 years to train a legislative drafter. In the civil law world, all officials are expected, as part of their day-to-day duties, to be able to draft legislation within their field of substantive competence. The activity is largely one of aptitude and some individuals possess more of a gift for this type of activity than others. Even in the common law world, with its elaborate network of professional drafting offices there is only a limited number of institutions providing training in the subject.

In all the NMS, efforts are being made to up-skill the public service. In **Estonia**⁶⁹, the Legal Terminology Committee has its own periodic publication. It contains articles on using language in legal texts, on legal terminology, on translating legal texts as well as concrete proposals on how to word certain rules. Although proposals of the Legal Terminology Committee are not compulsory to law drafters, as they have no legal power, they are quite often considered.

Work has begun in **Cyprus** on providing courses in legislative drafting for officials. In **Latvia**, law drafting study courses are included in the curriculum of the law faculty of one university. The School of Public Administration provides courses on impact assessment, policy-making and strategic planning. In addition, the Legal Terminology Committee organises workshops and seminars for law drafters to explain different linguistic questions.

Hungary and **Poland** have developed formal training in legislative drafting. In most NMS, drafts are handled by officials, in accordance with their level of experience. The theory is that experienced officials can draft at the level needed to produce high quality drafts. In many NMS, however, the age profile of officials is very young. This is particularly striking in **Estonia** and **Latvia**, where there has been a large influx of young people into the public service and an official with 5 years experience would be regarded as very experienced.

⁶⁸ For example, the list identifies officials by training: biologists, human geographers, engineers, economists, sociologists, lawyers, public administration managers, etc.

⁶⁹ The publication "Õiguskeel" (Legal language) is published five times a year.

The lack of experience of the staff involved in drafting may be compensated for by the availability of rules for drafting (**Estonia**) or by the publication of written criteria against which draft regulations must be reviewed (**Latvia**). It would require a very detailed study to examine the quality of legislative drafting in each Member State, taking account of linguistic differences and different judicial approaches to legislation.

4. BETTER REGULATION TOOLS IN NMS

This section describes the tools used in NMS. Regulatory Impact Assessment (RIA), Consultation, Alternatives, Simplification, and Accessibility. It examines them from the point of view of why they are used, how they are used (methodologies), who uses them (institutional arrangements, where appropriate) and when they are used, in the NMS.

Impact Assessment — General

Impact assessment⁷⁰ aims to facilitate the choice of the most efficient and effective regulatory option by establishing a systematic and consistent framework for assessing the potential impacts of government action. It ensures the formulation of evidence-based policies, while providing the information necessary to make better regulatory decisions. Impact assessment also improves transparency and accelerates culture change.

There is no single model for a good impact assessment programme. When designing an impact assessment programme, it is necessary to take into account institutional, social, cultural and legal contexts in the relevant country. An OECD study identified a number of good practices in member countries which maximise the benefits to be gained from implementing an impact assessment programme⁷¹.

Impact assessment needs to be reviewed by a central body to ensure consistency across, and within, ministries. The central body should add value by ensuring that ministries do not use impact assessment to justify decisions taken and by facilitating dialogue between ministries and resolving 'turf' disputes between ministries.

Impact assessment may be considered from two perspectives: as a tool to improve policy-making and as specific methodology used to assess the impacts of given regulations. Impact assessment should be part of an overall strategy on Better Regulation, as proposed in the Mandelkern report⁷². Three common problems were identified by the Mandelkern report as regards the implementation of a RIA policy. These are: practical difficulties, cultural resistance and political pressures. The practical difficulties can be overcome by awareness raising through

⁷⁰ Usually referred to as regulatory impact assessment, or RIA, but more easily recognised as impact assessment.

⁷¹ RIA best practices in OECD countries: Maximize political commitment to RIA; Allocate responsibilities carefully for RIA programme elements; Train the regulators; Use a consistent but flexible analytical method; Develop and implement data collection strategies; Target RIA efforts; Integrate RIA with the policy making process, beginning as early as possible; Communicate the results; Involve the public extensively; Apply RIA to existing, as well as new, regulation.

⁷² The Mandelkern report suggested that there were 7 prerequisites for a successful RIA policy. These are worth repeating in full as they still constitute a good basis for making a combined use of Better Regulation tools:

- The RIA process needs to be an integral part of an overall strategy to improve the regulatory environment;
- There must be high level political support for the concept of RIA and its practical application;
- Preparation of a RIA should, wherever possible, be by the policy officials concerned and should start as soon as possible in the policy development process and continue as a fundamental part of it;
- The results of the assessment need to be informed by, and subject to, both informal and formal consultation with interested parties and others;
- This work is most effective when it is overseen by a specific structure dedicated to Better Regulation and is supported by clear advice guidelines and training; and
- Sufficient resources (in terms of quality and quantity) must be allocated to this structure.

training, appointing an adequate number of staff and identifying good sources of data for policy analysis. The cultural and political challenges are closely related and both can be overcome by political commitment and embedding the use of the tool into day-to-day regulatory management.

Three common mistakes should be avoided in designing an impact assessment system⁷³. Impact assessment should not be used:

- As an *ex post* justification of the policy proposal.
- To create another bureaucracy.
- To define problems to fit into existing structures (some problems cut across traditional ministerial boundaries and this fact needs to be recognised in the process).

As far as the impact assessment methodology is concerned, consideration needs to be given as to which issues need to be prioritised for impact assessment and the choices for assessment include: economic impact, impact on the environment, impact on small businesses, and impact on the public service itself.

Generally, the extent to which legislation may be enforced, or compliance with it secured, is not considered by governments in advance of introducing new legislation. However, in the Netherlands, the Table of Eleven developed by the Dutch administration is a tool for thinking about compliance, and for increasing the likelihood that regulations will be complied with through an *ex ante* compliance assessment. It takes eleven aspects of a proposed regulation, each of which will increase or decrease the likelihood of compliance. In considering how exactly to phrase the regulation, and how to enforce and publicise it, the Table of Eleven is useful in highlighting areas that are likely to reduce compliance, so that regulations can be made as self-enforcing as possible.

Table of Eleven Developed in the Netherlands	
The eleven factors are	
▶ aspects of spontaneous compliance:	
	knowledge of the regulation
	costs of compliance/benefits of non-compliance
	degree of business and popular acceptance of the regulation
	loyalty and natural obedience of the regulated form
	extent of informal monitoring
▶ aspects of monitoring:	
	probability of report through informal channels
	probability of inspection
	probability of detection
	probability of the inspector
▶ aspects of sanctions	
	chance of sanctions
	severity of sanctions

A further step in the development of an effective impact assessment policy is to undertake a number of pilot impact assessment projects in some areas, selected on the basis of a screening

⁷³ Many lessons have been learned over the last twenty years and are documented. Bibliography set out in Annex 5.

mechanism. Decisions need to be taken as to whether the same process should be applied to all proposed policies or whether there should be a two-step approach of a broad brush stroke impact for all proposed policies and a more detailed one for policies that will involve a substantial impact.

Ex post impact assessment

The *ex post* assessments have much in common, in their approach, with the policy assessments made *ex ante*. *Ex post* assessments may involve a consultation process in order to receive feedback from stakeholders and make improvements, if necessary, to the legislation concerned.

The European Commission *Staff Working Paper on Impact Assessment and ex ante evaluation*⁷⁴ points out the need to set out *ex ante* and *ex post* evaluations. Few EU Member States have procedures for the regular evaluation of the operation and the effectiveness of existing laws. In some Member States⁷⁵, *ex post* evaluations are carried out by scrutinising a random selection of legislation on a quarterly basis. *Ex post* evaluations are usually carried out when general reviews of existing legislation take place, for example in the context of the simplification programme. In other cases, the time when the *ex post* evaluation takes place may be decided on when the new regulation is being prepared and can, in appropriate circumstances, be included in the legal text.

Typical questions addressed in ex post evaluation

- ▶ Have the original objectives been achieved in quality, quantity and time, when measured against the base of what would have happened without intervention?
- ▶ To what extent has the intervention brought about the achievement of the objectives or has it induced activity that would not otherwise have occurred?
- ▶ Has implementation been affected, adversely or advantageously, by external factors?
- ▶ Have any significant unexpected side effects resulted?
- ▶ Have all the inputs required from the Government and the private sector been made as planned?
- ▶ Have any of the allocated resources been wasted or misused?
- ▶ How efficient was the administration of the scheme?
- ▶ Has the scheme led to any unfairness or disadvantage to any sector of the community?
- ▶ Could a more cost-effective approach have been used?
- ▶ What improvements could be made to the scheme that might make it more effective or cost-efficient?
- ▶ Overall is the scheme well-suited to meeting the desired objectives?

Source: Preparation, Drafting and Management of Legislative Projects, by Professor Keith Patchett — Sigma January 2003.

Why is Impact Assessment Important?

Impact assessment is possibly the most novel of the tools in that its use brings to bear economic analysis and, used correctly, it may become a scientific driver for a more evidence-based approach to policy-making. Impact assessment aids good decision making and makes transparent the costs and benefits of different regulatory and non-regulatory options that may be suggested by ministries. However, impact assessment is not a substitute for political accountability.

⁷⁴ COM(2005)119 final, http://ec.europa.eu/research/future/pdf/comm_sec_2005_0430_1_en.pdf.

⁷⁵ E.g., the UK.

Impact assessment is not a new tool. It became used in the Office of Management and Budget (a part of the Office of the President of the United States) in the nineteen seventies and has been adopted by many countries since. Impact assessment is, increasingly, seen by governments and the Institutions of the European Union to be an essential tool of governance.

Conducting impact assessment may also contribute to improving compliance both *ex ante*, through the use of a compliance assessment, and *ex post*, since *ex post* assessments may help in identifying unanticipated regulatory effects with a view to amending regulations where their original goals are not met.

Impact Assessment System in the EU

The European Commission has introduced a new Impact Assessment system in 2003. This system is built partly on the experiences with its predecessor, the Business Impact Assessment (BIA). It was outlined in the Communication on Impact Assessment⁷⁶, which was part of the Better Regulation Action Plan⁷⁷. Impact assessment was further improved in 2005⁷⁸. The new procedure aims to improve the quality of the Commission's policy proposals in terms of their efficiency, effectiveness and coherency. It identifies alternative policy options and their likely positive and negative impacts, with an equal focus placed on economic, environmental and social effects, in line with the EU Sustainable Development Strategy⁷⁹. In March 2006, the 2005 Impact Assessment Guidelines were updated so that assessment of administrative costs is now a compulsory and integrated part of impact assessments.

To reinforce quality control, the Commission announced in its Strategic Review Communication⁸⁰ the creation of an Impact Assessment Board. It is composed of high level Commission officials from DGs ECFIN, ENV, EMPL and ENTR, chaired by the Deputy Secretary General. The Board acts independently of the policy- making departments and reports directly to the President of the Commission. It issues opinions on the quality of IAs. To assist its work the IAB may have recourse to external expertise. It commenced meetings in December 2006, and issues several opinions already.

The Commission IA system as a whole was subjected to a comprehensive independent review by external consultants during 2006, and the final report was delivered to the Commission recently. It will be used to detect areas for improvement.

Impact Assessment in NMS

At the time of the assessments, **Cyprus and Malta** did not have a fully developed policy on impact assessment, though the matter was under active consideration in both. The necessity for impact assessment was understood and used in the context of environmental impact assessments in both countries and for some large-scale projects involving substantial sums of money. It was not in use as a tool to improve the quality of policy-making or the drafting of legislation. **Cyprus** established a task force to address the issue and the Better Regulation Unit in the Management Efficiency Unit in **Malta** began work which will lead to the introduction of impact assessment.

All of the other NMS had adopted impact assessment in some form or another. However, a number of NMS (**Czech Republic, Lithuania, Poland and the Slovak Republic**) had reached

⁷⁶ COM(2002)276 final, *ibid*.

⁷⁷ COM(2002)278 final, *ibid*.

⁷⁸ European Commission (2005), New Impact Assessment Guidelines June 2005, SEC(2005)791, http://ec.europa.eu/governance/impact/docs/SEC2005_791_IA%20guidelines_annexes.pdf.

⁷⁹ COM(2001)264 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0264en01.pdf.

⁸⁰ COM(2006) 689 final.

the stage where they recognised that impact assessment existed in form, rather than in substance. In all NMS, other than **Cyprus and Malta**, impact assessment was required by law for proposals to be submitted to government.

Legal Basis

In the **Czech Republic**, the Government Rules of Procedure (GRP)⁸¹ impose a requirement that all policy proposals should include an analysis of the impacts on the business environment and the impact on equal treatment of men and women. Similar legal arrangements are in place in **Hungary, Lithuania, Poland, the Slovak Republic and Slovenia**. In the absence of a central control on their quality, these arrangements are generally ignored.

In **Estonia** impact assessments were obligatory for all proposals for new legislation. Regulatory impact assessments were included as part of explanatory memoranda for Bills from 1996 onwards. A ministry drafting legislation must, according to Rules of Government, prepare an analysis of its potential impacts. Both the parliament (*Riigikogu*) and the government adhere to technical rules on drafting, which include the necessity to examine a list of impacts that need to be assessed when drafting legislation. In February 2005, a new rule came into operation under which each minister and state secretary may give additional recommendations regarding the methodology of regulatory impact assessment in their corresponding areas of competence.

In **Latvia**, in 1998, the impact assessment system was introduced in the Rules of Procedure of the Government. The detailed methodology of impact assessment is set out in a government instruction.

Transparency of Impact Assessments

In some NMS, impact assessments are published. For example in **Latvia**, before a regulation is drafted, the need for the regulation is considered and the description of the current system must be set out in the Concept Paper⁸². Draft laws in **Estonia** must be accompanied by an explanatory letter. The explanatory letter is designed to oblige the drafter of a proposed law to explain the meaning of the draft law in simple language. The inclusion of comparative analysis and impact assessments in this letter is a useful device to explain why certain solutions were preferred.

Methodologies

Approaches to the methodology of impact assessment are different in all NMS that undertake impact assessments. Two main trends may be observed: some NMS have guidelines or are revising the existing guidelines; others leave the methodology to be determined by the ministry undertaking the assessment.

In the **Czech Republic**, guidelines for regulatory impact assessment were being developed (2006) based on the UK and the new EU methodology. This work was scheduled to be completed by the end 2006. Some training to explain the concept and introduce the EU methodology was given to 50 civil servants by the Institute of State Administration (Central Training Unit).

In **Hungary**, since January 2006, a new procedure on the Methodology of Regulatory Impact Assessment applied, based on a manual drawn up by the Department of Impact Analysis, Deregulation and Registration of Law. It applies during the preparatory phase of drafting laws and regulations. Measures laid down in the manual may be used in the course of preparing legislative proposals, and may also be applied (with variations) to other administrative organisations.

⁸¹ Since 2001.

⁸² Procedures for filling in annotations of draft regulatory enactments 18.09.2001.

In **Latvia**, a general approach to impact assessment in policy documents is set out in Policy Planning Guidelines (2001), Regulatory impact assessment methodology is defined in the Government Instruction entitled "filling in the Annotation of draft legal acts"⁸³. There is also a Manual on Impact Assessment methods which is used in policy planning and legal drafting. That Manual was prepared by State Chancellery and published in 2005. It deals with the quantitative methods to be used in impact assessments, such as cost-benefit analysis, cost effectiveness analysis and risk analysis.

In **Lithuania**, a Manual on Regulatory Impact Assessment was drawn up. It recommends that institutions dealing with EU legislation, or developing proposals that may have significant economic or social impacts, should carry out RIA by employing different tools such as cost-benefit analysis or other comprehensive studies.

In **Poland**, in order to increase the effectiveness of the RIA process, the Ministry of the Economy prepared new RIA Guidelines which were adopted in October 2006. It is planned, after operating the new guidelines for 12 months, to evaluate their effectiveness. Institutional arrangements for RIA were implemented in 2006 in order to strengthen the RIA system, including placing responsibility for the review of RIA in the Chancellery of the Prime Minister instead of the Government Legislation Centre where it was until July 2006.

The new guidelines clarify the key analytical steps to be taken in the undertaking of a RIA. The Guidelines constitute a set of logical steps which structure the preparation of policy proposal from identifying the problem, choosing objectives and main policy options, through comparing the possible options, assessing cost and benefits of each option to finally recommending the best solution.

The emphasis in the revised Guidelines was put on:

- Assessing the impacts in qualitative, quantitative and monetary terms where possible and appropriate.
- Assessing the impact on SMEs.
- Carrying out wide consultation before proposing legislation.

The **Slovak Republic** provides a good example of how an impact assessment policy may be undermined if there is no unified methodology to assess impacts. A study on the general quality of the Annexes submitted to the Council of Ministers was conducted by the Ministry of Justice. The following problems were noted:

- Many Annexes were unclear, inaccurate, or contained incomplete data;
- A large number of Annexes were not prepared in line with the rules for their preparation;
- Some Annexes did not contain all of the relevant information;
- In some cases, the documents submitted to the Council of Ministers did not contain an Annex;
- Very often, the author of the document or Bill did not submit the proposal for covering the estimated costs;
- The second part of the Annex (impact on business and citizens) was almost always prepared very generally and without any proper costs.

These problems were attributed, partly, to the lack of analytical capacities, and inadequate education and training of staff in ministries. Officials preparing legislation would appear to have

⁸³ Instruction Nr. 4, 18.09.2001.

variable approaches to providing information and tend to focus on the need to accelerate the legislative process and avoid conflicts with the Ministry of Finance.

The weakness in the process is to be addressed. The Council of Ministers took a decision in July 2005⁸⁴ directing the Minister for Finance, the Minister for the Environment, the Minister of Social Affairs, and the Minister of the Economy to draft unified methodologies for assessment in the Annex on financial, economic, environmental, social and business environment impacts.

In **Slovenia**, the Better Regulation Group⁸⁵ is responsible for developing an impact assessment methodology. In addition, the Government Office for Legislation and the Official Gazette department are co-operating to develop an e-portal⁸⁶. It will enable its users to carry out an impact assessment or check and verify their assessment results with the interested stakeholders. In practice, through this portal, citizens will be able to comment on a draft law and the results of the consultation process will be processed automatically and integrated into a pre-formatted report.

Institutional Arrangements

In the **Czech Republic**, a Department of Regulatory Reform and Quality of Public Administration, established after the transfer of the Better Regulation Unit from the Government Office to the Ministry of the Interior in November 2006, ensures a help desk function and checks the quality of the impact assessments carried out for all proposed regulation.

In **Estonia**, the approach to impact assessment varies from ministry to ministry and there is no central body to review its quality. For example, the Ministry of Social Affairs has, as part of its process management initiatives, developed a legislative drafting procedure that involves both public consultation (during the early stage of policy-making) and regulatory impact assessments. The Ministry of Finance and the Ministry of the Environment have undertaken similar initiatives. Some individuals in some ministries are more committed to improving impact assessment than others and a committee was established in the Ministry for the Environment to review and improve its approach to impact assessment.

In **Hungary**, a Department of Impact Analysis, Deregulation and Registration of Law was established but was never formally conferred with overall responsibility for reviewing the quality of impact assessments. The Department was abolished in July 2006. However, the Law Department of the Government Office, while not having the role of reviewing or carrying out impact assessments centrally, may point out in its report to government the lack of such analysis in its report to the government.

Impact assessments are mandatory in **Latvia** for all policy proposals and draft legal Acts with a socio-economic impact or an impact on the state budget. Impact assessments are reviewed in the State Chancellery and in line ministries, according to their respective competencies. Impact assessments that do not meet the required standard are returned to the ministry.

What is Assessed?

The table below provides an overview of a representative sample of impacts assessed.

In some countries, a two-step approach is applied whereby an in-depth assessment is only necessary for pieces of legislation that are expected to have an impact on the business environment.

⁸⁴ Cabinet resolution No. 557/2005.

⁸⁵ It includes representatives from the Ministry of Public Administration and the Ministry of the Economy.

⁸⁶ eSodelovanje portal www.esodelovanje.si.

In the **Slovak Republic**, the methodology for business impact assessment that is being drafted at the time of writing the report⁸⁷ at the Ministry of the Economy of the **Slovak Republic**, on the basis of the Netherlands methodology, requires a Ministry to do a 'quick test' to establish a rough estimate of the likely impacts. A full assessment is carried out for pieces of legislation ruling important issues. A similar approach is followed in **Poland**.

<p><i>Impacts to be assessed in Estonia</i></p>	<p>Impact of a draft Act on the state budget or local government budgets</p> <p>Impact on the socio-economic situation, everyday life and opportunities of target groups [role occupants] (e.g., which socio-economic groups are going to profit or lose in legal, economic or social terms)</p> <p>Impact on economy and situation of businesses, e.g., inflation, competition, etc.</p> <p>Impact on organisation of the work of state and local government institutions (e.g., changes in structure and functions, in public services, in the number of employees, delegation of tasks)</p>
<p><i>Impacts to be assessed in Latvia</i></p>	<p>The socio-economic impact</p> <p>The macro-economic impact</p> <p>The impact on the business environment</p> <p>The social impact of the proposed legislation</p> <p>The impact on the environment</p> <p>The impact on the state budget and budgets of local government</p> <p>The impact of draft regulations on the legal system</p> <p>The impact on international obligations (especially EU).</p>

⁸⁷ March 2006.

<p><i>Impacts to be assessed in Poland</i></p>	<p>The following matter should be referred to in an impact assessment in Poland:</p> <ul style="list-style-type: none"> ▪ Indicate who is affected; ▪ Present results of any consultation carried out; ▪ Identify impacts on: <ul style="list-style-type: none"> ○ public finances, including state and local budget, ○ labour market, ○ competitiveness, ○ entrepreneurship, ○ regional development; ▪ Indicate the financial resources. <p>The method of assessment depends on the scope of the proposal. In the case of major regulations, there should be a quantitative assessment. In the case of other regulations, the assessment is limited to qualitative analysis. The most common quantitative method applied is cost-benefit analysis. However, other methods include:</p> <ul style="list-style-type: none"> ▪ cost-effective analysis, ▪ the cost estimation, ▪ the benefit estimation.
<p><i>Impacts to be assessed in the Slovak Republic</i></p>	<p>Assessment of impacts on public finance, Assessment of impacts on environment, Assessment of impacts on employment, Assessment of impacts on citizens and businesses, Assessment of impacts on business environment.</p>

Ex Post

In **Cyprus and Malta**, responsibility for conducting *ex post* impact analysis of regulations and policy implementation programmes rests in individual policy departments or special research services of ministries. Some ministries have undertaken studies to evaluate the effectiveness of policies using different methods.

In **Estonia**, responsibility for conducting *ex post* impact analysis of regulations and policy implementation programmes rests also in individual policy departments or special research services of ministries. There is no external review of policy implementation or the effectiveness of regulations. For example, the Ministry of the Environment (Department of Forestry) ordered an *ex post* impact assessment of the Forest Act in 1996.

Other ministries have undertaken studies to evaluate the effectiveness of policies, including aspects of income tax, social security, pension schemes, parent benefit, taxation and financing of NGOs, regional development policy, ownership reform in rural areas and student benefits. Reviews are conducted regulation by regulation as well as issue by issue.

Ex post assessments are undertaken using different methods; some concentrate more on case law, some more on social aspects, much depends on the issue itself that is under evaluation. Some policies are reviewed as part of the planning for budgets of subsequent years and this activity may be seen reflected in the ministry's yearly activity plan. Representatives of target groups and other interested parties (e.g. research centres, other ministries) are involved in evaluation & *ex post* impact assessment of existing regulations. For example, in March 2005, the working group of the new Forest Act included all interested parties.

Consultation Generally

Consultation may be defined as 'a structured public engagement which involves seeking, receiving, analysing and responding to feedback from stakeholders.' It involves defining the purpose and subject of the consultation (policy initiative, regulatory change, legislative proposal). In most countries, consultation is mainly conducted on primary legislation and very rarely on secondary legislation. It also involves drawing up a consultation methodology, including criteria for identifying stakeholders.

The potential for consultation is a function of the strength of civil society and of the procedures used, so principles laid down for consultation need to take into account particular domestic cultural and societal factors as well as the national institutional set up.

Some countries have adopted guidelines on consultation, thereby providing the necessary political support for the consultation process within the Government system. The guidelines should be flexible and take into account different levels of organisation by stakeholders. A general time limit for consultations on draft laws should be set and compliance with the set of principles should be reviewed in the centre of government. The consultation process should be linked closely with the regulatory impact assessment process.

The necessary elements seem to be the following:

- Recommendations for how to select stakeholders to ensure a broad and useful input.
- A minimum time for external consultation needs to be introduced.
- Systems to ensure that the recommendations for selections and the minimum time have been complied with.
- Dissemination of best practices.

A distinction needs to be drawn between consultation within the government at the stage of the inter-ministerial comment procedure and consultation with the public in general which may be conducted through various procedures. In this regard, three main types of consultation with the public can be identified:

- Consultation with established bodies, e.g., tripartite committees.
- Consultation with ad hoc advisory groups.
- Public notice published on the internet and submitted to public comment, which may facilitate on-going consultations.

Why Consult?

The use of public consultation has different implications for the improvement of the regulatory framework.

Firstly, if it is undertaken in a timely and effective manner, consultation captures the collective intelligence of a society. It is increasingly being used to collect empirical information for analytical purposes, especially as a precondition for the move towards more analytically-based models of decision-making processes (e.g., the use of impact assessments to evaluate the impact of

regulations). Thus, consultation is a cost-effective source of data, as well as a source of information on issues such as the acceptability of various policies, which can be essential in determining practicability and designing compliance and enforcement strategies. Thereby, a consultation process is a valuable tool to improve the legitimacy and credibility of government actions. This data and information may also, in some countries, be used when carrying out regulatory impact assessments.

Secondly, consultation mechanisms are also being increasingly characterised by greater openness and accessibility, particularly for smaller, less organised interests. This reflects a move away from corporatist modes of governance toward more pluralistic approaches. Consultation is inherent to transparent and effective governance.

Finally, consultation is a partnership process that can improve the quality of legislation by involving expertise in civil society.

Consultation in the EU

The Commission has a long tradition of consulting interested parties on its policy and regulatory proposals. In order to improve its consultation processes, the Commission adopted a set of '*General Principles and Minimum Standards for Consultation of Interested Parties*'⁸⁸. The EU highly values consultation with interested parties⁸⁹, and the collection and use of expertise⁹⁰, which are both an integral part of the process.

These principles and standards provide a framework for consulting civil society and stakeholders, which ensures transparency and access to consultations, feedback to contributors and a minimum reply time of 8 weeks. This action is linked to the impact assessment procedure and will, as a first step, apply to those initiatives subject to impact assessments. Nevertheless, the Commission's services are encouraged to apply those rules to any other consultations that they intend to launch.

All consultations of special interest for businesses and professional organisations are accessible through DG Enterprise and Industry's dedicated web page *Enterprise and Industry DG in Dialogue*. DG Enterprise and Industry's consultations are also accessible through *Your Voice in Europe*, the Commission's 'single access point' for all its public consultations.

Consultation in NMS

Legal Basis

In most NMS (**Estonia, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia**), consultation forms part of the policy of regulation making rules as a compulsory requirement. In **Lithuania**, although public consultations are discretionary, some important laws such as the Law on Public Administration and the Law on Local Self-Government provide for compulsory consultation.

Methodology

All NMS have established different methods of conducting consultations. However, consultation procedures are not standardised in any NMS and even vary from one ministry to another. In addition, the type of consultation very often depends on the issue and its complexity, as well as on the body or people consulted. These variations may undermine the credibility of consultation exercises. The only factor in common is that none has a coherent written policy.

⁸⁸ COM(2002)704 final, *ibid.*

⁸⁹ COM (2002) 704 final, *ibid.*

⁹⁰ COM(2002)713 final, http://ec.europa.eu/governance/docs/comm_expertise_en.pdf.

In countries where civil society is more developed (**Cyprus, Estonia, and Malta**), consultation processes are conducted at various stages of the regulation making process on the basis of an agreed practice and rooted in a social dialogue and consensus tradition. However, this does not exclude some form of guidelines or established procedures. In **Latvia** and **Slovenia**, where there is little experience of consultation by Non-Government Organizations (NGOs), policies are being developed to train representatives from NGOs in consultation methodologies.

In **Cyprus** and **Malta**, consultation exercises are not compulsory and there are no agreed procedures to carry them out. However, some more established consultation procedures have been adopted. The *Code of Practice on Consultation* of the Malta Environment and Planning Authority, for example, describes the policy-making process and provides for guidelines on why and how consultation should be conducted. In addition, for secondary legislation, the check list requires that consultation take place.

However, other than **Cyprus** and **Malta**, many of the countries assessed did not have a tradition of consultation. Many officials we spoke to during the assessment expressed the view that consultation was a burdensome process and that civil society had not the capacity to be responsive to consultation procedures, though these officials fell short of taking the position that the administration knows what is best for the citizen.

Consultation with the Public

In many NMS, recent legislation required that draft regulations be published on an official website so that each citizen may comment on the draft. However, it is too early to judge what value is added by the consultations.

In **Hungary**, by virtue of section 19 of the Act⁹¹ on the Protection of Personal Data and Open Access to Public Information, the state, local-government or other public organisations defined by law is required to publish electronically or by other means all relevant data related to their activities. The ministries post the texts of draft legislation on the public bulletin boards of the so-called 'Green Spider' network, based on the concept of 'open legislation' whereby, according to the Act on the Freedom of Electronic Information, draft laws are published on the internet, together with a submission deadline for comments.

In **Latvia**, all proposals of importance are put on the website of the State Chancellery before their consideration at the weekly meeting of the State Secretaries.

In **Poland**, following *the Act on Lobbying*, all government policies and initiatives should be communicated to the public (especially, via internet sites of ministries) and that Act affirms the right of everyone to comment on legislative proposals. In addition, certified professional lobbyists communicate their comments on a given draft and can access the draft in the Bulletin for Public Information.⁹² However, much of the material on accessibility of legislation is included in the Law on Access to Public Information.

In the **Slovak Republic**, according to the Law on Free Access to Information, all pieces of legislation, including guidelines and draft proposals for legal regulations, are made available on government websites.

Some consultation practices are worth mentioning: In **Estonia**, the Web 'Talk along'⁹³ initiative is an innovative way of involving citizens in the formulation of policy and the drafting of legislation. Everyone has the opportunity to register on the involvement Web and, through the website, notices can be sent by e-mail about consultations and changes in the legislative drafting work

⁹¹ LXIII/1992 in force since June 1, 2005.

⁹² Order No. 1/2006 (I. 7.) GKM on the Communication of the Ministry.

⁹³ www.mkm.ee/index.php?id=8252.

plan. In **Latvia**, a Memorandum of Understanding was drawn up in 2005 between Government and NGOs and handbooks have been published for NGOs and training of officials in consultation techniques. In addition, a representative of NGOs may attend the State Secretaries' meetings and the Cabinet of Ministers' meetings as an observer and may suggest proposals.

Consultation with Established Bodies and Stakeholders

The consultation with business and civil society representatives in NMS is often conducted through regular meetings of a committee comprising representatives from social organisations and NGOs, as in **Cyprus, Hungary, Lithuania, and Poland**, or following more ad hoc initiatives, or a combination of the two, as in the **Slovak Republic**. In any case, from the point of view of the consulting party, it is not always easy to identify the relevant organisations or the persons in organisations who are the most appropriate to consult with.

In **Cyprus**, depending on the issue and on the existing legislation, the examination of the proposal by a committee such as, for example, the Labour Advisory Board or the Joint Staff Committee may be required. The Joint Staff Committee is consulted on all issues concerned with terms and conditions of civil servants and comprises interested parties from the private sector as well as from the civil service.

In the **Czech Republic**, the Legislative Rules enable a form of public consultation to take place. However, the authority responsible for the preparation of the law has discretion as to whether and how it will consult with bodies such as NGOs. In the case of labour, the Tripartite Council (Government, Unions and Employers) must be consulted. In addition, following the recent amendment to the Legislative Rule of Government, the Economic Chamber has become an official participant in the inter-ministerial comment procedure and can send its comments to the relevant ministry. Furthermore, the adoption of the Methodology of Public Consultations by the Government is expected in 2007.

In **Hungary**, there are several government institutions designed to ensure stakeholder involvement, e.g., the employment consent mechanism with the involvement of employers' and employees' representation⁹⁴. A typical consultation body is the National Environmental Council, which meets once a week and has a secretariat run by the Ministry of the Environment.

In **Lithuania**, a Tripartite Council of Lithuania (Government, Business interests and trade unions) was established in 1995 to deal with social, economic and labour issues.

In **Poland**, depending on the issue regulated, the government seeks the opinion of established bodies, including:

- The Joint Committee of the Central Government and Territorial Government, in each case if the draft concerns operations of the territorial government.
- The Tripartite Committee for Social and Economic Affairs composed of representatives of employees, employers and central government.
- The Copyright Committee.
- Sectoral regulators.

In the **Slovak Republic**, many ministries have advisory bodies which are consulted on major new proposals. The Minister of the Economy established a Business Environment Board, comprising representatives of the Slovak Chamber of Industry and other business associations. Bills and policy proposals relating to economic and social issues are discussed within the framework of the Council of Social and Economic Agreement. In addition, in many cases, an ad

⁹⁴ Z. Kovacs (2005), The Occurrence and Quality of Information on Impact Assessment in Proposals to the Government on Draft Acts in Hungary.

hoc advisory committee or a working group of civil servants and experts is established. Extensive consultation with non-governmental institutions (e.g., the Association of Slovak Towns and Municipalities, the Union of Agricultural Cooperatives of Slovakia) is also organised.

NMS: Lessons on Taking Results of Consultation into Account

Whatever the consultation procedure may be, it remains formal unless a systematic policy to assess the comments provided by the public, and take into account the relevant ones, is applied. In **Estonia**, the Government estimates that about 5% of the amendments proposed within the framework of the web talk along process are accepted.

Latvia has developed several procedures to ensure that the opinion of civil society is reflected in its regulations. The first stage is the publication or announcement of the draft. After publication comments made are collected and, if necessary, meetings are held to review the comments, a summary of all ministry proposals, including arguments for accepting or rejecting each proposal, is prepared and accompanies the draft document when it is returned to the meeting of the State Secretaries for approval.

In addition, an NGO with an interest in issues to be discussed at the Cabinet of Ministers meeting can apply to the Director of the State Chancellery to attend the Cabinet of Ministers' meeting. In exceptional circumstances, the NGO may be given the opportunity, at the discretion of the Prime Minister, to make a statement at the meeting. A representative of NGOs attending a State Secretaries' meeting may submit views to State Secretaries and reasons must be given if they are not taken into account.

In **Poland**, according to the Rules of Procedure of the Council of Ministers and the Standing Orders of the Sejm⁹⁵ the results of public consultations conducted for a specific regulation must be set out in the corresponding RIA. In addition, a number of ministries have set up internal procedures to handle public comments. For example, comments made by the public on a regulation drafted by the legal department of the Ministry of Justice are sent to the Codification Committee for civil law or the Codification Committee for criminal law, which decides whether the remarks are justified and need to be inserted into the draft.

However, in practice, RIAs rarely contain the result of the consultations conducted; this information is replaced by a commitment added to the RIA text according to which "the results of the consultation will be included later". When stakeholders comment on a draft regulation, they do not systematically receive feedback from ministries.

In the **Slovak Republic**, where 500 or more people comment on a proposal their views must be considered. If the proposal is not accepted by the government, it must give reasons to the citizens who presented the proposals.

It may sometimes be difficult to combine all the comments made by the public and various stakeholders in a consultation process. Submissions to the process may be contradictory.

In **Slovenia**, a pilot project was carried out on the e-archiving law using the *eSodelovanje* portal: 86% of the participants stated they would participate again via the portal and 75% of all comments received were incorporated in the final version of the draft law.

Assessing the relevance and whether the comments are representative of a wide range of views is not easy for any country, nor is it easy to avoid the risk of consultation fatigue.

Alternatives to Traditional Regulations — Generally

Alternatives to traditional 'command and control' legislation come in different forms. They include:

⁹⁵ Article 34.3 of the Rules of Procedure.

- More flexible, less prescriptive forms of traditional regulation, performance-based and incentive regulation allowing the regulated to develop their own approach to achieving the desired outcomes; this maximizes flexibility and innovation while achieving the desired objectives. Examples include compliance with occupational health and safety requirements, environmental emission requirements and price regulation of firms with monopoly power.
- Co-regulation and self-regulation, such as codes of conduct, for which the industry itself is responsible for enforcing.
- Incentive and market-based instruments: taxes and subsidies (to align private and social objectives more closely; pro-competitive reforms (removal of regulation and restrictions that inhibit market operation); creating markets (tradable permits, periodic tendering for service provision),
- Information approach: education and persuasion are used to achieve the community's objectives; government provided information; reporting requirements; advertising campaigns.
- No specific action, i.e., the option to do nothing.

The use of alternatives to traditional regulations in a given country reflects the extent to which a government addresses the question 'is regulation the best way to achieve a policy outcome?' Experience and knowledge of alternatives is continuing to develop but their use is very context specific and, arguably, the most effective approach may be to have a range of tools brought to bear on a policy problem with 'command and control' legislation only being brought to bear where alternatives have failed⁹⁶.

The potential to use such policy options is a function of a range of factors, including respect for the rule of law, political stability, lack of corruption and a confidence that results can be achieved without the ultimate sanction of a fine or imprisonment. Most OECD reports on Regulatory Reform recommend that policy makers should give due attention, wherever possible, to the use of alternatives to traditional 'command and control' regulation.

Why Use Alternatives to Regulations?

Many disadvantages and problems arise from the use of a 'command and control' approach, such as regulatory failure, lack of flexibility and lack of adequate resources to enforce or secure adequate compliance. In practice, in many situations, there may be a range of options other than traditional 'command and control' regulation available to achieve the government's policy objectives.

Although there may be considerable scepticism among policy makers and the public regarding the use of alternative instruments, it is widely accepted that traditional regulation is not always the most effective policy tool to ensure enforcement of, and compliance with, a policy and that alternatives to traditional regulations should be considered more systematically.

Alternatives to Traditional Regulations in the EU

The Commission's revised impact assessment guidelines require that all non-legislative options, including the 'do nothing' option are given equal consideration during the impact assessment process. The European Commission accepts the principle that early and effective consideration should always be given to alternative approaches to classic regulation, to make greater use of alternatives to traditional legislation without undermining the provisions of the Treaty or the prerogatives of the legislator. It suggests that certain policy objectives can be achieved with the

⁹⁶ See *Alternatives to Traditional Regulation* Working Party on Regulatory Management and Reform (OECD) GOV/PGC/REG (2006) 9.

use of alternative regulations, such as New Approach Directives, co-regulation, self-regulation, social partners' agreements, market-based instruments, recommendations, and information or guidance.

This approach was strengthened by the 2003 Inter-institutional Agreement on Better Law-making⁹⁷ which encourages the use of alternatives to regulation.

Alternatives to Traditional Regulations in NMS

All NMS had used one or more alternatives at different times, though most officials interviewed in **Cyprus, Czech Republic, Hungary, Lithuania, Slovak Republic, Slovenia** were not familiar with the potential to use alternatives as a policy option and a 'command and control' mentality prevails.

Alternatives to regulations may take various forms, such as educational campaigns. In all Member States there was an awareness of educational campaigns in respect of issues such as software piracy. Codes of conduct are used in **Cyprus** and **Lithuania** in a number of fields, notably in regulating professions such as lawyers.

Estonian officials were also keen to mention that their response was not automatically to regulate but to find the most efficient and effective means to achieve policy results.

In **Malta**, although not required, a number of entities have adopted a policy of assessing alternative policy instruments prior to instituting new policy actions. These include, amongst others, the Treasury, Customs Division, the Ministry for Family and Social Solidarity and the Broadcasting Authority.

In **Poland**, the *Methodological Foundations of RIA* and the newly adopted *RIA Guidelines* encourage the identification of alternative options to choose the best solution. However, as these RIA guidelines were only introduced in October 2006, it is too soon to evaluate their effectiveness.

Simplification Generally

Why is Simplification Needed?

A priority in any simplification programme is the requirement to ensure that all written communications between government and the citizen, including laws, are as simple as the subject matter permits. Lack of clarity of language or difficulties in accessing legislation reduces respect for the law and may contribute to regulatory failures. Accessibility of regulations is as an essential element of a transparent and open system of democratic governance. The principle of accessibility may require a particular effort of communication on the part of the public authorities involved, for example, in some cases information needs to be targeted at those persons who, because of their situation, have difficulty in asserting their rights.

The second aspect of simplification is that it is a means to reduce the administrative burden. Member States of the EU are becoming more aware of the costs of administrative burdens and the need to make regulatory requirements as simple as possible. In an age when investors compare administrative burdens between countries when making investment decisions, no country can fail to appreciate the costs of administrative burdens or fail to take steps to simplify regulations.

⁹⁷ COM(2003)770, http://ec.europa.eu/governance/impact/docs/com2005_0098en01.pdf.

Beyond the general efforts undertaken in OECD countries to keep their regulations up to date in order to maintain their competitiveness, specific grounds for legislation review in the NMS studied may be found in two additional reasons.

In some cases a substantial review of the body of law may be undertaken in the period immediately following the transition from one regime to another. It was the case in the period immediately following the communist period in most Central and Eastern European countries. In some countries such a review does not take place as constitutional arrangements are made to carry over certain laws from the previous regime.

When **Cyprus** became an independent republic in 1960, the Constitution provided for continuation of English common law. As a result, many laws remain in force even though they are in English and need to be translated into Greek.

Secondly, a large volume of regulations has been added to the stock as a result of the adoption of the *acquis communautaire*. Nevertheless, the hectic pace of law making, with frequent amendments, means that many texts are difficult to read. There is a need to review the stock of regulation from the point of view of coherence. In most countries studied concern was expressed about the quality of the transposition process for the *acquis communautaire*.

Simplification in the EU

The Mandelkern Report recommended that simplification should become a general policy in the behaviour of Member States and EU Institutions. This has involved the establishment of a rolling and targeted 'SimpReg' (SR) programme. Its remit extended to regulation beyond the Internal Market and to regulation that impacts on citizens and on public bodies charged with implementing it, as well as on business, thus covering the entire field of European regulation.

This work builds on earlier initiatives whereby the Institutions of the European Union adopted a policy on guidance for drafting legislation, contained in the Inter-Institutional Agreement of December 1998, relating to the quality of drafting of Community legislation. They ensured the guidelines were applied by restructuring their internal organisation, insofar as they found it necessary to do so.⁹⁸

These earlier initiatives led to a programme of consolidation which involved the Publications Office of the EU in an exercise to integrate the basic instruments of Community legislation, their amendments and corrections, in single, non-official documents. These documents aim to provide more transparency and easier access to EU Law. Several legal texts, initially and officially published in different issues of the 'Official Journal of the European Communities' are combined as a 'consolidated family' in one easy-to-read document⁹⁹.

The Commission has a three-fold approach to simplification of form:

- Repeal of regulations that are no longer of practical utility.
- Codification, which is a reframing of regulations that have been amended excessively, so that they may be more easily read but leaving the content unchanged.
- Recasting (the process of redrafting, so that regulations may be more easily read through revised drafting of particularly complex measures, and changes where necessary to make the regulations more effective).

This exercise builds on an earlier exercise where the Commission had asked Member States, businesses and citizens to tell it where red tape and over-regulation could be cut.

⁹⁸ Declaration 39, *ibid.*, note 8.

⁹⁹ See <http://europa.eu.int/eur-lex/en/information/help/help-consleg.html> for a full account of the process and access to consolidations.

Repeal of Regulations that are no Longer of Practical Utility

The Institutions of the EU are committed to a programme of repeal, i.e., a programme to remove spent regulations or regulations that are no longer of practical utility or unused legislation from the *acquis*. This work is undertaken in parallel with recasting work.

Codification

Codification work is also taking place in the Institutions of the EU. Codification contributes greatly to the reduction in volume of Community legislation. To codify means to assemble an original legal Act, plus all subsequent modifying Acts, in one new legal text.

Recasting

This is the task of revising the form and structure of legislation where frequent or substantial amendment renders its contents difficult to follow and changes in policy require a review of the whole area of legislation concerned.

The 2005 Communication on Simplification

The Commission's Better Regulation efforts focus on simplifying and updating the existing body of EU legislation. The Commission launched a new phase, including a work programme. In its Communication entitled: A Strategy for the Simplification of the Regulatory Environment¹⁰⁰, the review of the *acquis communautaire* has become a continuous and systematic process enabling the legislator to revise legislation, taking all legitimate private sector and public interests into account. This encompasses:

- A rolling programme anchored in stakeholders' practical experience.
- An approach based on continuous in-depth sectoral assessment.

Following a broad consultation of Member States and stakeholders, the Commission proposes to repeal, codify, recast or modify 222 basic pieces of legislation (now regrouped into 100) in the next 3 years. The programme will be regularly updated. It has started with the most heavily regulated sectors such as cars, waste and construction. Other sectors such as foodstuffs, cosmetics, pharmaceuticals or services will follow.

The 2006 Strategic Review

The Strategic Review of Better Regulation in the EU includes a section on simplification. Complimentarily, a Commission Working Document reports for the first time the progress achieved since the launch of the strategy in October 2005 and presents new developments towards further streamlining of the regulatory environment. In this context, 43 new initiatives will enhance the simplification rolling programme for the period 2006-2009. For 2007, 58 simplification initiatives are planned.

Screening and Withdrawal Exercise

In parallel, the Commission set up a screening exercise targeting the flow of proposals still pending before the legislator. After screening 183 proposals for EU laws pending at the European Parliament and Council, the Commission selected 67 proposals pending, which were legally withdrawn when the list of proposals was published in the Official Journal on 17 March 2006. These proposals were withdrawn because some were inconsistent with the objectives of the new 'Partnership for Growth and Jobs' or did not meet Better Regulation standards. Others were not advancing in the legislative process, or were simply outdated.

¹⁰⁰ COM(2005)535 final, *ibid.*

A new screening exercise was organised to complete the 2005 one: 79 proposals pending adopted by the Commission between 1 January 2004 and 21 November 2004 (end of term of the previous Commission) have been examined using the same criteria as for the 2005 screening. Final results were announced in the Strategic Review Communication. The Commission informed Parliament and Council as required, providing a justification for withdrawal for ten proposals in total¹⁰¹. As a reasonable time elapsed without any reactions from their part, the list of withdrawals was published in the Official Journal of 22 March 2007.

Measuring Administrative Costs

The Standard Cost Model (SCM) was designed by the Dutch Ministry of Finance for the purpose of quantification of administrative burden caused by a particular regulation or a set of legal standards, within the remit of a particular authority, during a specified time period, and for the purpose of enabling comparability between regulations and departments. In order to meet the administrative burden caused by the relevant information obligation imposed on business by the State through regulation, businesses are required to perform a sequence of activities. A similar model was developed in Denmark:

The cost of meeting the information obligation = the sum of the costs of all activities necessary to meet the obligation.

The overall administrative burden following from regulation = the sum of the costs incurred to meet all information obligations following from such regulation.

The cost P of performing an activity can be calculated as follows: $P = \text{tariff} * \text{time}$ ¹⁰².

The number Q of activities carried out during a given period is calculated as follows:

$Q = \text{number of businesses} * \text{frequency}$ ¹⁰³.

Administrative Costs (EU)

The Commission issued a Communication on 21 October 2005 outlining a common methodology to measure administrative costs in EU proposals.

More recently, the Commission Working Document on Administrative Costs, adopted on 14 November 2006, presents a broad strategy towards the reduction of administrative burdens, using some results of the pilot project. This pilot identifies policy areas that are most responsible for creating administrative burdens, by carrying out a cross-country comparison of the Member States that have already done a baseline measurement.

An Action Programme, presented on 24 January 2007, demonstrates in concrete terms the way in which the Commission intends to work with Member States to cut administrative burdens on businesses by a quarter by 2012. The Programme focuses on information obligations in thirteen selected priority areas including company law, employment relations, taxation/VAT, statistics, agriculture and transport. The Action Programme also includes a first series of 'fast track actions' where significant benefits could be generated through relatively minor changes in the underlying legislation. The measures could reduce the burdens on businesses by 1.3 billion euro.

¹⁰¹ Framework Agreement of 26 May 2005 on relations between the EP and the Commission (paragraph 32).

¹⁰² There exist two types of tariff – internal and external. The internal tariff is comprised of the unit costs per worker performing the relevant activity within the business (hourly payroll costs + additional expenses) and the cost of materials. The external tariff means, for instance, the hourly rate for the work of an external expert of organisation fulfilling the information requirement on behalf of the relevant business. Time means the number of time units (hours) taken to carry out the required activity. The required time may be determined by interviewing employers and employees.

¹⁰³ The number of businesses relates to businesses affected by the regulation, which are thus required to carry out the activity in question pursuant to the regulation and the ensuing information obligation. Frequency indicates how many times one business carries out the activity in a year.

The Commission intends to tackle administrative burden, especially for small businesses, by simplifying, for example, cumbersome statistics. However, significant results can only be achieved if the European Parliament and Council as co-legislators support it and work to develop this support is undertaken.

It should also be noted that much EC legislation is to be found in Directives which require Member States to achieve a particular result without dictating the means of achieving that result. Consequentially, many administrative burdens are imposed by Member States. A large duty falls, therefore, on Member States to ensure that their administrative procedures are as efficient and least burdensome as possible in accordance with the complexity and the risks associated with particular legislation.

Simplification NMS

Action Plans

Most of the NMS have recognised the need for simplifying procedures to enhance the competitiveness of their economy. This concern is reflected in governmental statements and reform programmes relating to the Better Regulation agenda.

In the **Czech Republic**, the government adopted an Action Plan of Reducing Administrative Burden on Businesses in April 2005, as well as a Methodology of Measurement of Administrative Burden, based on the Dutch Standard Cost Model. A baseline measurement of administrative burden imposed on businesses was then conducted and completed by December 2005. The results of the measurements undertaken by particular ministries and central state administration authorities were summarised in the report Analysis of Administrative Burden on Businesses published in 2006. The results were used to prepare the proposal for the next phase of the process, which should be submitted for the government's approval in 2007. It is envisaged that mandatory, ex ante administrative burden assessment will be introduced.

In 2006, the Ministry of Justice in Estonia published an action plan to simplify a large number of areas that affect businesses. It includes:

- Simplification of company law.
- Proposals to improve the quality of notaries.
- Reforms of labour law.
- A proposal concerning cost-based fees.
- Improvements in planning and construction laws.

The most important components of the comprehensive programme to rationalise governmental administration up to 2006 were: elimination of superfluous or parallel responsibilities of ministries and state authorities, internal rationalisation of ministerial functioning and simplification of the vertical structure of authorities. A Commissioner was appointed by the government for the rationalisation of governmental administration.

The Programme of Government (2006) renewed the commitment of the government to prioritise the simplification of certain laws and to take steps to simplify the business regulatory environment. It has set a number of goals, including that of simplifying the taxation system for small companies, given the importance of SMEs for the Hungarian economy.

In **Latvia**, an annual action plan for improving the business environment has been adopted by the government since 1999 and is regularly revised. The Latvian Investment and Development Agency (LIDA) regularly commissions surveys and reports on the state of the business environment to measure the extent to which the implementation of the action plan was successful

in this regard and to identify new priority areas for reforms.¹⁰⁴ In addition, the operational programme *Human resources and Employment* contains provisions designed to develop projects relating to the reduction of administrative burdens for citizens and entrepreneurs.

In **Lithuania**, the *Action Plan for Implementation of the Strategy for the Public Administration Development up to 2010* included a number of actions aimed at simplification of proposed and existing regulations such as:

- Preparing a manual that will be the basis for estimation and assessment of administrative costs for businesses. The objective of this action is to determine the concept of administrative costs and to define methods of assessment of administrative costs for businesses.
- Reconsidering legal regulation of different business areas in order to reduce administrative burdens and simplify legal regulation for business.

A further initiative to reduce administrative burdens was the establishment of a Working Group by the Prime Minister¹⁰⁵ to analyse the functions of institutions inspecting businesses and to put forward a proposal for improving these functions. The Working Group presented its report, along with an action plan, in 2004 and follow up action is underway.

In **Slovenia**, the Programme for the reduction of administrative burden for the year 2006 consisted of 34 measures. Each ministry submitted to the Ministry for Public Administration a series of proposals for simplification with an explanatory comment in each and a timetable for the implementation of the proposed simplification or reduction of administrative burdens. The explanatory comment stated whether or not it would be necessary to amend legislation to achieve the desired result. Among the 34 measures are the reduction of administrative delays, extension of the 'one-stop-shop' project for limited companies¹⁰⁶, reduction of the number of licences necessary for crafts¹⁰⁷, simplification of the permission acquisition procedure for planning permission for new buildings, simplification of rights on parent custody and easier access to public procurement by SMEs.

Measuring Administrative Costs — NMS

In most of the NMS, there is no procedure to measure administrative costs or to collect quantitative data on the various impacts regulations may have on businesses and citizens. Arguably, the lack of a measurement of administrative costs or a baseline by which to make comparisons weakens impact assessments undertaken for proposed legislation that will impose a burden and it undermines the potential to conduct *ex post* assessment and *ex post* reviews of regulations.

The need to measure administrative costs is under consideration in many countries and, for example, in **Lithuania**, there is an acceptance amongst officials that the lack of substantive indicators prevents policy makers from determining whether planned outcomes are delivered effectively.

The **Czech Republic**, **Poland** and the **Slovak Republic** have launched pilot projects or have undertaken surveys in order to measure administrative costs and assess how friendly the business regulatory framework is. The quality of the work varies, in accordance with the enthusiasm of the officials.

¹⁰⁴ http://www.liaa.gov.lv/eng/Incentives/Business_Environment/?doc=457: The latest (2005) report indicates steady improvements in the Latvian business environment.

¹⁰⁵ Ordinance of the Prime Minister No 239 "On Establishment of Working Group", adopted on October 22, 2003.

¹⁰⁶ A proposal to establish a one-stop-shop for the establishment of companies.

¹⁰⁷ For example, the need to have a licence to manage a hairdressing establishment or work in a shop.

In **Cyprus**, a number of surveys have been undertaken on the initiative of either the Public Administration or Personnel Department of the Ministry of Finance, or the relevant department or service, for the reduction of red tape. Cyprus is recognised as having an administrative structure which is business friendly.

In Estonia, two pilot projects were being undertaken in 2006, with obvious interest, in the Ministry of Economic Affairs and Communications in order to test the Dutch Standard Cost Model. Several ministries and offices (e.g., Ministry of Finance, Ministry of Social Affairs, Ministry of the Environment, and the Statistical Office and the Tax and Customs Board) have been involved in the leading group for testing the model.

In contrast, one official in Hungary commented that the results of surveys of this kind are sometimes unsatisfying as the task of collecting information about administrative costs is carried out sporadically and there is very often a strong reluctance on the part of officials to participate in these types of projects.

Nevertheless, a joint project was initiated by the Ministry of Finance and the Ministry of Justice in **Hungary** to assess the administrative burdens of VAT regulations. The Minister of Justice initiated a comprehensive programme for the reduction of administrative burdens, which is based on the Standard Cost Model, but is completed by the survey of economic costs beyond the business sphere (costs for the citizens). The first phase (total mapping of the burdensome regulations) was planned for the first half of 2005. As the project budget was reduced to a minimum, it is being undertaken with fewer resources over a longer period of time. Results are not expected before the middle of 2007.

In **Poland**, three pilot projects have already been implemented:

- A study, supported by the Office of the Committee for European Integration, was completed in December 2005 on the SCM and the perceptions of administrative costs in the road transport sector.
- Another study, supported by the Ministry of Finance, was aimed at measuring the administrative costs related to compliance with the information obligations required to be met by VAT payers in Poland. This study gave a rather alarming picture of the tax sector, since the level of administrative barriers was estimated at approximately 45.7% of all tax revenues in 2004.
- A third study was conducted on the initiative of the National Bank of Poland on administrative costs relating to the application of banking law.

A plan for administrative burden reduction was submitted to the Council of Ministers, together with the comprehensive Regulatory Reform Programme, for adoption in August 2006.

The lessons learned during the first benchmark were used to improve the method. In 2005 **Poland** and the Netherlands have conducted a benchmark on transport legislation. This was done according to the benchmarking method described in the international manual. The results of this benchmark are set out in Benchmark Transport EU Legislation Poland – The Netherlands¹⁰⁸. For **Poland**, the benchmark was part of a more extensive research into their transport legislation¹⁰⁹.

In the **Slovak Republic**, a paper¹¹⁰ prepared on the initiative of the National Agency for Development of Small and Medium Enterprises (NADSME), assessed the status and identified

¹⁰⁸ See: www.administrative-burdens.com.

¹⁰⁹ See: M. Gancarz., M. Kaluzynska (2005), *The Standard Cost Model and Perceptions of Administrative Burdens in the Road Transport Sector*, Office of the Committee for European Integration, Warsaw, Poland.

¹¹⁰ 2004.

the most significant factors influencing the business environment of Slovakia in 2004. However, the paper recognises that there is not sufficient data available to measure administrative costs burdening SMEs.

Simplification of Form

No coherent pattern can be seen in the NMS as regards the simplification of the form (language, style, structure, coherence, including its accessibility) of legislation. Some countries have undertaken extensive reforms while others do so on an 'as needed' basis.

In 2005, a systematic review of the regulations of the government was undertaken, coordinated by the State Chancellery. As a result of this review, regulations that were no longer of practical utility or were *ultra vires*, were repealed¹¹¹.

Each year the Legal Chancellor in **Estonia** gives an overview to the parliament of the conformity of the legislation, generally, with the Constitution and general principles of law¹¹². This usually results in amendments being made to correct errors discovered in laws. A systematic review of the regulations of the government and the ministers, coordinated by the State Chancellery, was undertaken in 2005.

A review¹¹³ has been undertaken to repeal spent or unused legislation and progress is being made towards requiring public bodies to seek information from their own records rather than impose the burden on citizens of repeatedly providing the same information.

There is no policy to simplify the language used in legislation, although the Constitutional Court ruled that Article 2 of the Constitution, which refers to the legal certainty principle, also includes the clarity of norms. On this basis, it declared invalid a regulation because of its complexity.

In **Hungary**, a simplification exercise was undertaken after the fall of communism which addressed the form and content of the stock of legislation. It was believed to be essential to reduce the number of rules that had no longer any practical utility and several systematic deregulation programmes were implemented.

Further initiatives to deregulate were undertaken, following the same principles and policy. The 2004 Programme on Law Simplification contained the task of mapping the changes in administrative costs caused by new legislation over a 4-month period. Having received responses from the ministries, the coordinating unit of the Ministry of Justice suspended this project and, instead, asked ministries for ideas from their own experiences for simplification. The proposal for the year 2005 was formulated having regard to these experiences¹¹⁴.

¹¹¹ See Administrative Procedures Act, Section 93 (1): "A regulation is valid until it is repealed by an administrative authority of the Supreme Court, or until expiry, or until repeal of the provision delegating authority."

¹¹² See the 2004 English version of the overview: <http://www.oiguskantsler.ee/files/36.pdf>.

¹¹³ There have been several specific projects to assess the potential to reduce the administrative burdens of legislation. For example, in 2001, a study was undertaken by PRAXIS. It involved three areas:

- mapping out and analysing the specific and procedural issues related to the licensing of business activity from both the government and corporate points of view. The goal was to deliver specific guidelines for the government to enable it to reorganise the current licensing procedure, and make the Estonian business climate more entrepreneur-friendly.
- Reviewing the regulations on the Law on Administrative Procedure.
- A study of checklists, and their use, to ensure due cooperation between the legislative and executive branches of government in updating the administrative procedure. In this project, PRAXIS's partners were government agencies and the *Riigikogu*. The project team compiled checklists that would enable speedy analysis of a draft law entailing administrative procedure (especially licensing). The checklists could be eventually used by legislators and *Riigikogu* committees. The goal is to ensure standard government regulation, reduce the complexity of administrative procedure and create a tool for coordinated policy-making.

¹¹⁴ Recent Regulatory Reform activities in Hungary, *ibid*.

In addition, within the framework of a comprehensive anti-bureaucracy programme, the Ministry of Finance has started to screen the financial legislation to identify possible areas of simplification. Codexes exist in several areas, such as criminal law and civil law. However, there is a view that there is a tendency to have too many specific codexes.

In Latvia, where 50% or more of the articles of a draft regulation need to be amended, a new version of the regulation must be issued.

Simplification of Procedures

There is a variety of approaches to simplification in the NMS. In some NMS, concern for simplification is driven by the business sector. In the **Slovak Republic**, for example, administrative costs were considered in a 2004 paper prepared on the initiative of the National Agency for Development of Small and Medium Enterprises¹¹⁵, which assessed the status and development of SMEs in the **Slovak Republic**.

In most NMS, a number of simplification initiatives and proposals for the reduction of administrative burdens are in place but their number and variety suggest the need to consolidate them, in order to ensure that they are focussed and that the full benefits of these policies can be achieved.

One way to reduce administrative burdens is to reduce the occurrence of circumstances where the same information is sought by several authorities. For example, in **Estonia** and **Latvia**, new laws are reviewed to ensure that the production of a piece of information is not required from citizens where that information is already available to the authority.

In **Estonia**, institutions have been given the right to authenticate copies of original documents presented to them and issued by them, so that the citizens do not have to go to notaries to have documents authenticated.

In **Latvia**, if a state body is obliged to establish whether it already has the information before it requests it from a person or small business. An audit of the bureaucratic procedures in order to ensure considerable simplification and transparent decision-making is foreseen. It is planned to review the body of legislation to ensure that the principle 'ask once use many times' is applied.

One-stop-shops

Another way consists in establishing a contact point with citizens such as 'one-stop-shops' where citizens and businesses may complete several kinds of administrative procedures.

In **Cyprus**, the first 'one-stop-shop' for citizens was opened in December 2005 so as to deliver better access to certain categories of government information and a range of services. It brings together the following services: identity documents, car registration, health and social benefits.

In **Malta**, the Malta Tourism Authority acts as a 'one-stop-shop' for tourism-related businesses. The Small Business Directorate, within the Commerce Division of the Ministry for Competitiveness and Communication, operates a helpline for small businesses that have difficulties with red tape. It forwards complaints of excessive red tape reported by businesses to the responsible authorities.

¹¹⁵ The paper pointed out that the most significant factors influencing the business environment of Slovakia in 2004 were the implementation of the new tax system, making administrative procedures required upon business start up more efficient, the changes in the system of social security to a system of social insurance, the improvement of communication with tax offices and the adoption of more flexible bankruptcy legislation.

Information Technology (IT)

In general, most of the initiatives taken rely on the use of IT tools to simplify procedures and to improve the coordination between authorities and all the stakeholders involved and, in general, to develop a more citizen-friendly administration.

Regarding the use of IT tools and e-government in general, some NMS are more advanced than others. However, the development of IT tools may result in reducing administrative burdens, provided internet access is well developed, which may not be the case in some NMS, such as Latvia.

In 1998, the government initiated an 'Information Systems Strategy' was set up in **Cyprus**. In the last 5 years, improvements have been made not only in the number but also in the level of the public services provided through the web. Most of the government ministries or departments or services have their own websites. The majority of the websites are informative and provide downloading of forms and other documents. Some also support user interaction.

In the last few years improvements have been made not only in the number but also in the level of e-services provided to the public. All Government Ministries/Departments/Services maintain their own websites¹¹⁶ which are either informative and provide downloading of forms and other documents or also support user interaction.

The development of "Citizen Centric" web-enabled systems, which has evolved as part of the Information Systems Strategy, is an ongoing process. Currently, a considerable number of e-services, such as the electronic submission of tax returns, the road tax license renewal using credit cards, the payment of social contributions for employees or for the self-employed using the "direct debit" payment method, etc., are provided to the public by the Government.

In the **Czech Republic**, the Public Administration Portal¹¹⁷ has been in operation since 2004. It serves as a single gateway between the public administration and citizens, businesses and institutions. The Portal includes a full public administration directory, Czech and European legislation, a database of detailed, suggested solutions for over 300 specific transactions with the authorities, the electronic Commercial Register, a facility for viewing parts of the Land Register, a public procurement overview and news from individual departments, etc.

Certain online services are available to citizens via the Public Administration Portal, including: filing of tax returns, applications for social benefits and services related to public healthcare. For companies, the services include: filing of statements related to social and health insurance of employees, filing of tax returns, filing of excise duty declarations, simplification of online completion and filing of statistical reports or electronic customs declarations.

Central public administration in Hungary is fully covered by computer systems, with a network access rate of almost 70% and the majority of ministries having their own home pages. In 1998, the so-called 'one-stop-shop' IT systems were created for the registration of sole proprietors and economic associations¹¹⁸. The modernisation of the Internet portal of the Ministry for Justice involved the creation of a forum for recommendations and feedback concerning the problems of lawmaking.

In **Malta** IT tools were developed with a view to increasing administrative efficiency and simplifying procedures. For example, a common database was set up to ensure that whenever

¹¹⁶ In order to promote e-inclusion, public web pages are developed on the basis of the Web Accessibility Guidelines.

¹¹⁷ www.portal.gov.cz.

¹¹⁸ Administrative Simplification – Best Practices in Hungary, Submission by the Hungarian government, Public Management Committee, 18-19 October 2001, Administrative Simplification – Best practices in OECD Countries, Expert Seminar.

information contained in a public database is amended, this change will also be made in all public databases.

In the **Slovak Republic**, e-government is developing but is at the 'start up' phase. Some initiatives have been taken recently, including those to simplify business registration. Standard forms can be downloaded from the website of the Ministry of Justice. The registration is complete within five days, once the requested documents and the completed form have been provided by a company.

In **Slovenia**, the portal, e-government¹¹⁹, was launched on 22 May 2006. It is an access point to public administration information and services which lists information in groups of life events. The portal provides easy access to information as well as user-friendly use of services offered by the state. The modernised portal includes a more comprehensive list of civil servants to whom a citizen can submit an application and it enables the citizen to communicate with public administration bodies, which ensures a quick response and user-friendly information. For example, it is possible to renew a driving licence online, thanks to the state portal e-government.

The Ministry of Public Administration hosts a state portal for businesses called e-VEM¹²⁰, which was launched on 1 July 2006. It enables the prospective sole trader to register in the Slovenian Business Register and forwards the information to the Tax Administration. It is planned to expand the e-VEM system to facilitate the registration of other types of companies.

Development of a More Citizen-friendly Administration

In many NMS, initiatives to develop a more citizen-friendly administration have been implemented, including the establishment of a quality service charter or a focus on some administrative principles of law.

In Malta, the Office of the Prime Minister developed a model of Quality Service Charter that ministries may adopt on a voluntary basis and adapt to their specific fields of activity in order to ensure that citizens are served as quickly as possible.

Some principles of administrative law may help to reduce administrative burdens. The Estonian Administrative Procedures Act requires the Estonian public service to provide administrative procedures that are efficient and provided with the least cost and delay to users¹²¹.

Dialogue with Stakeholders Committed to the Reduction of Administrative Burden

In some countries, coordination between authorities and all stakeholders involved regarding the reduction of administrative burden was strengthened through the establishment of a working group specifically in charge of these issues.

In **Lithuania**, a Standing Committee for Business Environment Improvement¹²² was established by the Prime Minister, involving representatives of business institutions, independent experts, specialists of state institutions, science and education institutions. The committee aims at the simplification of the business environment and its working method is based on close cooperation between authorities and business organizations.

However, in other countries, such as the **Slovak Republic**, there is no coordinated exchange of information between public service bodies. There is no central point such as a 'one-stop-shop' to

¹¹⁹ <http://uprava.gov.si/e-uprava/>.

¹²⁰ <http://evem.gov.si>.

¹²¹ Administrative Procedures Act, Article 5 II.

¹²² Resolution No 1265 'On Establishing a Standing Committee for Business Environment Improvement', *Official Gazette No 93-3271*, 2001, *No 127-4556*, 2005.

assist businesses, and in particular SMEs, and citizens dealing with administrative procedures and registration processes required by public service bodies.

Accessibility

It is essential for the good governance of a country that laws enacted to bind individuals and corporate people should be accessible to them and their advisers. This means that not only should they be able to find the laws but when they find them they should be able to follow them easily without having to refer from one text to another in a paper trail of cross-cutting amendments and overlapping requirements. Developments in Information Technology have aided considerably the process of making legislation and other official information available electronically and most countries now have some form of web-based access to legislation.

Publication in the Official Gazette and on the Internet

In all countries, primary and secondary regulation must be published in the Official Gazette in paper texts and in most countries it is also accessible online. Of particular interest is that in **Estonia** and **Malta** both versions (paper and electronic) have the same legal force. In **Estonia**, if the electronic version and the paper version of the same legislation published contradict each other, the paper version prevails and the State Chancellery must be notified of the contradiction.

In all other NMS, except in **Cyprus**, the internet version of legislation is free of charge. In most NMS, there is a slight delay between the publication of legislation on the internet and the publication on paper. However, in **Estonia**, legislation and other documents are published in the electronic Riigi Teataja at the same time as the Riigi Teataja (Official Gazette) is published on paper.

In **Lithuania**, all legislation must be published on the website of the parliament or the website of the institution which adopted it, within three days of its official publication in the Official Gazette.

Official Journal websites are maintained by various ministries in the NMS. The Ministry of Justice (**Hungary, Malta, and the Slovak Republic**) or the State Chancellery (**Estonia, Latvia**) is responsible for publishing the Official Gazette, including its publication on the internet.

In the **Czech Republic**, there is a searchable database of legislation available free of charge on the Public Administration Portal¹²³. The scanned issues of the Official Gazette can also be downloaded free of charge from the website of the Ministry of the Interior¹²⁴. The same website provides a similar search in the database of international treaties.

In **Cyprus**, internet accessibility is possible through several other websites such as Leginet¹²⁵, which is a vast database of legal materials such as titles of laws and regulations as well as the full text of laws. In Cyprus, also, an index of Primary Legislation (Titles of Laws and Regulations) is published in the Gazette. The House of Representatives' website includes indexes to all legislation in the form of yearly volumes. In addition, the Law Commissioner's Office drew up an index for international treaties called 'Index of International Treaties 1960 – 2004'.

In **Latvia**, all EC Directives and Regulations may also be found on the webpage of the Ministry of Foreign Affairs and the Centre of Terminology.

In **Lithuania** when legislation is amended, an unofficial text of the legislation is published which sets out the original text as amended.

¹²³ <http://portal.gov.cz/wps/portal/ s.155/699>.

¹²⁴ <http://www.mvcr.cz/sbirka/index.html>.

¹²⁵ www.leginetcy.com.

In **Malta**, the Department of Information, within the Office of the Prime Minister, is responsible for publishing the Government Gazette, including its publication on the internet. All subsidiary legislation, including bye-laws, is available on the Department of Information website¹²⁶. In **Cyprus and Lithuania**, a database of regulations is available on the Parliament's website.

In **Poland**, every year, starting from 31 March, an index of all regulations published in the official journal in a given year will be issued.

In some countries, in addition to the text of the laws, indexes of titles of laws and regulations are published. In **Lithuania**, public institutions publish titles of regulations in force within the sphere of their competence with respective references to relevant versions of regulations that are available in the database of regulations of the parliament.

Access to Consolidated Versions

In **Estonia**, since 2006, consolidated versions of legislation are published at the same time as the publication of an amending Act.

After amendment or repeal of a piece of legislation, a consolidated text of this piece of legislation, setting out all the amendments made to the original text, is prepared and published electronically in the Riigi Teataja (the State Gazette). All legislation is consolidated in this manner¹²⁷.

In **Latvia**, regulations, once amended, are made available by the Ministry of Justice in an annotated form¹²⁸. All regulations are collected in a database (NAIS) partially funded from the state budget and partially from subscriptions from selling the annotation service. It is planned to make this database available to the public free of charge and to link regulations with annotations and related materials.

In **Malta**, when legislation has been amended, it is re-published with the amendments in place. The website of the Ministry of Justice is regularly updated to include any recent amendments.

In the **Slovak Republic**, there is a Central Register of Laws website¹²⁹ where it is possible to read laws that have been amended as a single text, in consolidated form.

In **Slovenia**, the parliament publishes a consolidated text of legislation, once a principal Act in a series of Acts is amended. The consolidated text is not re-enacted but it is accepted as an official version of the legislation and as evidence of its contents.

Publication of Court Decisions

In **Cyprus and Estonia**, a database of court statistics and court decisions will soon be made available to the public.

In **Cyprus**, a web-enabled system is scheduled to be developed under the Ministry of Justice and Public Order. Once completed, the system will give access to all judgments, laws, regulations and other legal material to judges, lawyers, government officers, other external bodies and the public.

In **Estonia**, all Supreme Court decisions are available in the State Gazette, on paper, and on the homepage of the Supreme Court. In addition, a database (the 'KOLA'), in use since 2001, is

¹²⁶ www.doi.gov.mt.

¹²⁷ 1) Acts of laws; 2) decrees of the President of the Republic; 3) regulations and orders of the Government of the Republic; 4) regulations of ministers; 5) regulations of the President of the Bank of Estonia; 6) regulations of the National Electoral Committee.

¹²⁸ The compilation of the materials is undertaken by one official in the Ministry of Justice but the annotation work is undertaken by a private sector firm. The texts are not fully consolidated in the normal sense of the word but are annotated with links to enable the reader to follow easily a text that has been amended on a number of occasions.

¹²⁹ www.zbierka.sk.

divided into parts accessible to the public. Statistical returns related to judicial proceedings are also accessible to the public. The authorised users of the 'KOLA' have access to all the courts of the **Estonia**. The courts enter in the 'KOLA' notice of all court proceedings before them.

5. ENACTMENT BY PARLIAMENT

The capacity of the enactment process in parliament may be assessed by reference to:

- *The structure for enacting primary legislation.*
- *The procedures for enacting primary legislation*
- *The question of when parliament initiates legislation – does it follow the same processes of policy debate and law drafting as is followed by the executive branch of government.*
- *The resources available to parliament to enable members of parliament to research issues arising in legislation.*
- *The outputs of parliament and to what extent does the legislature indicate legislation independently of the executive branch of government.*

Structures for Enacting Primary Legislation

Generally, parliaments are only concerned with primary legislation; however, the House of Representatives in **Cyprus** also discusses secondary legislation, in detail.

The majority of parliaments in the NMS are unicameral, as can be seen from the table below. The question of whether there should be one or two legislative chambers is one of the most frequently asked questions of parliamentary design¹³⁰. The procedures for debate vary from NMS to NMS, though they all follow a broadly similar pattern of three readings.

Bicameral parliaments are to be found in **Poland** and **the Slovak Republic**. A further variation on this theme is **Slovenia** and, to some extent the **Czech Republic**, which have an incomplete bi-cameral structure. This means that the upper chamber does not have equal competencies with the lower chamber and has less authority. The purpose of upper chambers in incomplete bi-cameral systems, which on a world scale are more common than complete bi-cameral systems, is to supervise the work of the lower chamber.

As may be seen from the table below, terms of office vary. Representatives serve for four (Baltic countries, National Assembly of the Republic of Slovenia) or five-year terms, (**Malta, Cyprus, National Council of the Republic of Slovenia**). The number of representatives varies widely from country to country.

¹³⁰ Gallagher, Laver and Mair, McGraw Hill (2006), *Representative Government in Modern Europe*.

Overview of Parliaments in NMS

	Name of the Assembly	Number of MPs	Mode of election	Terms of election
Cyprus	House of representatives	80 (56 Greek Cypriots, and 24 Turkish Cypriots) 1/9804 citizens (14 005 if only the Greek MPs are taken into account)	Direct election with proportional representation and preferential system	5 years
Czech Republic	Chamber of deputies Senate	200 81 1/	Proportional system Majoritarian system (members elected in 81 constituencies)	4 years 6 years
Estonia	Riigikogu	101 1/13112 citizens	Proportional system	4 years
Hungary	Országgyűlés	386 1/25858 citizens	System of proportional and direct representation	4 years
Latvia	Saeima	100 1/22747 citizens	General, equal and direct elections, and by secret ballot based on proportional representation	4 years
Lithuania	Seimas	141 1/25432 citizens	70 elected from party lists and 71 from single-member districts	4 years
Malta	House of representatives	65 1/6157 citizens	Proportional representation	5 years
Poland	Sejm (lower chamber) Senate	460 100 1/68816 citizens	Complex system of proportional representation Elected by a majority vote on a provincial basis	4 years 4 years
Slovenia	National Assembly National Council	90 40 1/15464 citizens	88 seats directly elected on a proportional basis 2 seats reserved for Hungarian and Italian minorities (special voting rights) members indirectly elected by an electoral college	4 years 5 years
Slovak Republic	National Council	150 1/36263	Proportional representation	4 years

Procedures for Enactment

All parliaments in the NMS have developed different procedures for introducing, amending and debating Bills. It would require a very detailed analysis of the progress of a particular Bill, across all the parliaments, to form a view as to whether one procedure is more efficient than another. A feature in common is that Bills are reviewed in three readings in all NMS. The complex procedures allow time for issues to be considered and it is unlikely that a Bill will be enacted by any of these parliaments without a high degree of scrutiny. Some parliaments have, and make full use of, accelerated procedures¹³¹. What follows is an overview, which illustrates the complexity of the process and underlines the need for NMS to keep their procedures under review. They should ask themselves at some point:

- Why are these systems so different?
- What purpose is served by the different procedures?
- Could laws be debated and enacted in a more efficient and effective manner?

First Reading

The first 'reading' in all NMS is the submission of the draft law to the parliament. However, in **Slovenia**, the first reading may be avoided and it takes place only if requested by at least 10 members of parliament (deputies) (out of 90).

In **Malta** the introduction of a Bill is based on a motion requesting "that leave be given to bring in such a Bill". The first reading is, therefore, a formal approval of the title of the Bill.

In other countries, the first reading may be for the purpose of designating a committee to take charge of a Bill (**Czech Republic, Estonia, Lithuania** and the **Slovak Republic**).

Second Reading

The second reading in **Cyprus, Estonia, Hungary** and **Latvia**, is initiated by the presentation of a report made by the committee in charge of studying the Bill. The role of the committee at this stage is to focus on the general principles of the Bill. In the **Czech Republic, Lithuania, and the Slovak Republic**, the second reading initiates a more detailed deliberation, section by section, on the basis of the report of the committee in charge.

In the **Slovak Republic**, the National Council may only debate a Bill in the second reading after at least 48 hours have elapsed from the time the report of the committee established to consider the Bill was delivered. In **Malta**, when a day is fixed for the second reading of a Bill, the Clerk of the House gives each Member of the House a printed copy and causes it to be published in the Malta Government Gazette.

In **Slovenia**, at the second reading stage, the working body of the National Assembly responsible debates the Bill, article by article, before it is debated by the National Assembly as a whole.

Proposed amendments may then be considered at the second reading stage (**Czech Republic, Estonia, and Hungary**). In **Estonia**, after the close of the first reading, members of the *Riigikogu* can submit motions to amend to the leading committee. If that committee accepts a proposed amendment, it is put to a vote. The second reading of a draft may be suspended to leave additional time for improving the draft law and submitting motions to amend.

¹³¹ In some countries, such as the Czech Republic, Poland, and the Slovak Republic, the Standing Order of the Parliament establishes a so-called accelerated legislative procedure, according to which the timing of the enactment procedure is reduced, usually through the reduction of the number of compulsory readings. For example, in the Slovak Republic, all three necessary readings take place during a single plenary session. The excessive use of such procedures, as is pointed out by the National Council of the Slovak Republic, may reflect a lack of adequate preparation on the part of the government or a less than efficient working on the part of the parliament.

Between the second and third reading, in the **Czech Republic** and **Poland**, a Bill or draft resolution may be returned to the committees which considered it in the event of new amendments and motions being introduced during the second reading. In the **Czech Republic**, a detailed parliamentary debate is held on specific provisions of the draft and proposed amendments when the Chamber of Deputies has decided not to return a draft to a committee for further debate. In **Poland**, committees may present to the *Sejm* an additional report in which they may propose adoption or rejection of the Bill as a whole.

Third Reading

In **Cyprus**, **Latvia**, **Malta**, **Poland**, **Slovak Republic** and **Slovenia**, amendments may be considered, following the third reading. In **Malta**, only verbal amendments may be made to any law on the third reading. In the **Slovak Republic**, the third reading is restricted only to those provisions to which altering or amending proposals have been approved in the second reading. A Deputy may only propose, in the third reading, an amendment of legislative-technical irregularities and grammatical errors. At the third reading stage in all NMS, the draft is debated for the last time; once the debates are closed, the draft law is put to a final vote.

In **Slovenia**, amendments may be tabled to those articles to which amendments have been adopted in the second reading. The government may propose an amendment, provided it did not propose the Bill debated. The government or the member proposing the Bill may propose amendments to those amendments but not to the original text proposed.

Vote by the Other Assembly in the Case of a Bicameral Parliament

In the case of a bicameral parliament, such as in the **Czech Republic** and **Poland**, once the draft Bill has been adopted by one assembly, it is submitted to the other assembly which may approve of, reject or amend the Bill. In the two latter cases, the Bill is returned to the assembly which first discussed it and there is a procedure to ensure that a consensus is achieved, eventually, between the two assemblies.

In the **Czech Republic**, senators may attend a sitting of the Chamber of Deputies and justify the ruling of the Senate where a Bill has been returned with proposed amendments or if a Bill has been rejected.

In **Poland**, the Senate, within 30 days of submission of a Bill, may adopt it without amendment, adopt amendments or resolve upon its complete rejection¹³². If, within 30 days following the submission of the Bill to the Assembly, the Senate fails to adopt an appropriate resolution, the Bill is considered adopted according to the wording submitted by the *Sejm*. A similar procedure exists in the **Czech Republic**.

Initiation by Members of Parliament of Bills and Amendments

When members of parliament initiate legislation or propose amendments, it is essential that they do so with the same attention to technical detail, as is the case with a Bill or amendment prepared by a member of government with the technical assistance of his or her officials. To do otherwise can result in inadequate laws being proposed and in the quality of legislation being damaged by poorly thought out amendments.

In order to review the extent to which Better Regulation principles are embedded in a country, it is important to consider whether proposals by members of parliament are subjected to the same processes of policy analysis and law drafting as those followed in the executive branch of government.

¹³² Article 121 of the Constitution.

In some NMS, efforts are made to safeguard the integrity of the outputs of parliament by ensuring that proposals for Bills and amendments suggested by members of parliament are subject to a detailed analytical review, outside the partisan debates in the chamber of the parliament.

In certain countries (**Estonia, Hungary, Lithuania, and the Slovak Republic**), Bills initiated by members of parliament should be submitted to the government, for observations. In some countries, Bills are accompanied by an explanatory paper (**Cyprus, Estonia, Latvia, Slovak Republic and Slovenia**) in the same way as government Bills.

In **Lithuania**, a draft law must be sent to the European Law Department in the Ministry of Justice for evaluation of its consistency with European Union Law. The government, if consulted, is only entitled to give a conclusion and propose amendments. Amendments may not be made to a draft law, without the consent of a working group of the parliament.

In **the Slovak Republic**, a proposal by parliament is forwarded by the chairperson of the National Council to the Government for opinion. It is discussed within the Legislative Council and presented to the government by the minister in whose field of competence the proposal falls. If the government does not take a position on the proposal within a 30-day period, the proposal is discussed by the National Council and, in any case, the position of the government is only of recommendatory character.

In **Slovenia**, Bills submitted to parliament must be accompanied by documentation that states whether or not impact assessments and consultations have been undertaken and the secretariat of the parliament may reject a Bill which is not accompanied by at least a notional impact assessment. The quality of these impact assessments is not reviewed by the secretariat so, inevitably, the quality of the assessments is variable.

Rules of Procedure

Coherent and efficient rules on the organisation of plenary debates are a major factor in ensuring the quality of parliamentary debates and, therefore, the quality of parliamentary outputs and laws enacted. In particular, efforts are made through the committee system to place greater emphasis on the work of parliamentary standing committees in order to reserve plenary sessions for debates on major issues.

The standing orders or rules of procedure usually represent the main source of the rules regulating the order, timing and organisation of plenary debates, as well as the quorum. However, the Constitution may also contain essential provisions in this regard, as it is the case in **Cyprus**.

In all NMS, the standing orders establish organs, such as a chairperson and a board, which ensures the logistical organisation of the parliamentary debates.

In the **Czech Republic**, the coordination of the work of the Chamber of Deputies rests with the chairperson and the deputy chairperson. The chairperson of the Chamber of Deputies is represented by deputy chairpersons on his or her command, or in the order which has been specified.

Relative Positions of Legislature by Executive Branch of Government

The relations between the members of the executive branch of government and the parliament are ruled either by the Constitution, the rules of procedures of the parliament, or inter-institutional agreements.

Two distinct patterns may be seen in the NMS. The first is where the executive branch of government dominates the legislature (**Cyprus, Estonia, Latvia, Lithuania and Malta**). The second is where the legislative branch plays a more active role. In the **Czech Republic**,

Hungary, Poland, and the Slovak Republic, parliaments have a more independent approach to handling the executive branch of government. This may have adverse consequences for the quality of the resulting legislation, as the government does not exercise much control over amendments introduced at the enactment stage. **Slovenia** lies somewhere in between these two positions as its parliament is independent but respectful of the needs of the executive branch of government.

Positive Trend

In a few NMS, inter-institutional agreements have been signed between the government and the parliament in order to enhance the efficiency of the enactment process. In **Poland**, the 2004 Law on Cooperation of the Council of Ministers with the *Sejm* and Senate on matters relating to membership of the EU include provisions on the timely enactment of drafts transposing EU Laws. However, the coordination between these two constitutional bodies only refers to EU-related issues and does not cover other areas.

In **Slovenia**, the cooperation of the government and national assembly on EU affairs is governed by the Act on Cooperation between the National Assembly and the Government in EU Affairs¹³³, which stipulates that they cooperate in preparing positions and comments in cases where, in a comparable national situation, a document would be elaborated on in the National Assembly. In other cases, the government informs the National Assembly of developments.

Resources Available to Parliament

Parliaments are relatively well-served by research facilities and researchers. In most countries (**Cyprus, Hungary, Latvia, Lithuania, Poland, Slovak Republic**), each member of parliament has a parliamentary assistant who holds a University degree.

In **Slovenia**, the National Assembly provides each deputy group with a secretary, two specialised staff members and a clerk; an additional clerk is provided for every group of eight deputies; a group having more than eight deputies is provided with an additional specialised staff member.

Members of parliament may also have access to libraries and to a comprehensive database, including access to the complete, updated legislation, as it is the case in **Malta and Lithuania**. In the latter NMS, since 1997, this database has been extended by a new sub-system providing **Lithuanian** translations of all the EU regulations.

In the **Slovak Republic**, the Parliamentary Library provides the members of the National Council with books, periodicals and other documents, and provides research and reference services, thematically expert searches and creates an automated database of books, periodicals and articles from selected periodicals¹³⁴.

In the **Czech Republic, Latvia, Lithuania, Malta, Hungary and the Slovak Republic**, members of parliament may also benefit from services provided by parliamentary support staff assigned to committees, or to specific support units. In addition to the information provided by parliamentary support staff, members of parliament, as is the case in **Cyprus**, may visit parliaments in other countries in order to share experiences.

Whatever their size may be, support units seem to be essential as their analysis and activities enable the parliament to control the quality of Bills. In addition, in some NMS, they assist members of parliament to draft proposals or amendments, as well as to review government Bills.

¹³³ Official Gazette of RS, No. 34/2004.

¹³⁴ For example, the Slovak Parliamentary Digital Library, which contains electronic documents of all parliaments that have existed on the territory of the Slovak and Czech Republic since 1848.

In **Estonia**, the Parliament has adhered to the same technical rules on drafting as the government, which include the necessity to examine a list of impacts that need to be assessed when drafting legislation; and the support staff may assist members of parliament in conducting these assessments.

In **Lithuania**, the Information Analysis Department at the Office of Parliament provides comparative analysis and interpretation of regulations of foreign states, analysis of regulatory practice in various fields and any information requested by members of parliament. The Department often contributes to the reasoning provided by the Legal Department of the Parliament, when the latter carries out the analysis and interpretation of Lithuanian regulations.

In **Poland**, the Chancellery of the *Sejm* includes, in addition to the *Sejm* Library, the Office for Research which is responsible for providing legal, social and economic analysis for the legislation process, and the Office for Legislation, which participates in committee work and assists members of the *Sejm* by drafting Bills and amendments.

All parliaments in NMS appear to fall short of the expertise available to governments. In **Hungary**, the Office of the Parliament has 660 staff; the number of support staff varies but is usually relatively limited. Only 15 officials are involved in the administration of the Parliament in Cyprus, of which only a few have research competencies. The same number of staff is employed at the Parliamentary Institute in the **Czech Republic**.

In the **Czech Republic**, there are a number of problems with legislation relating to the lack of quality of amendments proposed to legislation and to the lack of discipline in the management of legislation. Many amendments proposed do not take full account of the scope and intention of the legislation or refer to a matter that is not covered at all by the draft law discussed. If enacted, these amendments distort badly the sense of the Bill to which the amendments are proposed and make the resulting law difficult to apply.

In **Slovenia**, the review of laws carried out by the legislative and legal service is purely formal and does not address the substance of the proposal. In addition, it appears to duplicate the review that is carried out by the Secretariat General of the Government.

Outputs

In all NMS, members of parliament may propose legislation. In **Cyprus**, by virtue of the Constitution, a member of the House of Representatives may propose a law, provided it does not burden the state budget.

In a number of NMS, Bills may be proposed as a result of a petition of a number of citizens. In **Lithuania**, for example, 50 000 citizens may submit a draft law to the parliament. In **Poland**, 100 000, and in **Slovenia**, five thousand or more voters may introduce a legislative proposal.

In practice, and in general, in the NMS studied, the majority of the laws debated and enacted are introduced by the Government and very few draft laws proposed by members of the parliament, or by any other person or body, are passed.

The number of Bills proposed by opposition parties represents a very small percentage of the total of Bills submitted to parliament.

Country	% of Bills introduced by the parliament	Number of governmental Bills passed/		Number of parliamentary Bills		Number of Bills debated		Number of Bills enacted		Number of Bills introduced by opposition parties/MPs		Total number of support staff working in the Parliament
		2005	current or last legislature ¹³⁵	2005	current legislature or the last legislature	2005	current legislature or the last legislature	2005	current legislature or the last legislature	2005	current legislature or the last legislature	
Cyprus	12%		318 ¹³⁶		61		514		455		63	100
Czech Republic ¹³⁷	40%		450		220		740		489		92	570, incl. 15 in the Parliamentary Institute
Riigikogu (Estonia)	20.5% ¹³⁸					245 146 in 2006		196 ¹³⁹ 84 ¹⁴⁰ in 2006		9		266
Hungary	10%		470		17 by parliamentary committees (= "PC") 86 by MPs		968		573		255 ¹⁴¹	631 + 221 officials who assist the 5 parliamentary factions
Latvia	1/3		296 ¹⁴²		81 by MPs 41 by PC				216			

¹³⁵ Slovak Republic: 2004 -2006; Poland: 2001-2005; Hungary : 2002 -2006; Czech Republic: 2000 -2006.

¹³⁶ 9/2004 – 7/2006.

¹³⁷ 4th election period (2002-2006).

¹³⁸ 2000-2004.

¹³⁹ 196 Acts adopted in 2005 including 161 laws and 35 decisions.

¹⁴⁰ 84 Acts adopted in 2006 including 69 laws and 15 decisions.

¹⁴¹ 170 were submitted by MPs of government parties, 229 by MPs of opposition parties, 17 by MPs of government and opposition parties, 2 by independent MPs, 5 by independent MPs with MPs of opposition parties, and 2 by independent MPs with MPs of government and opposition parties.

Among the Bills enacted: 68 were submitted by MPs of government parties, 7 by MPs of opposition parties, 10 by MPs of government and opposition parties, and 1 by independent MPs with MPs of opposition parties.

¹⁴² Saeima annual report 2005 <http://www.saeima.lv/Saeimasgadaparskats2005.pdf>.

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Country	% of bills introduced by the parliament	Number of governmental bills passed/		Number of parliamentary bills		Number of bills debated		Number of bills enacted		Number of bills introduced by opposition parties/MPs		Total number of support staff working in the Parliament
		2005	current legislature or the last legislature ¹⁴³	2005	current legislature or the last legislature	2005	current legislature or the last legislature	2005	current legislature or the last legislature	2005	current legislature or the last legislature	
Seimas (Lithuania)						869 ¹⁴⁴ including 660 laws 178 resolutions 31 other legal Acts		397 ¹⁴⁵ including 245 laws 137 resolutions 15 other legal Acts				504
Malta						17 (in 2006)	76 ¹⁴⁶	15 (in 2006)	69 ¹⁴⁷		3 ¹⁴⁸	
Poland	31.5%		735		33 by <i>Sejm</i> Committees 177 by groups of MPs	92 (in 2006: 206)	1264	178	894		51	1182

¹⁴³ Slovak Republic: 2004 -2006; Poland: 2001-2005; Hungary : 2002-2006; Czech Republic: 2002-2006.

¹⁴⁴ Figures for the 2nd session of the current legislature (2005/03/10 – 2005/07/07) and 3rd session (2005/09/10 – 2005/12/23). Dates of the 1st session: 2004/11/15 – 2005/01/20).

¹⁴⁵ Figures for the 2nd session (2005/03/10 – 2005/07/07) and 3rd session (2005/09/10 – 2005/12/23). Dates of the 1st session: 2004/11/15 – 2005/01/20).

¹⁴⁶ From May 2003 till today.

¹⁴⁷ From May 2003 till today.

¹⁴⁸ From May 2003 till today.

Country	% of bills introduced by the parliament	Number of governmental bills passed/		Number of parliamentary bills		Number of bills debated		Number of bills enacted		Number of bills introduced by opposition parties/MPs		Total number of support staff working in the Parliament
		2005	current legislature or the last legislature ¹⁴⁹	2005	current legislature or the last legislature	2005	current legislature or the last legislature	2005	current legislature or the last legislature	2005	current legislature or the last legislature	
National Council of the Slovak Republic	14%	116	458 (83 %)	27	92 (17 %)	262		143	550			509 job positions (Chancellery of the National Council of SR), of which - 170 civil servants - 339 others
Slovenia	6%		565 ¹⁵⁰		97		602		679 ¹⁵¹		26	364

¹⁴⁹ Slovak Republic: 2000 -2006; Poland: 2001-2005; Hungary : 2002-2006; Czech Republic: 2002-2006.

¹⁵⁰ 200 – 2004.

¹⁵¹ The number of adopted laws exceeds the number of draft laws because the National Assembly adopted laws which were already proposed in the previous term.

Much of the work of parliaments in NMS has been devoted in recent years to the implementation of European Union legislation and, in this regard, their output has been considerable.

However, the quality of the work undertaken in such a short period of time and under such intense pressure is being questioned. In many NMS, domestic issues were almost entirely left aside and what is needed now is a period of reflection and review. In many NMS, officials and representatives from businesses and NGOs stressed the need for parliaments to slow the pace and concentrate more on quality rather than quantity.

Reports and Public Inquiries

Parliamentary committees have the right to invite cabinet members to their meetings and to ask them for explanations, reports and necessary documents; they are under an obligation to attend a committee meeting, provide requisite explanations and reports and present documents.

Bills are usually discussed in committees at the first stages of the enactment process as, in most countries, except in **Malta** where debates on the Bill sections in plenary sessions are held on the basis of the comments provided by the relevant committee. Although the powers of parliamentary committees may vary from one NMS to another, committees usually have the right to consider fully the Bill submitted.

In **Lithuania**, the scope and importance of the parliamentary committees has increased significantly following the adoption of the 1999 Statute of the Parliament¹⁵².

In all NMS, committees may require that members of the government or the administration provide more information. In addition, debates at committee stage usually involve consultations with a wide range of stakeholders, including representatives of civil society and experts.

In most NMS, the parliament and parliamentary committees have the right to submit to the prime minister or to an individual minister questions and requests for further documents for which the latter is responsible (**Cyprus**, the **Czech Republic**, **Latvia**, **Malta**, **Poland**, the **Slovak Republic** and **Slovenia**).

A particular feature of the enactment process in **Cyprus** and **Latvia** consists in the fact that, not only ministers, but also officials are called before committees of the parliament and are required explaining policy decisions.

In **Cyprus**, the **Czech Republic (Senate)**, **Latvia**, **Lithuania**, and **Poland**, committees or even the parliament may invite not only the representatives of the government but also all the interested parties to present their opinion. However, procedures organising public hearings are very often neither fixed nor systematically used.

In **Lithuania**, following the 1999 Statute of the Parliament¹⁵³, the committee concerned sends the Bill to all interested state institutions and, if necessary, to public organisations, self-governments, political parties and organisations. The period allowed for consultation is longer than that allowed for government consultations. However, there appears to be no fixed rule on this issue.

In **Latvia**, NGOs may attend plenary sessions and parliamentary committee meetings. However, NGOs with only a sporadic interest in an individual piece of legislation do run into difficulties of access, such as the inability to secure a pass to enter parliamentary buildings. In addition, the parliament has, only on rare occasions, held hearings in order to solicit the views of the NGO community.

¹⁵² Entered into force on 1 February 1999.

¹⁵³ 1 February 1999.

In **Poland**, a public hearing may be held on a Bill, providing that a resolution referring the Bill to a committee for consideration is passed by the committee.

Limited Capacity for Independent Inquiry

In most NMS, the capacity of parliaments to conduct independent inquiry remains limited. In **Hungary**, no public inquiries are held by the parliament. In some NMS, e.g., the **Czech Republic** (Chamber of Deputies), **Estonia**, **Latvia**, **Lithuania** and **Slovenia**, select or investigatory committees may be appointed by the parliament.

In **Lithuania**, for resolving short-term or limited assignments, the *Seimas* may form standing commissions to examine special problems or to form ad hoc investigatory, control, revision, preparatory, editorial and other commissions to examine and prepare, or fulfill, another mission of the *Seimas*. In practice, some duplication appears to exist between parliamentary committees and commissions.

In **Slovenia**, the National Assembly may order inquiries on matters of public importance when required by a third of the deputies of the National Assembly or when required by the National Council. For this purpose, it appoints a commission which, for the purpose of investigations and examinations, has powers comparable to those of a judge. The National Assembly has conducted several parliamentary ad hoc inquiries, including one recent inquiry on company mergers.

In general, parliaments are addressed, and reports made, by various bodies which conduct inquiries in their own field of competence. For example, in **Hungary**, the State Audit Office¹⁵⁴ and the Hungarian Atomic Energy Committee report annually, to parliament.

¹⁵⁴ <http://www.asz.hu/ASZ/www.nsf/AMain?Openframeset>.

6. ENFORCEMENT AND COMPLIANCE

This part deals with enforcement and compliance in relation to intellectual property law and environmental protection law.

Enforcement and compliance are central to effective regulatory management. It would require an extensive study to assess the extent to which all legislation in a NMS was enforced or complied with. Two areas of law (environment law and intellectual property law) were selected as indicators of some general trends. The areas were selected in view of their importance to NMS and their economies and because their operation extended over a spread of administrative, civil and criminal enforcement and compliance tools.

There was widespread recognition in all NMS that effective enforcement depends on adequate structures being put in place to achieve it and adequate incentives being put in place to achieve compliance.

The assessments sought to establish, as regards environment law and intellectual property law:

- What are the general approaches to, or philosophies of, enforcement and compliance,
- Were policies in place for enforcement of, and compliance with, legislation in these fields adequately funded?
- Were there any trends towards higher levels of enforcement or compliance?
- What procedures were in place to enable citizens to appeal against administrative or judicial decisions?

The General Approach to, or Philosophy of, Enforcement and Compliance

In all NMS, the stated philosophy was zero tolerance. There was no mention in any country of a philosophy of a risk-based, proportionate model of regulation. In view of the limited resources in all NMS, the quality of the enforcement and the attention to techniques in compliance vary widely, without any discernible patterns, across the ten NMS.

A number of countries have developed administrative penalties.

Administrative Penalties

An administrative penalty arises where a law enforcement officer, in the course of inspection, identifies a contravention of a law. He, or she, may request that the infringement be remedied within a specified time or that a fine be paid on the spot. In some cases, an infringement may be remedied by the undertaking of work by a third party, with the cost of the work undertaken being recovered from the person committing the offence.

There is a trend in **Estonia**, for example, to prefer administrative remedies to penal sanctions, particularly after the improved procedures introduced in the Substitutive Enforcement and Penalty Payment Act.

An administrative penalty under that Act may be applied if a requirement of an administrative authority is not complied with during the term indicated on a warning notice. An administrative penalty is considered by officials in **Estonia** to be more efficient than a penal sanction in achieving compliance with environmental laws. A similar approach is adopted in the **Czech Republic** and **Slovenia**, according to officials in these NMS. Administrative penalties are also used in **Cyprus**.

Officials in these NMS agree that this approach is more demanding, in terms of time and energy, and runs a higher risk of being susceptible to corruption. However, officials interviewed were strongly of the view that requiring people who have breached laws to take action to address the problems caused is, ultimately, more effective than a criminal prosecution, where outcomes can be uncertain.

The documenting of enforcement and compliance success varies from one NMS to another. In some, information in this field is more transparent than in others.

In **Malta**, reports published by the Environment and Planning Authority (MEPA) set out priorities of the subsequent years. For example, the Enforcement Complaints and Compliance Section (ECCS)¹⁵⁵ prioritises removing large quantities of signs and billboards that were placed without permission and were unsightly. Priority was also given to cleaning up or removing scrap yards, and hundreds of tons of rubble and scrap material were deposited in facilities for recycling.

In **Poland**, for example, the Chief Inspector for Environmental Protection publishes an annual report entitled 'General Directions in Activities of Environmental Protection Inspection'. The report sets out priorities for enforcement activities, e.g., inspections on types of business activities or different types of legislation to be prioritised for inspections. On the basis of this report, each *Voivodship* Inspectorate of Environmental Protection prepares a detailed annual enforcement plan. Similar information is available (but is unpublished) in Slovenia and the Inspectorate for Environment and Spatial Planning has an annual plan prioritising areas for targeted surveillance and enforcement of particular legislation.

Are policies in place for enforcement of, and compliance with, environmental legislation and are intellectual property rights adequately funded and resourced?

All NMS indicated difficulties with having enough resources to deal with all contraventions. Particular difficulties were reported in **Cyprus** and **Slovenia**. In the former, officials in the Ministry of the Environment indicated that substantial energies and resources had been put into incorporating the *acquis communautaire* into **Cyprus** law, leaving little human or financial resources for inspections and enforcement¹⁵⁶.

In **Lithuania**, statistical data on the numbers of inspectors does not enable a complete picture to be drawn of the capacity of the administration to enforce all of the legislation. However, comments by officials in the field of environment law suggested that some capacity building will be necessary to bring the numbers of inspectors up to full strength.

Many of the wrongful consequences of breaches of intellectual property law are, however, identified by commercial bodies whose interests are directly affected by breaches. These bodies often have the resources to take civil actions. In some types of action, such as actions against breaches of copyright, persons not well placed to take legal action may benefit from involvement with collection societies, who are better placed to take collective action on behalf of their members.

¹⁵⁵ See Malta Environment and Planning Authority (2005), Annual report, p. 36 www.mepa.org.mt.

¹⁵⁶ In Cyprus, the Registrar of Companies also has responsibilities for intellectual property enforcement but the office has no capacity to develop its own database to be able to assess levels of compliance, from year to year.

Are there any Trends towards Higher Levels of Enforcement or Compliance?

All NMS reported improvements in enforcement. Reports from environmental protection bodies provide some data but comparisons are difficult, as data is collected for different reasons in different NMS.

Enforcement performance may differ within an individual NMS, depending on the sector considered, may derive from the fact that enforcement mechanisms are usually not standardised within a NMS.

In the **Czech Republic**, a report prepared by the Ministry of the Interior, reviewing all inspection arrangements for a wide range of laws, identified shortcomings of the legislation on inspection, including overlapping mechanisms and inconsistencies of terminology used. Currently, several hundreds Acts regulate the inspection procedures carried out by public administration authorities. The Ministry of the Interior launched a project to simplify and unify the system of control in the Czech Republic and to increase its transparency for the general public. This should be achieved through the adoption of a unique regulation which would replace all the existing regulations. The Ministry of the Interior is preparing a substantial proposal for the above-mentioned act and plans to submit it to the Government in April 2007.

In **Lithuania**, comments from industry sources suggest difficulties in the interpretation of some environmental regulations,

In **Malta**, each Ministry or enforcing body may have its own mechanism to ensure compliance with laws. This may not be automatically detrimental to the level of enforcement; however, it may contribute to its reduction.

Weak enforcement may also be linked to the fact that enforcement authorities are granted insufficient, or inappropriate, powers. In this regard, the situation varies from one NMS to the other.

Barriers to enforcement may result from the law itself or the way it is applied and interpreted. In **Cyprus**, the interpretation by the judiciary of burden-of-proof rules as to copyright ownership makes the initiation of legal proceedings against infringers very difficult.

Annual Reports

The documenting of enforcement and compliance success varies from one NMS to another.

In **Malta**, the Environment and Planning Authority reports that the Enforcement Complaints and Compliance Section (ECCS)¹⁵⁷ dealt with 3705 complaints in the period covered by the 2005 Report. Of these complaints, 3524 were replied to and, from these, 391 cases were resolved without need for an enforcement action. The ECCS monitored building developments so that infringements could be acted on at the construction stage of building projects. In a small number of cases, prosecutions were necessary but, in the majority of cases, a visit from the ECCS was sufficient to address problems.

In **Poland**, the annual report of the Chief Inspector for the Environment provides some information about enforcement, including the number of companies inspected in a particular year, the number of inspections and the number of decisions taken suspending the operation of an installation, due to infringements by that installation of environmental law.

Watch Lists

One definite objective measure of improvement may be gleaned from the Office of the United States Trade Representative. It publishes an annual report on intellectual property compliance,

¹⁵⁷ See annual report for Malta Environment and Planning Report and Accounts 2005 p. 36 [www.mepa.org.mt].

which includes a priority Watch List. There is a second list the Watch List of countries that do not provide an adequate level of IPR protection or enforcement, or market access for persons relying on intellectual property protection¹⁵⁸. The **Slovak Republic** was dropped from this list in 2005.

However, some NMS remain on the list. **Hungary** remained on the Watch List for 2006, despite the recognition by the U.S. authorities of the recent enactment of intellectual property enforcement legislation. There has undoubtedly been progress in this field in **Hungary** in recent years. Hungary was moved from Priority Watch List to Watch List in 2003. Positive steps have been taken in Hungary to modernise its copyright code, but poor enforcement of these laws, delays in bringing prosecutions, low fines, weak sentences and weak border enforcement remain a source of concern acknowledged by the authorities in **Hungary**.

Latvia also remained on the Watch List for 2006, despite the fact that it has improved enforcement, among other things, by improving co-ordination between ministries and enforcement authorities. There has been an increase in prosecutions, but low fines and prison sentences are not acting as a sufficient deterrent to prevent infringements. Border controls remain weak and internet piracy remains a problem.

Lithuania also remains on the list for 2006. It has improved its legislative framework for protecting IPR and in combating software piracy. However, optical media piracy levels remain high.

Poland also faces challenges from increasing software piracy. It remains on the Watch List for 2006. There were an increased number of raids in 2005 to seize pirated software but the imposition by the courts of low fines and short prison sentences appears not to have created a sufficient disincentive to continued infringements.

Appeal Processes

Enforcement can be delayed by lengthy appeal processes. All NMS have appeals processes in place but no effort has been made in any country to provide for accelerated appeal processes in cases of exceptional public interest. Delays in court hearings in some countries, notably in **Malta**, the **Slovak Republic** and **Slovenia**, need to be addressed by increasing capacity and reviewing procedures to ascertain if improvements can be brought about by more streamlined processes.

Decisions made by public authorities in the field of environmental law may be challenged in all NMS. In many NMS, including, the **Czech Republic**, **Malta**, **Poland** and **Slovenia**, individuals may first request the relevant authority to review the challenged decision before starting an appeals procedure before a court.

In **Poland**, decisions relating to intellectual property rights may be appealed either before an administrative court or a civil court. The 2000 Law on Industrial Property provides for a right of action in an administrative court, where an appeal against a decision of the Patent Office to the Regional Administrative Court may be filed. In addition, apart from the rights stipulated in the copyright law and the law of industrial property, an injured person is granted the right to file a claim for civil rights protection as provided for in the Civil Code.

Some NMS have nominated special bodies or procedures to appeal against a decision related to intellectual property rights. In the **Slovak Republic**, where a decision of the Industrial Property Office may be challenged, following a two-stage process. In the first stage, objections raised by third parties against the recognition of a trade mark are assessed and decided upon by the

¹⁵⁸ These reports are prepared under section 182 of the Trade Act 1974 (US) as amended including the Uruguay Round Agreements Act (1994) ('Special 301). Under special 301 provisions USTR must identify those countries that deny adequate and effective protection for IPR or deny equitable and fair market access for persons that rely on intellectual property protection.

Office. In the second stage, third parties who object to the decision may lodge an appeal before the appeals department of the Office. The final decision is signed by the head of the Office upon a decision of an independent Committee consisting of 5 members (3 from the academic world and 2 from the appeals department of the Office).

Extra-judicial Mechanisms of Recourse

All NMS have established extra-judicial mechanisms of recourse, including the establishment of ombudsmen and of bodies in charge of consumer claims.

Ombudsmen have been established in all NMS and usually have similar responsibilities. In **Cyprus**, for example, citizens may challenge administrative decisions by an appeal to the Ombudsman's Office. In addition, mechanisms for dispute resolution, including SOLVIT centres and arbitration mechanisms, have been set up in some NMS.

In **Malta**, consumers have an option to go to the Consumer Forum or the Consumer Claims Tribunal for purchases made by consumers of up to 1500 Lira. There is scarce data on enforcement. However, a survey conducted by the Council of Consumers revealed that many decisions delivered by the Consumer Claims Tribunal are not enforced. Also in **Malta**, mandatory arbitration was recently developed for claims of creditors of below 5000 Lira, resulting in an important reduction in the number of cases before the courts. Since August 2005, 500 claims have been made under such a procedure.

In the **Slovak Republic**, a Law on Mediation was adopted in September 2004. Following the 2004 amendment of the Act on Bankruptcy, a significant flexibility has been introduced to bankruptcy proceedings.

In **Slovenia**, the 2005 National Reform Programme identifies the need to improve the functioning of the judicial system. The measures proposed include: simplification of procedures, computerisation of courts and the re-organisation of the management of the courts.

7. CONCLUSIONS

General

The NMS reviewed during this study are, geographically, a very diverse group of countries. They range from small islands in the Mediterranean to states that have recently moved from central planning structures to free market economies. All adopted the *acquis communautaire* in a remarkably short period of time and many have seen accelerated and far reaching changes to their systems of governance. Now that they are members of the EU, they all face, to differing degrees, the challenge of ensuring that the laws which were adopted as part of the accession process are enforced or complied with and that future amendments to the *acquis communautaire* are adopted and implemented in a timely manner.

Many NMS face pressing domestic issues, some of which are beyond the remit of the European Union. These issues include: balancing expectations of state support for welfare and pension policies against the harsh reality of having to fund them from taxation, maintaining competitiveness, dealing with the challenges posed by unemployment and emigration of talent and addressing the rights of minorities.

As regards regulatory management, all of the NMS have transparent and efficient systems for planning the execution of policy choices, for the development of policies and their implementation into legislation. All have Better Regulation-type policies, with some having an explicit Better Regulation policy (**Czech Republic, Malta and Poland**), while others have an implicit Better Regulation policy.

Political support is a critical success factor for the development and implementation of improved governance practices, such as the adoption of a Better Regulation policy. In some NMS (**Cyprus, Malta, Poland, Slovenia**), political support was clearly visible in the form of participation by ministers in conferences on Better Regulation, speaking knowledgeably about the subject. However, in the other NMS, political support was less tangible, though references to Better Regulation issues may be found in all NMS in strategic plans and political documents of one kind or another. These references have to be treated with caution, as many of these documents set out ideals and ambitions as much as they set out realistic and deliverable goals.

Any policy development in states formerly under communist influence has to take its place alongside a large number of other pressing political issues. In the period up to, and immediately after, European integration, anything which was associated with accession was likely to be prioritised and accelerated. In the post-accession period, it is by no means certain that this will remain the case.

Regulatory Management Capacity

For the most part, in NMS, there is a sense that regulatory management works quite well and sophisticated and abstract fine-tuning through the development of Better Regulation is not an issue likely to attract voter attention or sustained political interest. It will, therefore, be a challenge to sustain interest in it. The reduction of red tape and the reduction of administrative burdens are issues that may get some attention, due to their obvious iconic value. However, these issues are competing with a wide range of other challenges and, inevitably, require some investment of time and money. The argument that Better Regulation policy is an investment in the infrastructure of

governance requires skilful advocacy and a degree of political vision which is not clearly visible in most NMS.

The biggest capacity challenge facing all NMS in the development and maintenance of policies to improve governance will be to either keep existing officials in place or to develop structures which provide for continuity. In all NMS, the fire for regulatory management improvement is kept alive by a small number of high priests. If they are promoted, or move on, the challenge will be to put in place other officials to deliver on the reforms that were seen being developed during the reviews.

Quality Control

All NMS have put in place regulatory management practices to assure the quality of their legislation before it is submitted to government for approval and parliament for enactment. However, the practices tend to concentrate exclusively on whether the law has achieved the relevant political objectives and on technical, legal issues, such as conformity with the Constitution, compliance with the general principles of law and with international obligations. These are important goals; however, most NMS neglect to put in place a review from the point of view of whether the proposed legislation conforms to Better Regulation principles or whether the tools used in their preparation (impact assessment or consultation) have been properly used. Some NMS are beginning to address issues associated with ensuring the administrative costs are kept to a minimum.

Use of Better Regulation Tools

In most NMS, there are laws which require impact assessment to be undertaken. However, most of these laws were enacted without putting in place the necessary skills or support structures and, up until recently; there was no real commitment to their operation. Consequentially, there are formal mechanisms in place but they are frequently ignored. A number of NMS (**Czech Republic, Lithuania, Poland, Slovak Republic and Slovenia**) are aware of this problem and are addressing it.

Enactment

All NMS have effective and fully-functioning democratic institutions and many are relatively well-resourced. However, in most NMS, the legislative branch of government is dominated by the executive. In a few, however (**Czech Republic, Hungary, Poland and the Slovak Republic**), parliament plays a dynamic, though not always effective, role in legislating and proposing amendments.

Enforcement and Compliance

Enforcement and compliance is not an area which has received much attention in the context of regulatory reform studies or as part of Better Regulation initiatives. As well as providing a general overview of enforcement and compliance in these areas in the NMS, the assessments threw up some fundamental questions that could be usefully studied in the EU as a whole:

- Should the philosophy of enforcement and compliance be zero tolerance, i.e., that every offence, no matter how trivial, be prosecuted or should penalty systems be more in the line of a risk-based proportionate model of regulation?
- Are administrative sanctions more effective than penal sanctions and in what circumstances are they more effective?
- What are the most effective sanctions for particular types of offence?
- What are the best incentives to secure increased levels of compliance?

- Should statistical data on compliance and enforcement issues be compiled by governments in the EU in a manner which facilitates comparisons between EU Member States?

Recommendations Common to all NMS

1. *Political support needs to be developed to maintain a policy on Better Regulation*

Political support is essential for the development of regulatory management capacities so that strategic goals are set to achieve good governance by regulating better. Political support needs to be more substantive than a few carefully drafted phrases in political manifestoes or national plans. It must be genuine and based on a personal commitment of a senior political figure to delivering improvements in governance that will ensure that the regulation of their societies and economies, and the protection of the environment, is undertaken in a manner which is proportionate to the problems experienced, is transparent and deals with issues without having unintended consequences. Better Regulation Units can facilitate this process through holding seminars and encouraging debate about Better Regulation issues.

2. *A policy to achieve Better Regulation works best when there are appropriate and adequately-funded arrangements in place to support and maintain it*

Appropriate institutional arrangements need to be put in place to ensure that the quality of policy-making and legislation drafting is tested against a set of agreed objective principles designed, and agreed to improve, regulatory management. In all NMS, legislation is rigorously reviewed from the point of view of legality, constitutionality, and consistency with the general principles of law and conformity with international obligations. These are important requirements but are not enough to address the complexities of the problems thrown up by the modern world. A multi-disciplinary approach is needed to ensure policy choices are well made and, as appropriate, expressed in legislative instruments that meet a test of efficiency as well as the traditional test of legal effectiveness.

3. *Regulatory management capacities may be developed through the effective use of Better Regulation tools*

Better regulation tools need to be widely used in a proportionate manner by all institutions (executive and legislative branches of government and independent regulators) concerned. The issue of proportionality is of particular concern as regards impact assessment. All NMS have enacted laws to require the use of impact assessment for all policy proposals.

These are most likely to be successful when full impact assessments, using quantitative techniques and trained economists, are used for major policy proposals involving substantial impacts. For smaller impacts, what is required is an educated sense by officials of what is involved and what the likely costs are going to be for a particular proposal.

Consultation practices need to be developed to ensure that the collective knowledge of society is drawn on, in the development of new laws.

Measurement of administrative costs may be undertaken, but it should not be a distraction from the wider goals of making legislation as simple as possible and as easy to comply with as possible, with the minimum of burdens and duplicated efforts.

The use of these tools should facilitate the development of a multi-disciplinary approach to policy — making and the slow evolution away from the monopolistic control by lawyers of the review of the quality of legislation towards the development of legislation that is not only legally effective but efficient.

4. *Executive and legislative branches of government must cooperate in a constructive way to ensure wise governance*

The executive and legislative branches of government must cooperate in a constructive way to ensure wise governance. Legislatures in **Hungary, Poland, the Czech Republic** and the **Slovak Republic** tend to make legislative proposals and put forward amendments to legislation that do not take into account the longer-term issues. While these are exclusively matters for the NMS concerned, it is nevertheless important to draw attention to the need for this cooperation.

5. *More attention needs to be paid to enforcement and compliance*

There are substantial developments taking place in the European Union as regards administrative costs measurement, simplification and impact assessment. However, the next challenge to face the European Union will be to ensure consistent application of European law across the EU. The NMS, having recently adopted the *acquis communautaire*, now face the challenge of its effective implementation. How these NMS meet this challenge may well provide inspiration and guidance to states that joined the European Union before the 1st of May 2004, as well as to those that will join next.

ANNEX 1: GLOSSARY OF TERMS FOR THE PROJECT TO ASSESS REGULATORY CAPACITIES

‘acquis’ (or *acquis communautaire*) means in European Union the total body of European Union law accumulated so far. When used in the context of enlargement and accession of NMS to the Union, the expression refers to the whole corpus of Community law which NMS have to take over, including:

- The Treaties;
- The decisions taken by the EU Institutions pursuant to the Treaties;
- The case law of the Court of Justice.

‘Administrative burdens of regulation’ means the costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but **NOT** including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations.

‘Administrative costs’ within the EU institutions means the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labelling, reporting, monitoring and assessment needed to provide the information and registration. They are a subset of compliance costs stemming from the generic requirements of the legislation, which also includes substantive costs one-off investments in new production processes, training or increased recurring costs for raw materials and labour (excluding administrative).

‘Administrative compliance costs’ has the same meaning as administrative burdens of regulation.

‘Advisory Groups’ means selected experts or interested parties (e.g., social partners, environmental groups) who are brought together to form a consultative body, either on an *ad hoc* or a standing basis.

‘Alternative policy instruments’ have the same meaning as regulatory alternatives.

‘Alternative to regulations’ means any instruments other than command and control regulation used with the purpose of obtaining policy goals and including policy instruments such as:

- performance based regulation;
- process regulation;
- waiver or variance provisions;
- co-regulation;
- self-regulation;
- contractual arrangements;
- voluntary agreements;

- tradeable permits;
- taxes and subsidies;
- insurance schemes or information campaigns.

'Baseline' is a minimum or starting point for comparisons; in this case, it is a minimum set of criteria drawn up by SIGMA, in consultation with the European Commission, for the purpose of this project.

'Better Regulation, Regulatory Management, Better Regulation and Smarter Regulation' are the terms which are increasingly being used to convey the concept of an ongoing commitment to improving the processes of policy formulation, legislative drafting and enhancing the overall effectiveness and coherence of regulation.

Better Regulation means a policy to improve regulatory management capacities by adopting a multidisciplinary approach to formulating policy and drafting regulations and using tools such as impact assessment consultation and simplification. It applies to the flow of new regulations and the stock of existing regulations. It is closely related to but goes beyond regulatory reform which is concerned with reforming regulations so that they operate efficiently. Better Regulation policy is designed to ensure that existing and future legislation is of high quality, i.e., that it is clear, concise and used only when its burdens are proportionate to its aims.

'Consumer' and **'citizen'** are frequently used and it is important to note that these are not interchangeable terms. The term **'consumer'** is meant to refer to individuals when they are participating in the marketplace and consuming particular goods and services. It can also refer to businesses, often the initial customers in particular sectors. The concept of a **'citizen'** is broader and refers to the relationship between individuals and the State (without being used in any strict legal sense to denote nationality). There are circumstances where the State is a producer or supplier of a particular good or service to citizens. In this context citizens can be viewed as consumers of the State¹⁵⁹.

The idea of 'Better Regulation' also helps to draw an important distinction between the wide reform agenda and deregulation. It is accepted that in some cases consumer, investor and the broader public interest may be better served by introducing new regulation and that in other cases it may be better served by removing regulation.

No initial assumption is being made about either the existing quality or quantity of regulation or the need to deregulate. Instead, it is suggested that the goal of Better Regulation will not be achieved by simply seeking to minimise the volume of regulation but rather by using measures that are as simple and straightforward as possible while achieving the same policy objectives.

'Capacity' means the ability to perform appropriate tasks effectively, efficiently and systematically in a timely manner.

'Circulation of proposals for comment' means the process whereby information on regulatory proposals is circulated to a selected group of experts or interested parties for comment.

'Codification' means the systematic arrangement of laws in force.

'Command and Control regulations' means regulations that use the traditional approach of imposing a sanction, typically a fine or imprisonment or both, for failure to comply with an obligation.

¹⁵⁹ See White Paper on Better Regulation (Dublin, 2004) www.betterregulation.irlgov.ie.

'Co-regulation' means a system of shared regulatory responsibilities in which an industry association or professional group will assume some regulatory functions, such as surveillance and enforcement or setting of regulatory standards.

'EU Better Regulation Policy' includes the 'Action Plan on simplifying and improving the regulatory environment',¹⁶⁰ as part of the European Commission White Paper on European Governance¹⁶¹ and the March 2005 Communication "*Better Regulation for Growth and Jobs in the European Union*"¹⁶², and the November 2006 Communication "*A strategic review of Better Regulation in the European Union*"¹⁶³.

'Governance' includes 'rules, processes and behaviour that affect the way in which powers are exercised, particularly as regards openness, participation, accountability, effectiveness and coherence'. The term is used in this document to refer to governance at all levels of government: national, local and, at times, at the level of specific economic sectors.

'Legislation' means Acts enacted by a parliament.

'Principles of Better Regulation' includes principles to be applied in the making of regulations such as necessity, transparency, proportionality and accessibility.

'Regulatory Management capacity' means the capacity to regulate by means of the formulation of policy and its implementation through regulation.

'Regulatory Management policy' means a specific policy on Regulatory Management: that is, a policy which has as its object the improvement of regulatory quality and is driven politically and by appropriately staffed structures.

'Regulation' means any legal norm and includes an instrument by which governments set requirements on enterprises and citizens and includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

'Regulators' means any personnel in government Departments and other agencies responsible for making and enforcing regulation.

'Regulatory Impact Analysis/Assessment (RIA)' means the systematic process of identification and quantification of economic, social and environmental impacts likely to flow from adoption of a proposed *regulation* or a non-regulatory policy option under consideration. May be based on benefit/cost analysis, cost effectiveness analysis, etc.

A broader definition of RIA would distinguish between the *ex ante* RIA which relates to likely impacts of a regulatory proposal and the *ex post* RIA which relates to the actual impacts of an existing regulatory measure.

'Regulatory management' means the management of policy-making by a country so as to achieve an equitable society, sustainable development of its economy and protect its environment.

¹⁶⁰ COM (2002)278 final, *ibid.* – See also Communication from the Commission 'European Governance: Better Lawmaking', COM (2002)275 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0275en01.pdf

¹⁶¹ COM(2001)428 final, *ibid.*: The aim of the European Commission initiative on European Governance is to develop a new common 'legislative culture' in Europe by improving current procedures, widening the breadth of policy tools employed and simplifying existing legislation.

¹⁶² COM (2005) 97 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0097en01.pdf.

¹⁶³ COM (2006) 689 final, http://ec.europa.eu/enterprise/regulation/better_regulation/docs/docs_admin_b/en_689.pdf.

'Regulatory Reform' means changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of *regulation* and formalities.

'Secondary regulation' means regulation which can be made by a person (a Minister) or a body (an independent local authority).

'SIGMA' (Support for Improvement in Governance and Management in Central and Eastern European Countries) means the joint OECD/EU initiative launched in 1992, coordinated and principally financed by the European Commission which aims, amongst other objectives, at assisting the new EU Member states and candidate countries in modernising and strengthening their policy-making capacities.

'Soft law' means administrative circulars and administrative discretion.

'Sunsetting' means the automatic repeal of regulations a certain number of years after they have come into force. This will usually trigger a review of the regulation just before repeal occurs.

ANNEX 2: BASELINE

Baseline

The Baseline establishes a set of norms in relation to seven key areas (A to G) and will be used to assess:

- Horizontally (i.e., whole of Government) an overarching policy and capacity of a country to create and implement an explicit regulatory policy, and
 - Vertically (i.e., with particular regulatory area) the application of a better regulation policy to particular policy activities.
- A.** A policy as regards regulatory management.
- B.** A regulatory agenda- setting process.
- C.** A process for the formulation of policy and its translation in to regulations (whether legal or administrative instruments).
- D.** A regulatory quality assurance process.
- E.** An enactment process.
- F.** An enforcement/compliance mechanism.
- G.** A review process in respect of particular regulations or generally after an agreed period of operation.

A. A specific regulatory management policy

1. The regulation of a country needs to be managed by reference to a specific policy on regulatory management: that is, a policy which has as its object the improvement of regulatory quality and is driven politically and by appropriately staffed structures. The policy should focus on new legislation as well as the stock of existing regulations, to bring about constant improvement in regulation making and the overall regulatory environment. The policy should stand as a clearly identifiable policy in the way fiscal or environmental policy can be seen and understood as explicit policies.

2. The capacity to undertake such a policy needs to be demonstrated by reference to:

- A written policy on regulatory management that operates across Government and secures a whole of Government approach to policy areas that overlaps.
- The existence of a body or structure to carry out the policy.
- An appropriate number of suitably qualified personnel.
- Reports or other indicators of the strengths and weaknesses of the policy.
- Appropriate tools and mechanisms for ensuring enforcement of policy.

B. An agenda setting process

1. Effective regulatory management requires planning in the form of a general strategy to achieve the political, economic, environmental and social goals of government as well as tactical planning to deal with the day – to – day implementation of government programmes and the effective negotiation, enactment and implementation of EU policies. The planning process should show evidence of a capacity to set goals and a capacity to ensure that goals, once set, are achievable and achieved.

2. The capacity of the agenda setting process needs to be demonstrated by reference to:

- Descriptions of the process.
- Published plans such as government or coalition programmes.
- Administrative structures.
- An appropriate number of suitably qualified personnel.
- Reports or other indicators that agreed outcomes in specified periods were achieved.
- A capacity to ensure compliance with agendas once set.

C. Policy formulation and regulation drafting process

1. Inherent in regulatory management is the process of formulating policy and articulating it in the form of regulations. Regulatory quality is a function of the people and processes involved in the analysis of problems, the design of regulatory solutions, the composition of regulations, the quality assurance of regulation, the implementation of, or compliance with, regulations and the review of regulations once put in place. Good regulatory management is a function of the policies (explicit policies on regulatory management and policies as regards each sector), tools (consultation, regulatory impact assessment, use of alternatives to traditional command and control regulation) and institutions involved in the process.

2. The capacity of the policy formulation and regulation drafting process needs to be demonstrated by reference to:

- A transparent process articulated by law or set out in check lists, for analysis of problems and decision making or similar guidelines.
- Appropriate structures for the analysis of policy issues and their resolution by regulatory or other means.
- Appropriate tools such as regulatory impact analysis tools.
- An appropriate number of suitably trained personnel as regards particular areas of policy formulation and regulation drafting.
- As regards EU measures, processes and personnel for the analysis of proposals and the enactment and implementation of EU policy.
- Appropriately designed and managed consultation processes, regulatory impact assessment tools and a variety of regulatory implementation tools including alternatives to traditional command and control regulatory tools.

D. Quality assurance process

1. Good regulatory management requires a built in quality assurance process that validates regulations against good regulation principles such as:

- Constitutionality and conformity with general principles of law including EU law and policy.
- Consistency within the regulation.
- Consistency with other regulations, government and EU policy generally.

- Proportionality.
- Clarity.
- Accessibility.
- Effectiveness not only as regards the achievement of stated policy objectives but also from the point of view of minimising “red tape” and burdens particularly burdens on small to medium enterprises (SME’s).
- Conformity with budgetary policy.
- Economic, environmental and social impact (including impact on small to medium enterprises).
- Efficiency and effectiveness (as regards practicability and implementation).
- Transparency and non discrimination.
- Adequacy of resources to achieve particular objectives.
- Powers to enforce quality standards.
- Administrative burdens and reduction of red tape.

2. The quality assurance process needs to function horizontally as regards the implementation of an overarching policy on regulatory management and vertically within each body responsible for making regulations.

3. The capacity of the policy formulation and regulation drafting process needs to be demonstrated by reference to:

- An institution or set of equivalent arrangements for quality assurance, horizontally across the whole of Government and vertically in respect of each regulation making body.
- Published or ascertainable norms of regulatory quality.
- Procedures for quality review.
- A sufficient number of appropriately qualified personnel.
- Reports on the quality assurance process (internal) prepared by the bodies themselves or by parliamentary committees or academic commentators.
- Practices and procedures to deal with failures to achieve high quality regulation in accordance with agreed norms.

E. Enactment

1. To achieve effective regulatory management there should be enacted a specific law as regards regulatory quality management which prescribes regulatory norms.

2. Enactment is central to the regulatory management process whether it be by a parliament (primary legislation) or a delegated body (delegated legislation). The enactment process typically involves some kind of review of policy issues and quality review of the regulations. It is unnecessary to review the existence of such institutions and would be inappropriate to give a qualitative analysis of them. However, a useful indicator of the potential capacity of enactment institutions may be determined from a review of the existence and extent of research, secretarial and library facilities available to legislators.

3. The capacity of the enactment process needs to be demonstrated by reference to:

- An institution or set of equivalent arrangements for quality assurance.
- Published or ascertainable norms of regulatory quality.

- Procedures for quality review.
- A sufficient number of appropriately qualified personnel.
- Reports on the quality assurance process (internal) prepared by the bodies themselves or by parliamentary committees or academic commentators.

F. Compliance and enforcement of regulations

1. The formulation and making of regulations is the initial part of the regulatory process. In order to be effective regulations need to be complied with or compliance with them must be enforced. It would require an extensive study to assess the total capacity to ensure compliance or enforcement of regulations. Consequentially, two areas are selected as indicators: intellectual property regulations and environment protection regulations.

2. The capacity of the enactment process needs to be demonstrated by reference to:

- The accessibility of the relevant regulatory regimes and the extent to which explanatory materials are available to make the regulatory requirements known.
- Reports (internal or external) indicating the extent to which the regulatory regimes are effective measured against subjective government self assessments of effectiveness or objective assessments undertaken by academic commentators, consumer, commercial and environmental interest groups.
- The availability of a sufficient number of appropriately qualified personnel to undertake inspections, ascertain levels of compliance and secure enforcement.

G. Review

1. An essential characteristic of regulatory management is the extent to which regulations, once put in place, are reviewed from the point of view of effectiveness and relevance.

2. The capacity of the regulatory review process needs to be demonstrated by reference to:

- The existence of review processes (general and particular) for review evidenced by institutional arrangements and reports or the proceedings of those institutions.
- The availability of a sufficient number of appropriately qualified personnel to undertake inspections, ascertain levels of compliance and secure enforcement.
- Evidence of co-operation with international bodies whether by participating in peer reviews or otherwise.

**ANNEX 3: QUESTIONNAIRE FOR PROJECT TO ASSESS THE REGULATORY
MANAGEMENT CAPACITIES OF THE NEW (EU) MEMBER STATES**

A. A policy as regards regulatory management

General

1. Do you have an express policy on regulatory management?

The purpose of this question is to ask you to describe:

- If an explicit reform policy has been adopted, you are asked to indicate: when and how?
- Is the policy driven or supported politically?
- If there is not an explicit policy on Better Regulation, you are asked to indicate: how has government indicated its support for regulatory reform?
- Have there been developments in: consultation on proposed regulations, use of alternatives to traditional regulation, use of impact assessment tools, reviews of regulations from the point of view of reducing red tape, codification of laws and improved accessibility of laws through internet access to regulations;

Openness of regulatory decision-making

2. Is there a system for forward planning of regulatory activities?

The purpose of this question is to ask you:

- To describe the planning process for making new regulations.
- To indicate whether information technologies are used in compiling or accessing such plans.
- To explain how priorities are determined.
- To explain and how conflicts between priorities are resolved.

B. A process for the formulation of policy and its translation in to regulations (whether legal or administrative instruments)

Administrative procedures for policy-making

3. Are there established administrative procedures for making new regulations?

The purpose of this question is to ask you:

- To describe any standardised administrative procedures required by law, government decree, internal rules, or other broadly applicable policy, for making new regulations.
- To indicate what are the objectives of the procedures?
- To indicate which body is responsible for enforcing the procedures?

- To specify are there requirements for inter-ministerial consultation and co-ordination and co-ordination between the Government and the parliament when preparing a draft subordinate regulation or law (e.g. type of information to be consulted, time limits for consultation, etc.)?

4. When making regulations, what questions do policy makers ask themselves, for example, are the regulations needed and what is the appropriate level for making regulations?

The purpose of this question is to ask you what the questions are posed by policy makers when making regulations.

5. Are regulators required to identify and assess alternative policy instruments before adopting new regulations?

The purpose of this question is to ask you:

- To describe arrangements, if any, to encourage use of alternative policy instruments.
- To explain which alternatives are used.

6. Are persons who will be affected by regulations consulted when regulations which will affect their interests are being developed?

7. Are regulatory requirements communicated?

The purpose of this question is to ask you:

- To describe requirements for publishing and otherwise making regulation accessible to affected groups (distinguishing between legislation and lower-levels of regulation) as well as any “plain language” drafting requirements.
- Have central registries of laws, regulations, and formalities been set up?

Assessment of regulatory impacts

8. Do standard instructions require regulators to consider whether government action is justified?

The purpose of this question is to ask you:

- To describe any arrangements to require consideration during the regulatory development process of whether regulation is justified.
- Are there standard criteria, such as a benefit-cost test, for making such a determination?
- Are priorities established to help the administration address the most important problems first?

Law-drafting capabilities**9. How are regulations drafted?**

The purpose of this question is to ask you to describe any arrangements to ensure the legal/technical quality of regulations, including review of legal basis and consistency with higher regulation.

Sectoral regulators**10. Is there a trend in establishing “independent” sectoral regulators, and is there a general policy to guide their design and functions?**

The purpose of this question is to ask you to describe:

- Is there a policy on the establishment, design, or functions of independent regulators?
- How many “independent regulators” (organisationally located outside of line ministries) are now functioning at the national level?
- How many of those have established in the past ten years, and for which economic activities?

Training the regulators**11. What training is provided to those who make regulations?****C. A regulatory quality assurance process****Capacities for review and updating of existing regulations****12. Once regulations are drafted, are they subjected to a quality review process?**

The purpose of this question is to ask you to describe

- The quality review process, if any, used in your country,
- The criteria used to determine the quality of regulation
- The conformity of the regulations with the original policy decision.

13. Are there explicit programmes aimed at reducing administrative burdens?

The purpose of this question is to ask you to describe:

- Whether there is a programme aimed at reducing administrative burdens?
- How is this programme organised, and what are its goals?
- Initiatives to increase the adoption of new technologies in this area and indicate whether “one stop shops” or other information management approaches used.
- Whether your government has set up a registry of business formalities.
- How easy is it to set up a business?
- How easy is it to get a patent?
- How easy is it to protect industrial designs?

Review of stock of regulations and administrative burdens

14. Are there processes for systematically reviewing and updating regulations?

The purpose of this question is to ask you:

- To describe any processes for reviewing and updating regulations,
- To describe the objectives and timetables of such processes, how they are organised, the approach used including any public consultation, the bodies responsible, and the resources devoted to this task.
- Is “sun-setting” of regulations used?
- Are reviews conducted “regulation by regulation” or are there more comprehensive reviews of whole sectors or policy areas?
- To show how priorities for review were chosen and the scale of the reviews compared to the total quantity of regulation.
- Has review activity led to major changes in regulation?
- What are the particularly important impediments to the reviews?

15. Are specific reforms underway to reduce the burdens of business licences and permits?

The purpose of this question is to ask you:

- To describe any programmes aimed at improving or reducing the use and administration of business licensing and permitting.
- If possible, give the total number of different types of business licences imposed by the national administration.
- To provide information on the use of new technologies, on administrative innovations (such as “one stop shops”) and on efforts to coordinate licensing more effectively.
- What have been the results of these programmes?

D. An enactment process

16. What resources are available to Parliament to enable members of parliament research issues arising in legislation?

17. To what extent does the legislature initiate legislation independently of the Executive branch of Government?

18. When parliament initiates legislation does it follow the same processes of policy debate and law drafting as followed by the Executive branch of Government?

E. An enforcement and compliance mechanisms**Enforcement and appeals policies****19. Are compliance activities well designed, and accompanied by accessible and efficient appeals procedures?**

In this question you are asked to:

- Summarise general approaches to regulatory enforcement,
- Are the enforcement policies in place for protection of the environment sufficiently well funded to deal with all contraventions?
- Are the enforcement policies in place for protection of intellectual property rights sufficiently well funded to deal with all contraventions?
- Indicate if there been any trend for higher or lower levels of compliance in recent years?
- Describe the appeals processes in the area of environmental protection — whether administrative or judicial.
- Describe the appeals processes in the area of intellectual property — whether administrative or judicial.

17. What is the role of judicial review in regulatory quality?

In this question you are asked to:

- Describe the general role of the courts in reviewing regulations and the basis on which courts can overturn regulatory decisions.
- To indicate if there been changes in recent years to the judicial processes to make it more effective or efficient?

ANNEX 4: PEERS AND PROJECT MANAGEMENT TEAM

Dr. Luigi Carbone

Judge at the Supreme Administrative Court of Italy, Legal Advisor at the Prime Minister's Office of Italy

Dr. Ortlieb Fliedner

Lawyer, Marl, Germany

Dr. Eoin Gahan

Economist and head of the Regulatory, Trade and Policy Department in FORFAS, (the National Policy and Advisory Board for Enterprise, Trade, Science and Technology in Ireland). Before his present role he worked with an international consulting firm dealing with regulatory reform issues. He has also acted as the co-ordinator of the United Nations Industrial Development Decade for Africa.

Dr. Dieudonné Mandelkern

Honorary member of the Conseil d' État, Grande Officier de la legion d'honneur, Commandeur de l'ordre Nationale du Mérite, Chevalier des Arts et des lettres and President of the Group appointed by the European Commission to examine Better regulation issues which later became known as 'the Mandelkern' Group

Professor Alan Mayhew

Jean Monet Professor, Sussex European Institute, University of Sussex

Mr. Charles-Henri Montin

Since July 2004, Head of Better Regulation and international affairs, Agency for administrative simplification, Ministry of Finance, Paris.

From 1994 to 2004: Director of Administration and Personnel, NATO International Secretariat, Brussels.

Mr. Flemming Olsen

Ministry of Finance, Denmark, later OECD, Governance and Territorial Development Division

Mr. Giovanni Rizzoni

Head of the Office for House Floor Proceedings

House Floor Department, Italian Chamber of deputies, Rome, Italy

Mr. Dick van den Bosch

Legal counsellor and deputy chief of the Department for legislative quality, Netherlands Ministry of Justice

Ms Kathy van Hoorne

Senior Project Manager, Chancellery of the Prime Minister, Agency for Administrative Simplification, Brussels, Belgium

Mr. Henrik Wingfors

Ministry of Industry, Employment and Communications, Stockholm, Sweden

Project Management

The team was managed on behalf of SIGMA by Mr. Edward Donelan, Barrister-at-Law (of the Middle Temple, London and the Kings Inns, Dublin), a Senior Advisor (Principal Administrator in the OECD). He also acted as lead drafter of the report.

Prior to his appointment to SIGMA, he was the Director of the Statute Law Revision Unit, Office of the Attorney General Dublin and taught at the University of Dublin.

He has served on a number of international and national working parties related to Better Regulation issues and acted as a peer reviewer of France and Poland in the OECD review of those countries as regards regulatory reform policies.

He was assisted by

- **Ms Diane de Pompignan** who undertook substantial research work, prepared preliminary drafts of country reports and of the Synthesis report and prepared materials for conferences and seminars
- **Ms. Sandra Phillipe** who handled the administrative and logistical aspects of the project.

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