OECD Reviews of Regulatory Reform

Regulatory Policy in the Slovak Republic

TOWARDS FUTURE-PROOF REGULATION

OECD

OECD Reviews of Regulatory Reform

Regulatory Policy in the Slovak Republic

TOWARDS FUTURE-PROOF REGULATION

OECD
BETTER POLICIES FOR BETTER LIVES

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Please cite this publication as:
OECD (2020), *Regulatory Policy in the Slovak Republic: Towards Future-Proof Regulation*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, *https://doi.org/10.1787/ce95a880-en*.

ISBN 978-92-64-86984-4 (print)
ISBN 978-92-64-48215-9 (pdf)

OECD Reviews of Regulatory Reform
ISSN 1563-4973 (print)
ISSN 1990-0481 (online)

Photo credits: Cover montage by Baseline Arts Ltd using components courtesy of Shutterstock.com.

Corrigenda to publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

© OECD 2020

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at *http://www.oecd.org/termsandconditions*.

Foreword

Laws and regulations are essential tools for governments to promote societal well-being and economic growth. A well-developed regulatory policy – the process governments use to create policies and, if necessary, regulations – is therefore crucial for achieving policy objectives. In its ongoing effort to improve its regulatory system, the Slovak Republic asked the OECD in 2019 to assess its capacity to develop and implement new regulations compared to the practices and approaches of other countries.

Since 2007, the Slovak Republic has made great strides in developing its regulatory policy framework and has introduced a broad set of useful and important reforms, including the Unified Methodology for the Assessment of Selected Impacts in 2010. This Unified Methodology laid the foundations for a systematic assessment of the economic, social and environmental impacts of regulations. In 2018, the Slovak Republic introduced the *RIA 2020 Better Regulation Strategy*. By committing to an explicit whole-of-government policy for regulatory quality at the highest political level, the Slovak Republic took a crucial step towards promoting sound regulatory practice.

This *OECD Regulatory Policy Review of the Slovak Republic* assesses both the development of these reforms and how these reforms perform in practice. The review takes stock of regulatory policies, institutions and tools employed by the Slovak government to design, implement and enforce laws and regulations. This includes the institutional set-up for regulatory policy, *ex ante* and *ex post* evaluation of regulations, stakeholder engagement practices, multi-level regulatory governance arrangements, and regulatory enforcement and inspections. The review concludes with an analysis of the "future-proofing" of regulations and behavioural insights. It describes trends and recent developments within the Slovak Republic's regulatory environment, identifies gaps in relation to good practices and offers policy recommendations based on international best practices to strengthen the government's capacity to manage regulatory quality.

The methodology of the review draws on the OECD Regulatory Policy Committee's decades of experience in better regulation as reflected in the *OECD 2012 Recommendation on Regulatory Policy and Governance*, which identifies the measures that government can and should take to support better regulation. The review also used guidance and results provided in the *2014 OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections,* the *OECD Enforcement and Inspections Toolkit,* and the *2018 OECD Regulatory Policy Outlook*, and the *2020 Best Practice Principles for Regulatory Policy: Regulatory Impact Assessments.*

The OECD Regulatory Policy Committee leads the programme on regulatory governance with the support of the Regulatory Policy Division of the OECD Public Governance Directorate. Regulatory policy country reviews are a key part of the Committee's programme. The Directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance; respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitment to citizens. The goal of the programme is to support sustainable economic and social development through sound government frameworks that enable evidence-based policymaking.

A draft version of this report was approved and declassified at the 22nd session of the Regulatory Policy Committee on 2 April 2020.

Acknowledgements

The review was prepared by a multidisciplinary team, led by Daniel Trnka, Senior Policy Analyst, under the direction of Nick Malyshev, Head of the Regulatory Policy Division, with the encouragement and support of Janos Bertok, Acting Director of the Public Governance Directorate. The following team members took primary responsibility for different sections of the review: Daniel Trnka for Chapters 4 (stakeholder engagement and public consultations) and 7 (regulatory compliance, enforcement and inspections); Eric Thomson for Chapters 5 (the development of new regulations), 6 (*ex post* evaluation of regulation) and 8 (multi-level governance: sub-national level); James Drummond for Chapter 9 (innovative approaches to support future-proofing legislation); Yola Thuerer for Chapters 2 (context for better regulation), 3 (institutional framework and capacities) and 8 (multi-level governance: EU level); and Supriya Trivedi for Chapter 1 (macroeconomic and political context). Many thanks are also extended to Claudia Paupe, who lent administrative and organisational support and to Jennifer Stein, who co-ordinated the editorial process.

The team also included peers from the members of the OECD Regulatory Policy Committee, who actively participated in the fact-finding mission to the Slovak Republic and provided key inputs throughout the development of the review. Special thanks are extended to Külvi Noor from the Ministry of Justice, Estonia and to Morten Vestergaard Hansen from the Danish Business Authority, Denmark, as well as Daniele Giovannola, from the Regulatory Quality Office, Presidency of the Council of Ministers, Italy who also participated in the workshops in the Slovak Republic.

The review would have not been possible without the support of the Government of the Slovak Republic. The team would like to thank in particular Tatiana Hlušková, Katarina Pavlikova and Iveta Ivánová from the Ministry of Economy's Department for Business Environment for their unique assistance in collecting data and information, organising the team's fact-finding mission and workshops in the Slovak Republic as well as providing feedback throughout the development of the review.

Table of contents

Abbreviations and acronyms 8

Executive summary 9

1 Macroeconomic and political context 11
- Political context: the Slovak Republic's path to independence 12
- Economic context 14
- Notes 20
- References 21

2 The context for Better Regulation in the Slovak Republic 22
- Regulatory policy and core principles 23
- Assessment and recommendations 31
- Notes 32
- References 33

3 Institutional framework and capacities for regulatory policy 35
- Key institutions and regulatory policy oversight of the regulatory process in the Slovak Republic 36
- Co-ordination of the Better Regulation policy across government 43
- Assessment and recommendations 48
- Notes 50
- References 50

4 Stakeholder engagement and public consultations 51
- Stakeholder engagement and public consultations 53
- Stakeholder engagement in reviewing regulations 59
- Assessment and recommendations 60
- Notes 62
- References 62

5 The development of new regulations in the Slovak Republic 63
- RIA in OECD Countries 64
- The legislative process in Slovakia 67
- Trends in new regulations 67
- *Ex ante* analysis of regulations 69
- Skills and capacities in Slovakia 73
- The use of RIA in parliament 74
- Oversight and inter-ministerial co-ordination 75

Legal quality 75
Considering risks and alternatives to regulation 76
Assessment and recommendations 76
Notes 77
References 78

6 *Ex post* evaluation of regulation in the Slovak Republic 80
Ex post evaluation in the Slovak Republic 83
Assessment and recommendations 87
References 89

7 Regulatory compliance, enforcement and inspections 90
Compliance monitoring 91
Regulatory enforcement and inspections 91
Assessment and recommendations 93
References 94

8 Multilevel governance 95
The importance of sub-national regulatory policy 96
The organisation of regulatory attributions in the Slovak Republic 97
The use of regulatory management tools at the sub-national level 98
Multilevel co-ordination and oversight 99
District offices 100
Challenges and opportunities for regulatory policy in the Slovak Republic's municipalities, counties, and cities 100
Assessment and recommendations 102
The interface between the national level and the European Union 102
Assessment and recommendations 107
Notes 108
References 108
Annex 8.A. Powers in the two local government acts in the Slovak Republic 110

9 Innovative approaches to support future-proofing regulation 112
Future proof regulation: updating processes and using innovation in regulatory policy making 114
Introducing forward looking processes into regulatory policy making 115
Incorporating future proofing as part of the regulatory policy making cycle 120
Using behavioural insights as an innovative regulatory policy making tool 122
Assessment and recommendations 125
Notes 127
References 128

Tables

Table 3.1. Regulatory oversight functions and key tasks 36
Table 5.1. Opinion ratings: for final stage IAs in the United Kingdom 71
Table 5.2. Opinions issued on RIA Statements by the RIA Commission 2016-19 71
Table 9.1. Applying BASIC to reduce missed medical appointments 124

Figures

Figure 1.1. GDP growth (annual %) – Slovak Republic 14
Figure 1.2. Percentage of jobs at risk in the Slovak Republic due to increased automation in the manufacturing sector 17
Figure 1.3. Average government stakeholder engagement has improved in the Slovak Republic since 2014 19
Figure 1.4. The Slovak Republic currently demonstrates the lowest level of trust within their police among all OECD countries 19
Figure 1.5. On average, perceived corruption has remained stable since 2012 and has only slightly improved in the Slovak Republic 20
Figure 1.6. Since 2010, trust in national government has improved slightly in the Slovak Republic 20
Figure 2.1. World Bank Doing Business Scores 2015-2020 25
Figure 2.2. Better Regulation National Project in the Slovak Republic 26
Figure 2.3. Reports on the performance of regulatory management tools 31
Figure 3.1. The RIA Commission 38
Figure 3.2. The process of quality review of RIA by the RIA Commission 39
Figure 3.3. Inter-ministerial commenting procedure 44
Figure 4.1. Composite indicators: Stakeholder engagement in developing primary laws, 2018 53
Figure 4.2. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2018 54
Figure 5.1. Composite indicators: regulatory impact assessment for developing primary laws, 2018 66
Figure 5.2. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2018 66
Figure 5.3. If RIA does not take place, is a post-implementation review required? 67
Figure 5.4. Consultation and RIA requirements for laws initiated by parliament, 2018 74
Figure 6.1. Composite indicators: *Ex post* evaluation for primary laws, 2018 82
Figure 6.2. Composite indicators: *Ex post* evaluation for subordinate regulations, 2018 82
Figure 8.1. Multi-level regulatory governance: Framework for analysis 97
Figure 8.2. Doing Business in Slovakia 2018 100
Figure 8.3. EU Member States' requirements to conduct stakeholder engagement and RIA on EU-made laws 104
Figure 8.4. Requirements to assess gold plating and national additional implementation measures 106
Figure 9.1. The European Commission's innovation principle 115

Boxes

Box 2.1. The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance 23
Box 2.2. RIA 2020 – Objectives, principles and measures of Slovakia's Better Regulation Strategy 27
Box 2.3. Evaluating the European Commission's consultation practices 30
Box 3.1. Main features of regulatory oversight bodies to promote regulatory quality 36
Box 3.2. Institute for Financial Policy of the Slovak Ministry of Finance 46
Box 4.1. The second recommendation of the 2012 Council on Regulatory Policy and Governance 52
Box 4.2. Better Regulation Centre of the Slovak Business Agency 55
Box 4.3. Denmark's Business Forum for Better Regulation 61
Box 5.1. The fourth recommendation of the 2012 Council on Regulatory Policy and Governance 64
Box 5.2. Best Practice Principles on RIA: Proportionality 69
Box 5.3. The three kinds of impact assessment ratings from the UK Regulatory Policy Committee 71
Box 5.4. SMART Objectives for regulation 72
Box 6.1. The fifth recommendation of the Council on Regulatory Policy and Governance 81
Box 6.2. Overarching principles for reviewing the stock of regulation 83
Box 6.3. Canada's policy on results 84
Box 6.4. Reducing administrative burdens in Slovakia 2009-2014 85
Box 6.5. Parliamentary evaluation and analysis units 86
Box 6.6. Approaches to *ex post* evaluation 88
Box 7.1. The OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections 91
Box 8.1. The eleventh recommendation of the 2012 Recommendation of the Council on Regulatory Policy and Governance 96
Box 8.2. Local Regulation Programmes of the Better Regulation Executive in the United Kingdom 101
Box 8.3. Comparing regulatory processes and outcomes across EU Member States 105
Box 9.1. Key definitions 113
Box 9.2. Five questions regulators need to ask themselves 116
Box 9.3. Strategic foresight methods 117

Abbreviations and acronyms

AU	Analytical units
BI	Behavioural Insights
CEE	Central- and Eastern Europe
DTF	Distance-to-frontier
EC	European Commission
EU	European Union
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
ICT	Information and Communication Technology
IFP	Institute for Financial Policy
ISA	Institute for Strategy and Analysis
MFEA	Ministry of Foreign and European Affairs
MoE	Ministry of Economy
NGO	Non-governmental Organisation
OP EPA	Operational Programme Effective Public Administration
PKK	Preliminary commenting procedure
RIA	Regulatory Impact Assessment
RPC	Regulatory Policy Committee
SBA	Slovak Business Agency
SCM	Standard Cost Model
SME	Small and medium-sized enterprise
VfM	Value for Money

Executive summary

This *OECD Regulatory Policy Review of the Slovak Republic* assesses the country's regulatory management capacity by taking stock of regulatory policies, institutions and tools, describing trends and recent developments, and identifying gaps in relation to good practices. Improving the entire regulatory policy cycle will ensure that regulations are built on a foundation of solid evidence and public participation and are designed to improve the security, health and well-being of citizens at a reasonable cost.

The Government of the Slovak Republic has introduced important reforms to improve regulatory policy. Line ministries are required to use tools such as regulatory impact assessment and stakeholder engagement when developing laws and regulations. However, challenges remain in ensuring that they implement these tools effectively. The Slovak Republic should support good law making by strengthening analytical capacities and oversight of the regulatory process.

Key findings

- The Slovak Republic has introduced a broad set of useful and important reforms that strengthen regulatory policy. The RIA 2020 Strategy follows international best practice, committing at the highest political level to an explicit whole-of-government policy for regulatory quality.
- As is the case in many OECD countries, the competencies for supporting regulatory quality are distributed among several key ministries and institutions. There is scope for improvement in the regulatory oversight system's methods and performance, as the overall quality of the RIA is currently not reviewed and co-operation with line ministries could take place more systematically.
- The analytical units in key ministries present an advantage for the Slovak Republic compared to other countries in the region and reflect international good practice, but are not systematically involved in the RIA process.
- Stakeholder engagement in the Slovak Republic, despite the lack of formalisation of its certain aspects, compares very well with other OECD countries, especially regarding consultations with businesses.
- All of the elements of RIA are in place in the Slovak Republic, but a lack of analytical capacity and training opportunities hamper effective implementation. Currently, the same RIA process and form are used for all laws and regulations.
- The Slovak Government recently introduced a methodology for the *ex post* evaluation of regulations as part of the RIA 2020 Strategy. Pilot testing is foreseen for 2020.
- As is the case in many other OECD countries, the Slovak Republic does not have a whole-of-government strategy for improving regulatory compliance and reforming inspections.
- Regulatory policy and regulatory management tools are not currently present at the local and regional level, though the national government does plan to support open government and consultation at the local level.

- The Slovak Republic has successfully put in place a government structure for co-ordinating the interface between the national and EU level. The recently introduced requirement to assess gold-plating follows EU best practice, but is not yet conducted systematically.
- The Ministry of the Economy is taking positive steps to develop strategies for future-proofing regulations and applying behavioural insights.

Key recommendations

- Choosing priority areas for the Slovak better regulation agenda will be crucial for the Ministry of Economy as the national co-ordinating body in order to effectively employ the resources available.
- The Slovak Government could strengthen analytical capacities and promote the use of existing capacities in key ministries, for example through continuous training on regulatory management tools as foreseen in the RIA 2020 Strategy.
- Methods and performance of the regulatory oversight set-up could be strengthened, for example by centralising regulatory oversight functions into one body and giving this oversight body greater powers.
- The preparation of the new guidance for stakeholder engagement should be accelerated. The Slovak Republic should undertake efforts to more systematically include stakeholders other than businesses in early-stage consultations.
- A simplified RIA process for regulations with minor impacts would help target scarce resources more effectively towards most burdensome pieces of legislation. Ministries could be encouraged to better integrate the analytical units in the process of developing legislation.
- Conducting pilot studies for *ex post* evaluation in a critical sector (e.g. health care) will be a crucial step to test the effectiveness of the newly developed methodology. Comprehensive and clear guides and methodologies for different types of *ex post* evaluations would provide civil servants with the analytical support needed for conducting the evaluations.
- The Slovak Republic would benefit from adopting a government-wide strategy on reforming inspections and a more robust risk-based approach to enforcement.
- The national government could offer to support a pilot project on RIA and/or public consultations with a region or city in the Slovak Republic to improve capacity at different levels of government.
- Carrying out a proportionate analysis of impacts and involving relevant stakeholders in the process of preparing national positions to draft EU legislation would strengthen the Slovak Republic's capacity to influence the legislative process on EU level.
- High-level support from senior levels in government for the strategies on future proofing regulation and behavioural insights would help ensure their success. The Ministry of Economy could carefully consider how to institutionalise and embed them in the work of the ministry.

1 Macroeconomic and political context

This chapter describes the political context and the previous macroeconomic context of the Slovak Republic. It also describes the current regulatory reform efforts and points to the specific economic challenges that the country faces in relation to its evolving economic landscape, the working population, and the well-being and trust within public institutions.

Political context: the Slovak Republic's path to independence

Officially, the Slovak Republic came into existence on 1st January 1993 following the peaceful dissolution of Czechoslovakia through the famously known "Velvet Divorce". With an area of approximately 49 000 km2 and a population of 5.4 million, Slovakia has been noted to be one of the smallest states within the European states that has been doing notably relatively well in regards to the overall developments of their economy.

It is important to note that the Slovak Republic's transition into an independent state went through a timeline of many "stop and goes". Several developments within the country's timeline has influenced the way the state has developed today.

Based on milestones derived from Slovakia's modern history, the First World War had a fundamental role in changing how the matters around the Czech Republic and the Slovak Republic were dealt with. As a result from the dismantling of the Austrian-Hungarian monarchy post the First World War, the nations of the Czech and the Slovaks united together to form a common state known as Czechoslovakia (Ministry of Foreign and European Affairs of the Slovak Republic, 2018[1]). This was a monumental moment for Slovakia, as it was the first time the nation was given their own state independence and was also the first time that the territory of Slovakia could be defined by both state and territorial borders. However, shortly after the developments of the Czechoslovakia, conceived under a parliamentary democracy, the new country fell into a 20-year inter-war period. This period was shortly then followed by the developments of the Second Word War from 1939-1945 (Ministry of Foreign and European Affairs of the Slovak Republic, 2018[1]).

Following the Second World War, there was a brief interlude of limited democracy in Czechoslovakia from 1945 to 1948. This period was then shadowed by a 40-year period of communist rule from 1948-1989. It is important to note that it was during this period when the National Assembly of Czechoslovakia adopted the Czechoslovak Constitutional Act on the Czechoslovak Federation in 1968 (Ministry of Foreign and European Affairs of the Slovak Republic, 2018[1]). Under this constitutional law, the once unicameral National Assembly of Czechoslovakia was replaced with a bicameral legislature known as the Federal Assembly and this is when both Czechs and Slovaks were given equal representation within their legislative branch (Ministry of Foreign and European Affairs of the Slovak Republic, 2018[1]). The shift towards federalisation allowed for various economic and social opportunities to emerge for the Slovak nation within Czechoslovakia and allowed for an augmentation in the development among that nation.

The true conversation of the Slovak Republic becoming an independent state began when the country no longer operated under the satellites and vassals of other dominant regimes. In this way, the start of measuring the Slovak Republic's as an independent state was believed to begin in November 1989. This was also the time period when political discussions started to emerge of the "Velvet Revolution" and when the communist regime within the Slovak Republic had officially ended (Lambert, 2019[2]). Therefore, as mentioned above, it was in 1993, when the Slovak Republic had officially transitioned into becoming an independent state (Lambert, 2019[2]).

Now, more than 25 years later, the Slovak Republic has not only established its presence within the international community, but has also demonstrated that as a newly emerged state, the country could defy barriers and advance successfully both socially and economically. In 2000, Slovakia became a recognised member of the OECD, in 2004, the Slovak Republic successfully became an official member of the European Union and in 2009, the country also officially adopted the euro, allowing itself greater access and entry into international markets and strengthening its economic development.

Government structure

The Constitution adopted in 1992 changed the system of governance in the Slovak Republic. The development of Slovakia's constitution not only abandoned any ties with the country's previous past with communism, but also set out new laws and legislations that would go on and form the legal premise of the state. One of the best ways to understand the different structures of the government within the Slovak Republic is by assessing the different roles and responsibilities of the President and the Prime Minister have within the state. As outlined within the Slovak Constitution, the Head of State (i.e. President) and the Head of Government (i.e. Prime Minister) execute different responsibilities within the country's three levels of government: the executive branch, the Legislative branch, and the judicial branch (Chapter 2: The Government of the Slovak Republic *Art. 109-111*) (Constitute Project, 1992[3]; Eurydice, 2019[4]).

To begin, the President, a democratically elected official, serves a term of five years and heads the executive branch. The President is responsible for appointing the Prime Minister as well as three Constitutional Court Judges, three Judicial Council members and the Cabinet based on the recommendation of the Prime Minister. The President can make executive orders; however, must always ask the legislative permission before commanding any military orders or amending any international agreements. Conversely, the Prime Minister, once elected and appealed by the President, has the responsibility to present the Government's manifesto and to request the expression of its legislatives' confidence. Once the manifesto has been approved, the government can begin to fulfil its set programme. In this way, while the President is responsible for appointing the powers within the Legislative and the rest of the government, the Prime Minister is responsible for overseeing *the* government. (Eurydice, 2019[4])

In terms of the national government structure, the legislative branch (i.e. the National Council), like within most democracies is one of the most fundamental organs of the government structure. As a unicameral parliamentary body of the Slovak Republic, the 150 members who are a part of the National Council are not only elected by the general population, but also go on to serve a 4-year term. At this level of government, the legislative branch is responsible for writing and amending the constitution as well as constitutional laws, other laws, domestic policies, and the agreement to the national budget. (Eurydice, 2019[4])

Conversely, the judicial branch within the Slovak Republic consists of three different levels: the general courts (i.e. district and county), a Special Criminal Court, and the Supreme Court of the Slovak Republic. In terms of understanding the differences between the three judicial branches, they can easily be distinguished by the limitation of their jurisdictions:

- **District courts:** are the courts of first instances in civil and criminal cases, unless specified otherwise. They also hear electoral cases.
- **Regional courts:** are the courts of second instances in civil and criminal cases, which are heard already by district courts.
- **The Special Criminal Court:** hears criminal cases and other cases as laid down by the rules of governing court procedure.
- **The Supreme Court of the Slovak Republic:** acts and rules on appeals against regional courts and Special Criminal Court and Supreme Court Decisions where the law so provides. The Supreme Court of the Slovak Republic also resolves conflicts of jurisdiction *in rem* between courts and bodies of public administration (European Union, 2019[5]).

Finally, the Slovak Constitutional Court (SCC) is a rule-adjudicating political institution that operates on several exclusive competences reserved for centralised constitutional courts (e.g. such as the constitutional review of legislation and the interpretation of the Slovak Republic's Constitution). As of 1 March 2019, the Constitutional Court is regulated by Law No. 314/2018 issued in order to accomplish a more effective way of work and contributing towards a higher protection of human rights and freedoms

(European Union, 2019[5]). It is important to note that the SCC is an independent judiciary body, and that the powers of the court are regulated by *Articles 124-140* of Slovakia's constitution.

Local government structure

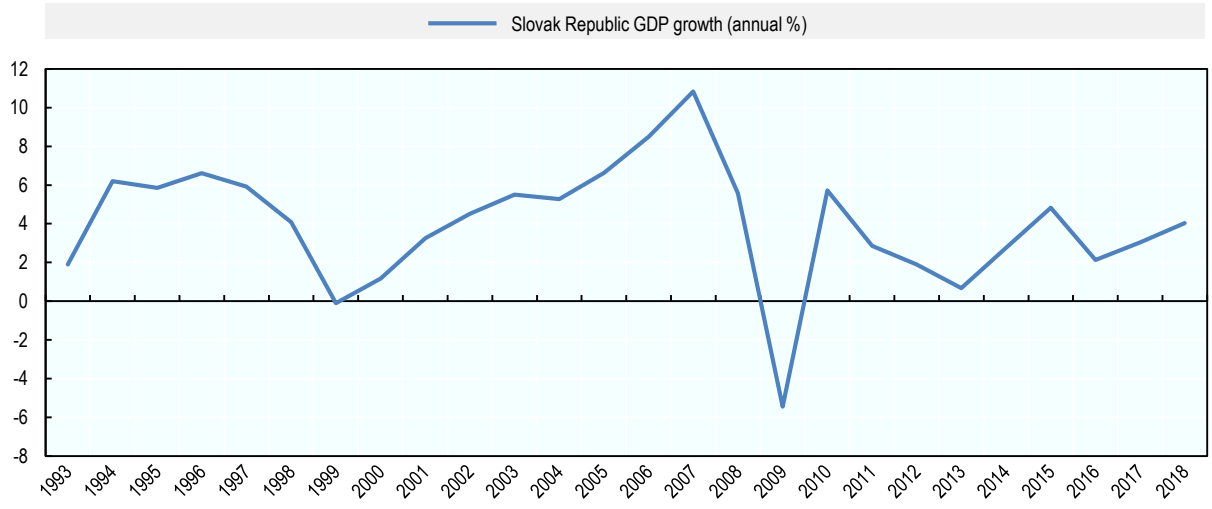
The Slovak Republic is governed on a dual public administration system, one that is represented by a state administration and the other that is represented by a two-layer self-administration.

At the regional level, municipalities and higher territorial units are independent self-governing and administration units of the Slovak Republic. Municipal council and mayors represent the authorities of municipality, while the council of the higher territorial unit and the chair of the higher territorial unit represent the authorities of the higher territorial unit (OECD, 2016[6]). The municipal council and the council of higher territorial unit are also made up of deputies. The deputies of the councils as well as mayors of municipalities and chairs of higher territorial units are elected by the inhabitants who have permanent residence at the territory of the municipality, or higher territorial unit, namely, because of general, equal and direct suffrage by secret ballot for a 4-year period (Eurydice, 2019[4]). These territorial bodies are responsible for legislating their own set of competencies, which often relate to topics relating to regional planning, welfare development, and socio-economic and cultural development of the region and education among others. Currently, the regional-level administration in Slovak Republic is represented by 8 regions, 79 districts, and 2 931 municipalities (OECD, 2016[6]). For more information on powers laid out explicitly in the two local government acts within the Slovak Republic, please refer to Chapter 8.

Economic context

Since its independence, the Slovak Republic has successfully transitioned from centrally planned economy to an economy that is now market based (Global Edge, n.d.[7]). In the first few years following the country's independence, the Slovak Republic suffered from a slow start due to the lingering effects of the country's previous market environment, however, it was noted that the progressive economic policies adopted in the end of 1990s propelled the state into a strong path towards economic growth (Reuvid, 2006[8]).

Figure 1.1. GDP growth (annual %) – Slovak Republic



Source: (World Bank, 2020[9]).

In the early 2000s, especially after the country's accession into the EU and NATO in 2004, and Slovakia's membership into the OECD, the country experienced strong developments in exports and access to new external markets. This access to new networks and international partnerships not only accelerated the country's economic development, but also pushed the country to achieve new economic heights. The power of pro-EU and globalisation coalitions for advancing economic strength was particularly proven within the Slovak Republic when the country achieved its highest economic growth at 10.8% in 2007, largely due to high openness (World Bank, 2020[9]). The economy of the Slovak Republic was also heavily affected by the 2008 financial crisis as, the 2011-12 Eurozone crisis, and now more recently with the economic impacts caused by the COVID-19 pandemic (NORDEA, 2020[10]).

Unprecedented short-term cycle shocks to the economic system: Slovakia's fiscal response to COVID-19

In 2019, projections relating to Slovakia's economic development estimated that the country would experience an economic slowdown of around 2.5% (OECD, 2019[11]). Impacts regarding this slowdown were largely related to weaker external demands and its weight on export growth, as Foreign Direct Investment (FDI) was a large component of Slovakia's economic sector. Conversely, while external demands were expected to slow down, domestics demands were expected to stay relatively strong, most notably as a result of private consumption, which was held up by a robust labour market and low unemployment (OECD, 2019[11]).

In 2020, however, the narrative of all competitive global economies shifted. As a result of the COVID-19 pandemic, many countries, including the Slovak Republic, were confronted with new economic challenges presented by the global health crisis. Despite, the Slovak Republic experiencing a lower spread of the COVID-19 pandemic compared to most other OECD countries, the country did introduce pre-cautionary health measures to minimise the impact of the virus.

In terms of the economy, the containment measures along with surrounding uncertainty has led to an abrupt decline in economic activity, particularly in areas dependent on social interactions such as tourism, accommodations, and restaurants (OECD, Forthcoming[12]). Massive disruption in the global value chain as concerns over worker's safety have led to temporary production shut down of major automotive companies (OECD, Forthcoming[12]). This measure, coupled with the decline in car sales in the EU, a main export for Slovakia, has led towards significant impacts on the Slovak economy (OECD, Forthcoming[12]).

Conversely, to help minimise the economic fallout that would result from COVID-19, the Slovak Republic has announced several fiscal packages to moderate the consequences that the COVID-19 pandemic would have on the country's economy. The government has introduced a number of measures to help mitigate the depth and length of the recession (OECD, Forthcoming[12]).

The measures aim to maintain employer and employee relationships (OECD, Forthcoming[12]). The Slovak Republic has committed to offering subsidies for those who have lost significant revenues in result of the pandemic. In addition, the country has also employed other measures such as introducing short-term work schemes, temporarily reducing employer social contributions for those business that remain close due to the pandemic, as well as offering income support for those who have lost their jobs over this period (this also includes non-standard forms of employment) (OECD, Forthcoming[12]). Finally, in terms of macroeconomic developments, measures of the European Central Bank have offered support by preserving bank loans and liquidity (OECD, Forthcoming[12]). The Government of the Slovak Republic will also adapt their policies to this situation by introducing loan guarantees and temporarily deferring payments on mortgages (OECD, Forthcoming[12]). The National Bank of the Slovak Republic has also decided to keep their countercyclical buffer at 1.5%, shifting away from its previous decision to increase the rate to 2.0% (OECD, Forthcoming[12]).

In sum, like with other OECD countries, the Slovak Republic has taken the necessary measures for its state to monitor and manage its economic situation within these unprecedented times. As the COVID-19 situation evolves, it is likely that the Government of the Slovak Republic will remain proactive and prompt the necessary steps to ensure that the situation within the country remains maintainable and that the economy can recover as quickly as possible once all restrictions are lifted.

Other areas important to consider for economic development

Aside from the very present economic implications caused by the COVID-19 pandemic, there are still other areas related to Slovakia's economy and its economic structure that will require consideration for the long-term. Sooner or later the country will shift into an economic recovery stage and areas suggested for development pre-COVID-19 will once again apply. According to (OECD, 2019[11]), some areas requiring attention for the longer-term economic growth of the Slovak Republic were areas related to Slovakia's rising age and its impacts on the country's labour market, the need to promote greater innovation for economic diversification in the Slovak Republic, as well as, the need to upskill Slovakia's labour force to manage prospects for innovation. This section will explore those areas and suggest ways forward for Slovakia's post-COVID-19 economic development.

Ages slowly rising and its impact on the Slovak labour force

The first key challenge for Slovakia's economic context will be in the ways the country prepares for addressing the country's steep upward trend toward the growing old-age dependency ratio in the Slovak Republic. Currently, the Slovak Republic experiences one of the fastest declines in the working population among all OECD countries. The share of elderly aged people (above 65) in the working population is 1/5 and it is estimated that in 2060 the share of elderly people will reach almost 60% (OECD, 2019[11]). Therefore, this strong upward trend in the rising age of the population will require that the Slovak Republic effectively manages this offset to ensure sustained productivity from its labour force.

Driving innovation for economic diversification

Secondly, as the Slovak Republic looks towards its economic future, it will be important for the country to consider stimulants for innovation and entrepreneurship. Another challenge affecting the economic development of the country is that the country has largely depended on the cars and electronic industry for its development. As a result of this focus, other areas such as those relating to innovation, technological development, and research have largely gone undermined (OECD, 2019[11]). Therefore, by promoting investments into innovation, research and development, and the adoption of new technologies, the country could likely move into higher valued-added activities, as well as create demand for entrepreneurship (OECD, 2019[11]).

In the context of regulatory policy, the Government of the Slovak Republic has improved some areas of its regulatory environment for businesses by lessening restrictions related to product market regulation (i.e. in areas where health, well-being, or safety could not be jeopardised) (OECD, 2019[11]). Moving forward, it is advised for the Slovak Republic to continue its support for promoting an entrepreneurial and innovative environment within its economy by continuing to evaluate how it can minimise administrative burdens and the slow pace of public procedures that impacts many new businesses (OECD, 2019[11]).

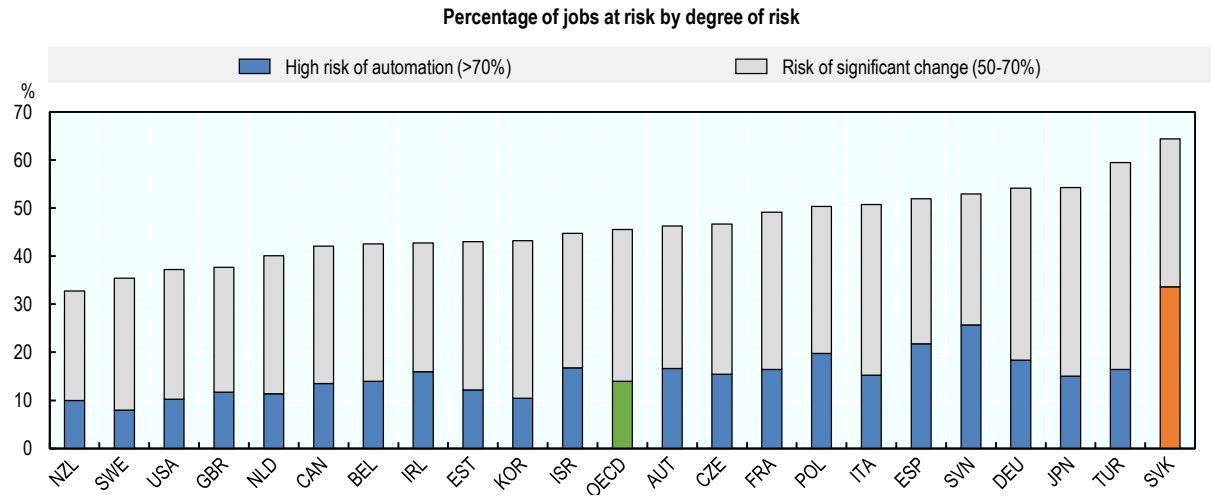
Promoting skilled labour for securing Slovakia's labour market

Finally, linked to the promotion of innovation and economic diversification within the country, another issue that the Slovak Republic must address is their growing shortage in skilled labour. As outlined in (OECD, 2019[11]), progress within the manufacturing sector of the Slovak Republic and shifts towards promoting innovation will create a toll on those with low to medium level skill sets within the country (OECD, 2019[11]).

For example in 2019, it was estimated that almost two-thirds of the present jobs within the Slovak Republic were at risk of being replaced by advanced automation (Figure 1.2) (OECD, 2019[11]).

As the Slovak Republic becomes more exposed to effects of globalisation, it will be imperative that the country responds to the evolving business environment by ensuring all members of society are equipped with well-rounded skills (OECD, 2020[13]). Presently, recent OECD reports have shown that Slovakia still faces a number of complex skill challenges, as the skills of youth have been either lagging or deteriorating compared to the OECD average (OECD, 2020[13]). In addition, skill balances within the Slovak Republic have also shown to be high, with skill shortages emerging particularly in knowledge and technology-intensive sectors (OECD, 2020[13]). Therefore, as the Slovak Republic looks towards improving its innovative environment and plans around the evolution of technological development, it will be important for the country to advocate for stronger training across all age groups (OECD, 2020[13]).

Figure 1.2. Percentage of jobs at risk in the Slovak Republic due to increased automation in the manufacturing sector



Source: (OECD, 2019[11]).

What's next: managing the economic recovery from COVID-19

The economic impacts of COVID-19 will define a new narrative for Slovakia's economic development. For the Slovak Republic, it will be important that the country not only emphasises the importance of minimising economic losses for households and businesses, but that the country also ensures that it manages its macro-financial development so that following the de-escalation of the economic impacts caused by COVID-19, the country can easily shift into a mode of economic recovery.

Previous to the impacts caused by COVID-19, the Slovak Republic was noted as a country that was not only benefitting from strong links within the world economy, particularly among EU states, but was also catching up with economic development of higher-income countries (OECD, 2019[11]). Hence, moving forward, the Slovak Republic will have to not only consider how it can mitigate immediate impacts from COVID-19, but will also have to ensure it maintains a vision of how to remedy the structural economic gaps as outlined above.

How's life and trust in the government within the Slovak Republic

How's life in the Slovak Republic?

In the Slovak Republic, mixed outcomes from various socio-economic indicators have demonstrated that while the country might be advancing in some areas, such as within their economy, the country still faces some difficulties in addressing some other areas important for horizontal social development.

To begin according to (OECD, 2020[14]) there were several areas within the Slovak Republic that required greater attention when it came their socio-economic development. For example, indicators relating to poverty showed that upwards of 45% of citizens in the Slovak Republic would fall in risk of poverty if they had to forgo 3 months of their income. In addition, other indicators related to socio-economic well-being showed that household wealth within the Slovak Republic had deteriorated by 25% since 2010, and that household debt levels had increased by more than 25 percentage points in the Slovak Republic since 2010.[1] Finally, indicators relating to the environment showed that the Slovak Republic had one of the largest material footprints among OECD countries, and that the country was relatively behind in its efforts towards decreasing levels of air pollution exposed to its citizens (OECD, 2020[14]).

At the same time, however, the Slovak Republic has also shown strong progress in other areas such as, reducing inequalities. (OECD, 2020[14]) showed that in comparison to other OECD countries, the Slovak Republic was one out of two countries that had improved its inequalities indicators by 40% between the years of 2010 and 2018.[2] A few indicators included within this measure were measures relating to the share of employees working long hours, the number of households living in overcrowded conditions, and areas related to subjective well-being (i.e. negative affect balance) (OECD, 2020[14]). In addition, fewer people also showed a reduction in signals demonstrating that they felt a lack of social support within the Slovak Republic.

It is important to mention, however, that one key observation made within the (OECD, 2020[14]), was that many countries who had improved their well-being scores had also likely done it at the presumed cost of investing in future resources (OECD, 2020[14]). This implies that while the Slovak Republic may be progressing in some areas of well-being, the country should also continue to prioritise areas of sustainability (OECD, 2020[14]).

Trust in Government

The role of public institutions in any country are important. Strong public institutions not only guarantee and protect the fundamental rights and values of their citizens, but they also help to ensure that needs of the of population are also met. In terms of indicators relating to principals of good governance and public trust in institutions, the Slovak Republic showed significant progress in government's stakeholder engagement, as the country ranked the highest after Mexico, the United States, and the United Kingdom (Figure 1.3) (OECD, 2020[14]).

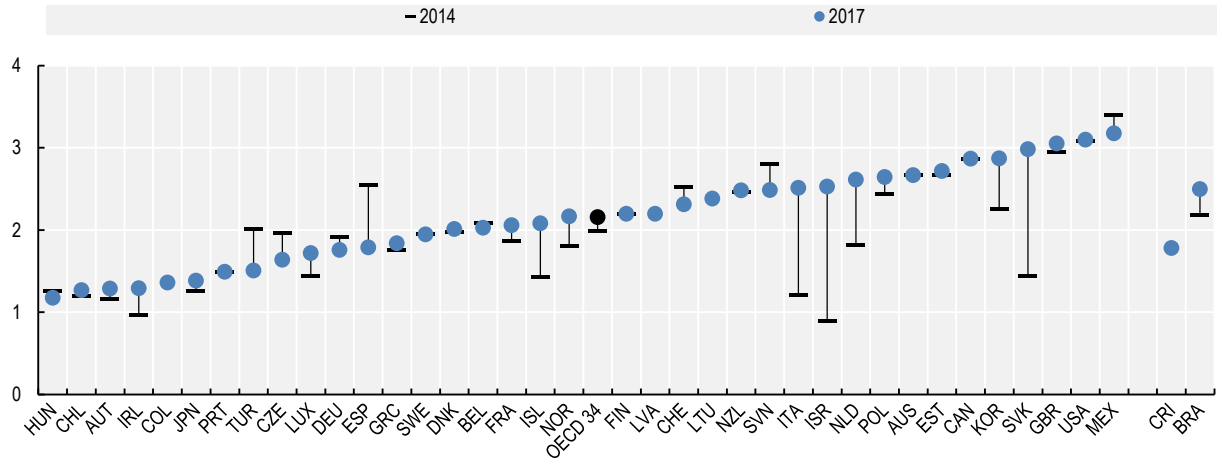
Conversely, despite the improvements in government engagement within the Slovak Republic, there were still other areas related to public trust within public institutions that still require attention. For example, areas related to the country's trust within their police force showed low developments as since 2013 the Slovak Republic has ranked last out of all OECD countries when measuring against citizen's average trust in the police (Figure 1.4) (OECD, 2020[14]). Alternatively, when reviewing the Transparency International's 2018 Corruption Perception Index, the Slovak Republic showed slight improvements. In 2017, only Hungary, Turkey and Mexico ranked worse than the Slovak Republic (OECD, 2019[11]) (Figure 1.4).

An explanation for this development could be in part to the Slovak Republic progressing on anti-corruption legislation and procedures (OECD, 2019[11]). Finally, when observing the trust in national government within the Slovak Republic, the share of the population in the country that responded "yes" to a question

about expressing their confidence in the national government increased only slightly from their benchmark set in 2010-12 (Figure 1.6).

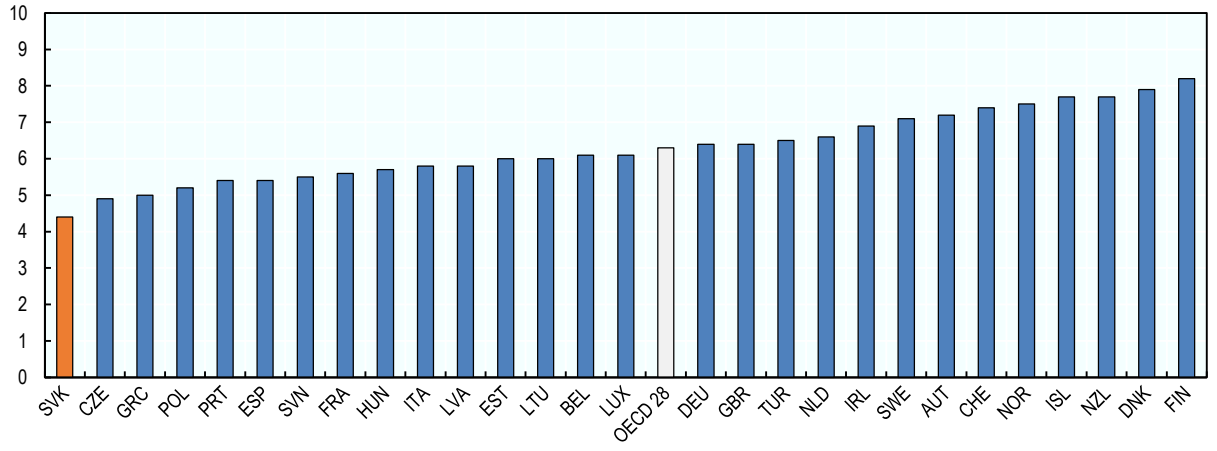
Figure 1.3. Average government stakeholder engagement has improved in the Slovak Republic since 2014

Government stakeholder engagement when developing primary laws and subordinate regulations, 0 (no engagement) – 4 (maximum engagement) scale



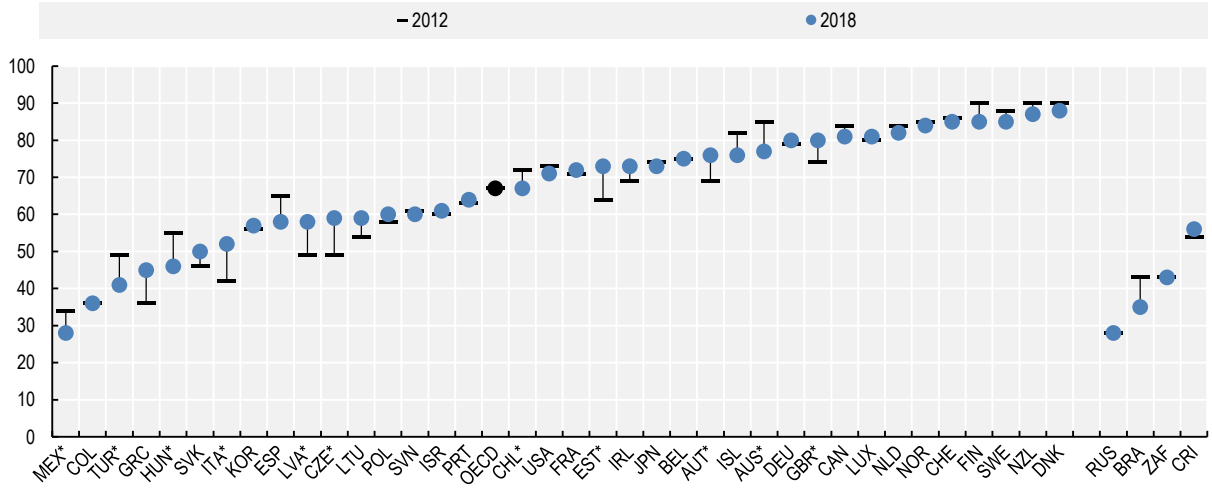
Notes: The sub-compomemt component scores for primary laws only cover practices in the executive. There is therefore no score for primary laws for the United States, where all primary laws are exclusively initiated by Congress. In Colombia, Costa Rica, Korea and Mexico, a majority of primary laws are initiated by the legislature.The OECD average excludes Colombia, Latvia and Lithuania due to incomplete time series.
Source: OECD Indicators of Regulatory Policy and Governance (iREG) (database), http://oe.cd/ireg; http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance

Figure 1.4. The Slovak Republic currently demonstrates the lowest level of trust within their police among all OECD countries



Note: Data for New Zealand refer to 2014. The OECD average excludes Australia, Canada, Chile, Colombia, Israel, Japan, Korea, Mexico and the United States due to a lack of available data.
Source: European Union Statistics on Income and Living Conditions (EU-SILC) (database), https://ec.europa.eu/eurostat/web/income-and-living-conditions, StatsNZ, customised report and licensed by StatsNZ for re-use under the Creative Commons Attribution 3.0 New Zealand licence (2017).

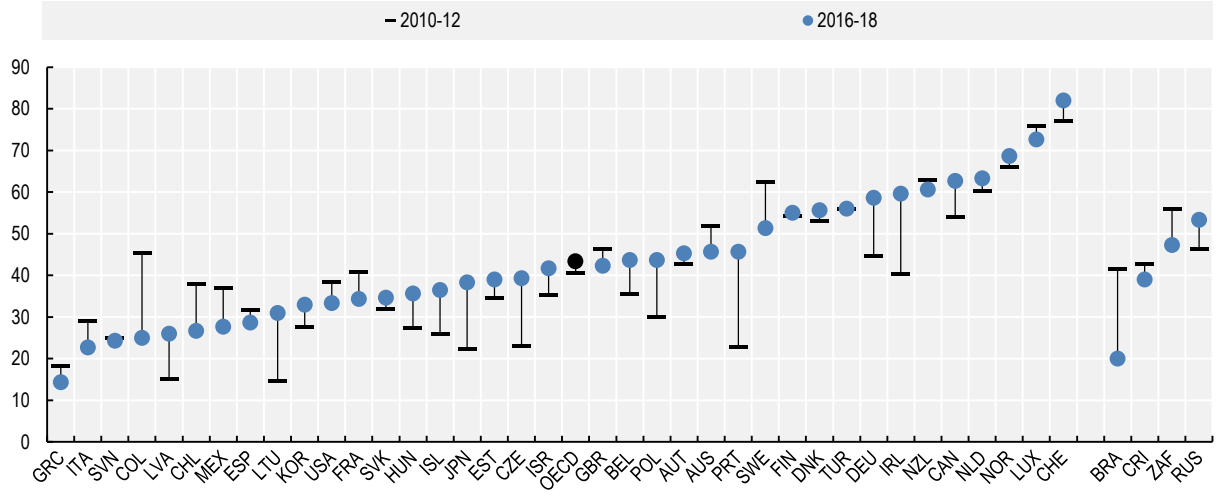
Figure 1.5. On average, perceived corruption has remained stable since 2012 and has only slightly improved in the Slovak Republic



* Indicates significant change since 2012 (90% confidence level, calculated by Transparency International).
Source: Transparency International Corruption Perception Index (database), https://www.transparency.org/cpi2018.

Figure 1.6. Since 2010, trust in national government has improved slightly in the Slovak Republic

Share of the population responding "yes" to a question about confidence in the national government, percentage



Source: Gallup World Poll (database), https://gallup.com/analytics/232838/world-poll.aspx.

Notes

[1] Or the earliest year available to measure household debt in the Slovak Republic.

[2] The other country that showed improvements in their inequality indicators by the same margin was the Czech Republic (OECD, 2020[14]).

References

Constitute Project (1992), *Slovakia's Constitution of 1992 with Amendements through 2014*, http://www.worldbank.org (accessed on 6 February 2020). [3]

European Union (2019), *Judicial systems in Member States - Slovakia*. [5]

Eurydice (2019), *https://eacea.ec.europa.eu/national-policies/eurydice/content/main-executive-and-legislative-bodies-72_en*. [4]

Global Edge (n.d.), *Slovakia: Introduction >> globalEDGE: Your source for Global Business Knowledge*, https://globaledge.msu.edu/countries/slovakia (accessed on 13 February 2020). [7]

Lambert, T. (2019), *A BRIEF HISTORY OF SLOVAKIA*, http://www.localhistories.org/slovakia.html. [2]

Ministry of Foreign and European Affairs of the Slovak Republic (2018), *2018 - Slovaks through the century*. [1]

NORDEA (2020), *Slovakia: Statistical Overview*. [10]

OECD (2020), *How's Life? 2020: Measuring Well-being*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9870c393-en. [14]

OECD (2020), *OECD Skills Strategy Slovak Republic: Assessment and Recommendations*, OECD Skills Studies, OECD Publishing, Paris, https://dx.doi.org/10.1787/bb688e68-en. [13]

OECD (2019), *OECD Economic Surveys: Slovak Republic 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eco_surveys-svk-2019-en. [11]

OECD (2016), *Regional Policy Profile Slovak Republic*. [6]

OECD (Forthcoming), *OECD Economic Outlook 2020*, OECD Publishing, Paris. [12]

Reuvid, J. (2006), *Corporate investment opportunities in the new Europe*, London: Kogan. [8]

World Bank (2020), *GDP growth (annual %) - Slovak Republic | Data*, https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=SK (accessed on 13 February 2020). [9]

2 The context for Better Regulation in the Slovak Republic

This chapter describes the administrative and legal environment for regulatory reform in the Slovak Republic and assesses the communication with stakeholders on strategy and policies. It also looks at the policies, processes and institutions for evaluating the efficiency and effectiveness of programmes aimed at improving the regulatory environment. The role of e-government in support of regulatory policy and governance is briefly reviewed. Finally, it provides recommendations for the Slovak Republic to develop a formal and explicit regulatory policy.

Regulatory policy and core principles

Laws and regulations are key levers for governments to shape economic development and societal wellbeing. A well-developed regulatory policy – the process governments use to create policies and, if necessary, regulation – is therefore crucial for a country to achieve its policy objectives. Poorly designed or insufficiently implemented legislation can be ineffective in achieving their objectives while imposing unnecessary costs on citizens and businesses (OECD, 2018[1]).

The objective of regulatory policy is to ensure that regulations are made in the public interest. It addresses the permanent need to ensure that regulations and regulatory frameworks are justified, of good quality and "fit-for-purpose" (OECD, 2010[2]).

Building on that idea, the OECD developed the 2012 *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012[3]) to advise governments on how to develop explicit, dynamic, and consistent "whole-of-government" policy to pursue high-quality regulation.

Box 2.1. The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance

The *2012 Recommendation of the OECD Council on Regulatory Policy and Governance* provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards; it advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and it calls for a "whole-of-government" approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication, and co-operation to address the challenges posed by the inter-connectedness of sectors and economies. The Recommendation advises governments to:

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy, procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice.
7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Source: (OECD, 2012[3]), Recommendation of the Council on Regulatory Policy and Governance, OECD Publishing, Paris, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

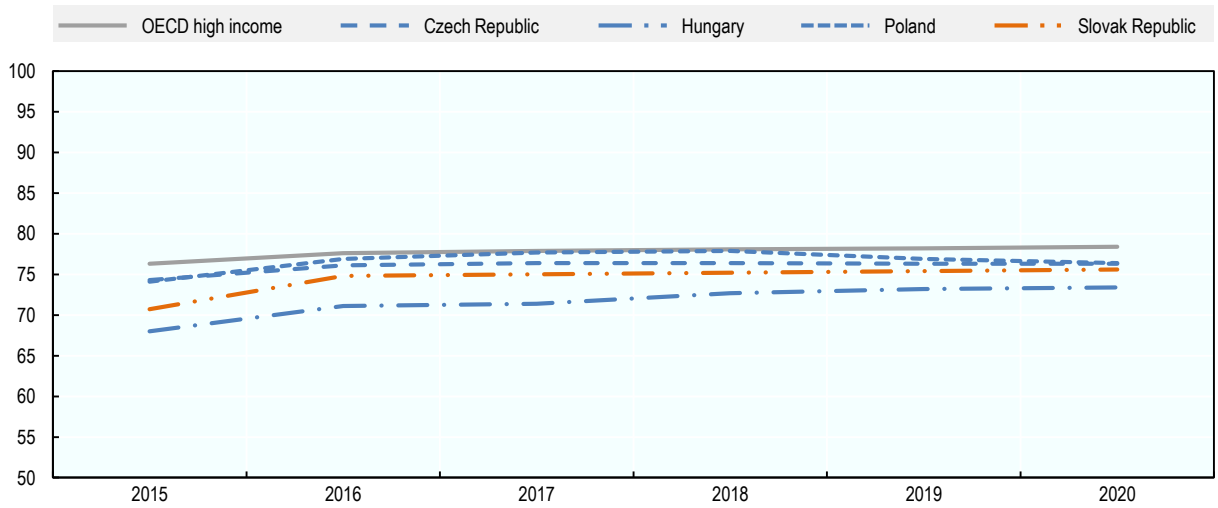
History of Better Regulation in the Slovak Republic

The Slovak Republic has made great strides in developing its regulatory policy framework. The obligation to conduct regulatory impact assessments as spelled out in the *Unified Methodology for the Assessment of Selected Impacts*[1] has been in place since 2010 with reforms laying the grounds for assessing economic, social and environmental impacts including an SME Test and impacts on innovation in 2015. On 24 January 2018, a whole-of-government policy for regulatory quality was introduced: the *RIA 2020 Better Regulation Strategy* (Ministry of Economy of the Slovak Republic, 2017[4]). The strategy outlines a set of principles and tools that aim to improve the regulatory environment in the Slovak Republic and increase the transparency of the law-making process. Most recently, reform efforts have focused on administrative burden reduction: a national action plan for reducing administrative burdens for businesses by 25% has been carried out 2007-12 and a new reduction target (25% by the end of 2020) was set in 2016 as reform intention for the optimisation of the regulatory impact assessment procedure.

Despite the efforts undertaken by the Slovak government to enhance the business environment and the quality of regulation, regulatory obstacles still harm business performance in Slovakia, especially for SMES, which employ 70% of the country's workforce (OECD, 2019[5]). According to the World Economic Forum, the main shortcomings are due to dysfunctions in administrative management, along with corruption, creating serious barriers for businesses (World Economic Forum, 2017[6]). The World Bank's Doing Business indicators 2019 also highlight problems stemming from an inefficient administration, like inefficient procedures for starting a business or granting building permits, areas that are essential for the proper functioning of businesses (World Bank, 2020[7]).

Regulatory reform efforts and initiatives like the introduction of a one stop shop for business registration undertaken in the recent years have led to some improvements to the business environment. Consequently, Slovakia was able to improve its World Bank Doing Business scores since 2015 by 5 points, closing the gap to OECD high income average (see Figure 2.1). However, Slovakia is still lagging behind some peers and improvements have stagnated recently.

Figure 2.1. World Bank Doing Business Scores 2015-2020



Note: An economy's ease of doing business score is reflected on a scale from 0 to 100, where 0 represents the lowest and 100 represents the best performance.
Source: World Bank Doing Business Scores, available at https://www.doingbusiness.org/en/data/doing-business-score.

Towards a whole-of-government approach to regulatory policy

Efforts to improve regulatory policy in the Slovak Republic were first introduced in 2007 with the *Better Regulation Agenda and Action Plan for reducing administrative burdens for businesses* approved by Government Resolution No. 833/2007. The Action Plan introduces a burden reduction target for businesses by 25% by 2012 and lays out corresponding measures and recommendations. This initiative followed the European Commission's Action Plan for Reducing Administrative Burdens, presented by the European Council in March 2007.

The Selected Impact Clause of *Government Resolution No. 122/2010* from June 2010 introduced the requirement to conduct impact assessments for primary laws and subordinate legislation in the Slovak Republic. The clause stipulated the assessment of regulatory impacts in five selected areas: impacts on the budget of the public administration, impacts on the business environment, social impacts, impacts on the environment and impacts on the informatisation of society. When positive or negative impacts were identified, a more detailed analysis was required.

In 2014, a methodology for assessing selected impacts was developed lead by the Ministry of Economy: the *Unified Methodology on the Assessment of Selected Impacts*. The new methodology was approved by the *Government Resolution no. 24/2015* and came into effect in accordance with Government Resolution No. 55/2015 from 1st October 2015. The methodology was amended in April 2016.

The purpose of the methodology is to improve the impact assessment system in Slovakia. The methodology is based on previous Slovak experiences with regulatory impact Assessment, and recommendations of the EU, OECD and best foreign practices. It introduced several changes to the impact assessment process: The Permanent Working Commission of the Legislative Council of the Government of the Slovak Republic for the Assessment of Selected Impacts was established (further referred to as the *RIA commission*); a formal requirement to consult with businesses in the legislative process and an SME Test were introduced.

The *Unified Methodology* is now one of three basic legal documents civil servants have to abide by when drafting a legal text, together with the Act on Lawmaking and on the Collection of Laws No. 400/2015 and the Legislative Rules of the Government (Government of the Slovak Republic, 2016[8]).

In March 2017, the Action Plan "Initiative for Open Government" 2017-19 was adopted. The *Operational Programme* project under the responsibility of the Office of the Plenipotentiary of the Government for the Development of the Civil Society promoted stakeholder engagement and participatory processes in policy making. This was followed by the National Action Plan 2020-21 adopted in November 2019, aiming at further strengthening public consultation efforts.

In 2017, 2018 and 2019, the Ministry of Economy prepared three "anti-bureaucratic" packages, which were approved by a government resolution. The proposed 89 measures aimed to gradually reduce the administrative burden for entrepreneurs.

In 2018, a regulatory reform process took off in the Slovak Republic with the introduction of the RIA 2020 strategy. This initiative is part of the *Improving the Business Environment* project in Slovakia (see Figure 2.2), which is funded by EU structural funds through the *Operational Programme Effective Public Administration*; as well as the *Intelligent Regulations* project, funded by the *Integrated Infrastructure*.

Figure 2.2. Better Regulation National Project in the Slovak Republic

Source: (Danilak and Hlluskova, 2019[9]).

In January 2018, a strategic whole-of-government policy for regulatory quality "**RIA 2020**" was adopted with the purpose of paving the way towards a new better regulation culture in the Slovak Republic. The strategy was developed following a consultation process with the business community and is based on OECD recommendations from the 2015 Regulatory Policy Outlook (OECD, 2015[10]) and international best practice. The introduction of RIA 2020 was a crucial step towards sound regulatory practice, committing to an explicit whole-of-government policy for regulatory quality at the highest political level as recommended in (OECD, 2012[3]).

Box 2.2. RIA 2020 – Objectives, principles and measures of Slovakia's Better Regulation Strategy

The *RIA 2020 Strategy* was introduced by Government Order No. 32/2018 with the goal to initiate a new "culture of regulation" in the Slovak Republic. It includes 38 specific actions aimed at improving the better regulation framework, primarily carried out by the Ministry of Economy. The implementation of the strategy is co-ordinated, evaluated and implemented by the Ministry of Economy in co-operation with the members of the RIA Commission for the assessment of selected impacts. Ministry staff, in co-operation with the analytical institutes of the individual ministries, will ensure further fulfilment of the objectives of the strategy according to the Action Plan.[1] Support for better regulation and the implementation of the action tasks is provided by the *Operational Programme Effective Public Administration*.

The strategy has **five strategic objectives:**

1. Raise awareness of the importance of better regulation efforts by communicating its benefits;
2. Improve the quality of the *ex ante* impact assessment process;
3. Introduce systematic *ex post* evaluation of regulations;
4. Make use of innovative and future-looking approaches to regulation-making;
5. Promote horizontal co-operation within the administration to better connect bodies tasked with better regulation functions.

1. Available at www.mhsr.sk/podnikatelske-prostredie/lepsia-regulacia/ria-2020-strategia-lepsej-regulacie/dokumenty.
Source: Based on information received from the Slovak government. For further information on the RIA 2020 Strategy, available at https://www.mhsr.sk/podnikatelske-prostredie/lepsia-regulacia/ria-2020-strategia-lepsej-regulacie.

The implementation of the strategy was planned to begin in 2016 but experienced some delay due to a lengthy procurement process. As a result, the already very ambitious reform programme faces some serious time constraints and it is unclear if all tasks can still be accomplished in the short time period that is left. According to the action plan, the Ministry of Economy was responsible for publishing annual progress reports on the progress of the implementation of the 38 tasks laid out in the RIA 2020 strategy. This has so far not been the case.

Information from the Slovak Government indicates that there is a delay in implementation for a majority of the tasks. So far, 8 out of 38 tasks outlined in the RIA 2020 Action Plan have been reported as fulfilled. These include preparing training material for the RIA 2020 Strategy, publishing RIA quality reviews by the RIA Commission and information on better regulation activities on the MoE's website, a legislative stocktaking exercise, developing a methodology for the *ex post* review of legislation and proposing measures for the improvement of the business environment (by the Interdepartmental Working Group for Doing Business), preparing SME tests (by the SBA). Several tasks are currently under way.

The preparation of the action plan with a timeline and performance indicators to track project progress can be considered good practice. However, the tasks lack detailed implementation steps and the indicators are not specific enough, rarely measurable and in many cases not realistic.

Overall, the RIA 2020 Strategy aims to achieve a complete overhaul of the regulatory policy system – a task that takes other OECD countries at least several years – in a short period of time. There is a serious risk that the tasks outlined by the strategy will not be achieved, which is augmented by a lack of implementation control: The MoE as the body reviewing the implementation of the tasks is at the same time the body responsible for carrying out a significant number of tasks. It is unclear what measures are taken in the event tasks are not being implemented on time. A failure to implement a majority of the tasks could create a serious credibility issue for the better regulation agenda in the Slovak Republic.

Communicating the benefits of regulatory reform

Despite these ambitious reform plans, there are no efforts undertaken to systematically communicate benefits and costs of regulatory reform to the public and within the administration. An overarching communication strategy on regulatory reform is not foreseen as part of the RIA 2020 Strategy. The Strategy itself does not spell out the benefits of using regulatory management tools.

The RIA Commission publishes an annual report on the performance of the commission's work, opinions on RIAs issued and the quality of impact assessment statements. While the annual report is an important step towards increasing transparency of the RIA system, it is not widely advertised and does little to convey the importance of regulatory management tools to civil servants.

As a result, government officials are aware e.g. of the requirement to conduct impact assessments, but do not fully understand the purpose of the exercise. RIA is considered an additional burdensome obligation with unclear benefits in an already cumbersome legislative process. Communicating the benefits of RIA to civil servants could help generate support and buy-in for regulatory reforms across the administration.

Drivers of better regulation in the Slovak Republic

OECD data and recommendations have provided a strong impetus for Better Regulation reform efforts in the Slovak Republic. The 2012 *Recommendation of the Council on Regulatory Policy and Governance* and the 2015 Regulatory Policy Outlook offered a normative framework and concrete policy recommendations for countries wishing to improve their regulatory policy systems. The close co-operation between the Slovak Republic and the OECD has inspired to date the most extensive reform effort to improve the Slovak regulatory environment – the development of the RIA 2020 Strategy.

Next to the OECD, businesses are traditionally one of the strongest drivers of better regulation efforts in the Slovak Republic. The strong support of the business community calling for regulatory reform means that better regulation takes on a higher priority on the government's agenda. As a result, businesses' interests are particularly considered in the legislative process: for example, consultations prior to the public consultation process are conducted more systematically with businesses than other stakeholder groups. The National Action Plans I and II are good examples for national reform efforts aiming at improving the regulatory environment for businesses by putting in place measures to reduce administrative burdens hampering business activity.

However, the strong interconnectedness of Slovakia's regulatory reform agenda and interests of the business community also carries the risk of neglecting the interests of other stakeholders. Some ministries reported engaging with a set list of stakeholders, mostly businesses, during the consultation phase of the legislative process. There are limited efforts undertaken to reach out to other, potentially smaller and less organised, constituents from civil society and the general public. These groups are almost never consulted with in the early stages of the legislative process, when the different regulatory options are discussed. This issue is further discussed in Chapter 4.

Another strong driver of better regulation in the Slovak Republic are generous EU-funds available for regulatory reform projects. On the one hand, these funds enable the government to undertake large-scale projects and hire additional staff needed to carry out projects. On the other hand, this availability of funds carries the risk that governments are incentivised to undertake broad reform projects, not prioritising the most urgent areas for reform. Also, a significant number of staff in BR units is funded from EU-funds, effectively making the government's better regulation reform efforts' continuity dependent on EU grant availability. This might potentially harm the sustainability of the reform efforts in the long run.

Transparency and e-government

The legislative framework for consultations with the general public in the Slovak Republic is based on *Act No. 400/2015* on lawmaking and on the collection of laws. According to §10, all draft legislation together with the accompanying impact assessment statement has to be published for commenting on Slov-Lex, the central consultation platform of the Slovak Government. All comments submitted are visible on the website. A preliminary information document is also published for every planned law. The portal is managed by the Ministry of Justice. For further information, see Chapter 4.

The Information Systems in Public Sector Act No. 95/2019 C.I.a. provides the legal foundation for the promotion of e-government in the Slovak Republic and established responsibilities and guidelines for all bodies tasked with developing public sector electronic services. Act No. 177/2018 adopted in March 2018 lays out measures to reduce administrative burdens through the use of public administration information systems and on amendments. (European Commission, 2019[11]) The Office of the Pleni-potentiary of the Government for the Development of the Civil Society is tasked with promoting e-services and e-government in the Slovak Republic.

The Central Public Administration Portal (CPAP),[2] managed by the Slovak Government Office and operated by the National Agency for Networking and Electronic Services (NASES), is the Slovak Republic's central e-government portal. It provides government services and information to the public, acting as a single access point. Civil servants and civil society representatives reported that the portal is not designed in an intuitive, user-friendly way. The deputy prime minister's office is currently working on improving the user-interface of the platform.

The RIA 2020 strategy foresees that all goals of the strategy should be complemented by a Better Regulation IT platform specifically created for this purpose, along the three following components: *data*, *analytics* and *communication*. This means that the platform will

- provide necessary *data* for regulators to calculate impacts of regulations both in the *ex ante* and *ex post* phase;
- include a *regulation register* listing rights and obligations stemming from legislation in an easily accessible and searchable way for entrepreneurs and the general public;
- provide *analytical tools* to help regulators calculate these impacts;
- enable *communication* of draft legislation in the early stages of the legislative process by providing tools to organise public consultation (working groups, roundtables etc.) and allow for the RIA Commission to communicate with law drafters throughout the process.

OP Effective public administration and OP Integrated infrastructure provide methodological and analytical inputs for the IT platform. The platform is currently in the early stages of the public procurement process.

Ex post *evaluation of regulatory policy*

Information on the performance of regulatory policy and regulatory reform programmes is necessary to identify if regulatory policy is being implemented effectively and if reforms are having the desired impact. They can also provide a benchmark for improving compliance by ministries and agencies with the

requirements of regulatory policy such as reporting on the effective use of impact assessment, consultation, simplification measures and other practices (OECD, 2012[3]). Evaluations can furthermore help to target scarce resources to those reforms that result in the greatest improvements, and to generate the political support needed to implement regulatory policy reforms. The European Commission for example undertook a comprehensive evaluation of its consultation system to inform the reform of its consultation system in 2015 (see Box 2.3).

Box 2.3. Evaluating the European Commission's consultation practices

The 2012 review of the EU Commission's consultation policy is a comprehensive report describing and reviewing current consultation practices. It addresses issues such as the openness and reach of consultation and the use of input received during consultation.

The review draws upon different sources. First, it contains an analysis of international standards, among them the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance*. Second, an open consultation of external stakeholders was used to gather a wide range of opinions. Third, input from different Commission services was sought, including data on consultations and impact assessments carried out between January 2010 and August 2012.

The report provides indicators concerning the Commission's consultation practices, for example on the type of consultation, consultation tools, languages and length, as well as the availability of consultation outputs, and percentage of consultations with external parties in which the minimum consultation period was respected. The report also identifies measures that could be taken to enhance the quality of consultation, for example:

- Adjusting the minimum standards;
- Improving planning, for example by publishing a rolling calendar of planned consultations online;
- Improving follow-up and feedback, for example through developing alert systems to notify respondents at key stages throughout the policy-making cycle.

The European Commission's consultation practices were further refined in the Better Regulation guidelines and accompanying Better Regulation "Toolbox", which were adopted by the European Commission in May 2015 as part of a "Better Regulation Package". Reforms included new opportunities for the general public to participate in consultations on inception impact assessments for new regulatory initiatives with major impacts, on regulatory proposals after adoption by the European Commission, and on draft texts of delegated acts before adoption by the Commission.

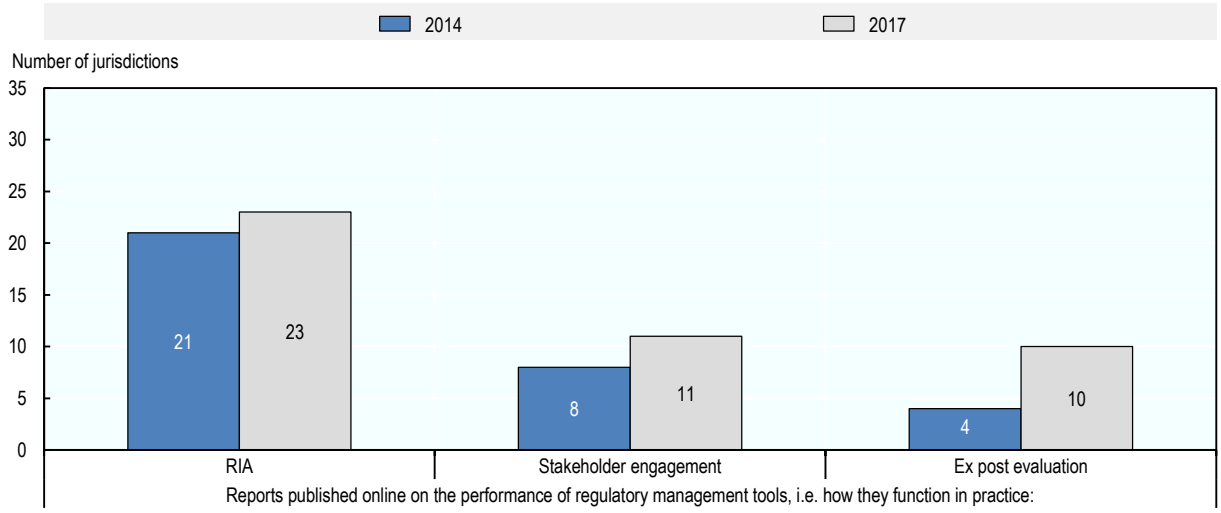
In 2018, the European Commission took stock of its 2015 Better Regulation Package. The College of Commissioners adopted a Commission communication describing the Better Regulation Agenda, discussing its strengths and shortcomings, and identifying possible avenues for progress.

Source: (OECD, 2014[12]), (European Commission, 2015[13]) and (OECD, 2016[14]); in: (OECD, 2019[15]).

Until 2017, there was no requirement in place in the Slovak Republic to evaluate the performance of regulatory reform programmes. The RIA 2020 Strategy introduced the obligation to monitor and evaluate the progress of such programmes, notably the strategy itself. The Ministry of Economy as the national co-ordinator of better regulation efforts in the Slovak Republic is responsible for this task and reports on progress in the annual report of the RIA Commission and the MoE's annual report on business environment.

Following international good practice, the RIA Commission systematically evaluates the performance of the RIA system in the Slovak Republic since 2016. The RIA Commission's annual report[3] includes an evaluation of the Commission's work, the opinions on RIA statements that had been issued, an evaluation of the overall quality of the RIA process and recommendations for improvement. It is available on the MoE's website. (OECD, 2017[16]) There is however no evaluation conducted of the consultation practices used by ministries, which is the case in a majority of OECD countries (see Figure 2.3 centre bars). Also, the Commission's annual report does not provide recommendations for future improvement of the regulatory management system.

Figure 2.3. Reports on the performance of regulatory management tools



Note: Data is based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Like many better regulation units in OECD countries, the MoE in the Slovak Republic has also tracked the total impact measures to reduce administrative burden. The three burden reduction packages implemented since 2016 are expected to reduce administrative burdens for businesses by more than 100 mil. EUR. The actual burden reduction will be verified in the *ex post* evaluation stage. For more information on the national action plans to reduce administrative burdens and the burden reduction packages, see Chapter 6.

Assessment and recommendations

Since 2007, the Slovak Republic has introduced a broad set of useful and important reforms that strengthen regulatory policy and have already supported the improvement of the business environment. The current better regulation agenda contains a whole-of-government political commitment to the use of regulatory management tools, introducing systematic *ex post* evaluation of regulations and elements of innovative rule-making. With the introduction of the RIA 2020 Strategy, the Slovak Republic follows the OECD *Recommendation of the Council on Regulatory Policy and Governance*, committing at the highest political level to an explicit whole-of-government policy for regulatory quality.

The RIA 2020 Strategy is a comprehensive better regulation effort following international best practice, but risks being too ambitious. The Strategy aims to achieve significant progress to a best practice regulatory system. While this effort is highly acknowledged, it means a complete overhaul of the regulatory policy system – a task that takes other OECD countries at least several years – is envisaged in a short period of

time. The implementation of some tasks is delayed and there is a risk that the tasks outlined by the strategy will not be achieved in the foreseen timeframe. Progress reporting since the start of the programme has not been regular. A failure to implement a majority of the tasks could create a serious credibility issue for the better regulation agenda in the Slovak Republic.

Despite ambitious reform plans, the objectives and results of Better Regulation are not systematically communicated within the administration and to the general public. An overarching communication strategy on regulatory reform is not foreseen as part of the RIA 2020 Strategy and the Strategy itself does not spell out the benefits of using regulatory management tools. As a result, the benefits of regulatory management tools like RIA are not fully understood across the administration and by external stakeholders, which limits the capacity to gather support and buy-in for reforms across the administration, in parliament and from the general public.

Better Regulation efforts in the Slovak Republic are largely driven by OECD recommendations, businesses and EU-funds. OECD data and recommendations have provided a strong impetus for Better Regulation reform efforts in the Slovak Republic and inspired the development of the RIA 2020 Strategy. Combined with the strong support of the business community calling for regulatory reform, this means that Better Regulation takes on a high priority on the government's agenda and generous EU-funds available for regulatory reform programmes provide the necessary resources. As a result, businesses' interests are particularly considered in the legislative process. This however also carries the risk of neglecting interests of other stakeholders. Large EU-funds allow for ambitious reform efforts but can incentivise governments to undertake large-scale projects that aim to achieve too much at once, not prioritising the most urgent areas for reform. A failure to achieve these (very) ambitious reform goals might pose credibility issues for the Better Regulation agenda in the Slovak Republic at large.

The OECD Secretariat makes the following policy recommendations:

- **Regulatory reform efforts should target the most urgent areas of reform**. Choosing priority areas for the Slovak BR agenda will be a crucial task for the Ministry of Economy as the national co-ordinator of better regulation in order to effectively employ the resources available. The generous EU-funds available should be used to undertake targeted reform programmes, tackling one issue at a time. This effort should be complemented by an action plan with a realistic timeline and SMART[4] performance indicators. Progress should be tracked systematically and evaluation results should be systematically published online to ensure accountability.
- **The Slovak Republic should add a communication strategy to its whole-of-government policy for regulatory quality.** To generate support and buy-in for regulatory reforms across the administration, in parliament and from the general public, the benefits of regulatory management tools and regulatory reform programmes should be spelled out in the RIA 2020 Strategy. In addition, the Strategy should be complemented with a clear communication strategy to help engage the public in the scrutiny of the regulatory process. The realisation of this strategy should be supported by the Ministry of Economy overseeing implementation and co-ordination.

Notes

[1] Available at https://www.mhsr.sk/podnikatelske-prostredie/jednotna-metodika.

[2] Available at https://www.slovensko.sk/sk/titulna-stranka.

[3] The 2018 annual report is available at https://www.mhsr.sk/uploads/files/vyxNJ0Ll.pdf.

[4] See Chapter 5, Box 5.6. SMART Objectives for regulation.

References

Danilak, M. and T. Hlluskova (2019), *Presentation on New RIA Approaches*. [9]

European Commission (2019), *Digital Government Factsheet 2019*, https://joinup.ec.europa.eu/sites/default/files/inline-files/Digital_Government_Factsheets_Slovakia_2019.pdf (accessed on 22 January 2020). [11]

European Commission (2015), *Better regulation for better results - an EU agenda*, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en (accessed on 18 February 2020). [13]

Government of the Slovak Republic (2016), *Legislative Rules of the Government of the Slovak Republic*, https://www.vlada.gov.sk/data/files/7528_uplne-znenie-legpravvladysr-v-zneni-uzn-vlsr-z-29-maja-2019-c-242.pdf. [8]

Ministry of Economy of the Slovak Republic (2017), *RIA 2020 - Better Regulation Strategy*, https://www.mhsr.sk/podnikatelske-prostredie/lepsia-regulacia/ria-2020-strategia-lepsej-regulacie (accessed on 11 December 2019). [4]

OECD (2019), *Better Regulation Practices across the European Union*, OECD, http://dx.doi.org/GOV/RPC(2018)15/REV1. [15]

OECD (2019), *OECD Economic Surveys: Slovak Republic 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eco_surveys-svk-2019-en. [5]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [1]

OECD (2017), *Indicators of Regulatory Policy and Governance Survey 2017*, http://oe.cd/ireg (accessed on 13 March 2019). [16]

OECD (2016), *Pilot database on stakeholder engagement practices*, http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm (accessed on 7 October 2019). [14]

OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264238770-en. [10]

OECD (2014), *Framework for Regulatory Policy Evaluation*, http://www.oecd.org/regreform/framework-for-regulatory-policy-evaluation.htm (accessed on 23 January 2019). [12]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264209022-en. [3]

OECD (2010), *Regulatory Policy and the Road to Sustainable Growth*, https://www.oecd.org/regreform/policyconference/46270065.pdf (accessed on 23 January 2019). [2]

World Bank (2020), *Economy Profile Slovak Republic: Doing Business 2020*, https://www.doingbusiness.org/content/dam/doingBusiness/country/s/slovakia/SVK.pdf (accessed on 20 January 2020). [7]

World Economic Forum (2017), *The Global Competitiveness Report*, http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf (accessed on 20 January 2020). [6]

3 Institutional framework and capacities for regulatory policy

This chapter examines the institutional framework for regulatory policy in the Slovak Republic. Regulatory management needs to find its place in a country's institutional architecture, and capacities for promoting and implementing Better Regulation need to be build up. Mechanisms and institutions need to be established to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality.

Key institutions and regulatory policy oversight of the regulatory process in the Slovak Republic

The institutional set-up of regulatory policy matters. Regulatory management needs to find its place in a country's institutional architecture and have support from all the relevant institutions. The institutional framework extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the sub-national levels of government also play critical roles in the development, implementation and enforcement of policies and regulations.

(OECD, 2012[1]) advises governments to "establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality."

Regulatory oversight is a critical aspect of regulatory policy. Without proper oversight, undue political influence or a lack of evidence-based reasoning can undermine the ultimate objectives of policy. Careful, thoughtful analysis of policy and an external check of policy development are required to ensure that governments meet their objectives and provide the greatest benefits at the lowest costs to citizens. Allocating roles and responsibilities and defining tasks throughout the regulatory process, especially ensuring that regulatory management tools are used effectively, are key success factors in any regulatory policy system. Accordingly, the OECD have stated that bodies tasked with regulatory oversight should be tasked with five functions (see Box 3.1):

Box 3.1. Main features of regulatory oversight bodies to promote regulatory quality

Principle 3 of the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* calls for countries to "establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality" (OECD, 2012[1]). The Recommendation highlights the importance of "a standing body charged with regulatory oversight (…) established close to the centre of government, to ensure that regulation serves whole-of-government policy" and outlines a wide range of institutional oversight functions and tasks to promote high quality evidence-based decision making and enhance the impact of regulatory policy.

In line with the Recommendation, a working definition of "regulatory oversight" has been employed in the *2018 Regulatory Policy Outlook* (OECD, 2018[2]), which adopts a mix between a functional and an institutional approach. "Regulatory oversight" is defined as the variety of functions and tasks carried out by bodies/entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making. These functions can be categorised in five areas, which however do not need to be carried out by a single institution/body:

Table 3.1. Regulatory oversight functions and key tasks

Areas of regulatory oversight	Key tasks
Quality control (scrutiny of process)	• Monitor adequate compliance with guidelines / set processes • Review legal quality • Scrutinise impact assessments • Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory
Identifying areas of policy where regulation can be made more effective(scrutiny of substance)	• Gather opinions from stakeholders on areas in which regulatory costs are excessive and / or regulations fail to achieve its objectives.

	• Reviews of regulations and regulatory stock. • Advocate for particular areas of reform
Systematic improvement of regulatory policy (scrutiny of the system)	• Propose changes to improve the regulatory governance framework • Institutional relations, e.g. co-operation with international for a • Co-ordination with other oversight bodies • Monitoring and reporting, including report progress to parliament / government to help track success of implementation of regulatory policy
Co-ordination (coherence of the approach in the administration)	• Promote a whole of government, co-ordinated approach to regulatory quality • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle • Facilitate and ensure internal co-ordination across ministries / departments in the application of regulatory management tools
Guidance, advice and support(capacity building in the administration)	• Issue guidelines and guidance • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)

Source: (OECD, 2018[2]), OECD Regulatory Policy Outlook 2018, Paris, https://dx.doi.org/10.1787/9789264303072-en; (OECD, 2012[1]), Recommendation of the Council on Regulatory Policy and Governance, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en.

As is the case in many OECD countries, Slovakia has a fragmented institutional landscape for regulatory policy, and responsibilities for regulatory oversight are split among several authorities. The RIA Commission is responsible for overseeing the quality of regulatory impact assessments and is part of the Legislative Council of the Government, which reviews the legal quality of government regulations and the compliance of legislation with EU-law. The Ministry of Economy co-ordinates better regulation efforts across the administration and ensures the RIA process is carried out in line with the Unified Methodology. Lastly, the Ministry of Justice is responsible for co-ordinating the inter-ministerial commenting procedure.

The key institutions tasked with regulatory oversight functions and/or involved in regulatory policy in the Slovak Republic are described in the following:

Legislative Council of the Government

Established by Art. 2 III *Act. No 575/2001 Coll.*, the Legislative Council of the Government is a permanent advisory and co-ordinating body of the Government. The Chairman is the Minister of Justice.

The Council is responsible for reviewing the legal quality of government regulations and the compliance of legislation with EU-law. The Council also establishes permanent advisory bodies of the Government of the Slovak Republic. After the comments proceedings the legislative draft is discussed with the Council where an agreement must be reached. If no agreement with the sponsoring ministry is reached, the Council issues an opinion to the Government.

RIA Commission

The Commission is chaired by the State Secretary of the MoE. Several ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs, Ministry of Environment, Ministry of the Interior and Deputy Prime Minister's Office for Investments and Informatisation) are represented in the Commission as well as the Government Office and the Slovak Business Agency. They share competencies for checking the quality of RIAs with each one focusing on their area of competences (OECD, 2018[2]): The Ministry of Economy reviews impacts on the business environment, the Ministry of Finance focuses on budget impacts, the Ministry of Labour on social impacts and the Ministry of

Environment on environmental impacts, the Ministry of Interior scrutinises the impact on public services provided for citizens, the Deputy Prime Minister's Office for Investment and Informatisation reviews impacts on the "informatisation" of society (see Figure 3.1). A new impact area on marriage, parenthood and family was introduced in 2018 by Act No. 217/2018, but is not yet reflected in the Unified Methodology and has not been assigned to a concrete ministry.

Figure 3.1. The RIA Commission

A. Impacts on business environment **B.** Budget impacts **C.** Environment impacts **D.** SME-test
E. Impacts on informatisation **F.** Impacts on public services for citizens **G.** Social impacts

Source: Information received from the Government of the Slovak Republic.

According to Art.3 of the *Unified Methodology*, the RIA Commission is responsible for

- Providing methodological support to civil servants tasked with drafting legal texts and impact statements;
- Assessing the quality of the RIA process and the impact assessment statements at the draft and final stage;
- Informing the submitter of the Commission's opinion on the impact assessment statement;
- Granting permission to conduct a shortened RIA following Art. 2.6.

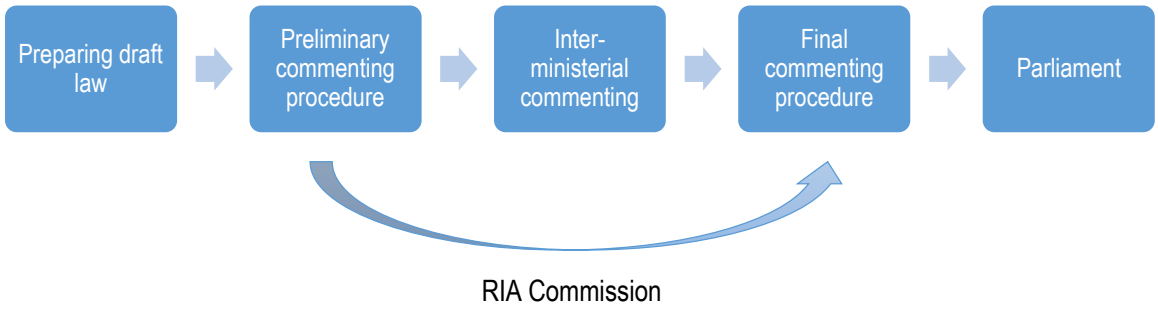
The Commission does not comment on the substance of the legislative draft. Instead, it reviews the regulation's impacts on the general government budget, business environment (including SME test), social impacts, environmental impacts, impacts on the informatisation of society and impacts on public administration services for the citizen as presented in the RIA statement.

Most of these key oversight functions outlined in Box 3.1 are covered by the RIA Commission (quality control of RIA; providing guidance and support and systematic improvement of regulatory policy) and the Legislative Council (reviewing legal quality). However, some key functions are currently not fulfilled.

Notably, there is no body in charge of reviewing the quality of stakeholder engagement processes or identifying areas of policy where regulation can be made more effective. The co-ordination function is currently carried out by the Ministry of Economy.

The quality review process of RIA is conducted in three phases. In **phase 1**, the preliminary commenting, ministries are required to send the legislative draft with the accompanying RIA to the RIA commission for review. According to the *Rules of Procedure of the RIA Commission*, the Commission then has 10 days to issue a first opinion. Once the RIA has been adjusted (if necessary), the draft and RIA are published on the consultation portal Slov-Lex.sk for **phase 2**, the inter-ministerial commenting procedure, where both public and other ministries can provide comments. The ministry sponsoring the legislation then addresses the comments provided and the commission, if necessary, reviews the RIA again in **phase 3** before sending the documents to Parliament. Phase 3 only takes place if the impacts have been changed following the inter-ministerial commenting phase, or if one of the ministries explicitly demands to send the legislation into phase 3. All final statements issued by the Commission can be found in its annual report and on the MoE's website, a helpful practice ensuring transparency of the quality review process.

Figure 3.2. The process of quality review of RIA by the RIA Commission



Source: Information received from the Government of the Slovak Republic.

The Commission's opinions can be positive (without any comments), positive with recommendations for revision (minor comments), negative (substantial comments). It cannot stop the legislation from going forward should the RIA quality be insufficient. OECD interviews showed that there is an issue with ministries not revising the RIA statement after a negative opinion issued by the Commission, pointing to a potential lack of authority of the oversight body. According to the RIA Commission's 2018 annual report, two-thirds of regulations are submitted to Parliament even though the Commission had voiced quality concerns about the RIA statement.

The Commission only reviews the quality of individual impacts in the portfolio of individual institutions represented in the Commission in isolation and not the overall quality of the RIA and total impacts on the welfare of the society, including whether the overall benefits justify the potential costs stemming from regulatory drafts. It also does not review the quality of stakeholder engagement processes with the general public.

The RIA commission usually only meets once a year, depending on current needs, and does not meet with the ministries sponsoring legislative drafts. This is a missed opportunity as meeting with ministries and providing continuous advice throughout the drafting process could significantly improve the RIA. The Commission does however provide some guidance on FAQs online[1] and answers questions via email and telephone, following its responsibility to provide methodological support to ministries according to the Unified Methodology.

RIA Commission Secretariat

The Commission's secretariat is the first point of contact for ministries and central government bodies, it reviews the material submitted to the Commission for completeness and the most serious shortcomings, is in charge of communication and supporting law drafters with procedural issues and prepares the Commission's annual report. It does not however conduct a preliminary review of the RIA statements submitted in terms of burdens presented. This practice could help ease the Commissions workload by targeting its efforts to the RIA statements for the most burdensome pieces of legislation.

Ministry of Economy

According to art. 3 of the *Unified Methodology*, the Ministry of Economy is responsible for promoting regulatory quality across the administration and the MoE's Department for Business Environment was appointed national co-ordinator of better regulation efforts.

The ministry is responsible for:

- Managing the RIA process and ensuring it is carried out in line with the Unified Methodology;
- Deciding which legislative drafts will be subject to consultations with businesses prior to the preliminary commenting procedure (PKK) following Art. 5.4;
- Co-ordinating the RIA Commission;
- Issuing regular opinions on the conformity of the RIA process with the requirements set out in the Unified Methodology in its annual reports[2];
- Implementing the national project *Improvement of the Business Environment in Slovakia* and evaluating policies in the competence of the ministry with the goal to reform the Better Regulation processes in the Slovak Republic.

In its function as member of the RIA Commission the Ministry of Economy reviews impacts on the business environment.

Government Office

The Slovak Republic refers to the Government Office as its centre-of-government institution (OECD, 2019[3]). As laid out in the Statute of the Government Office of the Slovak Republic,[3] its main responsibilities include: reviewing the performance and implementation of tasks within the state administration as well as of tasks resulting from government resolutions, ensuring action is taken on petitions and complaints, co-ordinating the performance of tasks for the development of the information society, and co-ordinating the implementation of policies of the European Communities and the European Union. The Government Office currently has a rather limited role in co-ordinating government policies, however in March 2020 a new Deputy Prime Minister for legislation and strategic planning has been appointed that likely will take on a co-ordination function for RIA. The Deputy PM will act as chair of the Legislative Council of the Government.

The *Implementation Unit* within the Government Office is responsible for the review and evaluation of spending goals defined by the Ministry of Finance, mostly VfM spending reviews but IU has recently also been tasked with reviewing the implementation of the 2030 strategy at the Ministry of the Environment. It co-operates closely with the ministries in this regard, preparing the implementation plan for them and continuously reviewing implementation for three years. The IU currently employs five staff members funded from EU and another three from the state budget.

The *Institute for Strategy and Analysis* (ISA) provides analytical support for economic and social policies of the Prime Minister and Government Office in line with economic policy objectives and strategic priorities of the Government programme, including the European Union's cohesion policy. The Institute co-operates

closely with other analytical units of central state administration bodies for the development of strategy documents. ISA conducts research on topics like regional policy, innovation, health policy, education, and the impacts of EU funds allocation. Recently, ISA has become the Secretariat for the National Productivity Board and has been charged with preparing the annual report on productivity and competitiveness of the Slovak economy. There are 10 analysts currently employed at the Institute.

Office of the Deputy Prime Minister for Investment and Informatisation

The Deputy Prime Minister's office reviews impacts on the informatisation of society in its function as member of the RIA Commission. It also co-ordinates large investment projects and the use of EU resources in the programming period 2014-20. Since 2019, there is a Behavioural Unit at the Office of the Deputy Prime Minister of the Slovak Republic for Investments and Informatisation called Behavioral Research and Innovations Slovakia. The Office also oversees the Slovak Republic's digital governance agenda.

Office of the Plenipotentiary of the Government for the Development of Civil Society

The Office of the Plenipotentiary of the Government for the Development of the Civil Society, located within the Ministry of Interior, organises the Government Council for NGOs which is chaired by the Ministry of Justice. One of its tasks is ensuring ministries' compliance with the preparation of the Report on Public Participation on the outcomes of the public consultation process for a legislative proposal. The report on public participation in the drafting of legislation is prepared by the proposer before submitting it to the inter-ministerial commenting procedure. Once a year, the Plenipotentiary's Office controls the compliance with this obligation within the fulfilment of the AP OGP 2017-2019 task. The Office is also tasked with promoting e-services and e-government in the Slovak Republic.

Government Council for NGOs

The council consists of representatives of ministries and more than 30 NGOs. It aims to "contribute to the development of participative democracy in Slovakia" to ensure that government policies and regulations are "not only efficient, fair and democratic, but also adopted based on a wide consensus of the government and the non-governmental sector and its implementation was controlled by the civil society". This platform is, however, more used to discuss general policies, strategies or projects on co-operation with NGOs than to find NGOs' views on particular specific policies or regulations (OECD, 2015[4]).

Ministry of Finance

The Ministry of Finance is responsible for managing the national fiscal framework, including: the national budget, taxes and fees, customs, financial control, internal audit and government audit. It launched the Value for Money Initiative, which aims to promote evidence-based policy making and efficiency within the public sector by conducting spending reviews. By preparing and overseeing the fiscal framework and state budget, the Ministry of Finance fulfils a key centre-of-government function. (OECD, 2015[4]) The Ministry of Finance also reviews budget impacts in its function as member of the RIA Commission.

Ministry of Justice

The Ministry of Justice is responsible for managing the national consultation portal Slov-Lex.sk. The Ministry chairs the Legislative Council of the Government, which is responsible for scrutinising legal quality before submitting the legislative proposal to the Government, and it reviews the compliance of the legislation with the EU *acquis*.

Ministry of the Interior

The Ministry of the Interior is the managing authority for the EU *Operational Programme Effective Public Administration* (OP EPA), which funds the Ministry of Economy's national project on Better Regulation. The OP EPA aims to support the government-wide public administration reform by supporting investment into the institutional capacities and into the effectiveness of public administration and public services at national, regional and local level, thus contributing to the implementation of reforms, better legal regulation and good governance.

The Ministry of Interior reviews impacts on public administration services for the citizen in its function as member of the RIA Commission.

Ministry of Foreign and European Affairs

The Ministry of Foreign and European Affairs co-ordinates the Slovak Republic's position on EU matters, for which it has 90 staff stationed at the Permanent Delegation to the European Union in Brussels. The MFEA operates a government-wide commission that meets weekly to discuss proposals currently being discussed in COREPER I (*Comité des représentants permanents*) and COREPER II.

Other institutions

Parliament

The *Rules of Procedure of the Parliament* [4] serve as a legal framework for activities carried out by the National Council of the Slovak Republic. §2 spells out its powers, which include i.e. discussing legislative proposals and deciding on the Constitution, constitutional amendments, constitutional laws and laws and controlling their compliance,

The requirement to conduct an impact assessment as stated in the Unified Methodology does not apply to legislation initiated by the National Council. As in most OECD countries, the results of RIA are not sufficiently used in parliamentary discussions and there is no impact assessment conducted on changes made to legislation in parliament.

The *Parliamentary Institute*, which is the parliament's analytical unit, provides data and research upon request from MPs. The institute co-operates with institutes in other countries to prepare information on international practices. It currently employs 9 staff members.

The Slovak Business Agency

The Slovak Business Agency is a non-profit organisation for the support of small and medium-sized enterprises. It was founded in 1993 through a common initiative of the EU and the government of the Slovak Republic. It is a unique platform of public and private sectors. The founding members include the Ministry of Economy of the Slovak Republic, the Entrepreneurs Association of Slovakia and the Slovak Association of Crafts.

The *Better Regulation Centre* is the Business Agency's analytical unit. It is represented in the RIA Commission, issuing partial statements on the assessment of impacts on SMEs and carrying out the *ex ante* and *ex post* SME-tests. The Centre consults with businesses on the impacts identified in the SME-test and advocates for their interests with regulators. It currently counts four employees.

Council for Budget Responsibility (Fiscal council)

The Council for Budget Responsibility is an independent body for monitoring and evaluating the fiscal performance of the Slovak Republic. Its main tasks are defined in Constitutional Act No. 493/2011 on Fiscal Responsibility:

- Preparing an annual report on the long-term sustainability of public finances;
- Submitting a report to parliament on the government's compliance with fiscal responsibility and fiscal transparency rules;
- Review and publish opinions on budget impacts of legislative proposals submitted to parliament;
- Providing information on alternative regulatory scenarios and provide suggestions how to improve the methodology for calculating indicators in the area of public finances.

Judiciary

The *Constitutional Court* rules on the compatibility of laws, decrees (either by government or local administration bodies) and legal regulations (issued by local state administration or resulting from international treaties) with the Constitution. It also decides on disputes between state administration bodies and complaints against decisions issued by a state body.

Matters of administrative law mainly fall under the authority of *regional courts* (*krajský súd*) and the *Supreme Court* (*Najvyšší súd Slovenskej republiky*). The Slovak Republic does not have separate administrative courts; rather, there are separate chambers of administrative judges.

In 2015, a comprehensive legal reform of Slovak procedural law was undertaken to speed up the process of judicial proceedings, introduced by Act No. 160⁄2015 Coll. Civil Proceedings Code for Adversarial Proceedings (*Civilný sporový poriadok*), Act No. 161⁄2015 Coll. Civil Proceedings Code for Non-adversarial Proceedings (*Civilný mimosporový poriadok*), and Act. No. 162⁄2015 Coll. Administrative Proceedings Code (*Správny súdny poriadok*).

OECD stakeholder interviews still showed that judiciary proceedings typically progress slowly, effectively making judicial appeals unattractive for businesses.

Local governments

Title 4 of the Constitution on Territorial Self-Administration sets forth the legal structure and powers of local and regional governments in the Slovak Republic (Constitution of the Slovak Republic). Municipalities and regions may generally issue binding regulations in matters of territorial self-administration, and for securing the requirements of self-administration required by law (*Article 68*). The interface between the national and sub-national level is further discussed in Chapter 8.

Co-ordination of the Better Regulation policy across government

According to art. 3 of the *Unified Methodology*, the Ministry of Economy is the national co-ordination body for better regulation in the Slovak Republic. It promotes a whole-of-government, co-ordinated approach to regulatory quality. The MoE was in charge of the development of the Unified Methodology and ensures the conformity of the RIA process with its requirements. The MoE's role in the RIA system is well respected, but as a line ministry it finds itself in a difficult position to drive a cross-government horizontal objective such as regulatory quality. Also, with its department for business environment, the Ministry of Economy is a strong advocate for businesses in the Slovak Republic. Also, with its Department for Business Environment, the Ministry of Economy is a strong advocate for businesses in the Slovak Republic. In its

role as national co-ordination body for better regulation the MoE has been steering the better regulation agenda towards a pro-business approach – to the disadvantage of other stakeholder groups.

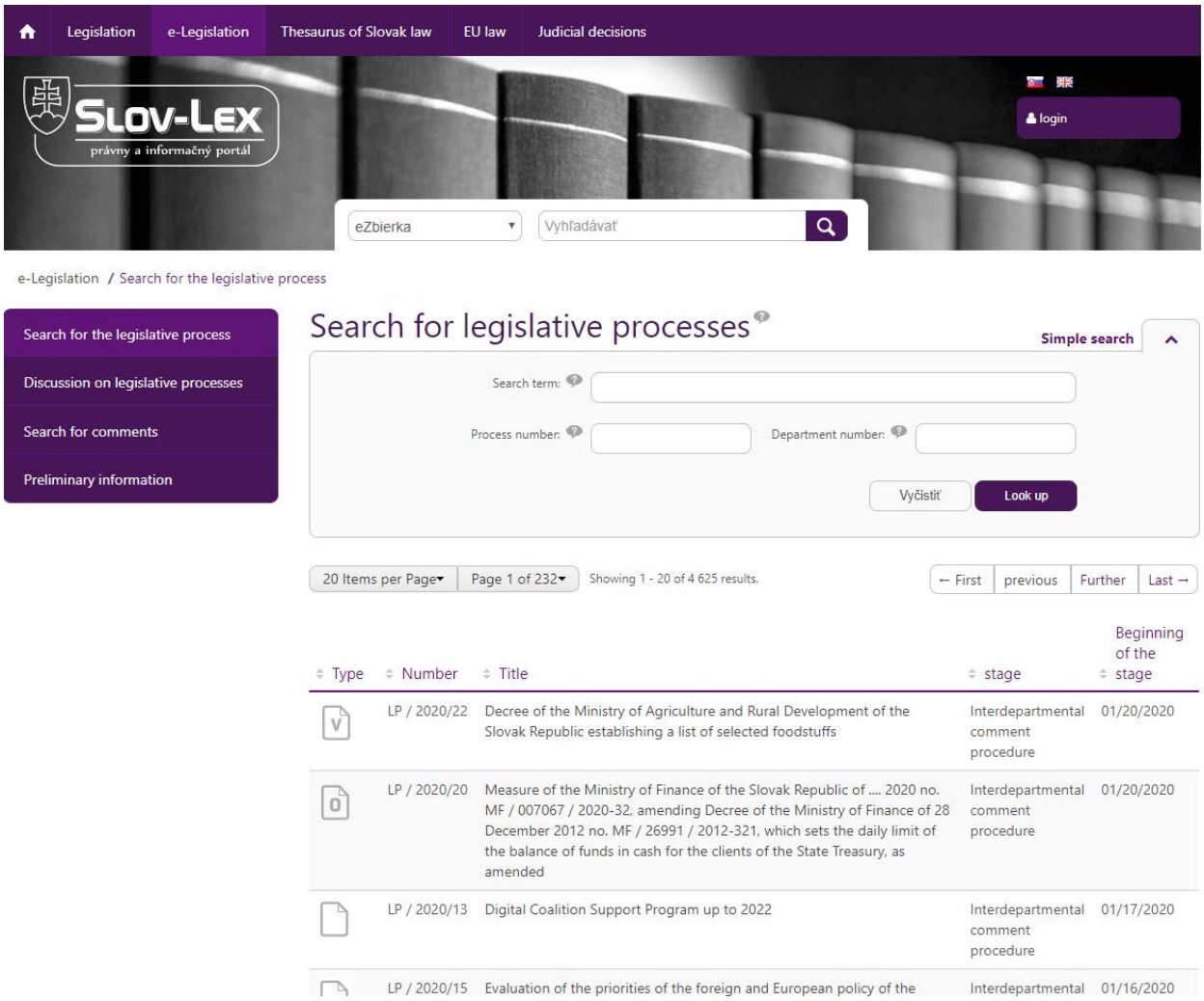
The Ministry of Justice is in charge of the inter-ministerial co-ordination process and manages the inter-ministerial commenting procedure via the government's consultation portal Slov-Lex.sk.

In March 2020, a new Deputy Prime Minister for legislation and strategic planning has been appointed in the Government Office. The new Deputy PM will act as chair of the Legislative Council of the Government, and as such will likely take on a co-ordination function for RIA. If realised, this new institutional set-up would be in line with the OECD's *2012 Recommendation of the Council on Regulatory Policy and Governance,* which suggests regulatory management tools like RIA should be supported at the centre of government.

Inter-ministerial co-ordination during the development of regulations

According to Art. 13 of the Legislative Rules of the Government of the Slovak Republic and § 10 of the Act on Lawmaking and on the Collection of Laws No. 400/2015, a legislative proposal has to be shared with ministries and the public in what is called the "inter-ministerial commenting procedure".

Figure 3.3. Inter-ministerial commenting procedure



Source: https://www.Slov-Lex.sk/vyhladavanie-legislativneho-procesu?filter=1.

The Ministry of Justice runs Slov-Lex.sk, the website where all legislative drafts are published for consultation (see Figure 3.3). Legislative drafts are shared with ministries and the general public and all comments on the drafts are publicly available. Users can see what stage of the consultation process the draft legislation is in (e.g. “inter-ministerial commenting procedure”) and when the consultation process has started. The inter-ministerial commenting procedure is repeated if there were very important changes in changes made within the draft. After the second stage, the proposer prepares a report on the outcomes of the consultation process. Once a year, the Plenipotentiary's Office analyses compliance with this obligation.

Comments from relevant authorities have the statute either of “suggestions” (not binding), or “objections” (substantial comments, binding). The ministry sponsoring the legislation is obliged to react to comments provided. It has to declare whether a) the comment was accepted and legislative proposal was changed; b) the comment was partially accepted – this must be followed by an explanation why it was not fully accepted; c) the comment was not accepted at all, followed by an explanation why it was not accepted at all. A list of all comments made in this procedure with their status (accepted/partially accepted/not accepted at all), including explanations and proposers’ statements, has to be uploaded on the Slov-Lex website.

If the ministry sponsoring the legislation does not accept any objection (substantial comment), a dispute meeting (*rozporová komisia*) has to be organised to solve the issue. If the matter remains unsolved, the document is submitted to the meeting of the Legislative council with objections (*s rozporom*). The dispute may even be brought to the meeting of the Government Office to be decided upon. Resources, training and guidance.

Resources

The culture of using evidence and analytical support in the decision-making process is not yet firmly embedded in the functioning of the Slovak government. There is both a lack of demand for evidence and analysis from decision makers when discussing government policies, programmes and/or regulations, and a lack of analytical capacities in line ministries to be able to produce said evidence.

A unique resource: analytical institutes in line ministries

This lack of analytical capacities comes as a surprise, given the competitive advantage the Slovak Republic enjoys in terms of analytical capacities compared to other countries in the region: the analytical institutes that have been established in most Slovak ministries. The institutes are specialised units operating within the portfolio of their ministry and serve to provide analytical background for the ministry’s decisions. Their structures, competences and position in the organisation of the ministry vary. Some institutes have only been established very recently and compared to other institutes still lack resources and overall capacities.

There are no systemic, formalised procedures on how to involve the analytical institutes in the decision-making process in their ministry. While the IFP produces a significant number of policy briefs and working papers, including economic forecasts and inputs for medium-term budgets, it is at the discretion of the Minister of Finance or the government whether to use these analyses to support their decisions. The IFP is regularly asked to provide the Minister of Finance with advice and supporting analysis; however, this only occurs in an *ad hoc* manner without any formal rules, and may change with every new minister (OECD, 2015[4]).

Box 3.2. Institute for Financial Policy of the Slovak Ministry of Finance

The **Institute for Financial Policy (IFP)** is a special unit of the Slovak Ministry of Finance with the status of a section. Operating within the Ministry of Finance' portfolio, the institute's mission is to provide reliable macroeconomic and fiscal analyses and forecasts for the Slovak government, especially the Minister of Finance, as well as for the general public. The Head of the institute reports directly to the State Secretary of the Ministry of Finance. The IFP's main goals are to contribute to the transparency of the budgeting process in the Slovak Republic, the sustainability of public finances and the effectiveness of public finances, including taxation and public expenditure. The IFP's main activities are:

- macroeconomic analyses and forecasts
- tax analyses and forecasts
- fiscal analyses and forecasts
- expenditure analysis
- structural reforms
- analytical service for the management of the Ministry of Finance.

The IFP provides inputs to the government for its strategic documents such as the Stability Programme or the National Reform Programme and for its medium-term budgets. In addition, the institute is also known for publishing its own economic analyses, working papers and commenting on recent developments and economic indicators.

Source: (OECD, 2015[4]).

In the case of other ministries, the practices of involving analytical centres in the decision-making process is less common. Some ministries like the Ministry of Health closely involve the analytical units in the legislative process, the institute helps with RIA and can even prepare its own laws. The Ministry of Education, Science, Research and Sport of the Slovak Republic involves its analytical unit in the legislative process from the very beginning, giving them certain tasks like the assessment of certain impacts and the unit would provide the necessary data. However, there are no formal communication channels in place and some ministries barely co-operate with their analytical unit, for example in the case of the Ministry of Environment. The impulse for change to more closely involve the institutes in ministry work usually comes from public scandals, creating the need to support policy decisions with analytical evidence in the public eye. In cases where the analytical units are closely co-operating with the ministry's legal unit and are involved in the RIA process, the RIA tends to be of better quality and the ministries consider the support helpful.

Co-ordination between the different institutes varies. The Institute of Financial Policy has the central co-ordinating role between ministries, but co-ordination is not systematically ensured. The Institute of Health helps other units with impact assessments relating to public health and has substantial data available in this regard. The institute also reviews impact assessments accompanying legislative drafts sent from other ministries. The Ministry of Education's analytical unit works closely with the IFP and the Institute for Labour. However, there were also cases where information between different analytical units could not be shared because of legal issues. Generally, analytical institutes pointed out that co-ordination between units was still in its infancy and could be improved.

Size and resources of the analytical institutes also vary. The IFP is the institute with the highest status, enjoying sufficient resources available to them, but other institutes are facing some difficulties in this regard. Especially some of the more recent analytical units seem to be struggling for resources and have difficulties attracting and keeping highly skilled staff. The Institute of Health counts 15 people in two

departments, the Institute of Education employs 10 people all funded from EU-funds, but other institutes reported they have 1-5 staff available on average.

The lack of involvement of the institutes in ministry work is not only a problem of supply (i.e. the institutes' resources), but also of demand for analytical information and evidence. It seems that many senior decision makers in ministries are not fully aware of the analytical capacities available in institutes and there is a lack of interest in demanding analysis and evidence. MPs can ask the analytical institutes for information for example on international best practices in a certain field. The Parliamentary Institute reports that in particular analysis from the financial, health and environment institutes is of high quality.

Training and guidance

Beyond the technical need for training in certain processes such as impact assessment or plain language drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of better regulation. In the Slovak Republic, targeted trainings on the application of regulatory management tools and guidance material pose challenges to an effective implementation of the better regulation agenda.

Up to this date, no trainings on better regulation topics, incl. RIA, are available to civil servants in the Slovak Republic. The RIA 2020 Strategy foresees the following training activities in Activity 1: Education and awareness-raising of public servants and other relevant entities on the process and content of impact assessment of regulatory frameworks and non-legislative proposals:

- intensive 2-day workshops on RIA for state officials who draft regulations and RIA analysts few times a year,
- 1-day seminars on RIA with international experts for all officials participating on RIA process once a year,
- 1-day workshops on tools of BR for state officials a few times a year,
- 2-day workshops on RIA for the officials of from the ministries responsible for selected impacts,
- 2-day workshop for the RIA Commission members on internal processes and sharing experience,
- 1-day seminars for the public (including entrepreneurs and NGOs) on RIA tools and possibilities to take part in the process,
- 1-day seminars for MPs and their assistants on benefits and opportunities to use BR tools in Parliament,
- 1-day seminars for representatives of regions and municipalities on benefits and possibilities to use BR tools in their administrations.

The Ministry of Economy plans to hold a first training on pilot projects for the members of the working committee on *ex post* evaluation in the end of March 2020.

Staff in analytical units mentioned that they would welcome RIA trainings. These trainings would not only allow them to deepen their analytical skills to provide guidance and advice to ministry staff, they would also represent an opportunity to interact and potentially co-operate with staff from other analytical units.

The Ministry of Economy as a national co-ordinator of Better Regulation and the Department for Business Environment is responsible for the Unified Methodology and thus responsible for providing guidance material. Guidance material has so far been developed for a number of topics, i.e. conducting RIA and assessing regulatory alternatives. There are also different guidance documents available for consultations

with entrepreneurs according to the Unified Methodology[5] and with the general public,[6] issued by the Office of the Plenipotentiary. The RIA 2020 Strategy foresees the development of a joint methodology by June 2020. Pilot testing of the new methodology should be carried out by the end of March 2021.

Assessment and recommendations

Within the Slovak government, the competencies for supporting regulatory quality are distributed among several key ministries and institutions. As is the case in many OECD countries, Slovakia has a fragmented institutional landscape for regulatory policy, and responsibilities for one oversight function are split among several authorities. The RIA Commission is responsible for overseeing the quality of regulatory impact assessments. The Legislative Council of the Government is in charge of reviewing the legal quality of government regulations and the compliance of legislation with EU-law. The Ministry of Economy co-ordinates better regulation efforts across the administration and ensures the RIA process is carried out in line with the Unified Methodology. Lastly, the Ministry of Justice is responsible for co-ordinating the inter-ministerial commenting procedure. The distribution of competencies for supporting regulatory quality among several key ministries and institutions means that the current institutional set-up bears a risk of overlapping and unclear functions.

The regulatory oversight system's methods and performance have scope for improvement. The RIA Commission as the regulatory oversight body brings together several ministries and other bodies for a comprehensive approach to RIA quality control. The insufficient quality of some RIA statements and compliance issues with the Commission's opinions suggest that the oversight body's methods and performance should be improved. Currently, the Commission only reviews the quality of individual impacts in the portfolio of individual institutions represented in the Commission and not the overall quality of the RIA and total impacts on the welfare of the society, including whether the overall benefits justify the potential costs stemming from regulatory drafts. The lack of overall quality review means the informative value of the RIA statement is diminished. Furthermore, the RIA commission usually only meets once a year and does not meet with the ministries sponsoring legislative drafts. This is a missed opportunity as meeting with ministries and providing continuous advice throughout the drafting process could significantly improve the RIA. Lastly, there are some key oversight functions the Commission does not cover. There is no body in charge of identifying areas of policy where regulation can be made more effective. This includes gathering opinions from stakeholders on areas in which regulatory costs are excessive and/or regulations fail to achieve its objectives and advocating for particular areas of reform. There is currently also no quality control carried out on the stakeholder engagement processes employed by line ministries.

The Ministry of Economy is well respected as the national co-ordinating body for better regulation, but strong leadership from the centre of government is missing. A key regulatory oversight function is fostering a whole-of-government perspective towards regulation and performing essential co-ordination activities to ensure a homogenous approach to regulatory policy across the public administration. In the Slovak Republic, the Ministry of Economy as the national co-ordinating body puts in place important better regulation reform efforts like the RIA 2020 Strategy and brings ministries together in the Unified Methodology Working Group for this purpose. However, as a line ministry the MoE might not have the authority necessary to promote better regulation as a topic of high political priority across the administration. The delay of the implementation of the RIA 2020 Strategy might partly be due to the lack of strong leadership for better regulation from the centre of government or an independent body with the power to enact change around the government.

The analytical units in some line ministries present a competitive advantage for the Slovak Republic and reflect international good practice. The institutes are specialised units operating within the portfolio of their ministry and serve to provide analytical background for the ministry's decisions. Some institutes, like the Institute for Financial Policy, enjoy sufficient resources and analytically trained staff to support ministry staff

with the RIA process. Their structures, competences and position in the organisation of the ministry however vary. Some institutes have only been established very recently and compared to other institutes still lack resources and overall capacities.

The existing analytical capacities in ministries are not used to full potential. The analytical institutes are a unique source of analytical capacities only in few line ministries. Particularly institutes that have been established recently are not involved in the impact assessment process and co-operation between institute and ministry staff does not happen on a systematic basis. The level of involvement in the decision making process is at the minister's discretion, there is no formalised process in place.

The OECD Secretariat makes the following policy recommendations:

- **The Slovak Government should strengthen analytical capacities and promote the use of existing capacities in key ministries.** This includes creating conditions to attract and keep sufficiently trained staff. The government should follow up on trainings planned as part of RIA 2020. Putting in place trainings on key regulatory management tools would not only improve analytical performance, but could also promote co-operation within ministries and among analytical institutes, bringing together key actors in regulatory policy. To make full use of existing capacities in analytical institutes, there should be efforts undertaken to formalise co-operation among institutes and ministries. The institutes should systematically provide advice and support to staff drafting laws and preparing RIAs.
- **Stronger leadership driving a concerted better regulation effort across the administration should be put in place**. There should be a body with the authority to enact change around the government and to promote a co-ordinated whole-of-government approach to regulatory policy. This body might take the form of a ministerial committee chaired by the Minister of Economy or the Prime Minister, with the MoE's Business Environment Department acting as secretariat. It could also be considered placing this co-ordination function in the centre of government, where the body might have the authority necessary to promote and co-ordinate better regulation reform efforts across the administration. In this respect, the newly appointed Deputy Prime Minister for legislation and strategic planning could play an important role. Should an arm's length body for regulatory oversight be considered (see recommendation below), this body naturally should take on such a leadership function.
- **The methods and performance of the RIA Commission should be improved.** The RIA Commission should meet with ministries *at least* four times a year, to provide continuous advice and support during the RIA preparation phase. To ensure the overall impacts of a legislation are considered, the RIA Commission should review the total impacts on the welfare of the society, including whether the overall benefits justify the potential costs stemming from regulatory drafts. The RIA commission's secretariat should conduct a preliminary review of the RIA statements submitted and screen out problematic or particularly burdensome RIA statements for the Commission's review. This practice could help ease the Commissions workload by targeting its efforts to RIA statements for the most burdensome pieces of legislation. In addition, the secretariat should have more staff allocated and should meet regularly with ministries to discuss RIA statements. It could be considered to place the secretariat within the center of government to elevate the regulatory policy agenda to a higher political level.
- **The Slovak Government could consider centralising regulatory oversight functions into one body and giving this oversight body stronger powers.** The location of the oversight bodies is an important consideration. Where the responsibility for regulatory oversight is placed, i.e. within government or located in a body operating at arm's length, clearly depends on the oversight function carried out:

- Functions supporting a whole-of-government approach to regulatory policy through co-ordination, the provision of guidance and training or the overall systematic improvement and advocacy for regulatory policy are usually located within government. A clear mandate consolidating Better Regulation and oversight responsibilities at the centre of government would help promoting and implementing regulatory management policies through effective monitoring. Consolidating at least some of these powers in one unit close to the centre of government specifically in charge of regulatory management could improve co-ordination among existing ministries and agencies and would help ensure that regulatory quality principles are successfully applied.
- For the quality control of regulatory management tools however it could be considered to place them in independent bodies external to government. The insufficient quality of some RIA statements and compliance issues with the RIA Commission's opinions suggest a lack of authority across the administration. For this reason, several ministries and business representatives have argued in favour of transforming the RIA Commission into an "independent watchdog". Such an independent body should be given stronger powers to be able to ensure RIA quality, like being able to stop legislation from going forward if the RIA quality is deemed insufficient.

Notes

[1] Available at https://www.mhsr.sk/podnikatelske-prostredie/jednotna-metodika/vykladove-stanoviska.

[2] Available at https://www.mhsr.sk/ministerstvo/informacie-o-mhsr/vyrocne-spravy.

[3] Available at https://www.government.gov.sk/statute-of-the-government-office-of-the-slovak-republic/.

[4] Available at https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1996/350/#.

[5] Available at https://www.economy.gov.sk/podnikatelske-prostredie/jednotna-metodika/vykladove-stanoviska.

[6] Available at https://www.minv.sk/swift_data/source/rozvoj_obcianskej_spolocnosti/participacia/Metodicke-usmernenie_Sprava-o-ucasti-verejnosti_final.pdf.

References

OECD (2019), *OECD Economic Surveys: Slovak Republic 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eco_surveys-svk-2019-en. [3]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [2]

OECD (2015), *Slovak Republic: Better Co-ordination for Better Policies, Services and Results*, OECD Publishing, https://www.oecd.org/governance/slovak-republic-better-co-ordination-for-better-policies-services-and-results-9789264247635-en.htm (accessed on 19 December 2019). [4]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264209022-en. [1]

4 Stakeholder engagement and public consultations

This chapter sheds light on the processes in place in the Slovak Republic for consultation and dialogue with affected stakeholders and the general public and to what extent the outcomes can influence policy makers. It describes and evaluates the regulatory and institutional framework for stakeholder engagement, the practices in place for e-consultations, and the role of stakeholder engagement in *ex ante* and *ex post* regulatory impact assessment.

The central objective of regulatory policy – ensuring that regulations are designed and implemented in the public interest – can only be achieved with help from those interested in and affected by regulations – the "stakeholders". Stakeholders should not only be consulted when new regulation is being proposed and developed, they should also have an opportunity to participate in subsequent phases of the "regulatory governance cycle", such as regulatory delivery or reviewing the regulatory stock.

According to the 2012 *OECD Recommendation on Regulatory Policy and Governance*, "governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place". Governments should be actively engaging all relevant stakeholders during the regulation-making process and designing consultation processes to maximise the quality of the information received and its effectiveness (see Box 4.1).

Box 4.1. The second recommendation of the 2012 Council on Regulatory Policy and Governance

2. Adhere to **principles of open government**, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

2.1. Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.

2.2. Governments should **co-operate with stakeholders** on reviewing existing and developing new regulations by:

- Actively engaging all relevant stakeholders during the regulation-making process and designing consultation processes to maximise the quality of the information received and its effectiveness.
- Consulting on all aspects of impact assessment analysis and using, for example, impact assessments as part of the consultation process;
- Making available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data;
- Structuring reviews of regulations around the needs of those affected by regulation, co-operating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals;
- Evaluating the competitive effects of regulation on various economic players in the market.

2.3. Introduce **regular performance assessments** of regulations and regulatory systems, taking into account, among other things, the impacts on affected parties and how they are perceived. Communicate the results of these assessments to the public.

2.4. Make sure that policies and practices for inspections and enforcement respect the legitimate rights of those subject to the enforcement, are designed to maximise the net public benefits through compliance and enforcement and avoid unnecessary burdens on those subject to inspections.

2.5. All regulations should be **easily accessible** by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

2.6. Governments should have a policy that requires regulatory texts to be drafted **using plain language**. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations.

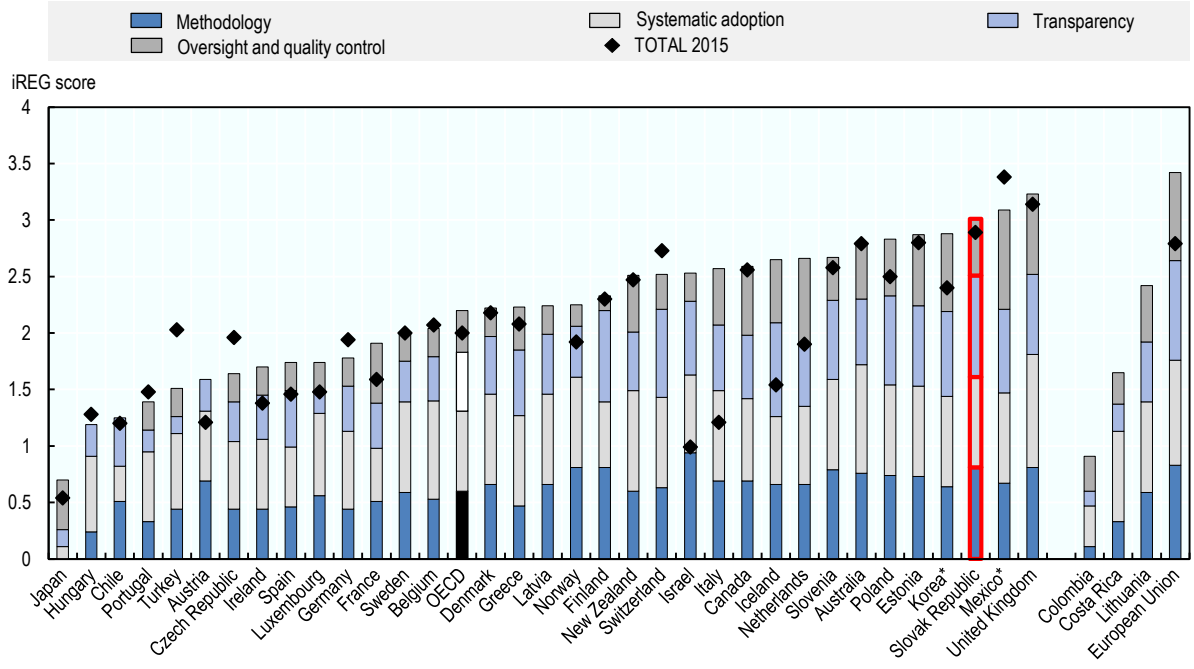
Source: (OECD, 2012[1]), Recommendation of the Council on Regulatory Policy and Governance, Paris, https://dx.doi.org/10.1787/9789264209022-en.

Stakeholder engagement and public consultations

Governments should consult with all significantly affected and potentially interested parties, where appropriate, at the earliest possible stage while developing regulations (OECD, 2020[2]).

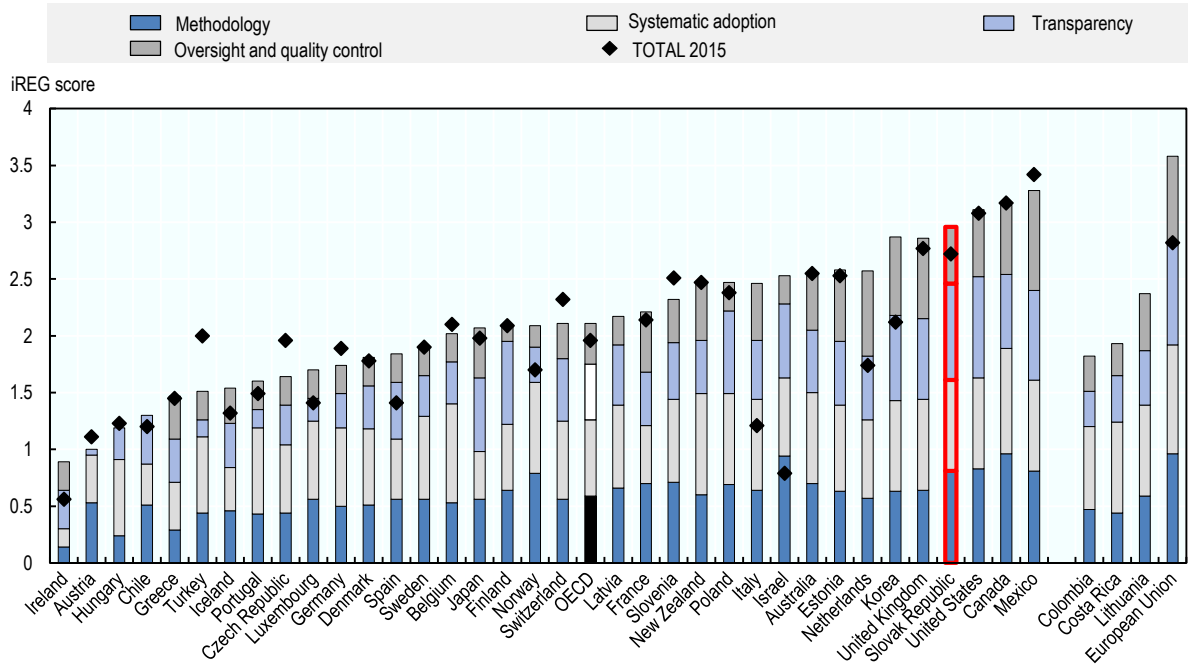
Slovak administration uses both early-stage and late-stage consultations to engage with stakeholders. The systematic use of electronic public consultations through the government portal accessible to all members of the public as well as focus on early engagement with stakeholders, especially businesses, earned Slovakia a comparably high score regarding requirement for stakeholder engagement in developing both primary and secondary regulations in the OECD Indicators of Regulatory Quality, as illustrated by Figure 4.1 and Figure 4.2.

Figure 4.1. Composite indicators: Stakeholder engagement in developing primary laws, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. *In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Figure 4.2. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Slovakia explicitly differentiates between consultations with the general public and engagement with businesses. Consultations with businesses mostly take place as part of the regulatory impact assessment process. Businesses and their associations might therefore have a privileged position of sorts when it comes to influencing government regulations.

Regarding public consultations, the *Rules of Public Involvement in Public Policy Making*[1] were adopted in March 2014 as a non-binding recommendation of the Government. This document provides a good overview of various approaches to public consultations in different stages of the policy- or legislation-making process. However, its implementation in practice, due to its non-binding character and a lack of enforcement, is, even according to the government representatives, insufficient and ministries and other government agencies often do not comply with this guidance.

Provisions and guidance regarding consultations with businesses are included in the *Unified Methodology on Assessment of Selected Impacts* as well as in the *SME Test* and in guidance published by the Secretariat of the RIA Commission on its website.[2]

Provisions on (mostly late-stage) public consultations are included in the *Legislative Rules of the Government*. There are other materials as well that regulate participation in public policy-making, e. g. the *Methodology and institutional framework for the preparation, creation and implementation of central government bodies strategic documents*.

According to the update of the RIA 2020 strategy, a methodology for stakeholder consultations should be developed by mid-2020 and several pilot projects should be carried out to test the new methodology. The methodology should provide more detailed guidance for early stage consultations as well as to strengthen the principle of proportionality, so that more significant draft regulations are consulted more thoroughly.

Early-stage consultations

When involving stakeholders early in the policy cycle – at the stage before the preferred solution has been identified and the paragraph wording drafted, and at the stage when the administration is still able and willing to significantly change the regulatory draft – governments can achieve much better effects and improve regulatory outcomes. Slovakia, unlike many OECD countries, has a formalised process for the so-called early-stage consultations. While guidance for early-stage consultations is also included in the *Rules of Public Involvement in Public Policy Making*, in practice, formalised early-stage consultations mostly follow the procedures set by the *Unified Methodology* and are, therefore, focusing almost exclusively on business stakeholders.

According to the Act No. 400/2015 on the development of legal documents, every ministry or a regulation-drafting agency is obliged to publish a notification ("preliminary information") on the Slov-Lex portal (see below) on all prepared legislative drafts. In the preliminary information, the responsible ministry/authority usually describes the main goals and basic ideas of the proposal. It should also assess the existing status of the regulated area and inform users on the likely start of the consultation process on the legislative draft. The preliminary information are also published on the website of the Ministry of Economy.[3]

The Ministry of Economy decides whether consultations with businesses should take place. The MoE decides either automatically, based on the Legislative Plan of the Government, or, if the draft is not included in the Plan and is likely to have impacts on businesses, the responsible ministry should notify the Ministry of Economy which then takes the decision on the need of consulting with businesses.

If this is the case, MoE then, in co-operation with the Better Regulation Centre of the Slovak Business Agency, forwards the information on the legislative draft to a list of businesses and associations which expressed interest in being informed on ongoing consultations. The list is open for any business/association willing to be engaged and is published on the Internet.[4] Businesses/associations can then engage with the responsible ministry in the process of drafting the regulation. Ministries are not asked to proactively look for potential consultees which are not included in the list, either due to the lack of interest or capacities to be part of consultations. This presents a risk that the whole spectrum of interests will not be represented in those consultations, as larger companies or business associations might be better resourced and motivated to actively engage in discussions with the administration.

Box 4.2. Better Regulation Centre of the Slovak Business Agency

The Better Regulation Centre is a specialised analytical unit established within the Slovak Business Agency. The analytical unit was created following the Initiative of the European Union on the promotion of small and medium enterprise, also known as the Small Business Act, with the aim to accomplish the objectives stipulated by this Initiative. The Better Regulation Centre comprises a team of specialists in the fields of legislation and regulatory impact assessment on the business sector (the so-called Business Impact Assessment), whose mission is the reduction of the disproportionate regulatory burden of businesses and an improvement in the business environment in Slovakia.

Main activities

The primary mission of the Better Regulation Centre (BRC) is a reduction of the disproportionate regulatory burden on SMEs and an improvement of the business environment in Slovakia. Amongst the main activities of the BRC belong:

- Identification of legislative and non-legislative measures with an impact on the SMEs,
- Assessment and quantification of impacts of the newly proposed legal norms and non-legislative materials,
- Carrying out business impact assessments (BIA) of legislative and non-legislative materials on SMEs *ex ante* and *ex post* through SME Test,
- Creating space for SMEs for consultations of newly proposed, as well as already existing legal norms, materials of non-legislative nature and EU regulations,
- Ensuring feedback in relation to public sector bodies and bodies of the EU,
- Presentation of measures aimed at reducing the regulatory burden on SMEs in order to boost the economic growth and the competitiveness of the business sector,
- Implementation of the "Think Small First" Principle in the Slovak legal system in accordance with the Small Business Act, i.e. taking into account the specific needs of the SMEs,
- Assessment of excessive transposition of EU Directives in the Slovak legal system (so-called gold-plating).

Source: http://lepsiezakony.sk/en/about-us/.

The scope of these consultations usually varies. In many cases, ministries consult only based on a brief reasoning, less frequently a more detailed plan for action is presented. At this stage, businesses are often asked to provide data for future impact assessments. The early-stage business stakeholder consultations should, according to the *Unified methodology,* take four weeks; however, a shorter period might be agreed on between the drafting institution and stakeholders.

In addition to these procedures, anybody can register through the Slov-Lex portal and submit comments to the preliminary information. The length of the period for submitting such comments is not specified.

The results of consultations with businesses should be described in the *Analysis of the impact on the business environment*. Usually, ministries/agencies responsible for the draft do not provide much information on the results of consultations and mostly only mention when and which subjects were consulted. In these cases, the RIA Commission usually asks for additional information as part of its review.

It is not unusual for ministries and other central government bodies that draft regulations to create working groups when preparing legislation/regulations. Working groups usually contain experts from relevant ministries and/or relevant stakeholders, depending on the nature, scope and estimated impacts of regulation. However, creating such groups is not mandatory and it depends largely on the responsible ministry whether such group will be created and who will participate in the group. According to the interviews, it is quite often the case that only businesses are invited among external stakeholders, while CSOs, consumer groups, etc. are not so often part of the discussion.

While creating working groups with participation of stakeholders is certainly a good practice, what might be missing in Slovakia is some guidance on how these working groups should be created, how to make sure that various interests are balanced, how to conduct meetings of such groups, how to provide feedback to the consulted subjects, etc.

The process of drafting a new renewable energies law prepared by the Ministry of Economy might be mentioned as one of the examples of successful early-stage consultations. Workshops, conferences and numerous meetings with various stakeholders have been organised and the initial draft changed substantively before it was submitted to and approved by the Parliament. Another good example of early stage consultations is a draft law on subsidising electro mobility. The legislation has been changed completely compared to the initial draft based on the suggestions provided mostly by car and battery producers. The RIA 2020 strategy was also developed in co-operation with business associations, Office of the Plenipotentiary of the Government for the Development of the Civil Society and government bodies.

While businesses clearly welcome the opportunity to get engaged early in the process, they also often complain about the lack of time, especially thanks to the fact that business associations need to communicate with their members to obtain their views on the subject matter and 4 weeks is often not sufficient. According to representatives of businesses interviewed, the consultations often are carried out just to comply with the obligation, without clearly communicating the goals of the consultation process. It is therefore impossible to determine later if the goals of consultations have been achieved.

On the other hand, despite the fact that the Ministry of Economy is providing over 300 possibilities to join consultations during the early stages of drafting regulation, the number of businesses joining the consultation is still relatively low. It became obvious during the fact-finding mission that some civil servants do not perceive engaging with businesses as useful and look at it rather as additional administrative burden. At the same time, during interviews, businesses often complained about their input not being taken into account and that ministries often do not explain the reasons for not implementing them.

Late-stage public consultations

As discussed in Chapter 2, the main document setting the rules for drafting government regulations are the *Legislative Rules of the Government*. According to the *Legislative Rules*, all legislative drafts (whether primary or secondary legislation) must be published on the government electronic portal Slov-Lex[5] at the same time as they enter the inter-ministerial comment procedure. The electronic dossier must include all accompanying documents, including the cover page, draft Government Resolution, Submission Report, Explanatory Report, Assessment of Selected Impacts, Report on Public Participation, Annex on compatibility with EU law and the Compliance Table.

The portal provides a single access point to comments on legislative proposals and non-legislative drafts (e.g. concept notes, green or white papers). It seeks to ensure easier orientation and search in legislative materials to facilitate the evaluation of the inter-ministerial commenting process, and to support compliance with legislative rules and time limits.

Both public authorities as well as members of the general public can provide comments on the legislative drafts and the accompanying material. All comments submitted are published on the portal. The deadline for submitting comments is usually 15 working days, in exceptional cases, this period can be shortened to seven days. According to the *Legislative* Rules, this should happen only in exceptional cases such as when human rights are endangered, states of emergency, when the deadline for implementing EU legislation would not be complied with or when it is necessary to submit the legislative draft to the Government without any delay due to its urgency. Especially the last exemption seems to be overused. According to the information provided during the fact-finding mission, the time for submitting comments is shortened in 20% of all consultations.

Written comments can be submitted by members of the general public either as individual comments or as “collective comments”, to which individuals or organisations can signal their support. Whenever a comment receives support from 500 individuals or organisations (the so-called “collective public comment”), ministries are obliged to provide written feedback on the comment, either taking the comment into consideration for the legislative proposal or explaining why the comment has not been taken into

account. The feedback provided then becomes part of the dossier submitted to the government for discussion. In case of non-acceptance of the "collective public comment", a "dispute meeting" should be organised by the responsible ministry with the aim to find a compromise with representatives of those who submitted the comment.

To be able to submit a comment through the portal, a user has to be registered. The registration is simple and free of charge. The registration also enables signing up for receiving alerts whenever a document from a selected area(s) is published on the portal for consultation.

Virtually all legislative proposals are adjusted following the consultation process. The number of comments received varies significantly for different legislative proposals. Accompanying impact assessments to the legislative proposal are also updated on the basis of comments received. Following the consultation process, a summary of comments received together with the reasoning for their consideration or non-consideration is published on the portal.

(OECD, 2015[3]) found that the number of comments received through the portal varies significantly depending on the actual draft and that the portal is not used to the optimal extent by external stakeholders due to low user-friendliness and a lack of awareness of the possibility to comment through the portal. The latest version of the portal launched in April 2016 comprises a range of new features to increase user-friendliness, including the possibility to access and search through the portal all existing legislation that is part of the Official Gazette. Nevertheless, some of the critical remarks made in the 2015 review are still valid today, including the relatively low take up among external stakeholders, especially individuals, due to the limited knowledge of the possibility to take part in the legislative process through the portal and its suboptimal user-friendliness.

According to the RIA 2020 strategy, a specific better regulation web platform should be created, contributing to, among other, improved stakeholder engagement. It will enable communication of draft legislation in the early stages of the legislative process by providing tools to organise public consultation (working groups, roundtables etc.) and allow for the RIA Commission to communicate with law drafters throughout the process. MoE has already started working on the content of the platform, e.g. semantic decomposition of laws and decrees which will form the Register of Regulations.

In addition to the initiatives related to with regulatory policy, the Action Plan 2017-2019 on Initiative for Open Government[6] was adopted in March 2017 which includes the call for public participation on policy making. The responsible oversight body is Office of the Plenipotentiary of the Government for the Development of the Civil Society. As part of the current OGP National Action Plan 2020-2021 adopted in November 2019, the Office of the Plenipotentiary of the Government for the Development of the Civil Society co-operates with four ministries (Ministry of Agriculture and Rural Development, Ministry of Education, Science, Research and Sport, Ministry of Environment and Ministry of Interior) on four selected public policies, and assists the ministries with the stakeholder engagement process as part of their development.

Another platform that can be used to engage outside stakeholders in the decision-making process in the government is the Government Council for Non-Governmental Non-Profit Organisations (NGOs). This council consists of representatives of ministries and more than 30 NGOs. It is chaired by the Plenipotentiary of the Slovak Government for the Development of Civil Society. One of the aims of the council is "to contribute to the development of participative democracy in Slovakia" to make sure that government policies and regulations are "not only efficient, fair and democratic, but also adopted based on a wide consensus of the government and non-governmental sector and its implementation was controlled by the civil society". This platform is, however, more used to discuss general policies, strategies or projects on co-operation with NGOs than to find NGOs' views on particular specific policies or regulations.

Institutional set up for overseeing the quality of stakeholder engagement

Control and oversight of the quality of engagement activities and compliance with policy guidelines should exist within all administrations. Clear competences should be assigned for co-ordinating and promoting stakeholder engagement in regulatory policy across the administration.

In general, there is a limited scrutiny of the quality of stakeholder engagement when developing new or reviewing the existing regulations in Slovakia. The Ministry of Economy only decides upon the need to consult businesses as part of the early-stage consultation processes but does not play any oversight role. The RIA Commission should, in theory, oversee compliance of the legislation-making process with the *Unified Methodology*. However, according to the interviews with the OECD team, it rarely pays attention to the quality of the engagement process, whether in the early or its late stages. In most cases, the Commission only checks, whether consultations have been carried out and sometimes also whether the comments have been taken into account but not the completeness of consultations or representativeness of the consulted subjects.

The Office of the Plenipotentiary of the Government for the Development of the Civil Society is the institution behind the *Rules of Public Involvement in Public Policy Making* and owner of the idea of preliminary information (a mandatory part of the legislative procedure to inform public about new regulation) but it has no power or ambition to enforce a proper compliance with the *Rules* or the obligation of early-stage consultations. The enforcement of the obligation to publish preliminary information is fully in the competence of the Ministry of Justice and the Office of the Government of the Slovak Republic. However, the Plenipotentiary's Office analyses compliance with this obligation as part of the fulfilment of the OGP Action Plan 2017-2019.

Stakeholder engagement in reviewing regulations

The so-called anti-bureaucratic packages (see Chapter 6) are prepared mostly on input gathered from stakeholders. As part of the process, the general public is usually invited to submit proposals for potential simplification. Many of these proposals are submitted by businesses. The packages are then discussed by the inter-ministerial Group on Doing Business with participation of business associations.

During interviews, the OECD heard several reports of ministries and government bodies directly consulting with stakeholders (particularly businesses) to identify potential issues with the stock of regulations. This seems to be a practice that is becoming more and more common, however, is not formalised.

In addition, the Better Regulation Centre also identifies regulations that might have negative impacts on the business environment in Slovakia, especially on SMEs. The Better Regulation Centre is also co-organising, together with the Association of Young Entrepreneurs of Slovakia, an annual “Bureaucratic non-sense” (*byrokratický nezmysel*) award.[7] The Centre collects inputs from stakeholders to identify top ten most “absurd” regulations out of which every year one is selected. The award is published in the media. In the last 8 years, the Government successfully dealt with one third of all “top ten qualifiers”.

Access to regulations

All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

In Slovakia, all legislative documents, except generally applicable regulations of regions or municipalities and internal regulations of the central government bodies,[8] are published electronically, free of charge on the Slov-Lex portal. Some of the legislative materials are also accessible in languages of national minorities, e.g. Hungarian, German, Ukrainian or Roma. Citizens and businesses can use also the Central Government Portal[9] which provides information on regulations and administrative procedures grouped by life events, such as starting up a business.

Assessment and recommendations

Stakeholder engagement in Slovakia, despite the lack of formalisation of its certain aspects, is comparing very well with other OECD countries, especially regarding consultations with businesses. The fact that the methodology for stakeholder engagement is generally not enforced and therefore rarely complied with stands in the way of using the engagement procedure to their full potential.

Slovakia has, unlike most OECD countries, formalised procedures for early-stage consultations and engagement, especially with businesses. Generally all regulations impacting businesses are consulted with businesses or their associations early in the process. The depth of these consultations however varies. The obligation to notify general public on newly drafted regulations through the government portal improves awareness among stakeholders of what is in the pipeline in the regulatory sphere. It also enables better identification of potential stakeholders to be engaged early in the legislation-making process.

Early-stage stakeholder consultations often take the form of ad hoc working groups and/or informal meetings and workshops. As guidance on forming such working groups and conducting meetings with stakeholders, or, alternatively, organising surveys or collecting information from stakeholders, is missing, the working groups mostly consist of representatives of businesses or their other associations while other stakeholders, such as CSOs, are often neglected.

The late-stage public consultations are on par with the OECD best practice. Any member of the general public can provide comments to virtually all regulations developed at the level of the executive. What remains a problem are laws enacted either through the shortened procedure or directly by the Parliament, sometimes in a very short period of time, without sufficient time to consult all stakeholders. The heterogeneous numbers of comments received through the Slov-Lex portal on individual regulations might mean that the portal is still insufficiently user-friendly and that the wider public might not be sufficiently informed on the possibility to use the portal to get engaged in the legislation-making process.

The institute of the "collective public comment" is a rather unique element of the consultation process, making legislators more accountable to deal with comments which obtain support from a significant portion of the public.

Businesses and their association have, to a certain extent, a privileged status regarding stakeholder engagement. As the process of consulting with businesses is quite rigorously set by the *Unified Methodology*, businesses seem to be given more opportunities for consultations than other stakeholders, such as individual citizens, CSOs, etc. Despite this fact, the level of satisfaction with their engagement among business is still not very high. At the same time, ministries arte complaining about the low level of input received from the side of businesses. One of the reasons might be the low level of trust on both sides.

Ex post reviews of regulations, though focusing mostly on reducing administrative burdens so far, are very much based on feedback collected from stakeholders, especially businesses. The Ministry of Economy uses input from business associations in identifying potentially burdensome regulations through the so-called "anti-bureaucratic packages". More systemic co-operation and ongoing co-operation through establishing a permanent discussion forum between administration and businesses might be advisable.

The access to regulation is in line with the OECD best practice, all regulations in force are available both in the printed form and electronically through the government portal Slov-Lex with free access.

The OECD Secretariat makes the following policy recommendations:

- **The preparation of the new guidance for stakeholder engagement** as envisaged in the RIA 2020 strategy **should be accelerated**. The guidance should specifically focus on guiding civil servants through the early stages of the legislation-making process, forming working group, ensuring representativeness of consulted subjects, etc. **More systemic training to public**

officials on stakeholder engagement techniques should be provided following the issuance of the new guidance.

- Following the guidance, **Slovakia should undertake efforts to more systematically include stakeholders other than businesses** (general public, civil society organisations, etc.) **in early-stage consultations**. It is necessary to let all potentially impacted stakeholders express their views and to balance various interests as part of the consultation process.
- **When consulting with stakeholders** and namely businesses, **it is important to create an environment of mutual trust.** It is crucial that goals of individual consultations process are clearly communicated upfront and that the input obtained from stakeholders is seriously analysed. In case the received comments cannot be taken into account, the reasons for doing so must be explained. Creating an informal discussion forum similar to the one existing in Denmark (see Box 4.3) could help strengthen mutual trust.
- **Slovakia should consider opportunities to make the Slov-Lex portal more user-friendly** and inform the general public better on the functionalities of the portal as well as on the possibilities to become engaged in the government's decision-making process.
- **The Slovak Government should, voluntarily and to the extent possible, avoid presenting legislative proposals through the shortened procedure or directly in the Parliament through MPs initiatives.** Thus, all governmental legislative proposals would go through the systematic procedures describe in the Legislative Rules and the Unified Methodology, including thorough engagement with stakeholders. This, of course, does not mean limiting legislative initiative of the MPs.

Box 4.3. Denmark's Business Forum for Better Regulation

The Business Forum for Better Regulation was launched by the Danish Minister for Business and Growth in 2012. It aims to ensure the renewal of business regulation in close dialogue with the business community by identifying those areas that businesses perceive as the most burdensome, and propose simplification measures. These could include changing rules, introducing new processes or shortening processing times. Besides administrative burdens, the Forum's definition of burdens also includes compliance costs in a broader sense as well as adaptation costs ("one-off" costs related to adapting to new and changed regulation).

Members of the Business Forum include industry and labour organisations, businesses, as well as experts with expertise in simplification. Members are invited by the Ministry for Business and Growth either in their personal capacity or as a representative of an organisation. The Business Forum meets three times a year to decide which proposals to send to the government. So far, the proposals covered 13 themes, ranging from "The employment of foreign workers" to "Barriers for growth". Interested parties can furthermore submit proposals for potential simplifications through the Business Forum's website. Information on meetings and the resulting initiatives is published online.

Proposals from the Business Forum are subject to a "comply or explain" principle. This means that the government is committed to either implement the proposed initiatives or to justify why initiatives are not implemented. As of October 2016, 603 proposals were sent to Government, of which so far 191 were fully and 189 partially implemented. The cumulated annual burden reduction of some initiatives has been estimated at DKK 790 million. Information on the progress of the implementation of all proposals is available through a dedicated website. The results are updated three times a year on www.enklereregler.dk. The Business Forum publishes annual reports on its activities. The Danish Minister for Business and Growth also sends annual reports on the activities of the Business Forum to the Danish parliament.

Source: (OECD, 2016[4]), "Pilot database on stakeholder engagement practices in regulatory policy", http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm; www.enklereregler.dk.

Notes

[1] Available at http://www.minv.sk/swift_data/source/rozvoj_obcianskej_spolocnosti/aktuality/participacia/2014/05/Pravidla-zapajania-verejnosti_verejne-politiky.pdf.

[2] Available at https://www.economy.gov.sk/podnikatelske-prostredie/jednotna-metodika/vykladove-stanoviska,

[3] Available at https://www.mhsr.sk/podnikatelske-prostredie/jednotna-metodika/prebiehajuce-konzultacie-a-predbezne-informacie

[4] Available at https://www.economy.gov.sk/uploads/files/IscLx69Z.xlsx

[5] Available at www.slov-lex.sk.

[6] https://www.minv.sk/?ros_vsetky-spravy&sprava=schvaleny-akcny-plan-iniciativy-pre-otvorene-vladnutie-na-roky-2017-2019.

[7] Available at http://lepsiezakony.sk/byrokraticky-nezmysel/.

[8] The publication of generally binding regulations and internal regulations of the central government bodies on Slov-Lex is being prepared; it is part of the task of the OGP Action Plan for 2020-2021.

[9] Available at https://www.slovensko.sk/en/title.

References

OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://dx.doi.org/10.1787/7a9638cb-en. [2]

OECD (2016), *Pilot database on stakeholder engagement practices in regulatory policy*, http://www.oecd.org/gov/regulatory-policy/pilot-database-on-stakeholder-engagement-practices.htm. [4]

OECD (2015), *Slovak Republic: Better Co-ordination for Better Policies, Services and Results*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264247635-en. [3]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264209022-en. [1]

5 The development of new regulations in the Slovak Republic

This chapter reviews the processes for developing new regulations in the Slovak Republic, with a particular focus on forward planning, administrative procedures and *ex ante* impact assessment. The framework for developing regulations is well-established in the Slovak Republic, although the practical implementation needs reinforcement. Analytical units in many ministries are a unique asset to the policy development system in the Slovak Republic.

RIA in OECD Countries

Regulatory impact assessment (RIA) is a fundamental process for ensuring that regulations meet the needs of businesses and citizens. The RIA process itself is a systematic approach to weigh the benefits and costs of various regulatory and non-regulatory options for the government to address a specific problem in society. Governments must make decisions for new laws based on a sound rationale and evidence; otherwise, regulations and policies will not be-fit-for-purpose and, in the worst case, may do more harm than good. RIA is a fundamental part of the 2012 *Recommendation on Regulatory Policy and Governance* from the OECD that all OECD members ought to adhere (see Box 5.1).

Box 5.1. The fourth recommendation of the 2012 Council on Regulatory Policy and Governance

4. **Integrate Regulatory Impact Assessment (RIA) into the early stages** of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

4.1. Adopt *ex ante* impact assessment **practices that are proportional** to the significance of the regulation, and include benefit-cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.

4.2. *Ex ante* assessment policies should require the **identification of a specific policy need**, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.

4.3. *Ex ante* assessment policies should include a **consideration of alternative ways** of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.

4.4. When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be **quantitative** whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.

4.5. Regulatory impact analysis should as far as possible be made **publicly available** along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.

4.6. *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, **competition and consumer welfare**, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.

4.7. When carrying out an assessment, officials should:

- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects
- Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets
- Evaluate the impact on small to medium-sized enterprises and demonstrate how administrative and compliance costs are minimised.

4.8. RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: (OECD, 2012[1]), Recommendation of the Council on Regulatory Policy and Governance, Paris, https://dx.doi.org/10.1787/9789264209022-en.

The RIA process should include, at the very least, the following phases (OECD, 2015[2]):

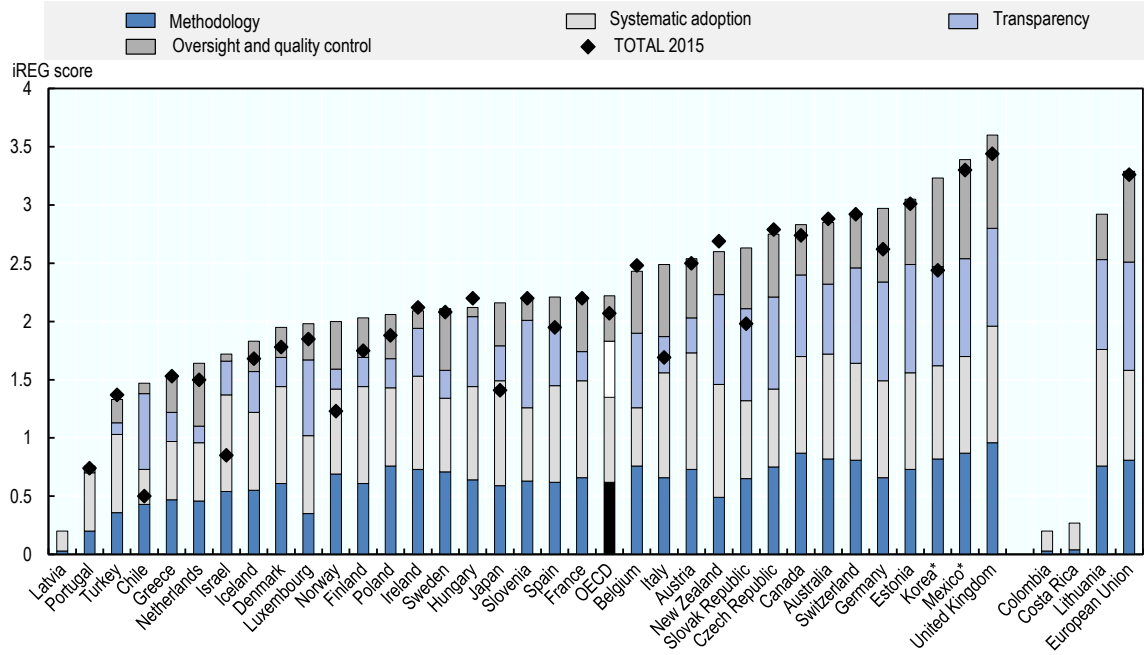
- **Problem definition**: A thorough analysis to understand the policy issue at hand, so that any solutions tackle the actual causes of the problem.
- **Identification of both regulatory and non-regulatory options**: The government should present and analyse different options to address the particular causes of the problem, which should always be weighed against doing nothing.
- **Data collection**: Collecting data to analyse the different policy options
- **Assessment of the alternative options**: A critical assessment of the different policy options that looks at the pros and cons and their impact on different stakeholder groups.
- **Identification of the preferred policy option with reasons**
- **Provisions for monitoring and evaluation (including indicators)**

Virtually all OECD countries now have an RIA process in place in some form. However, they are not all at similar stages of development. It often takes decades and strong political support across many administrations to firmly establish RIA as part of the regulatory process in a country.

Slovakia has an above-average score for RIA in the iREG indicators. RIA has been a requirement for regulatory proposals since 2008 according to the first version of the *Unified Methodology on the Assessment of Selected Impacts.*[1] The methodology became effective in 2010 and requires proposers to include an Annex of Selected Impacts in dossiers submitted to the inter-ministerial commenting procedure. The Ministry of Economy, responsible for the Better Regulation program, has instituted several reforms to entrench RIA in the development of regulation further since 2014.

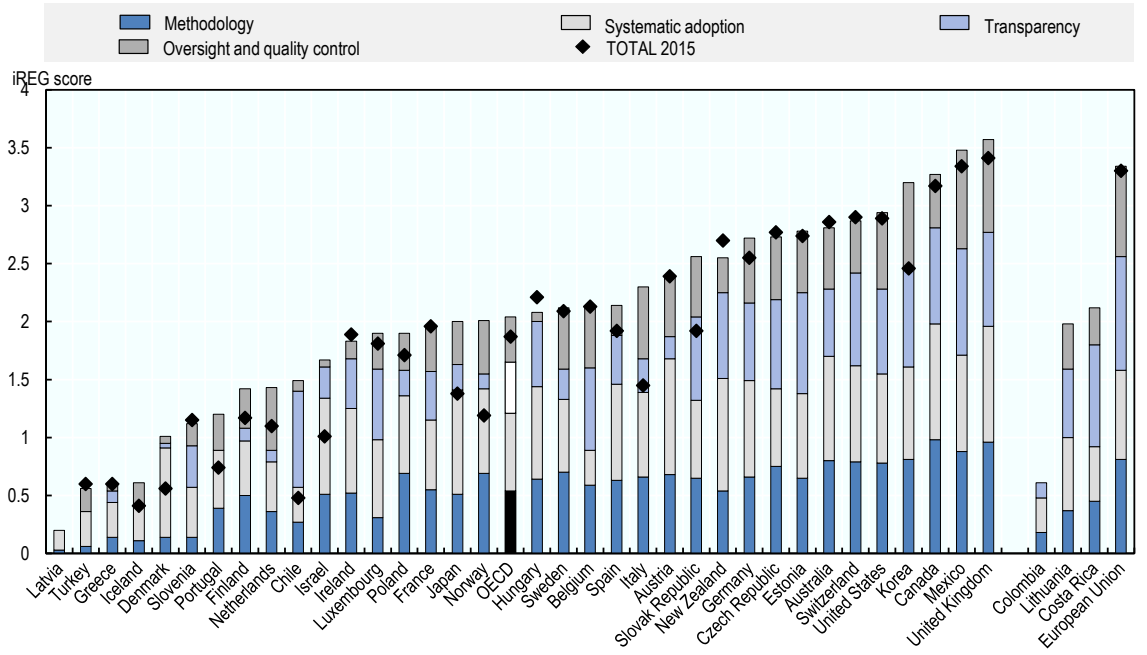
In 2014, the Ministry of Economy of the Slovak Republic led the development of a methodology for assessing selected impacts, known as the *Unified Methodology on the Assessment of Selected Impacts* (or "Unified Methodology"). The purpose of this methodology is to improve the impact assessment system in Slovakia. The Unified Methodology became effective on 1 October 2015 and introduced several changes to the assessment process, including creating the RIA Commission in the Slovak Republic and reinforcing the consultation process with a new business and SME Test.

Figure 5.1. Composite indicators: regulatory impact assessment for developing primary laws, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. *In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.
Source: (OECD, 2018[3]).

Figure 5.2. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: (OECD, 2018[3]).

The legislative process in Slovakia

Forward planning

Each year, the Government approves and publishes the "Plan of Legislative Works". It is usually approved at the end of the year and contains laws that should be created or amended over the next year. The Plan includes only the name and description of the primary legislation (laws and regulations), the responsible body and a brief rationale for the proposal. In case the responsible ministry or government body is not able to submit the regulation draft by the deadline, it must make a request to the Prime Minister for postponement or removal of the draft with proper reasoning.

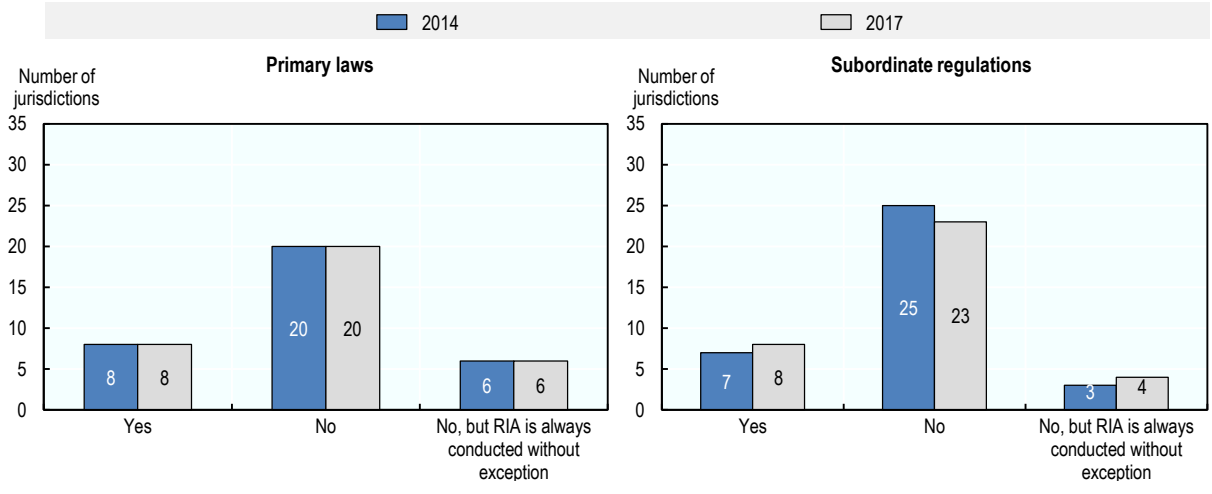
The Government Office prepares the "Plan of Governmental Tasks" – a list of non-legislative materials that will be approved during the year. The Government Office publishes both plans on its website (Government of the Slovak Republic, 2019[4]).

Trends in new regulations

Business leaders are concerned that the government often uses the shortened procedure that avoids both RIA and extensive consultations. In the Slovak Republic, the shortened procedure is used too often, according to some representatives of the business sector. A short survey conducted by the Ministry of Economy's Department for Business Environment showed that out of 512 dossiers submitted to the inter-ministerial commenting procedure between January and October 2019, in 141 cases (28%) the commenting period was shortened to 7 days or less. The Ministry of Agriculture stated that approximately 5-7% of legislation are passed each year using a shortened procedure.

To compensate for a lack of impact assessment and/or stakeholder engagement in the design stage of a legislation, some countries put in place post-implementation reviews. In eight OECD countries, regulators are required to evaluate the regulation within one or two years after implementation, if the ministry ought to have done a RIA (see Figure 5.3). Slovakia has not implemented the institute of post-implementation reviews so far.

Figure 5.3. If RIA does not take place, is a post-implementation review required?



Note: Data is based on 34 OECD member countries and the European Union.
Source: (OECD, 2018[3]), Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

The following documents govern the development of new regulations:

- Legislative Rules of the Government
- Rules of the National Council of the Slovak Republic for drafting laws
- Guidelines for preparing and submitting materials to the Slovak government
- Unified Methodology for the Assessment of Selected Impacts

The *Legislative Rules of the Government* stipulate the step-by-step law-making process. The Legislative Department of the Government Office should follow and enforce all the statutory procedures, not just the legal quality.

According to the Unified Methodology, the RIA Commission should have information about the preparation for every new regulation. With this information, the RIA Commission makes the ultimate decision if consultation (based on opinions from stakeholders) and *ex ante* RIA is necessary.

The Unified Methodology sets requirements for consultations with stakeholders in preparatory stages (before preliminary commenting). If impacts on the business environment are identified, an analysis on the impact on the business environment needs to be prepared. This analysis, which is part of every document submitted to the government, contains a statement of whether consultations were made, what were the points for discussion, and what the outcome was the outcome or what was agreed. Further consultations run during the ministerial commenting period, where all ministries, central-government bodies, stakeholders and the public may submit their comments.

The legislative process itself consists of seven successive stages. Each stage can only start after the previous one has been completed through the Slov-Lex portal.

1. Information on material preparation – This proposing ministry or government body prepares material based on the approved plan of legislative tasks of the government or initiative material of one of the ministries. In the second case, the proposing ministry informs the Ministry of Economy in advance to ensure consultation with businesses, if required.
2. Consultation with business entities – The stage is not a mandatory phase of the impact assessment procedure and is only used if the material could have an impact on the business environment. The Ministry of Economy decides on the necessity of consultations with businesses.
3. Internal approval of material within the ministry or government body – This is the so-called internal comment procedure, in which individual departments of the proposing ministry or government body have the opportunity to express their views on the material.
4. Preliminary comments procedure – The assessment material is submitted to the RIA Commission upon completion of the internal comments procedure within the department in those cases where the ministry or government body has identified at least one of the possible effects. The result is the opinion of the RIA Commission, which may be positive (no comments), positive with suggestions (minor comments) or negative (substantial comments). The ministry or government body is obliged to incorporate the opinion of the RIA Commission into the material itself. A negative statement or suggestion for finalisation is not an obstacle to further steps in the legislative process.
5. Inter-ministerial and public consultation procedure – Individual ministries or government bodies as well as civil society and the general public might comment on the material as a whole and make their comments and proposals for changing the proposal.
6. A final assessment of selected impacts – This assessment takes place should there be substantial changes made to the draft legislation following the consultation procedure or if the draft had not been submitted to the preliminary comments procedure.
7. Approval of the Government of the Slovak Republic – The final assessment and approval of the submission by the proposer. The proposal is approved as follows: 1) Minister, in the case of a decree (edict) and measures, 2) Government, in case of Government regulation, 3) Government

and then the Parliament in case of a law. The RIA Commission provides the Government with information in a final statement.

The Ministry of Economy is responsible for managing the RIA process and ensuring it is carried out in line with the Unified Methodology (see Chapter 3).

Ex ante analysis of regulations

RIA has been a long-standing part of the regulatory development process in the Slovak Republic. The government first instituted an RIA process as part of the Legislative Rules of the Government in 2001, after a review by the OECD SIGMA programme[2] (OECD, 2001[5]). In 2009, Katarína Staroňová reviewed the early years of implementation of RIA in Slovakia and found that most (over 70%) of all RIAs had determined that there were no significant costs or benefits. When ministries did identify impacts, they tended to focus on financial consequences, potentially because of the strong influence of the Ministry of Finance (Staronova, 2009[6]) (Staronova, 2016[7]).

The current process

The obligation to conduct RIA according to the Unified Methodology has been in place since 2008. Reforms since then have instituted a comprehensive methodology for assessing economic, social and environmental impacts, including an SME Test[3] and the effects on innovation in 2015. A new impact area on marriage, parenthood and family was introduced in 2018 by Act No. 217/2018, but is not yet reflected in the Unified methodology.

The Unified Methodology serves as the methodology for RIA. It is a governmental guideline and thus mandatory to follow for the ministries and other central government bodies. The IA is divided into two stages, although, unlike in several OECD countries, there is not an extended or more in-depth RIA required for proposals with more substantial impacts.

There is a shortened procedure for emergencies that pose significant risks to citizens. The shortened procedure does not include RIA and has a much shorter consultation period if any. The OECD *Best Practice Principles on Regulatory Impact Assessment* outline why a proportional approach to RIA should be adopted and what aspects should be considered for threshold design (Box 5.2).

Box 5.2. Best Practice Principles on RIA: Proportionality

RIA should be **proportional** to the significance of the regulation. Resources invested in RIA must be carefully targeted. Policymakers should target RIA towards regulatory proposals that are expected to have the largest impact on society, and ensure that all such proposals be subject to RIA scrutiny. The depth of the analysis should depend on the significance of the regulation being analysed. Not all legislative proposals should go through the same level of analysis. Possible alternatives for sorting out which legislative proposals have to go through a certain level of analysis are

- Setting quantitative thresholds (e.g. potential impacts over USD 100 mil. in the United States);
- Introducing a set of criteria (on issues such as the extent of the impact on competition, market openness, employment, productivity, innovation, investment as well the number of people affected by the proposed regulation.);
- Multi-criteria analysis or

- A general principle of proportionate analysis (such as the one used by the European Commission). The choice of how deep should the RIA can be left to the administration itself, based on a principle of proportionality. At the same time, such choice requires the scrutiny of an oversight body able to intervene and suggest a more in-depth analysis in case the proportionality principle has not been applied.

It is very important that the application of the threshold is transparent, and that the results of the application of the threshold are publicly shared.

Many OECD countries have set **quantitative thresholds** based on common economic indicators or tools to determine whether a proposal needs a thorough or less thorough review. For example, the Treasury Board Secretariat in Canada has a tiered system for low, medium and high impact proposals based on total impacts of less than CAD 5 million, CAD 5-10 million and over CAD 10 million.

Quantitative threshold tests have an advantage that an oversight body and regulator can relatively easily observe which category a new proposal falls into and then guide the level analysis. Nevertheless, the amount of effort that goes into developing and analysing a new regulation should be **proportionate to the size of the impacts**. The additional benefit of more analysis declines with the amount of effort, so policymakers should in theory stop when their analytical resources would no longer improve the policy or could be better used in another area.

OECD countries have not always increased the number of proposals that are given greater scrutiny. In 2016, the National Audit Office (NAO) in the UK. found that the government could achieve better value for money by increasing its rate. In 2018, the Better Regulation Executive increased its business impact threshold from GPB 1 million to GBP 5 million for the full RIA and scrutiny threshold. In the U.K., over 90% of the GBP 10 billion regulatory cost reductions claimed during the period 2010-15 were achieved through just 10 regulatory changes. Therefore, the NAO and suggested that the BRE and UK Regulatory Policy Committee should focus on the few most important regulations per year.

Source: (OECD, 2020[8]).

Under the standard procedure, if the law drafting authority identifies impacts in at least one of the RIA Commission's impact categories (as outlined in Chapter 3) during the preparation of a new law or regulation,[4] the law-maker is obliged to conduct a full impact assessment. Once drafted, the law-maker sends the impact assessment along with the legal text of the law or the non-legislative material to the RIA Commission. The RIA Commission reviews the preliminary RIA in ten days. In case the law-maker asks for a shortened period, the RIA Commission may decide to shorten the period to three days. This happened 92 times in 2019.

The RIA Commission provides three types of opinion: without comments (green light), opinion with minor comments (yellow light) and opinion with substantial comments (red light). This system is similar to the one employed by the UK RIA oversight body, the UK Regulatory Policy Committee (See Box 5.3). The opinion does not stop a regulation from proceeding. However, if the law drafter makes any significant changes after ministerial commenting procedure, then there is a second round of comments by the RIA Commission.

Box 5.3. The three kinds of impact assessment ratings from the UK Regulatory Policy Committee

The UK RPC provides the following guidance to ministries on its traffic light system for opinions on RIA

Table 5.1. Opinion ratings: for final stage IAs in the United Kingdom

Initial review notice (IRN)	Red-rating	Green-rating
The IA, as first submitted to the RPC, is not fit for purpose. If major concerns over the quality of evidence and analysis are not addressed after an IRN has been issued to a department, this could result in a formal red rating. IRNs contain informal advice and are, therefore, not published.	The IA is not fit for purpose following the department's response to an IRN. The RPC retains major concerns over the quality of the evidence and analysis, and the overall quality of the IA, that need to be addressed. Red-rated opinions are formal and are published once the corresponding IA has been published.	The IA is fit for purpose. The RPC has no significant concerns or where some minor issues could be improved. There may be many points for improvement, which the department should consider. Green-rated opinions are formal and are published when the corresponding IA has been published.[5]

Source: UK RPC, RPC opinions guidance, https://www.gov.uk/government/collections/rpc-opinions (Government of UK, 2019[9]).

Although the RIA Commission does not have the formal power to stop or slow the passage of laws and regulations in development, government representatives reported that ministries want to avoid presenting RIAs with a negative opinion from the RIA Commission. Still, the majority of RIA statements had unresolved substantial comments in the final commenting stage in 2019 (see Table 5.2). This means that the Commission's quality control function is not working effectively. The high number of laws and regulations presented also limits the depth of review for each of the areas. In some countries, the role of the oversight body has been limited to ensure that only high-impact proposals are sent to the oversight body for review.

Table 5.2. Opinions issued on RIA Statements by the RIA Commission 2016-19

	2019	2018	2017	2016
Total number of opinions issued	258	310	326	257
Preliminary commenting				
No comments	36	58	67	51
Minor comments	73	91	95	60
Substantial comments	104	128	127	70
Total	213	277	289	181
Final commenting				
No comments	15	11	13	16
Minor comments	13	14	11	18
Substantial comments	17	8	11	27
Total	45	33	35	61

Source: Information received from the Slovak Government.

Once a year, the RIA Commission publishes an Annual Report with an evaluation of its work, opinions issued and overall quality of *ex ante* impact assessment process. In the OECD, it is still relatively uncommon for the oversight body to publically release a report on all of its opinions annually. The Commission further publishes all of its opinions on the website of the Ministry of Economy on a monthly basis.

In addition to its oversight roles, the RIA Commission, alongside the Ministry of Economy, acts as a support service for ministries to complete the RIA process. For the measurement of business costs, the Ministry of Economy has prepared a regulatory compliance cost calculator. However, there is no formal training for RIA in place as of late 2019. The Ministry of Economy, through the new RIA 2020 Strategy, plans to provide more training opportunities for IA and Better Regulation in general in the future (described below).

Despite on-going improvements, in many cases, Slovak ministries still struggle with the quantification of broader impacts, focusing mainly on impacts to the budget and, to a lesser extent, on business.

Data availability is often a challenge for law-makers. Many law-makers do not have a clear picture or approximate numbers about an environment they regulate. On the other hand, certain regulators, primarily financial or network regulators, have very detailed statistics on their stakeholders. The Ministry of Economy, who is responsible for the Better Regulation programme, may provide law-makers with some numbers on the business environment from the Statistical Office or help them calculate the costs and benefits.

Law-makers are required to provide an objective that the regulator could, theoretically, use to evaluate the regulation at a later date. However, the targets are often qualitative only. The Slovak Republic also has no program for the systematic review of legislation, which creates little incentive at present for ministries to plan on how to evaluate regulations later. Ideally, the objectives found in RIAs should follow a SMART framework so that they may be reviewed against earlier expectations.

Box 5.4. SMART Objectives for regulation

The use of the acronym for SMART objectives first originated in 1981 by George T. Doran in 1981. (Doran, 1981[10]). An adapted version of the original idea exists in many fields, including business and academia. However, the OECD Regulatory Policy Committee and the Secretariat have defined SMART criteria for regulation as:

Specific: The objective should be as specific as possible and relate directly to the outcome of the proposed legislation. Ideally, the objective of the proposed law should connect directly to the overarching strategy and plan of the government.

Measurable: The objective should be quantifiable and measurable. Ministries that proposed regulations should have an idea of the expected size of the impacts. For particularly significant laws with economy-wide effects, it may be necessary for the government to put resources into developing the indicators and data to track the impact of the proposed regulation.

Attainable: The objective should be achievable within the life of the regulation.

Responsible: The ministry should ultimately be held accountable for the effect of the regulation based on the quantified indicator. The purpose of the objectives is so that the rule may be reviewed for its efficacy after a reasonable amount of time.

Time-bound: The objective should be time-bound, so that the ministry may ultimately review if the regulation had the expected effect in the expected time-frame.

Source: (OECD, 2018[11]); (Doran, 1981[10]).

Of course, it is not always possible to create a new indicator or data collection for every new regulation. Whenever possible, the effects of a regulation should be tracked through existing indicators.

The RIA 2020 Strategy

The RIA 2020 Strategy is an ambitious programme to reinforce evaluation in the Slovak Republic. It will introduce an explicit whole-of-government policy for regulatory quality to fill some of the gaps in the current approach for both *ex ante* analysis and *ex post* evaluation. The strategic objectives are based on the assessment of better regulation in Slovakia, OECD recommendations, Slovak institutional history and modern trends. For further information, see Chapter 2.

With regards to RIA, the Strategy foresees an improvement of the quality of the *ex ante* phase of the assessment process. To this end, the development of bespoke methodologies is planned for the consideration of different regulatory- and non-regulatory options as well as for internal processes of the RIA Commission and the assessment of gold-plating and regulatory benefits. The Strategy also envisages targeted RIA trainings.

Skills and capacities in Slovakia

In several OECD countries, the government has a well-established *ex ante* evaluation process, codified in a law, resolution or other government documents. However, ministries across the OECD often lack the technical abilities actually to measure impacts and to use the results to inform the policymaking process. This situation is not entirely the case, however, in the Slovak Republic. Many ministries have established analytical units (AU) with significant expertise in policy analysis. The most prominent is the AU of the Ministry of Finance – the Institute for Financial Policy (IFP) – which has the mandate to act as an "initiator" of key economic and fiscal topics within the Slovak economy (Burokina, 2017[12]). In addition to the requisite skills, these AUs may act somewhat independently of their ministry, although they are ultimately responsible to their minister.

In practice, the professional makeup and the capacities of the AUs vary across ministries, as does their involvement in supporting the development of new laws. During interviews, some representatives reported that they were unaware that these units could support the development of new regulations. Representatives of several other departments, however, noted that these units provided crucial input in their process.

Notably, many positions within the AUs are funded in part through EU grants. The continued success of the AUs relies on continued financing that may eventually need to come from government coffers. Additionally, public sector wages are relatively low compared to the private sector in the Slovak Republic.

The Slovak Republic has significant challenges in hiring and maintaining capabilities in its public sector staff. Slovakia has one of the most substantial skill gaps between the civil service and private sector compared with all OECD countries (OECD, 2019[13]). In recent years, annual pay raises were lowered from 4% to 1%, making it much harder for the public administration to attract and maintain talent (OECD, 2015[14]).

Right now, there is no standard training for Better Regulation, the development of laws or RIA in the Slovak Republic. Nevertheless, the Ministry of Economy, as part of its national project, will begin with several short training sessions. The first activity of the project includes sessions to raise education and awareness of public servants and other relevant entities on the process and content of impact assessment of regulatory frameworks and non-legislative proposals. For further information, see Chapter 3.

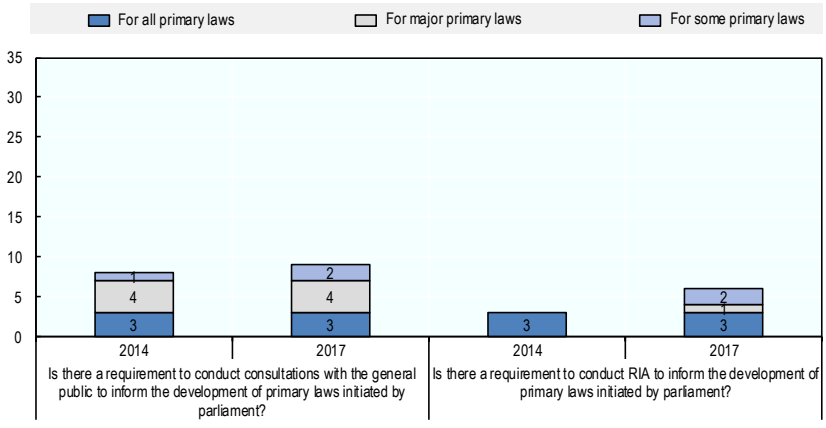
More training sessions are planned within the framework for 2020. There are eight types of training planned, including intensive workshops (for regulators and RIA analysts), seminars (less detailed training for other officials), sessions on the Unified Methodology training for the RIA Commission and also sessions for deputies and their assistants, representatives of local governments and separate meetings for the public as well.

The use of RIA in parliament

RIA is well established for regulations produced by the executive branch of government across the OECD and EU. However, only six OECD countries have any RIA process at all for laws introduced directly in parliament. The EU parliament has frequently used IA over the past five years. The specialised Impact Assessment Unit produced 188 analyses between July 2014 and June 2019, a marked increase from the previous period (Hiller, 2019[15]). In Canada, laws adopted in parliament must be prepared with a memorandum to cabinet (MC) that must include a rationale for the proposal, an analysis of options and estimates of the cost to the government (Government of Canada, 2018[16]).

In most countries, members of parliament are not required to produce any analysis when presenting laws for adoption in parliament, although significant work may take place behind the scenes as part of regular committee work. A significant difference in the administrative requirements might encourage "forum shopping" – governments may introduce laws directly in parliament because the process is much faster and requires less analysis. Secondly, the regulation proposed by the executive may end up significantly altered in parliament, but the RIA done by the executive will not be updated to reflect what could be substantial amendments to the proposed legislation. In the EU parliament, committees may request substitute impact assessments that review the analysis after significant changes.

Figure 5.4. Consultation and RIA requirements for laws initiated by parliament, 2018



Note: Data is based on 34 OECD member countries.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

In the Slovak Republic, parliament (the National Council) initiates about 2% of legislation (OECD, 2018[3]). Most legislation is initiated by the government and passed by parliament and undergoes the procedure above. The National Council does not regularly use IA during its assessment of proposals. However, according to Section 68 of the *Rules of Procedure of the National Council*, all bills should be accompanied by a written justification including an objective and purpose of the bill, and an evaluation of the current social, economic and legislative background. Already, the Ministry of Economy reports that many proposals in parliament include an objective and some analysis.

The work of the committees of parliament is supported by the Parliamentary Institute of the Chancellery of the National Council of the Slovak Republic, although they often focus research efforts on international legal comparisons and often lack the time and resources for a more thorough socio-economic analysis of laws in parliament.

Sometimes, legislation may move through the entire process in the National Council in as little as three days, according to reports from business representatives, which is not enough time for a proper analysis.

The National Council may also make substantial amendments to legislation proposed by the executive without updating the initial IA. Recognising these challenges, the Ministry of Economy under the RIA 2020 strategy will attempt to improve the level of analysis in the National Council and will include members in forthcoming training sessions.

In order to capture changes in the effects of the regulatory proposals after approval by the Government of the Slovak Republic, the Ministry of Economy will draft a methodology for assessing the impact of the legislative proposals brought by the National Council. However, the government cannot bind members of the National Council to a mandatory procedure, so it will be used voluntarily with the possibility to consult the government.

Oversight and inter-ministerial co-ordination

As outlined in Chapter 3, the RIA Commission is responsible for overseeing the quality of regulatory impact assessments. Several ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs, Ministry of Environment, Ministry of the Interior and Deputy Prime Minister's Office for Investments and Informatisation) are represented in the Committee as well as the Government Office and the Slovak Business Agency. They share competencies for checking the quality of RIAs with each one focusing on their area of competences. The Commission reviews the regulation's impacts on the general government budget, business environment (including SME test), social impacts, environmental impacts, impacts on the informatisation of society and impacts on public administration services for the citizen as presented in the RIA statement.

The co-ordination within the RIA Commission is limited to the RIA process only. A new co-ordination mechanism was created in the scope of the RIA 2020 strategy, but, at this time, the RIA Commission has no firm mandate and operates as a "working group."

Some representatives consider a lack of communication and the low number of meetings of the RIA Commission as obstacles to supporting the RIA process. However, the Commission is regularly in touch with ministries via e-mail communication. Otherwise, co-ordination happens during the inter-ministerial commenting phase, when external line ministries may comment on the quality of the RIA analysis.

The RIA Commission also does not comment on the overall costs and benefits of the proposal. Instead, it reviews the quality of individual impacts in the portfolio of individual institutions represented in the Commission in isolation. This means that total impacts on the welfare of the society, including whether the overall benefits justify the potential costs stemming from regulatory drafts, are not reviewed.

Legal quality

The legislative department at every ministry or central-government body prepares legislative proposals in conjunction with the proposer. Ultimately, the Legislative Council of the Government of the Slovak Republic is responsible for checking the final legal quality of regulations.

Like ministries, the Section of Government Legislation in the Department of Approximation of Law has an opportunity to intervene during the inter-ministerial commenting procedure on behalf of the Government Office of the Slovak Republic.

Considering risks and alternatives to regulation

In practice, ministries do not consider many alternatives to regulation in the Slovak Republic. Representatives identified a lack of experience and knowledge as the main impediment to more innovative policy solutions. As a result, the RIA Commission is also not very strict on this part of the RIA.

In most cases, there is not sufficient time or analytical resources available to consider different regulatory and non-regulatory options in the RIA process. Unofficially, ministries consider alternatives to regulation during early-stage consultations or while drafting laws.

Systematic risk management does not form a part of RIA or any other better regulation tool yet. Nevertheless, a risk assessment may be conducted with specific regulations but only on an ad hoc basis.

Under the RIA 2020, the Ministry of Economy will create clear guidelines on considering alternatives that should encompass more on theory and practice, including case studies. These guidelines will become an educational unit in the upcoming training programs.

Part of RIA 2020 (Goal 4: Implement innovative approaches to regulation) is to create a new set of guidelines on risk assessment when drafting regulations and when evaluating them. A methodology for the risk assessment of regulations will also be prepared under the RIA 2020 strategy by the end of 2020.

Assessment and recommendations

All of the elements of RIA are in place in the Slovak Republic. Ministries and government bodies are required to submit RIA as part of the legislative process. The RIA Commission provides oversight of the process, even if their opinions on the quality of RIA are non-binding. The Analytical Units are particularly useful in supporting sound, evidence-based law and regulation development, even if they are not always integrated fully into the process. The AUs are a crucial resource for ministries and, in some cases, are already involved in the review of regulations and policy (e.g. the IPF of the Ministry of Finance).

To date, the RIA process does not appear to have had a significant impact on the decision-making process in many ministries. In some cases, representatives were not aware of AUs or the potential benefits of RIA. The RIA process itself is staged, but the level of analysis is effectively the same regardless of the actual impact on citizens and businesses.

The Slovak public administration has challenges in maintaining staff with expertise in analysis. Although the AUs are an integral feature of the public administration, policy makers outside of the AUs will also need continuous training in developing and analysing regulations. The analytical institutes are a unique source of analytical capacities only in few line ministries. Particularly institutes that have been established recently are not involved in the impact assessment process and co-operation between institute and ministry staff does not happen on a systematic basis. The level of involvement in the decision making process is at the minister's discretion, there is no formalised process in place.

Currently, the same RIA process and form are used for all regulations. Unlike in several OECD countries, there is not an extended or more in-depth RIA required for proposals with more substantial impacts. Introducing such a targeted approach could help allocate scarce resources where they are most needed.

The OECD Secretariat makes the following policy recommendations:

- **The Slovak Republic should offer continuous training for RIA and analysis to policymakers** that covers all possible stages of a sound evidence-based RIA process. Training should include employees from the parliamentary research service, who would likely support efforts to introduce IA in parliament.

- **The Slovak Republic could develop a simplified process for regulations with minor impacts**. A threshold could be introduced outlining criteria that allow legislation to undergo a simplified RIA process. This effort would have to be supported by the oversight body scrutinising the decision to conduct a simple RIA.
- **Furthermore, the Slovak Republic should consider having the RIA Commission only look at proposals with impacts above a certain threshold, once the methodology supports it.** The RIA Commission should have a mechanism to focus their reviews on draft legislation with the most significant effects on society.
- **Setting clear and measurable objectives that relate to the broader government strategy should be a regular part of the legislation development process.** Policymakers should be required to provide a SMART quantitative objective as part of the RIA. In cases where the impact of the regulation will be high and the data or indicator does not exist, the ministry could be required to develop or find such data, if possible. This policy is already a planned part of the RIA 2020 Strategy. So, the Slovak Republic should ensure that the RIA Commission adds it to their review of the RIA.
- **The shortened procedure should only be used in cases of an actual emergency.** As part of the RIA 2020 Strategy plans to introduce *ex post* evaluation, the Slovak Republic could make an *ex post* impact assessment a requirement for regulations past under a shortened procedure. The RIA Commission could provide a statement about whether the regulation is appropriate for the shortened procedure.
- **Ministries should be encouraged to better integrate the AUs in the process of developing legislation.** The RIA Analysts present in AUs should be involved at an early stage when the analysis of the AU has a chance to affect the form of the final law and, ultimately, the beneficial impact regulation has on citizens. The Slovak Republic should find a way to guarantee continued financial support for AUs and policy development in general.

Notes

[1] Version 2008: approved by the resolution of the Slovak Government No. 329/2008; Version 2010 (pilot projects): resolution No. 112/2010; Version 2015: resolution No. 24/2015; Version 2016 (amendment of 2015): resolution No. 76/2016.

[2] SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the OECD and the European Union. Its key objective is to strengthen the foundations for improved public governance, and hence support socio-economic development through building the capacities of the public sector, enhancing horizontal governance and improving the design and implementation of public administration reforms, including proper prioritisation, sequencing and budgeting (SIGMA - OECD, n.d.[17]).

[3] The EU actively encourages EU members to implement an SME Test as part of its “Think small first” principle, which is part of the Small Business Act (Kitching, 2016[18]).

[4] Both primary laws and subordinate regulations must comply with the Unified Methodology.

References

Burokina, J. (2017), *MINISTRY OF FINANCE OF THE SLOVAK REPUBLIC Measuring the gap for CIT-The case of Slovakia*, https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38173&no=2 (accessed on 17 February 2020). [12]

Doran, G. (1981), *There's a S.M.A.R.T. way to write management's goals and objectives | Middlesex University*, https://mdx.rl.talis.com/items/6A89AF27-BFF7-9B08-C37F-ED5425DD4445.html (accessed on 17 February 2020). [10]

Government of Canada (2018), *A Drafter's Guide to Cabinet Documents*, https://www.canada.ca/en/privy-council/services/publications/memoranda-cabinet/drafters-guide-documents.html (accessed on 14 February 2020). [16]

Government of the Slovak Republic (2019), *Lán Legislatívnych Úloh Vlády Sr Na Rok 2019 (2019 Legislative Plan of the Slovak Republic)*. [4]

Government of UK (2019), *RPC Opinions - GOV.UK*, https://www.gov.uk/government/collections/rpc-opinions (accessed on 21 February 2020). [9]

Hiller, W. (2019), *Impact Assessment and European Added Value work during the eighth legislative term, 2014-2019*. [15]

Kitching, J. (2016), "Between vulnerable compliance and confident ignorance: Small employers, regulatory discovery practices and external support networks", *International Small Business Journal: Researching Entrepreneurship*, Vol. 34/5, pp. 601-617, http://dx.doi.org/10.1177/0266242615569325. [18]

OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://dx.doi.org/10.1787/7a9638cb-en. [8]

OECD (2019), *OECD Economic Surveys: Slovak Republic 2019*, OECD Publishing, Paris, https://dx.doi.org/10.1787/eco_surveys-svk-2019-en. [13]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [3]

OECD (2018), *Regulatory Policy in Slovenia: Oversight Matters*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264291690-en. [11]

OECD (2015), *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264241800-en. [2]

OECD (2015), *Slovak Republic: Better Co-ordination for Better Policies, Services and Results*, OECD Public Governance Reviews, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264247635-en. [14]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264209022-en. [1]

OECD (2001), “Improving Policy Instruments through Impact Assessment”, *SIGMA Papers*, No. 31, OECD Publishing, Paris, https://dx.doi.org/10.1787/5kml60vnhc6h-en. [5]

SIGMA - OECD (n.d.), *http://www.sigmaweb.org/.*. [17]

Staronova, K. (2016), “Regulatory impact assessment in Slovakia: performance and procedural reform”, *Impact Assessment and Project Appraisal*, Vol. 34/3, pp. 214-227, http://dx.doi.org/10.1080/14615517.2016.1176410. [7]

Staronova, K. (2009), *Better Regulation and Regulatory Quality: The Case of Slovakia*. [6]

6 *Ex post* evaluation of regulation in the Slovak Republic

This chapter focuses on how the Slovak government rationalises its existing stock of regulations, including how it undertakes reforms to improve regulation in specific areas or sectors to reduce administrative burdens or evaluate the overall effectiveness of regulation. The Slovak Republic has focused almost exclusively on administrative burden reduction, but the RIA 2020 Strategy introduces new *ex post* evaluation requirements.

The final stage of the policy cycle is to monitor and review how laws, regulations and other government policies affect citizens and businesses in practice. Even with proper *ex ante* analysis, governments are not able to predict precisely how the legislation will work in reality. At the same time, new technological developments might make regulations obsolete, or technology may create new ways of delivering on policy objectives in more cost-effective ways. Governments and law itself need to be agile, and the government should have a process in place to review the stock of regulation – both individual laws as well as packages of laws and policies across entire policy areas or sectors.

The stock of regulation is many magnitudes larger than the number of new regulations every year. As a result, governments may uncover significant economic gains by reviewing the current body of legislation. Unfortunately, OECD governments have been quite reticent in establishing successful *ex post* evaluation for regulations. OECD governments have adopted the fewest best practices found in the 2012 *Recommendation of Regulatory Policy and Governance*, based on the iREG indicators on *ex post* evaluation. Across many countries, the push for the government to review or modify regulations often only happens when an issue becomes a political priority. Relatively few OECD countries have regular programs to review regulations.

Box 6.1. The fifth recommendation of the Council on Regulatory Policy and Governance

> *Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives (OECD, 2012).*

5.1. The methods of Regulatory Impact Analysis should be integrated in programmes for the review and revision of existing regulations. These programmes should include an explicit objective to improve the efficiency and effectiveness of the regulations, including better design of regulatory instruments and to lessen regulatory costs for citizens and businesses as part of a policy to promote economic efficiency.

5.2. Reviews should preferably be scheduled to assess all significant regulation systematically over time, enhance consistency and coherence of the regulatory stock, and reduce unnecessary regulatory burdens and ensure that significant potential unintended consequences of regulation are identified. Priority should be given to identifying ineffective regulation and regulation with significant economic impacts on users and/or impact on risk management. The use of a permanent review mechanism should be considered for inclusion in rules, such as through review clauses in primary laws and sun-setting of subordinate legislation.

5.3. Systems for reviews should assess progress toward achieving coherence with economic, social and environmental policies.

5.4. Programmes of administrative simplification should include measurements of the aggregate burdens of regulation where feasible and consider the use of explicit targets as a means to lessen administrative burdens for citizens and businesses. Qualitative methods should complement the quantitative methods to better target efforts.

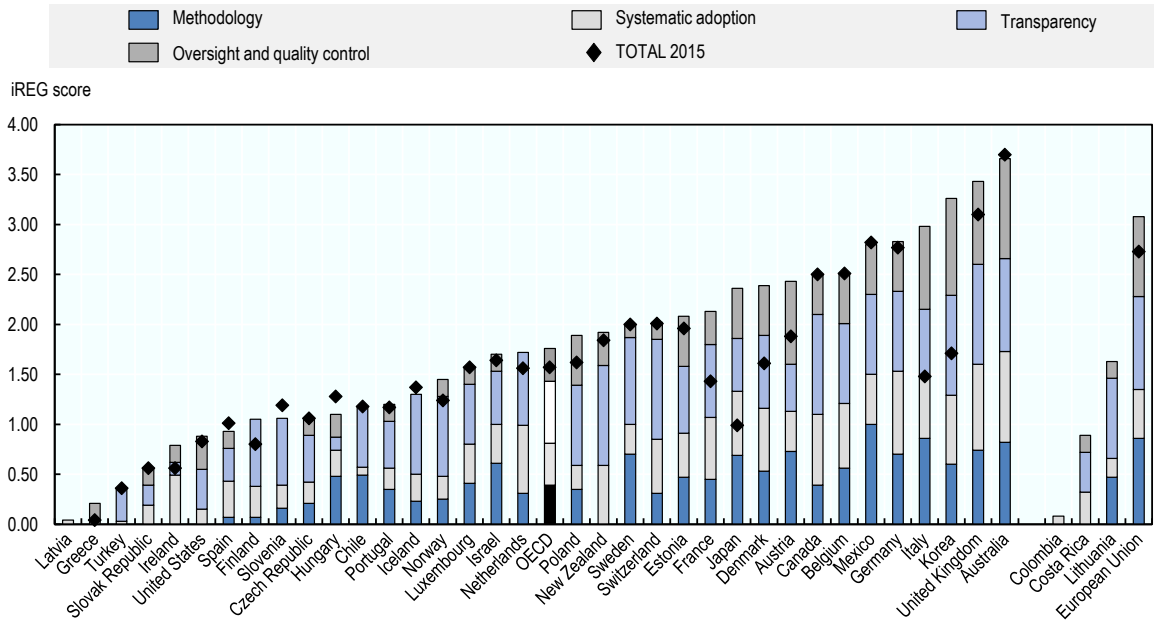
5.5. Employ the opportunities of information technology and one-stop shops for licences, permits, and other procedural requirements to make service delivery more streamlined and user-focused.

5.6. Review the means by which citizens and businesses are required to interact with the government to satisfy regulatory requirements and reduce transaction costs.

Source: (OECD, 2012[1]), Recommendation of the Council on Regulatory Policy and Governance, https://dx.doi.org/10.1787/9789264209022-en.

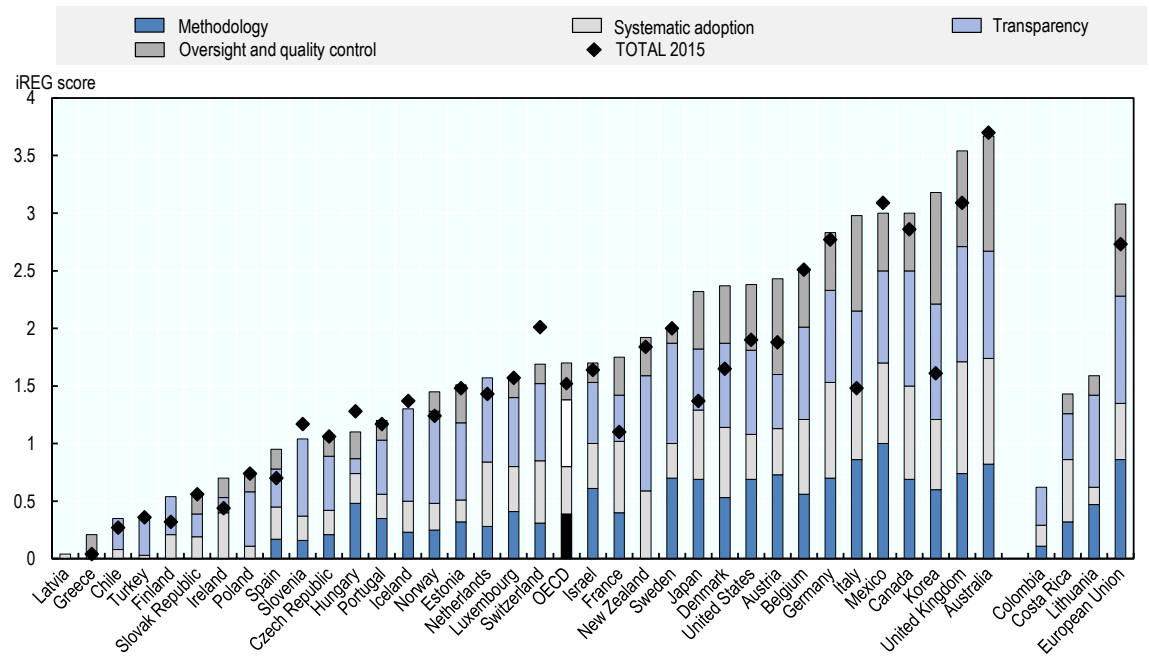
The OECD has recently developed a new framework for reviewing the stock of regulations: The OECD Best Practice Principles for Regulatory Policy on Reviewing the Stock of Regulation to complement the 2012 Recommendation to support OECD governments in establishing the systematic review of regulations.

Figure 6.1. Composite indicators: *Ex post* evaluation for primary laws, 2018



Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: (OECD, 2018[2]), Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

Figure 6.2. Composite indicators: *Ex post* evaluation for subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: (OECD, 2018[2]), Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, http://oe.cd/ireg.

The Slovak Republic has some of the lowest scores of all OECD and EU countries in the iREG indicators on *ex post* evaluation. Through the end of 2019, the Slovak Republic had no methodology for *ex post* evaluation, and all systemic reviews focused on reducing administrative burdens. This situation has recently changed as the Ministry of Economy, which in charge of Better Regulation initiatives, rolled out an entirely new system for *ex post* evaluations through the RIA 2020 Strategy in December 2019.

Box 6.2. Overarching principles for reviewing the stock of regulation

- Regulatory policy frameworks should explicitly incorporate *ex post* reviews as an integral and permanent part of the regulatory cycle.
- A sound system for the *ex post* review of regulation would ensure comprehensive coverage of the regulatory stock over time, while "quality controlling" significant reviews and monitoring the operations of the system as a whole.
- Reviews should include an evidence-based assessment of the actual outcomes from regulations against their rationales and objectives, note any lessons and make recommendations to address any performance deficiencies.

Source: (OECD, 2020[3]), OECD Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation, Paris.

Ex post evaluation in the Slovak Republic

Until recently, there was no explicit policy for the *ex post* evaluation of regulations in the Slovak Republic. The Slovak Republic had only conducted formal reviews of rules to reduce their administrative burdens as well as spending reviews. The Ministry of Economy is responsible for the administrative burden reduction programmes.

Fortunately, the Slovak Republic has already committed to change this situation. Under the RIA 2020 Strategy (adopted in January 2018 and described in previous chapters) and the subsequent national project, the Ministry of Economy has elaborated a new methodology (including guidelines) for the *ex post* evaluation of regulations, which was approved in December 2019. A pilot project for every governmental body that produces rules to assess a selected law is planned to be carried out in 2020. Methods used in the pilot testing phase will include the semantic decomposition of legal acts and quantitative scaling of impacts. The methodology will be adjusted based on the results of the pilot testing and presented to the Slovak Government for approval. Otherwise, at the moment, there are no existing obligations to carry out *ex post* evaluation of regulations.

That said, during interviews, the OECD heard several reports of ministries and government bodies directly consulting with stakeholders (particularly businesses) to identify potential issues with the stock of regulations.

The Analytical Units discussed in Chapter 3 and 5 also provide some indirect *ex post* evaluation. For example, the Institute for Financial Policy conducts spending reviews, which often have a component that looks at the impacts and effectiveness of government policies and regulations on outcomes.

As already noted, the goals and objectives for regulations are usually only stated qualitatively in the RIA of regulatory proposals. The lack of clear objectives makes it much harder for ministries to assess whether a law has achieved its objectives or not. Policymakers should consider the expected impacts and how to track them at the beginning of the development process. Furthermore, the purpose of the regulation should be tied directly to the priorities and objectives of the government as a whole, e.g. the objective of a new

law to increase road safety and reduce injuries and deaths would be tied directly to a broader government objective on protecting citizen's health and welfare.

In most cases, the impact of regulations may be tracked through existing government statistical data. The Ministry of Economy and the RIA Commission already provide help to ministries and central government bodies to find relevant data to assess proposed regulations. In some instances, particularly for high impact proposals, policy makers may need to build new indicators or databases to track the implementation and impact of a proposed regulation. Currently, there is no requirement in place to develop new indicators to plan for the review of proposed regulations. However, in some OECD countries, the government has developed frameworks to track the impact of government policies and regulations (Box 6.3).

Box 6.3. Canada's policy on results

The Policy on Results sets out the fundamental requirements for Canadian federal departmental accountability for performance information and evaluation while highlighting the importance of results in management and expenditure decision making, as well as public reporting (Government of Canada, 2016[4]).

Objectives and expected results: The main objectives of the Policy on Results is to improve the achievement of results across government and enhance the understanding of the results the government seeks to achieve, does achieve, and the resources used to achieve them.

The expected results of the policy are that departments are clear on what they need to achieve and how to achieve it. Departments will receive the resources they need to meet and track their objectives. Finally, the Policy on the Results will improve transparency for parliamentarians and citizens.

Requirements: The Policy on Results requires that ministries and deputy heads of department are responsible for establishing and carrying out a Department Results Framework, under the direction and guidance of Treasury Board Secretariat. The Treasury Board Secretariat may approve changes to frameworks and indicators or may request specific evaluation above standard requirements.

Monitoring and reporting: Deputy heads will be responsible for monitoring their own performance and bringing any issues to the Treasury Board Secretariat. More precisely, they will monitor that their departments undertake necessary evaluations and participate in reviews led by the Treasury Board secretariat.

Source: (Government of Canada, 2016[4]), Policy on Results, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=31300.

Past reviews of the stock of regulation and formalities

The Ministry of Economy has prepared several packages of measures to reduce administrative burdens for the business environment. The measures have come in several successive waves.

In 2007, a national action plan for reducing administrative burdens was adopted in Slovakia to reduce administrative burdens for businesses in 2012 by 25%. The government initiated this program in accordance with the 2007 EU reduction targets. A new reduction target of an additional 25% by the end of 2020 was set in 2016, as part of a package of reforms that included reinforcing the regulatory impact assessment procedure. However, this reform intention is not meant to be an "explicit programme" aimed at reducing administrative burden.

Box 6.4. Reducing administrative burdens in Slovakia 2009-2014

1st and 2nd phase (2009-2011) Covers selected areas of Slovak legislation	3rd phase (2013-14) Covers all areas of Slovak legislation
• 72 mapped pieces of legislation • 60 measured pieces of legislation • 400 information obligations measured • EUR 1.26 bln measured AC • EUR 109 mln measured AB • EUR 1.98 bln overall estimated AC • EUR 659 mln overall estimated AB	• 1 202 mapped pieces of legislation • 282 measured pieces of legislation • 4 566 information obligations measured • EUR 2.67 bln measured AC • EUR 270 mln measured AB

Results from the 1st and 2nd phase of measurement were transformed into measures, which were part of the *Government Policy of the Slovak Republic for Improving the Business Environment in the Slovak Republic* (resolution of the Slovak Government No. 486/2011). Implementation of the proposed measures managed to reduce the administrative burden of EUR 79 million, which represents almost 70% of the administrative burden identified during the 1st and 2nd stages of measuring administrative costs in 2009-2011 (EUR 109 million) and approximately 12% of the total estimated administrative burden in Slovakia. Results from the 3rd stage of measurement were also transformed into measures, which were approved by the MoE, but due to disputes with several ministries these measures were not submitted to the Slovak Government for approval.

Source: Information received from the Slovak government.

Since 2016, three packages of measures to reduce administrative burdens for businesses were adopted by the Slovak government. The Ministry of Economy is preparing a fourth. The three packages so far contain almost a hundred measures that reduce administrative burdens by more than 100 million EUR. Ministries and government bodies have already successfully fulfilled more than half of these measures with the Ministry of Economy being responsible for 20 measures, the Ministry of Transport for 16, the Ministry of Finance for 15, the Ministry of Health for 15, the Ministry of Environment for 12 and the Ministry of Labour for 11. The deadline for most of the unfulfilled measures was December 2019. The proposals cover different economic sectors with impacts on the business environment (e.g. taxes, employment, environment, construction, healthcare, central government services, competitiveness, family business support) and also affect different stages of running a business. Measures are meant to save money and time for entrepreneurs. The fourth package is currently being prepared for the inter-ministerial commenting procedure, its adoption has been delayed.

Ex post *evaluation in the RIA 2020 Strategy*

A central goal of the RIA 2020 Strategy is to establish a system for the *ex post* evaluation of regulations in the Slovak Republic. In December 2019, the Ministry of Economy produced a new *ex post* evaluation methodology to help ministries with their first evaluations of regulations.

The new methodology proposes to make an *ex post* assessment of regulation mandatory within a maximum period of four years from the approval of the regulation. However, the specific date must always be chosen by the ministry, taking into account the content of the legislation under consideration. Ultimately, the ministry will be responsible for the timing of the *ex post* evaluation of the regulation. When planning *ex post* evaluations, they should consider:

- The period between the start of implementation of the legislation and its effects (e.g. where the bill provides for time limits, transitional periods, and other information.),
- The different short-term effects from long-term,
- The possible risk of unintended consequences or obsolescence.

Possible examples that would be high risk include legislation regulating hitherto unregulated area or law governing areas that may rapidly change (e.g. new technologies or business models).

The RIA 2020 Strategy and the new *ex post* evaluation methodology include steps to develop SMART indicators (see Box 6.5) and to ensure that the necessary data is available to evaluators.

Ex post evaluation and parliament in the RIA 2020 Strategy

The new *ex post* evaluation methodology also wisely recommends that ministries re-evaluate the initial RIA before conducting a review, given that the National Council of the Slovak Republic may make significant and unanticipated changes to draft legislation before its implementation. The law or regulation should be evaluated with due consideration of how the parliamentary process affected the outcome and impacts of the legislation. Part of the RIA 2020 Strategy is to support the adoption of RIA and *ex post* evaluation expertise within the parliament. Several OECD countries have dedicated evaluation units in their parliament to review regulations (see Box 6.5). Nine OECD countries indicated that parliaments have a body that is responsible for identifying areas where regulation could be made for effective.

Box 6.5. Parliamentary evaluation and analysis units

Chile: The *Law Evaluation Department* of the Chamber of Deputies provides *ex post* evaluations of regulations. As part of that role it is also responsible for advocating for changes to the regulatory policy framework. The department uses seven criteria to select a law for examination: political neutrality, general applicability of the law, public exposure, methodological feasibility, temporary feasibility, technical feasibility and application time.

European Union: The *Directorate for Impact Assessment and European Added Value* works to strengthen the Parliament's capacity for scrutiny and oversight of the executive at the successive stages of the legislative and policy cycles – from the conception and proposition of EU law and policy to its implementation, enforcement and effectiveness in practice – so contributing to the quality of law-making itself. The Directorate supports parliamentary committees in their work in these fields, notably on European added value, *ex ante* impact assessment and *ex post* evaluation, including in the identification, quantification and justification of parliamentary initiatives, and on the implementation, operation and effectiveness of EU law and policies in practice.

United Kingdom: The *Legislative Scrutiny Unit* in the House of Commons supports committees scrutinising draft bills. It also supports all evidence-taking functions of those committees giving detailed examination to substantive bills as part of the legislative process. The Unit has also assisted select committees in implementing a system of post-legislative scrutiny. The *Secondary Legislation Scrutiny Committee* (SLSC) in the House of Lords examines the policy merits of regulations and other types of secondary legislation that are subject to parliamentary procedure.

Source: (OECD, 2018[2]), (OECD, 2013[5]).

At first, the government will test the new *ex post* evaluation methodology through pilot studies that are due by the end of 2020.

At present, the Ministry of Economy is currently deciding on how to establish the oversight of evaluations. The ministry will lead discussions during the *ex post* pilot projects on the six options for oversight as laid out in the recently developed *ex post* evaluation methodology, including the least-preferred "no-control" option. The RIA Commission already oversees RIA in the Slovak Republic, however it could be difficult for the Commission to also supervise *ex post* assessments without additional financial and human resources.

Assessment and recommendations

Until 2019, the Slovak Republic had not yet adopted a formal institutional set-up, methodology, or process for evaluating laws and regulations individually or across sectors. Ex post evaluation efforts focused, like in many countries, on reducing administrative burdens for businesses across the economy. Although these programs were successful, the Slovak Republic did not have any system for evaluating the effectiveness and efficiency of regulation.

The Ministry of Economy, through the RIA 2020 Strategy, now has an ambitious plan to make ex post evaluation a critical aspect of regulatory policy in the Slovak Republic. Already, the Ministry of Economy has developed a methodology based on OECD experience and with due consideration of the local context in the Slovak Republic.

The biggest short term challenge will be for the Ministry of Economy and associated ministries to deliver high-quality pilot projects in ex post evaluation. The pilot studies should be in a critical policy area or sector (e.g. health care) to review all of the relevant regulations and their costs, benefits and effectiveness. The final result should be a series of recommendations to improve both the beneficial effects of the laws and reduce their costs to society.

Over the medium term, the Slovak Republic could think about piloting a regulation under development for review. The pilot ministry would need to find appropriate SMART indicators as part of the RIA to review the result of the regulation after two years. This pilot could help establish a close link between RIA and *ex post* evaluation in the Slovak Republic, incentivising civil servants to carefully develop the policy's goals and consider the information that will be needed for the later evaluation already at the RIA stage.

The OECD Secretariat makes the following policy recommendations:

- **Capacities for analysis will need to be continuously supported by the government.** Like with RIA, some of the analytical capacities already exist in whole or in part within the AUs of individual departments. However, ministries may find it challenging to do more *ex ante* and *ex post* analysis at the same time.
- **Training for policymakers in evaluation methods will need to be continuous**. The Ministry of Economy will need to continue to build the capacities for analysis in individual ministries for evaluation beyond the guidelines by arranging continuous training opportunities. The AUs could support both *ex ante* and *ex post* evaluation in the Slovak Republic.
- **The Slovak Republic should prepare comprehensive and clear guides and methodologies for different types of *ex post* evaluations.** The future success of *ex post* evaluation in the Slovak Republic will rely on successful pilots through the RIA 2020 Strategy. These pilots should further be supported by clear guidelines. Different types of *ex post* evaluations could include programmed mechanisms (sun-setting rules, embedded in statute, other post-implementation reviews), ad hoc reviews (public stocktakes, principles-based reviews, benchmarking) and ongoing management types of reviews (stock-flow linkage rules, quantitative red tape reduction targets) (see Box 6.6). The European Commission for example has prepared bespoke guidance for their "fitness checks".
- Like RIA, **the government should establish an external oversight body that is independent of the ministry that initially produced and reviewed the regulation**. The RIA Commission could

suit this purpose, but it would need to be sufficiently resourced. Alternatively, the creation of a separate commission scrutinizing the quality of *ex post* evaluations could be considered.

- **Policy and spending in ministries should be reviewed together** as it often happens in the IFP in the Ministry of Finance**.** The evaluation of regulation should not exist in a silo. *Ex post* evaluations should be linked to the government's broader policy goals. Value for money reviews could for example focus also on performance of policies/regulations rather than just spending. The overarching issue tackled in these reviews should be to determine if a policy has delivered on its goals. The financial efficiency aspect should be secondary.

Box 6.6. Approaches to *ex post* evaluation

"Programmed" reviews

- For regulations or laws with potentially important impacts on society or the economy, particularly those containing innovative features or where their effectiveness is uncertain, it is desirable to embed review requirements in the legislative/regulatory framework itself.
- Sunset requirements provide a useful "failsafe" mechanism to ensure the entire stock of subordinate regulation remains fit for purpose over time.
- Post-implementation reviews within a shorter timeframe (1-2 years) are relevant to situations in which an *ex ante* regulatory assessment was deemed inadequate (by an oversight body for example), or a regulation was introduced despite known deficiencies or downside risks.

Ad hoc reviews

- Public "stocktakes" of regulation provide a periodic opportunity to identify current problem areas in specific sectors or the economy as a whole.
- Stocktake-type reviews can also employ a screening criterion or principle to focus on specific performance issues or impacts of concern.
- "In-depth" public reviews are appropriate for major regulatory regimes that involve significant complexities or interactions, or that are highly contentious, or both.
- "Benchmarking" of regulation can be a useful mechanism for identifying improvements based on comparisons with jurisdictions having similar policy frameworks and objectives.

Ongoing stock management

- There need to be mechanisms in place that enable "on the ground" learnings within enforcement bodies about a regulation's performance to be conveyed as a matter of course to areas of government with policy responsibility.
- Regulatory offset rules (such as one-in one-out) and Burden Reduction Targets or quotas need to include a requirement that regulations slated for removal if still "active", first undergo some form of assessment as to their worth.
- Review methods should themselves be reviewed periodically to ensure that they too remain fit for purpose.

Source: (OECD, 2020[3]), OECD Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation, Paris.

References

Government of Canada (2016), *Policy on results*, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=31300 (accessed on 14 February 2020). [4]

OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://dx.doi.org/10.1787/7a9638cb-en. [3]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [2]

OECD (2013), *Law Evaluation and Better Regulation: The Role for Parliaments. Joint meeting of the OECD and the Scrutiny Committee on Law Implementation of the French Senate.*, https://www.oecd.org/regreform/regulatory-policy/Concept%20note_role%20for%20parliaments.pdf (accessed on 10 March 2020). [5]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264209022-en. [1]

7 Regulatory compliance, enforcement and inspections

This chapter reviews Slovak Republic's strategy for regulatory compliance, enforcement and inspections. It pinpoints the need for a whole-of-government policy on reforming inspections and promoting compliance.

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Compliance monitoring

The general level of compliance rates is not monitored in Slovakia. Individual ministries or central government bodies monitor compliance in specific sectors such as the financial sector or in tax regulations. Specific regulatory bodies monitor compliance with regulations within their area of competence (e.g. the Nuclear Regulatory Authority, the Office for Public Procurement, and the Office for Personal Data Protection). However, no government-wide guidance exist for monitoring compliance and/or analysing reasons for non-compliance.

Regulatory enforcement and inspections

Ensuring effective compliance with rules and regulations is an important factor in creating a well-functioning society and trust in government. If not properly enforced, regulations cannot effectively achieve the goals intended by the governments. Regulatory enforcement is therefore a major element in safeguarding health and safety, protecting the environment, securing stable state revenues and delivering other essential public goals. Inspections are the most visible and important among regulatory enforcement activities. For more information on the OECD's view on the issue of regulatory enforcement and inspections, see the OECD Best Practice Principles for Regulatory Enforcement and Inspections see (OECD, 2014[1]) and (OECD, 2018[2])

Box 7.1. The OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections

1. Evidence based enforcement. Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. Selectivity. Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulations' objectives.
3. Risk focus and proportionality. Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. Responsive regulation. Enforcement should be based on "responsive regulation" principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. Long term vision. Governments should adopt policies on regulatory enforcement and inspections: clear objectives should be set and institutional mechanisms set up with clear objectives and a long-term road-map.

6. Co-ordination and consolidation. Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. Transparent governance. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. Information integration. Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. Clear and fair process. Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. Compliance promotion. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. Professionalism. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: (OECD, 2014[11]) *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, Paris, http://dx.doi.org/10.1787/9789264208117-en.

Such as is the case in most of the OECD countries, no cross-cutting, government-wide policy on reforming regulatory enforcement exists. However, some of the inspection authorities have policies that implement some of the elements described in the OECD Principles. This is especially due to the fact that regulators and inspection authorities in recent years got their budgets cut while at the same time, more competences have been added to their portfolio. They should, or are even forced, to look for ways how to make their activities more targeted.

The majority of inspections in Slovakia are regular (planned). Most of the inspection authorities prepare their inspection plans, mostly annual, in some cases more long-term. The plans are based on various criteria, however, in many cases, the goal is to inspect all regulated subjects during a certain period of time instead of focusing on potential risks. Potential risk is used as one of the criteria for planning inspections rather rarely. The same applies to the record of previous inspections of individual inspected subjects (with some exceptions, e.g. the environmental inspection). What is sometimes taken into account is the size of inspected companies, the existence of natural monopolies, etc.

In case of the Slovak Trade Inspection, inspections focus on products rather than facilities. Their inspection planning is based on:

- complaints of consumers and economic operators
- announcements of other administration bodies
- based on requirements from new legal norms
- experience from previous inspections
- experience from appeal procedures
- follow-up of the measures applied
- notifications from RAPEX system and ECHO system
- risk assessment.

These aspects are taken into account in deciding whether a product is suspicious and whether we will take a sample of it or not within scope of risk assessment (before sampling of products):

- type of product – with recurrent risk
- the origin of the product – the manufacturer
- riskiness of the economic operator – the importer
- the distributor

Individual inspectorates have the database of operators according the degree of risk.

A high percentage of inspections is complaints-based, in some cases, such as the environmental inspection, the ratio is 80%. While complaints are evidently a relevant source in terms of assessing the likelihood of a problem, they give only limited information (or information of limited reliability) about the potential magnitude or severity of the problem. For inspection activities to be properly 'evidence-based', complaints information should be systematically combined with other sources. For example, an analysis of the actual impact of past violations, the potential effects of current economic activities, and the reliability of past complaints in terms of predicting the severity and magnitude of damage.

Providing advice to regulated subjects on how to comply with regulations does not seem to be embedded in a mind-set of regulators and inspection authorities. During interviews, many representatives of inspectorates expressed the opinion that regulated subjects should be able to find all necessary information on which regulations they have to comply with. In some cases, ad hoc information is provided based on a request by a concrete company or individual.

There is some co-ordination among various inspectorates, for example the occupational health and safety inspection co-ordinates with labour inspectorate and environmental inspection, when needed also with the police. However, this co-ordination is not a result of a systemic, government-wide policy.

The National Healthcare reform included some interesting provisions in the area of inspection reform. The changes mostly focused on automatisation of inspections using ICTs and sharing data on the results of inspections with other inspectorates. A centralised portal should have been created enabling access to crucial information for inspected subjects. Unfortunately, the reform law was withdrawn from the Parliament in December 2019 and it is not clear when the legislative process will start again and how the substance will change.

Training is provided to inspectors by individual inspection authorities and also based on the Civil Service Law. The trade inspection, for example, trains its inspections also in soft skill, such as communication and interaction with inspected subjects.

Assessment and recommendations

As is the case in many other OECD countries, *Slovakia does not have a whole-of-government strategy on improving regulatory compliance and reforming inspections.* The issue of regulatory delivery is not part of regulatory policy and there is no central body responsible for co-ordinating regulatory enforcement and inspections. While elements of good regulatory enforcement are implemented by some individual inspectorates, the use of evidence when planning inspections, targeting inspections based on risk as well as more focus on promoting compliance are still not fully embedded in the daily work of the inspectorates. Better co-ordination among different inspection authorities would also be useful and contribute to reducing regulatory burdens on inspected subjects.

The OECD Secretariat makes the following policy recommendations:

- **Slovakia would**, as many other OECD countries, **benefit from adopting a government-wide strategy on reforming inspections or even a specific law on inspections**. The approach of the Lithuanian government could be used as an example of a successful strategic approach.
- **The government should bolster the use risk-based approaches to enforcement in Slovakia**. Regulatory enforcement strategies continue to be mostly based on prescribing sanctions to regulated businesses and individuals. The Slovak Government should introduce changes to encourage inspectors to use risk-based strategies, such as warnings for minor or unintentional infractions, so that strained inspection resources can be used to in-depth audits of high-risk areas.
- **All inspectorates should move to focus on raising compliance rather than simply handing out sanctions**. They could accomplish this by issuing guidance materials, providing inspection checklists, or through information portals (see Principle 10 of the Compliance and Enforcement Principles).
- **Better co-ordination among inspection-authorities should be ensured at the central level**. This can be achieved through the voluntary exchange of inspection plans, creation of an inter-inspectorate co-ordination body (ex. the Slovenian Inspection Council) and automatic exchange of data and information on the results of inspections among inspectorates.

References

OECD (2018), *OECD Regulatory Enforcement and Inspections Toolkit*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303959-en. [2]

OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264208117-en. [1]

8 Multilevel governance

This chapter looks at the interface between the national and both the sub-national and European level in the Slovak Republic. It explains the organisation of regulatory attributions and the oversight mechanisms in place for regulation at the subnational level and points to challenges and opportunities for regulatory policy in Slovakia's municipalities, counties and cities. The chapter also describes and evaluates the processes in place for negotiating the national position, transposing EU directives into national law and ensuring consistency with national legislation in the Slovak Republic. Finally, it gives recommendations for improvement of the multilevel regulatory governance set-up.

The importance of sub-national regulatory policy

In many OECD countries, subnational governments (states, provinces, or even municipal governments) have strong regulatory powers. Many subnational governments make regulations in areas critical to the safety and well-being of citizens, often including health, road safety, and the environment. For example, seventy-six percent of energy-related greenhouse gas emissions come from cities and permits for clean energy facilities often involve compliance with local permitting ordinances. Also, local and governments are often responsible for providing regulatory services, such as handling the administration for starting a new business as well as compliance and enforcement (e.g. policing, work safety inspections).

This multi-level nature of regulation can cause severe economic friction. According to a report from the Conseil d'État in France (Marcou and Musa, 2017[1]), the decentralisation of regulatory powers makes citizens and businesses have to navigate multiple levels of red tape. Worse yet, uncoordinated regulation can create overlap or even conflicts that make it impossible for companies or citizens to comply with regulations. A growing set of procedures at local and regional levels can undo bureaucracy reduction efforts at the national level. Multi-level governance directly alters the relationships of public administration with citizens and businesses and, if poorly managed, will negatively impact economic growth, productivity, and competitiveness.

Box 8.1. The eleventh recommendation of the 2012 Recommendation of the Council on Regulatory Policy and Governance

11. Foster the development of regulatory management capacity and performance at sub-national levels of government.

11.1 Governments should support the implementation of regulatory policy and programmes at the sub-national level to reduce regulatory costs and barriers at the local or regional level, which limit competition and impede investment, business growth and job creation.

11.2 Promote the implementation of programmes to assess and reduce the cost of compliance with regulation at the sub-national level.

11.3 Promote procedures at the sub-national level to assess areas for which regulatory reform and simplification is most urgent to avoid a legal vacuum, inconsistencies, duplication and overlap.

11.4 Promote efficient administration, regulatory charges should be set according to cost recovery principles, not to yield additional revenue (Hoornweg, Sugar and Trejos Gómez, 2011[2]).

11.5 Support capacity-building for regulatory management at sub-national level through the promotion of e-government and administrative simplification when appropriate, and relevant human resources management policies.

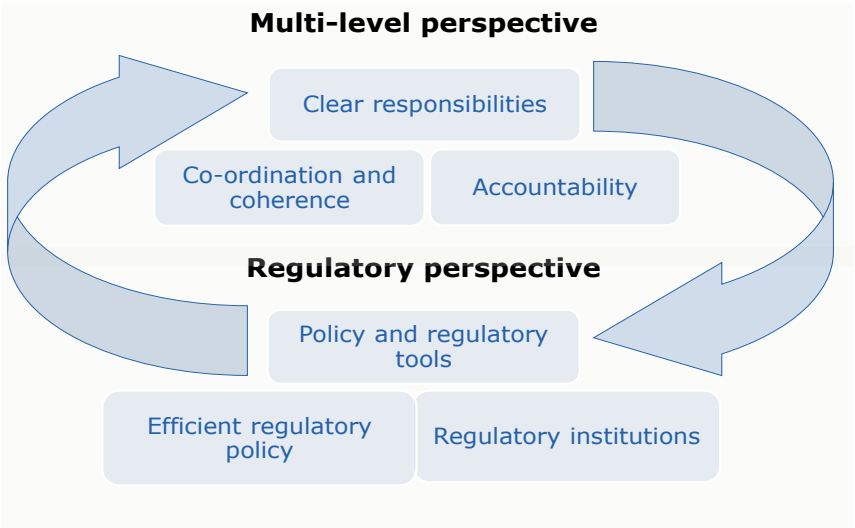
11.6 Use appropriate incentives to foster the use by sub-national governments of Regulatory Impact Assessments to consider the impacts of new and amending regulations, including identifying and avoiding barriers to the seamless operation of new and emerging national markets;

11.7 Develop incentives to foster horizontal co-ordination across jurisdictions to eliminate barriers to the seamless operation of internal markets and limit the risk of race-to-the-bottom practices, develop adequate mechanisms for resolving disputes across local jurisdictions.

Source: (OECD, 2012[3]), Recommendation of the Council on Regulatory Policy and Governance, Paris, https://dx.doi.org/10.1787/9789264209022-en.

Recognising the role of subnational levels of government in regulatory policy, in 2009, the OECD developed a framework for multi-level regulatory governance. The framework focuses on three priority areas for multi-level regulation (Rodrigo, Allio and Andres-Amo, 2009[4]): harmonising policies and strategies, institutions and the regulatory management tools (RIA, consultation and *ex post* evaluation).

Figure 8.1. Multi-level regulatory governance: Framework for analysis



Source: (Rodrigo, Allio and Andres-Amo, 2009[4]).

Regulatory policies should encourage co-operation and co-ordination among different levels of government so ensure that laws are implemented effectively (e.g. ensuring that subnational governments have the resources to enforce regulation under their purview effectively).

The national government should also have the necessary institutions and oversight of the subnational government to make sure that subnational governments' laws do not overlap or conflict with national laws. The national government should also create institutions to support effective regulation at subnational levels.

Finally, national governments should support the growth of the capacities of lower levels of government to manage their own rules, including support for consultation, evaluation, reducing administrative burdens and compliance and enforcement.

The organisation of regulatory attributions in the Slovak Republic

Like much of Europe, the Slovak Republic is a unitary state, where regions and municipalities powers are devolved or centralised by the national government. In the Slovak Republic, the national government has granted regions and local governments more powers since the end of the socialist era – a trend common throughout central and eastern European countries. Reforms implemented through the early 2000s gave regions more authority in areas of education,[1] health care and road transportation (see for example (Csachová and Nestorová-Dická, 2011[5]). At the same time, the reform of 2002 introduced a minimum of 3 000 inhabitants to reduce the further fragmentation of municipalities in the Slovak Republic.

Despite the devolution of powers, the local and regional governments in the Slovak Republic have some of the lowest revenues in the OECD. Nearly 70% of their budgets come from national transfers or grants. The Slovak Republic also has the second smallest municipalities in the OECD, with an average of just

1 850 inhabitants per local government area.[2] To support the efficient use of public resources, the Slovak Republic has encouraged joint municipal offices and has set up territorial districts to provide some services.

The local public administration system has undergone further changes since 2013. The most significant ones include the ESO Programme,[3] electronic public administration, and changes in the way how self-government works. In 2013, the district offices of integrated local state administration were re-established.

Legal structure and powers

Title 4 of the Constitution on Territorial Self-Administration sets forth the legal structure and powers of local and regional governments in the Slovak Republic (Constitute Project, 1992[6]). Municipalities and regions may generally issue binding regulations in matters of territorial self-administration, and for securing the requirements of self-administration required by law (*Article 68*).

The national government may allocate certain activities and powers to local governments, and the state shall cover any costs of the delegated exercise of state administration.

When exercising the powers of state administration, a municipality or region may also issue generally binding regulations within their territory. The scope of action of a territorial unit is defined in Act No. 302/2001 on the self-government of higher territorial units.

In case of conflict between regulation of a sub-national government and a national law, a court can decide on the validity of such rule or its respective parts (Act No 302/2001 on Self-government of higher territorial units, § 8a.).

Generally, the essential powers of municipalities are on delivering services. The regions have more responsibility to develop the rules and regulations that create the conditions for providing services. Municipalities and regions in the Slovak Republic are responsible for areas of education, healthcare, urban planning, and the environment. Regions are concerned with developing programs and plans to deliver social services, and the municipalities are tasked with actually carrying out the services. A full explanation of the powers granted by the Constitution is found in the chapter appendix.

Each region must have a Chief Inspector (*Hlavný kontrolór*) to enforce applicable regulations (*Act No. 302/2001 on the self-government of higher territorial units, § 19c*). The Chief Inspector has many duties. He or she controls:

- the legality, efficiency and economy in the management of the property and property rights of the self-governing region, as well as the property used by the self-governing region under special regulations,
- checking compliance with generally binding legal regulations, including regulations of the self-governing region,
- checking the fulfilment of the council's resolutions,
- checking compliance with the internal regulations of the self-governing region,
- checking the fulfilment of other tasks stipulated by special regulations.

The use of regulatory management tools at the sub-national level

The national government of the Slovak Republic is unaware of any efforts to use regulatory management tools or Better Regulation at the regional or local level. However, in a few cases, cities like Bratislava have used participatory budgets (Džinić, Svidroňová and Markowska-Bzducha, 2016[7]) Many municipalities have created Joint Municipal Offices to take advantage of the economies of scale in providing certain administrative services.

The Slovak Republic does have an open government partnership and national action plan to improve consultation at the local level. As part of this plan, the government will promote the principles of open governance at regional and local levels. The Office of the Plenipotentiary of the Government for the Development of the Civil Society in co-operation with NGOs has prepared a national project to promote the participation of citizens in national and sub-national consultations (Government of the Slovak Republic, 2017[8])

However, it is near impossible for the government to compel municipalities to participate and none of the regional or local authorities has expressed explicit interest to be a part of the project so far. Given the small size of many municipalities in the Slovak Republic, it is quite likely that they may simply lack the resources and time.

As part of the RIA 2020 Strategy, the Ministry of Economy will develop a methodology for assessing the impact of regulatory proposals at the local and regional level as a first step in introducing regulatory policy at the regional and local levels.

Multilevel co-ordination and oversight

In the Slovak Republic, state administration and self-government are separate. Co-ordination between state administration and self-government bodies exists, especially in the transferred performance of state administration, the execution of which is controlled by the government. However, in recent years, the complete separation of state administration and self-government has been weakened by the fact that the district office at the seat of the region, as a local state administration body, decides at second instance on matters where municipalities or self-governing regions have decided at first instance. The district office at the seat of the region is the appellate body, regardless of whether it is original or transferred competence.

Co-operation between municipalities or self-governing regions in the Slovak Republic is solely voluntary. The government usually discuss any regulations in development with a representative Association of Towns and Communities of Slovakia (*Združenie miest a obcí Slovenska* or ZMOS).

Municipalities have the possibility under Act No. 369/1990 on Municipality Government to co-operate based on a contract concluded to carry out a specific task or activity. This co-operation is in practice at the 230 Joint Municipal Offices, which serve as administrative offices for municipalities to ensure transferred competencies.

The relationship between a region and a state or municipality is defined by Act No 302/2001 on the self-government of higher territorial units. The relationship between a municipality and a state is defined by Act No. 369/1990 Coll. about the municipal constitution. The court decides any disputes arising from a public contract between the state and the municipality or region.

If several bodies at the same level believe that they are competent to act on the same matter, this conflict will be decided by their joint superior. In the case of transferred state administration, the district office at the seat of the region decides in the case of a conflict of competencies of municipalities and, in the case of self-governing regions, the Ministry, which is responsible for specific competence. Act No. 162/2015 Coll. Administrative Court Code establishes an institute of action about the question of jurisdiction in which the plaintiff may seek a decision of a conflict of jurisdiction linked to an administrative procedure.

If a municipality or a self-governing region would issue a generally binding regulation governing matters that do not fall within their competence, the Constitutional Court will decide on the discrepancy of this regulation with other legal regulations.

District offices

The district office is a local state administration body of the Ministry of the Interior of the Slovak Republic. It plays a significant role in the co-ordination and oversight of sub-national governments.

The district office at the seat of the region:

- manages, supervises and co-ordinates the execution of state administration carried out by district offices based in its territorial district;
- acts as the representative of the national government in matters in which the administrative proceedings at first instance are decided by the district office unless a special law provides otherwise.
- is an appeal body in cases in which a higher territorial unit having its registered office in its territorial district decides in administrative proceedings at the initial stage,
- is an appeal body in cases where the administrative proceedings are decided by a municipality located in its territorial district unless a special regulation provides otherwise.

The district office is managed and accounted for by the head of the district office appointed and recalled by the Government of the Slovak Republic on the proposal of the Minister of the Interior of the Slovak Republic.

District authorities carry out activities in the areas of civil protection, economic mobilisation, real estate, state defense, regional development and the environment. The responsible ministries or government authorities manage and control the tasks performed by district authorities.

Challenges and opportunities for regulatory policy in the Slovak Republic's municipalities, counties, and cities

Like other countries in the region, the high level of decentralisation for providing administrative services such as construction permits and the small size of municipalities has created extremely different operating environments for businesses across the country. Intriguingly, Bratislava – the economic centre and capital of the Slovak Republic – scored the worst compared to five other municipalities in the World Bank Doing Business Index (see Figure 8.2). The World Bank estimates that if cities in the Slovak Republic adopted the best approach in each of the Index's subcategories, the country as a whole would rise nine spots in the Doing Business Index ranking (The World Bank, 2011[9]).

Figure 8.2. Doing Business in Slovakia 2018

TABLE 1.4 Except for Bratislava, all the cities in Slovakia rank at the top in at least one area

				Starting a business		Dealing with construction permits		Getting electricity		Registering property		Enforcing contracts	
City	Population	Aggregate rank (1–5)[a]	Average DTF score (0–100)[a]	Rank (1–5)	DTF score (0–100)	Rank (1–5)	DTF score (0–100)	Rank (1–5)	DTF score (0–100)	Rank (1–5)	DTF score (0–100)	Rank (1–5)	DTF score (0–100)
Presov	89,618	1	78.78	1	84.73	1	62.91	2	86.27	4	90.17	2	69.81
Kosice	239,141	2	78.19	4	83.72	3	60.74	3	85.29	2	91.24	1	69.95
Zilina	81,041	3	77.82	1	84.73	5	57.90	1	88.41	3	91.00	4	67.08
Trnava	65,536	4	76.96	3	83.98	2	61.39	5	80.07	1	91.48	3	67.90
Bratislava	425,923	5	76.16	5	81.97	4	59.33	4	83.19	4	90.17	5	66.12

Notes: The distance to frontier (DTF) score shows how far a location is from the best performance achieved by any economy on each Doing Business indicator. The score is normalised to range from 0 to 100, with 100 representing the frontier of best practices (the higher the score, the better). For more details, see the chapter "About Doing Business and Doing Business in the European Union 2018: Croatia, the Czech Republic, Portugal and Slovakia." The data for Bratislava have been revised since the publication of Doing Business 2018. The complete data set can be found on the Doing Business website at http://www.doingbusiness.org.
a. Based on the DTF scores for the five regulatory areas included in the table.
Source: (World Bank, 2018[10]).

In the United Kingdom, the Better Regulation Executive of the Department for Business, Energy and Industrial Strategy has specific programs to reduce administrative burdens at the local level in the United Kingdom.

Box 8.2. Local Regulation Programmes of the Better Regulation Executive in the United Kingdom

The United Kingdom is a unitary state of four countries that includes 389 large municipalities, with an average of 166 060 inhabitants. Each local government provides several local services, including housing, policing, planning and transport. The Better Regulation Executive of the United Kingdom has two main initiatives to improve regulation and service delivery at the local level (OECD, 2016[11]).

Primary Authority

The Primary Authority scheme is one of the key ways in which the U.K. Government simplifies how municipalities deliver regulation. The system enables businesses or co-ordinators, such as trade associations, to form a legal partnership with one local authority. In 2016, the scheme was simplified and expanded by the Enterprise Act 2016 and the Co-ordination of Regulatory Sanctions and Enforcement Regulations 2017. These changes have made the benefits of the programme accessible to any business, including start-ups. The number of firms participating has increased from under 18 000 in September 2017 to 57 000 in March 2018.

Better Business for All programme

The Better Business for All programme is another simplification, which brings together businesses, regulators and Growth Hubs to improve the delivery of local regulation. The U.K. Government has been supporting Local Enterprise Partnerships (LEPs) to produce support services that understand and respond to local business needs. These partnerships help businesses access the regulatory support they need, making it easier for them to "get it right the first time," benefitting both businesses and communities. Eighty-two percent of LEPs have Better Business for All programmes.

The Programme is still growing. As of March 2018, over 200 Local Authorities were involved in 23 LEPs areas across the country.

Source: Abbreviated from (Department for Business Energy and Industrial Affairs, n.d.[12])

Construction permits are one of the most challenging areas for cities of the Slovak Republic, suggesting that the administrative burden reduction efforts at the national level have not trickled down to cities. As a regional and municipal issue, the rules, the permitting and enforcement of municipal planning laws fall entirely on local and regional governments. Constructions and permits could be a target area for any burden reduction efforts.

Assessment and recommendations

Regulatory policy and regulatory management tools are not currently present at the local and regional level in the Slovak Republic. However, the subnational government in the Slovak Republic has significant responsibility for providing services to citizens and in crucial policy areas like transportation and urban planning.

The national government does plan to support open government and consultation at the local level through an Open Government Partnership. The Ministry of the Economy also plans to support the introduction of RIA to the local level by developing a methodology for analysis at the local and regional level.

The high-level of decentralisation has led to significant differences in how permits and licences are issued, depending on the municipality or region.

The OECD Secretariat makes the following policy recommendations:

- **The national government could offer to support a pilot project on RIA and evaluation with a region or city in the Slovak Republic.** At this time, there are no known case studies of applying regulatory policy tools like RIA at the local level. The first stage would be to introduce the concepts for the local level and demonstrate their benefits. The current RIA 2020 Strategy foresees developing a methodology for RIA at the local level, but it should also be applied in practice.
- **The national government should encourage greater co-operation for providing licencing and permitting services at the subnational level. Although some joint offices exist, more efficiencies could likely be found.** The national government could set up a forum to share best practices and support finding ways to reduce regulatory burdens at the local and regional level. Based on the powers of the subnational government and the concerns from the World Bank DB Index report, construction permits could be a suitable target area for finding administrative burden reductions at the local and regional level.
- **As a critical provider of administrative services and enforcement, regions and municipalities should be involved regularly during the development of regulation.** Although many municipalities may already be represented through the Association of Towns and Communities, ZMOS, regulators could still reach out during consultations to smaller municipalities that may be unlikely to participate in an open consultation process.
- **The national government could support the creation of a national portal for online consultations at the local and regional level.** Other countries in the region have set up single portals that make all consultations on regulations or permitting issues at the local and regional levels available online.

The interface between the national level and the European Union

The 2019 *Better Regulation Practices across the EU* report (OECD, 2019[13]) highlights that the complexity of today's environment means that governments cannot address regulatory challenges at the domestic level alone. The quality of laws and regulations in the EU also depends on the quality of the regulatory management systems, both in member states and in EU institutions. The benefits of European legislation can significantly be reduced if countries' practices of negotiating and transposing EU directives into national law are not well designed and implemented. The regulatory management systems of the EU institutions and the EU Member States therefore need to be mutually reinforcing in order to be effective.

National co-ordination of EU affairs

The Ministry of Foreign and European Affairs (MFEA) has been appointed national co-ordinating body of the implementation process of EU policies on 1 November 2010 with the amendment to Act No. 403/2010 Coll. 575/2001 Coll. on the Organisation of Government Activities and the Organisation of Central State Administration (Ministry of Foreign and European Affairs, 2019[14]).

In this role, the MFEA is responsible for organising the co-ordination process between government and parliament and for managing issues arising from the Slovak Republic's membership in the European Union. It also provides information on EU matters, incl. planned legislative proposals, on the MFEA website.

Responsibility for the co-ordination of key strategic EU initiatives is shared across a number of ministries and roles. For example:

- The Ministry of Foreign and European Affairs is responsible for the co-ordination of positions in negotiating on the EU legislation.
- The Ministry of Justice, the Government Office, the Ministry of Foreign and European Affairs are responsible for co-ordinating the Slovak Republic's transposition of EU legislation.
- The Ministry of Finance is responsible for co-ordinating the preparation of the National Reform Programme, including its evaluation as well as for the preparation of the Stability Programme in relation to the Europe 2020 Strategy.
- The function of the Deputy Prime Minister for Investment has been established for the co-ordination of large investment projects and use of EU resources in the programming period 2014-20 (OECD, 2015[15]).

Negotiation of the national position

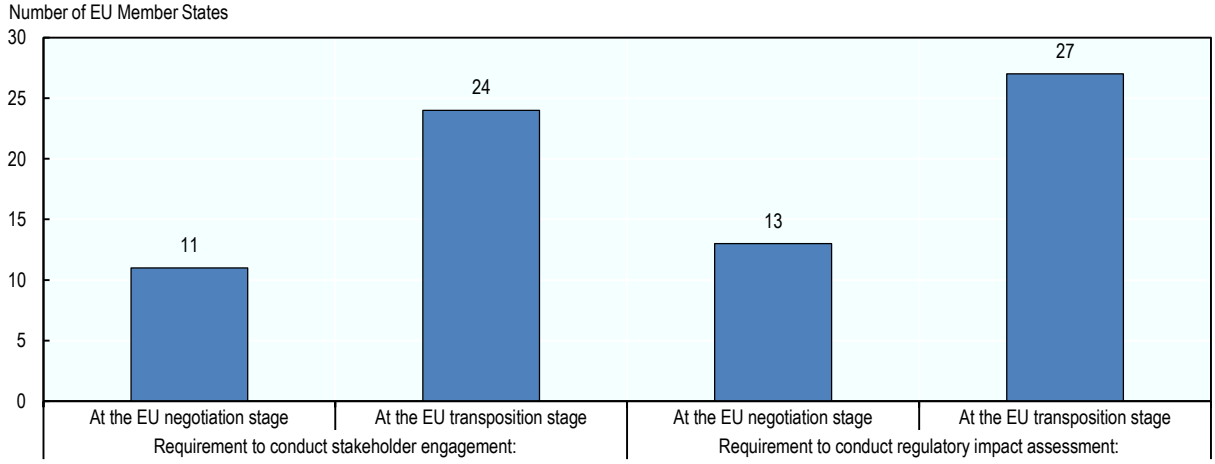
The process of negotiation is described in the Constitutional Law No. 397/2004 Coll., Act No. 350/1996 Coll. on Rules of Procedure of the National Council (i.e. National Parliament) and in detail in the Document to the Government Decree No. 627/2013 amended by Decree No. 485/2015. This document (*Systém tvorby stanovísk k návrhom aktov EÚ a Stav koordinácie realizácie politík EÚ)* contains a description of the mechanism and role of the Slovak Republic in the negotiation of an EC regulation or any other legislative or non-legislative Act (e.g. an EC draft directive). The National Commission for European Affairs may be consulted for guidance.

The Ministry of Foreign and European Affairs plays a key role in the negotiation phase, overseeing the process and issuing the underlying legislation. The MFEA also creates the National Commission for European Affairs, which consists of employees of all Slovak central authorities (mainly ministries but also other bodies).

The Slovak Republic is one of few OECD countries that require an impact assessment and the consultation of stakeholders for EC legislative proposals at the EU negotiation stage (see Figure 8.3). This is considered good practice, as the negotiation phase presents a strong opportunity for countries to directly amend the EU legislative proposal.

The process starts with the EC draft directive being distributed to the Permanent Mission of the Slovak Republic to the EU, to all Slovak central authorities and to the Parliament Office. The MFEA together with the Government Office decides the competent ministry responsible for the draft directive. The National Commission for European Affairs decides in cases of dispute. The departmental co-ordination groups (RKS) in line ministries co-ordinate in case of matters of an inter-ministerial nature and manages the co-operation between ministries.

Figure 8.3. EU Member States' requirements to conduct stakeholder engagement and RIA on EU-made laws



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Survey 2017, http://oe.cd/ireg.

The responsible ministry's legal department then reviews the draft and suggests a responsible department to the minister. The minister decides on the responsible department, which is then given four weeks to prepare a preliminary opinion on the draft directive. The opinion usually includes information on the directive, its content and goals, type and time frame of the approval process as well as a subsidiarity and proportionality assessment and a regular impact assessment as required for domestic legislation.

The competent ministry then submits the preliminary opinion to the inter-ministerial commenting process, which allows other ministries and the general public to submit comments. It also submits the preliminary opinion to parliament. The opinion is also discussed in the National Commission for European Affairs. Stakeholders can participate in this discussion but are not actively invited, except for economic and social partners. Disagreements with other ministries are either solved by regular means in the consultation process (in a disagreement procedure called *rozporové konanie*) or by the Commission. In case a solution cannot be found, the draft is then submitted to the Government with an explanation of the issue in question.

A preliminary opinion approved of by the Government is generally binding and serves as the basis of negotiation positions of the Slovak Republic. The draft then proceeds through the approval process on EU level (Council working group, COREPER and Council meeting). The responsible ministry prepares documents on the position of the Slovak Republic for all these negotiation stages. These documents are approved by the responsible minister. The ministry then prepares a concluding report on the content of the new EU act and practical information regarding the transposition process, incl. time-frame, affected national legislation and possibly also a draft correlation table with legislative solutions.

OECD interviews shows that the practical implementation very much differs from the legally prescribed process. Ministries report regulatory management tools like RIA or stakeholder engagement are not used systematically to inform the national position.

This is a missed opportunity as Member States can use the negotiation phase to directly amend European Commission proposals before they become EU legislative acts. It is therefore important that the relevant stakeholders get an opportunity to express their views on the EU legislative proposal and that its impacts for Slovakia are adequately assessed at this stage.

Transposition into national law

The process of transposition of EU directives in the Slovak Republic is standard and similar to many OECD countries that are members of the EU.

Just as in the negotiation phase, the MFEA together with the Government Office decides the competent ministry responsible for the draft directive and the National Commission for European Affairs decides in cases of dispute. The Government office oversees the transposition process. The ministry responsible for drafting the legislation is required to conduct a regulatory impact assessment at the transposition stage and to publish the draft for public consultation on the national consultation portal Slov-Lex. The same requirements and processes apply as for regulations originating domestically. This is the case in most OECD countries (see Figure 8.3).

In OECD interviews, civil servants pointed out that RIAs conducted for EU legislation do not undergo the same rigorous quality control processes by the RIA Commission as legislation originating domestically. This is due to the limited leeway the administration has to change the EU legislation.

The transposition of EU directives into national law can be challenging and it can be useful to look to other EU countries for best practices in this regard. Some countries conduct cross-jurisdictional reviews to identify opportunities for improvement in specific areas, address inconsistencies between jurisdictions and identify gold plating in the implementation of EU-law (see Box 8.3).

Box 8.3. Comparing regulatory processes and outcomes across EU Member States

In **Denmark**, the EU Implementation Council can initiate so-called “neighbour checks”, i.e. reviews of methods used to implement EU legislation in other Member States with the aim to identify best practices. In 2016, the Danish Ministry of Energy, Utilities and Climate compared the transposition of the Energy Efficiency Directive in Denmark with the implementation in Sweden, Finland, Germany and the United Kingdom. The report identified, inter alia, inconsistencies with regards to the definition of large enterprises subject to mandatory energy audits, which have been subsequently clarified by the European Commission.

In 2013, the **Netherlands** carried out a comparative study comparing regulatory burden to SME’s in the bakery sector across selected EU Member States. The evaluation compared the impact of the regulatory frameworks in the Netherlands, Lithuania, Spain and Ireland. The assessment included the effects of EU directives, EU regulations and national laws and regulations. The purpose of the comparison was to assess whether significant differences exist in the implementation of national and EU legislation resulting in regulatory burden and to provide recommendations how to achieve significant reductions for the particular sector. The review identified opportunities for improvement in national as well as EU legislation. For instance, the report concluded that the use of exemptions and lighter regimes for SME bakeries in EU legislation can reduce regulatory burdens and improve the economic viability of these businesses.

Italy compared in 2016 its notification requirements for food business operators with those in France, Spain and the United Kingdom. The review revealed cases of gold plating: in particular, some information required to be provided to the public administration in notification forms for the registration of food businesses was identified as redundant or not required by legislation. As a result of the review, Italy revised and standardised the notification requirements in line with practices in other European countries.

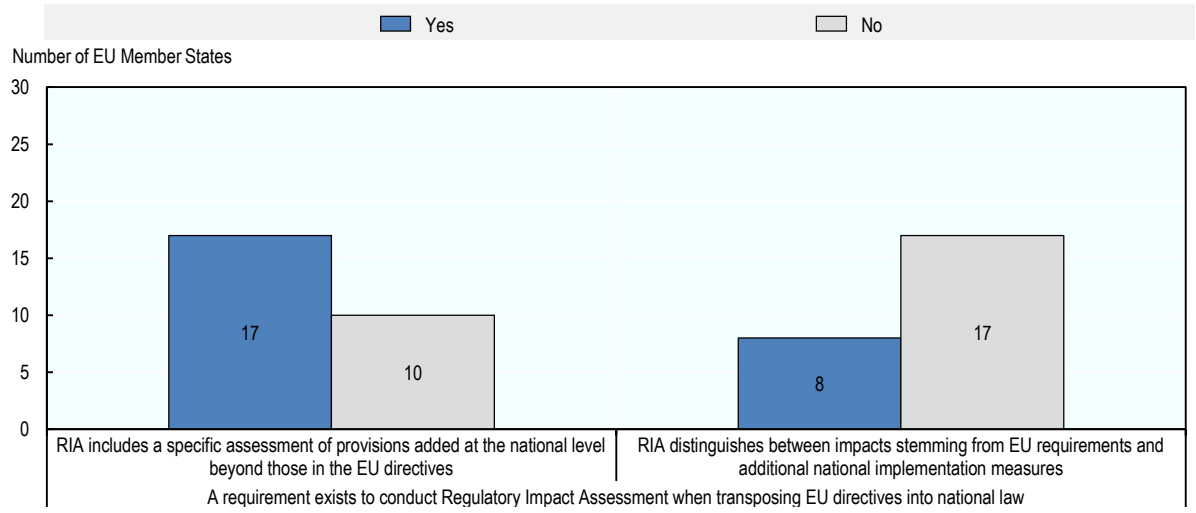
Source: Indicators of Regulatory Policy and Governance Surveys 2017; SIRA Consulting (2013), The CAR Methodology applied to SME bakeries and a Scoping Comparison of Regulatory Burden in four EU Member States: Final report, study commissioned by the Dutch Ministry of Economic Affairs, Netherlands; Implementeringsrådet (2018), “Oversigt anbefalinger nabotjek”, https://star.dk/media/6417/oversigtimplementeringsraadets-anbefalinger-og-iu-svar-nabotjek.pdf in (OECD, 2019[13]).

The issue of gold-plating

In 2018, a ministry-wide ad hoc assessment of gold-plating of existing legislation was conducted in the Slovak Republic. The assessment is considered an among EU countries unique exercise to identify burdens stemming from provisions added at the national level which go beyond those established in the EU directive.

Resolution no. 50/2019 then introduced the requirement to assess gold-plating when assessing impacts of EC directives in the Slovak Republic. This requirement is considered good practice and is in place in a majority of OECD countries, which conduct a specific assessment of provisions added at the national level (Figure 8.4, left pane), so called "gold-plating". By doing so, countries assess the total regulatory impacts of the legislation imposed by both the EU and the member state (at national level).

Figure 8.4. Requirements to assess gold plating and national additional implementation measures



Note: Data is based on 28 EU Member States.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, and the extension to all EU Member States, http://oe.cd/ireg.

Should the analysis find that gold-plating is conducted, this should be justified in a report (*dôvodová správa*) accompanying the draft legislation. Ministries are required to submit their analyses and the report to the Ministry of Economy. The government resolution also requires quality control of the gold-plating assessment by expert bodies external to government, to ensure impartial quality review. In case the analysis and quality review find that provisions are added to the EC directive that pose unjustified administrative or regulatory burdens to regulated subjects, the ministry will have to revise the draft legislation.

However, ministries reported that they do not conduct the assessment systematically in practice and that the oversight body did not control whether an assessment of gold-plating was included in the impact assessment statement. There is no methodology available yet for the assessment of gold-plating but is planned to be developed according to the RIA 2020 Strategy. Some ministries, like the Ministry of Education, Science, Research and Sport of the Slovak Republic, reported assessing gold-plating when legislation was transposed in their area of competence without finding any evidence of gold-plating.

In OECD interviews, business representatives in the Slovak Republic reported disproportionate administrative and regulatory burdens due to the over-implementation of EC directives. The introduction of the requirement to assess gold-plating as part of the regular RIA procedure was an important step to tackle this issue.

Assessment and recommendations

The Slovak Republic has successfully put in place a government structure for co-ordinating the interface between national- and EU-level. Responsibilities for the co-ordination of key strategic EU initiatives are shared across a number of ministries and roles with the Ministry of Foreign and European Affairs as the national co-ordinating body for EU initiatives. The Ministry of Finance is responsible for co-ordinating the preparation of the National Reform Programme, including its evaluation as well as for the preparation of the Stability Programme in relation to the Europe 2020 Strategy. The function of the Deputy Prime Minister for Investment has been established for the co-ordination of large investment projects and use of EU resources in the programming period 2014-20.

The responsibilities for co-ordinating the EU legislative process are shared between different ministries. The Ministry of Foreign and European Affairs is responsible for the co-ordination of positions in negotiating EU legislation. The Ministry of Justice, the Government Office, the Ministry of Foreign and European Affairs are responsible for co-ordinating the Slovak Republic's transposition of EU legislation. This means that the current institutional set-up bears a risk of overlapping and unclear functions.

Regulatory management tools are rarely used to inform the national position during the negotiation phase. The negotiation phase presents a strong opportunity for Member States to directly amend European Commission proposals (as introduced to Council and the European Parliament) before they become EU legislative acts. It is therefore important that the relevant stakeholders get an opportunity to express their views on the EU legislative proposal and that its impacts for the Slovak Republic are adequately assessed at this stage. There is a requirement in place in Slovakia to consult relevant stakeholders and assess impacts of the draft legislation when developing the national position on the EU draft legislation. This requirement is not yet systematically followed in practice and there is no regulatory oversight in place to ensure regulatory management tools are used to inform the national position.

The recently introduced requirement to assess gold-plating follows EU best practice, but is not yet conducted systematically in practice. Ministries reported that they do not conduct the assessment systematically and that the oversight body did not control whether an assessment of gold-plating was included in the impact assessment statement. There is no methodology available yet for the assessment of gold-plating but is planned to be developed according to the RIA 2020 Strategy.

The OECD Secretariat makes the following policy recommendations:

- **The roles of different institutions involved in co-ordinating the EU legislative process should be clarified.** In particular the mandate boundaries between the Ministry of Foreign and European Affairs and the Government Office with respect to managing relations with the EU should be clarified to eliminate the potential for overlap and duplication. The Government Office's responsibility for managing the transposition of EU legislation into national law, and the Ministry of Foreign and European Affairs' mandate of advancing the Slovak Republic's national interests in Brussels before, during and after the EU decision-making process implies that the institutions need to work closely together and co-ordinate their activities vis-à-vis line ministries effectively on an ongoing basis.
- **The Slovak Republic should ensure that a proportionate analysis of impacts is carried out and relevant stakeholders are involved in the process of preparing national positions to draft EU legislation.** Criteria for when such assessment is necessary should be set by the Government decree describing the processes to be carried out during the negotiation phase. In addition to applying regulatory management tools on national level when negotiating the national position and transposing EU directives into national law, the Slovak Republic should use the results of regulatory management tools (e.g. RIA) conducted at EU level to inform the process. While the European Council and Parliament carry out impact assessments for substantial amendments to the Commission's regulatory proposals, the impacts of these amendments may not adequately

assessed by individual member states, which could cause unnecessary burdens for individual countries. The impact assessments conducted on both EU- and national level should therefore inform the development of the national position for the negotiation phase in EU council. This effort should be supported by a body tasked with regulatory oversight functions ensuring the use of RIA and stakeholder engagement at the negotiation stage.

- **The assessment of gold-plating as part of the impact assessment process should be reviewed more closely by the oversight body.** The RIA Commission should review if an assessment of gold-plating has been included in the RIA statement and should prompt ministries to do so should this not be the case.

Notes

[1] Education is the largest spending area for regions and municipalities in the Slovak Republic (OECD, 2016[16]).

[2] France has the third smallest and the Czech Republic the smallest municipalities.

[3] The ESO programme (Efficient, Reliable and Open state administration) was approved in 2012 to support the efficient delivery of services for citizens.

References

Constitute Project (1992), *Slovakia's Constitution of 1992 with Amendements through 2014*, http://www.worldbank.org (accessed on 6 February 2020). [6]

Csachová, S. and J. Nestorová-Dická (2011), *Territorial Structure of Local Government in the Slovak Republic, the Czech Republic and the Hungarian Republic – A Comparative View*, Geografický Časopis / Geographical Journal, https://www.researchgate.net/publication/267824054_TERRITORIAL_STRUCTURE_OF_LOCAL_GOVERNMENT_IN_THE_SLOVAK_REPUBLIC_THE_CZECH_REPUBLIC_AND_THE_HUNGARIAN_REPUBLIC_-_A_COMPARATIVE_VIEW (accessed on 17 February 2020). [5]

Department for Business Energy and Industrial Affairs (n.d.), *Better regulation: annual report 2018 to 2019 - GOV.UK*, https://www.gov.uk/government/publications/better-regulation-annual-report-2018-to-2019 (accessed on 17 February 2020). [12]

Džinić, J., M. Svidroňová and E. Markowska-Bzducha (2016), "Participatory Budgeting: A Comparative Study of Croatia, Poland and Slovakia", *NISPAcee Journal of Public Administration and Policy*, Vol. 9/1, pp. 31-56, http://dx.doi.org/10.1515/nispa-2016-0002. [7]

Government of the Slovak Republic (2017), *Open Government Partnership and National Action Plan of the Slovak Republic*. [8]

Hoornweg, D., L. Sugar and C. Trejos Gómez (2011), "Cities and greenhouse gas emissions: moving forward", *Environment and Urbanization*, Vol. 23/1, pp. 207-227, http://dx.doi.org/10.1177/0956247810392270. [2]

Marcou, G. and A. Musa (2017), "Regulatory Impact Assessment and Sub-national Governments", in *Evaluating Reforms of Local Public and Social Services in Europe*, Springer International Publishing, Cham, http://dx.doi.org/10.1007/978-3-319-61091-7_2. [1]

Ministry of Foreign and European Affairs (2019), *National Coordination of European Affairs*, https://www.mzv.sk/europske_zalezitosti/europske_zalezitosti_na_ministerstve-vnutrostatna_koordinacia_europskych_zalezitosti (accessed on 30 January 2020). [14]

OECD (2019), *Better Regulation Practices across the European Union*, OECD, http://dx.doi.org/GOV/RPC(2018)15/REV1. [13]

OECD (2016), *OECD Regions at a Glance 2013 – United Kingdom Profile*. [11]

OECD (2016), *Regional Policy Profile: Slovak Republic*. [16]

OECD (2015), *Slovak Republic: Better Co-ordination for Better Policies, Services and Results*, OECD Publishing, https://www.oecd.org/governance/slovak-republic-better-co-ordination-for-better-policies-services-and-results-9789264247635-en.htm (accessed on 19 December 2019). [15]

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264209022-en. [3]

Rodrigo, D., L. Allio and P. Andres-Amo (2009), "Multi-Level Regulatory Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence", *OECD Working Papers on Public Governance*, No. 13, OECD Publishing, Paris, https://dx.doi.org/10.1787/224074617147. [4]

The World Bank (2011), *http://documents.worldbank.org/curated/en/570761468032937505/Doing-business-in-the-Croatia-2012-comparing-business-regulation-in-25-cities-and-183-economies*. [9]

World Bank (2018), *Doin Business in the European Union in 2018: Croatia, the Czech Republic, Portugal and Slovakia*, https://www.doingbusiness.org/content/dam/doingBusiness/media/Subnational-Reports/DB18-EU2-Report-ENG.PDF (accessed on 5 March 2020). [10]

Annex 8.A. Powers in the two local government acts in the Slovak Republic

This annex describes the powers laid out explicitly in the two local government acts in the Slovak Republic.

Powers of municipalities (Act No. 369/1990 on municipal government):

a. performs operations related to the proper management of the movable and immovable property of the municipality and property owned by the state, which the municipality has left for use,

b. draws up and approves the municipal budget and the municipality's final account; declares a voluntary collection,

c. make decisions on local taxes and local fees 5a) and administer them,

d. directs economic activity in the municipality, and if so stipulated by a special regulation, 5b) issues a consent, binding opinion, opinion or statement on business and other activities of legal persons and natural persons and on the location of operations in the municipality;

e. creates an effective control system and creates appropriate organisational, financial, personnel and material conditions for its independent performance,

f. ensures construction and maintenance and administers local roads, public spaces, municipal cemetery, cultural, sports and other municipal facilities, cultural monuments, heritage sites and landmarks of the municipality,

g. maintaining cleanliness in the municipality, management and maintenance of public greenery and public lighting, water supply, wastewater disposal, wastewater management and local public transport,

h. establishes and protects healthy conditions and a healthy way of life and work of the inhabitants of the municipality, protects the environment as well as creates conditions for providing health care, education, culture, enlightenment activities, interest artistic activity, physical culture and sport,

i. performs tasks in the field of consumer protection and creates conditions for supplying the municipality; Manages marketplaces

j. procures and approves zoning and planning documentation of municipalities and zones, the concept of development of individual areas of community life, procures and approves housing development programs and co-operates in creating suitable conditions for housing in the municipality,

k. carries out its own investment and business activities in order to ensure the needs of the inhabitants of the municipality and the development of the municipality,

l. establishes, abolishes and controls its budgetary and contributory organisations, other legal entities and facilities according to special regulations,

m. organises local referendum on important issues of community life and development,

n. ensures public order in the municipality,

o. ensures the protection of cultural monuments in the scope pursuant to special regulations and ensures the preservation of natural values,

p. performs tasks in the field of social assistance to the extent pursuant to a special regulation,
q. performs certification of documents and signatures on documents, leads the general chronicle in the state language or in the language of a national minority.

Powers of regions (Act No 302/2001 on the self-government of higher territorial units):

a. ensures the creation and implementation of the program of social, economic and cultural development of the territory of the self-governing region,
b. carries out planning activities concerning the territory of the self-governing region,
c. procures, discusses and approves territorial planning documents of the self-governing region and territorial plans of regions,
d. make efficient use of local human, natural and other resources,
e. carries out its own investment and business activities in order to ensure the needs of the inhabitants of the self-governing region and the development of the self-governing region,
f. establishes, abolishes and controls its budgetary and contributory organisations and other legal entities according to special regulations,
g. participates in the creation and protection of the environment,
h. creates preconditions for the optimal arrangement of mutual relations of settlement units and other elements of its territory,
i. procures and approves a development program for the provision of social services and co-operates with municipalities and other legal entities and natural persons in the construction of facilities and flats intended for the provision of social services,
j. creates conditions for the development of health care,
k. creates conditions for the development of education, particularly in secondary schools, and for the development of further education,
l. creates conditions for the creation, presentation and development of cultural values and cultural activities and takes care of the protection of the heritage fund,
m. creates conditions for the development of tourism and co-ordinates this development,
n. co-ordinates the development of physical culture and sports and the care of children and youth
o. co-operates with municipalities in creating programs of social and economic development of municipalities,
p. participates in solving problems concerning several municipalities in the territory of the self-governing region, develops co-operation with local authorities and authorities of other countries, performs other powers laid down by special laws

9 Innovative approaches to support future-proofing regulation

This chapter provide Slovakia with frontier OECD research on innovative approaches to policy making, that can help support the development of strategies to “future proof” regulation. It presents three complementary approaches to consider individually or as a bundle, including introducing forward-looking processes such as strategic foresight and anticipatory innovation, incorporating future proofing as part of regulatory policy making, and using innovative tools such as behavioural insights to understand human behaviour. Finally, it gives recommendations for developing and implementing strategies to begin using these various approaches in practice.

Times are rapidly changing. Economic and digital disruption, political uncertainty, international tensions, declining trust in government, rapid changes to populations, climate, and many others are increasing complexity and uncertainty for governments around the world.

Each of these pressures present challenges for government in the form of changing their way of thinking and approaching policy problems, and often bringing into question the effectiveness of legacy regulations. They also present opportunities to update policy processes, ways of thinking and modernise regulation to be ready for the challenges that lie ahead. In turn, governments around the world are turning to innovative policy making methods to anticipate and forecast these changes, and adapt to them in real time, in an attempt to "future proof" regulatory policy making.

This chapter explores these themes in the context of the Ministry of Economy's desire to utilise innovative policy making tools and future proofing regulation. The Ministry is engaging with these concepts ahead of plans to develop strategic plans in 2021 to begin using these various tools and methods, after the implementation of the RIA 2020 action plan. However, discussions with representatives from the Ministry have identified some roadblocks in terms of a reticent internal environment, a lack of knowledge about the tools available, and the need to define clearly what is future proofing regulation and how it can be implemented in the Slovak context, especially with linking with ongoing work on these topics in other parts of the Slovak Public Administration.

This chapter is intended to provide frontier OECD thinking to support the Ministry's development of these strategies. It will begin by discussing the origins and elements of future proofing regulation from the European level. Then it will discuss three ways in which the concept of future proofing regulation can be implemented in Slovakia: introducing forward looking processes, such as strategic foresight and anticipatory innovation; incorporating innovative approaches to current regulatory policy making; and using innovative policy making tools, such as behavioural insights. Definitions for the various concepts explored in this chapter can be found in Box 9.1.

Box 9.1. Key definitions

Anticipatory innovation governance is a broad-based capacity to actively explore options as part of broader anticipatory governance, with a particular aim of spurring on innovations (novel to the context, implemented and value shifting products, services and processes) connected to uncertain futures in the hopes of shaping the former through the innovative practice.

Anticipatory regulation is a function of anticipatory governance which uses regulatory means to create space for sandboxes, demonstrators, testbeds etc. for various technology options to emerge. This requires an iterative development of regulation and standards around an emerging field.

Behavioural insights uses rigorous research and experimental methods from the behavioural sciences, including behavioural economics, to understand why citizens behave as they do and pre-test which policy solutions are most effective before implementing at larger scale.

Strategic foresight is a structured and systematic way of using ideas about the future to anticipate and better prepare for change. It is about exploring different plausible futures that could arise, and the opportunities and challenges they could present, then using those ideas to make better decisions and act now.

Future proof regulation: updating processes and using innovation in regulatory policy making

There is some ambiguity of the origins and meaning of the term "future proofing" regulation. From the technology perspective, where thinking is more advanced, it is broadly considered to be about keeping options open, looking at the potential scale of effects in the long term (value, rather than costs) and emphasise the heterogeneity of choices. Applied in general terms to regulation, this means being sufficiently agile to adapt to rapid and transformative changes.

In terms of the interest for Slovakia, the genesis for the idea of "future proofing" regulation appears to come from the European Commission, who began the research and thinking on this concept for the Member States. An opinion note produced by the European Economic and Social Committee provides comments on this concept, which "aims to ensure legislation is more in line, in particular, with EU competitiveness and takes account of the specific nature of SMEs and micro-enterprises" (EESC, 2016[1]). The note also identifies two components of future proofing: better regulatory policy making and a focus on innovation.

Better regulatory policy making has been enshrined at the EU level with the "Better Regulation Package" adopted in 2016 (OECD, 2016[2]) and is broadly in line with OECD best practice in regards to good regulatory practices and better regulatory management. This is evident by the European Union's iReg scores being significantly higher than OECD average for each of the three main categories – stakeholder engagement, RIA and *ex post* evaluation (OECD, 2018[3]). The Package seeks to achieve better results through a suite of reforms that sets out to ensure that (European Commission, n.d.[4])

- Decision-making is open and transparent
- Citizens and stakeholders can contribute throughout the policy and law-making process
- EU actions are based on evidence and understanding of the impacts
- Regulatory burdens on businesses, citizens or public administrations are kept to a minimum

Key elements of delivering on these objectives are better consultations through roadmaps, inception impact assessments, and sharing draft acts for comment, as well as improved impact assessments that analyses possible economic, social or environmental impacts.

From an e*x post* perspective, the Package also includes the Regulatory Fitness and Performance (REFIT) programme that evaluates and conducts "fitness checks" of existing policies and laws to simplify and reduce the cost of regulations while still achieving benefits.

The reform also introduced the Regulatory Scrutiny Board, an independent group of Commission officials and experts from outside the commission with the role of checking the quality of all impact assessments and major evaluations (European Commission, n.d.[4]).

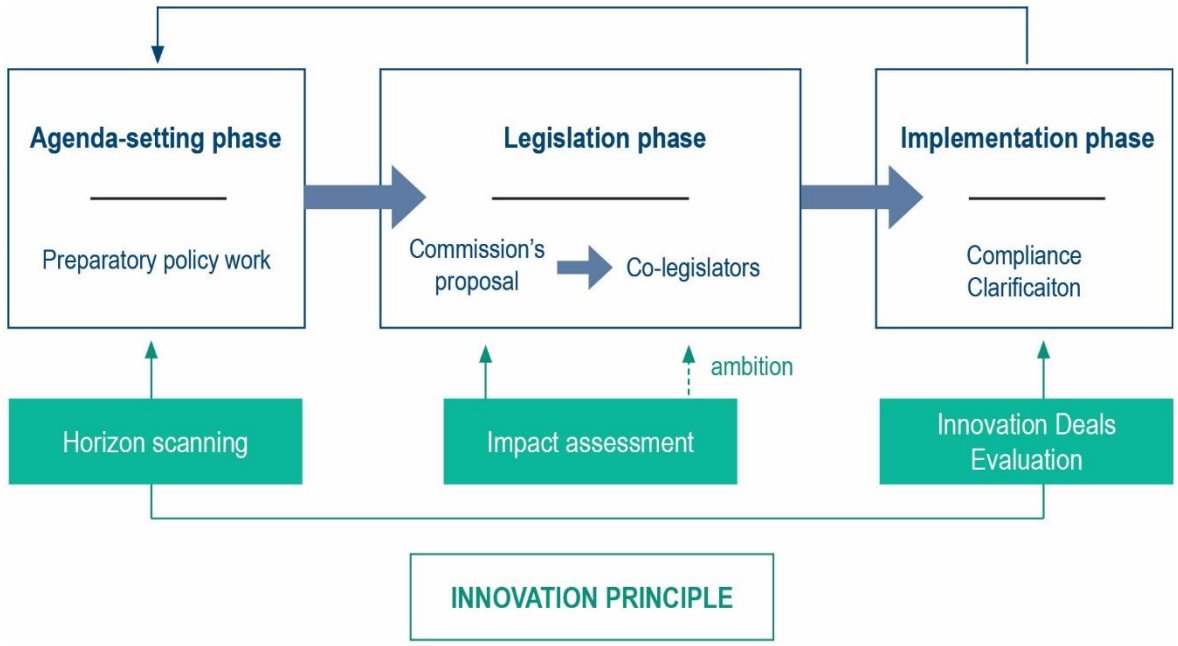
Innovation at the EU level is enshrined in the "innovation principle" that promotes smart, future-oriented regulation and policies. The Commission defines the innovation principle as "EU policy and legislation should be developed, implemented and assessed in view of encouraging innovations that help realise the EU's environmental, social and economic objectives, and to anticipate and harness future technological advances" (European Commission, 2019[5]) and encapsulates three objectives:

- Improve the design of existing and future EU regulations with regard to their impact on encouraging beneficial innovation.
- Steer the development of innovative solutions addressing new and complex challenges in a way that embeds EU values and protects Europeans.
- Achieve an optimal balance between predictability of the regulatory environment and adaptability to scientific and technological progress.

This principle has clear links with the Better Regulation Package, especially the REFIT element that seeks to minimise burdens on businesses and citizens.

According to the European Commission's fact sheet, the innovative principle is implemented in three main areas of the policy making process: agenda setting, drafting/legislative, and implementation. These are subsequently joined up with tools such as horizon scanning, impact assessments and innovation deals evaluations as ways to include the innovative principle in these stages (see Figure 9.1).

Figure 9.1. The European Commission's innovation principle



Source: European Commission (2019[5]), The Innovation Principle Factsheet, European Commission, Research and Innovation Department, https://ec.europa.eu/info/research-and-innovation/law-and-regulations/innovation-friendly-legislation_en.

This chapter seeks to build off this framework to suggest ways that better regulation and innovation can be joined together, in line with OECD research and the European Commission's strategic direction. Three related topics will be discussed to support this model: first, the need for foresight and anticipatory regulation; second, reviewing and updating processes and tools to incorporate a focus on future proofing priorities throughout the rule making process, such as administrative simplification and SMEs; and, third, incorporate innovative policy-making tools, with a focus on behavioural insights. While these map broadly with the figure above, OECD research demonstrates that these principles can be used throughout the policy making process to bring innovation and simplification to policy making.

Introducing forward looking processes into regulatory policy making

A key element of future proofing regulation is not knowing, but continuously analysing, what future challenges will be faced by government. For policy-makers and regulators to prepare for and "manage" future technology, it is important for them to have a clear understanding of what technologies might shape the global economy and society over a sustained period and for which their "intervention" may be necessary" (OECD, 2019[6]). This can be both in terms of disruptive technologies that are challenging regulatory systems around the world, or more "normal" shifts in the market, environment or society that then require governments to modernise legacy regulation to ensure their fitness over time.

Changes in the regulatory landscape offer both opportunities and challenges for government (OECD, 2019[6]). On the one hand, government may capitalise on these new tools, technologies and ways of working to become more efficient, reliable and outcome-focused. On the other, challenges include the pace at which some of these changes are occurring, especially regarding emerging technologies that advance faster than regulation or social structure governing that technology (Marchant et al., 2011). Moreover, business models and the functioning of markets can be challenged, which has the potential for impacts throughout the economy.

Five questions may help in tackling challenges discussed above as a beginning step for policy makers and regulators to develop innovative policy and regulatory measures (Box 9.2). These concepts will be elaborated more in this chapter.

Box 9.2. Five questions regulators need to ask themselves

1. What's the current state of regulation?

When answering this question, policy makers will have to consider aspects including the relevance of current regulations, barriers to innovation through prescriptiveness, overlapping or convergent regulations, and other impacted regulations such as employment, taxation etc.

2. What's the right time to regulate?

Typically empowered with mandates to protect citizens and society, promote economic growth and competition and protect national/regional interests, regulators have to make choices of the appropriate time to regulate. They cannot be found to be too slow in avoiding negative impacts to their mandate or too fast or overzealous in protecting their mandates while hampering innovation without understanding the true nature of their impacts.

3. Is regulation the right approach?

When it is decided that government intervention is needed, all plausible alternatives to regulation – including a wide range of non-regulatory solutions – should be considered, including considering evidence of their effectiveness vis-à-vis more direct forms of intervention.

4. What's the right regulatory approach?

When the decision has been made to regulate, regulators and policymakers now have a variety of tools to choose from ranging from traditional regulatory approaches to softer approaches including self-regulations.

5. What has changed since regulations were enacted?

Impact of enacted regulations using tools such as *ex post* evaluations developed by the OECD and others may be used to not only to monitor and evaluate the performance of the regulations but, more importantly, relate them to the state of emerging technologies and business models and determine their relevance.

Note: This box was first published in a working paper *Regulatory Future of Emerging Technologies: A Scoping Paper on Gaps and Opportunities*, presented to the Regulatory Policy Committee in November 2018.
Source: Adapted from Deloitte, (2017[7]), The future of regulation: Principles for regulating emerging technologies, Deloitte Insights, https://www2.deloitte.com/us/en/insights/industry/public-sector/future-of-regulation/regulating-emerging-technology.html.

As the digital transformation has highlighted, policy makers and regulators unprepared to address these challenges have faced an uphill battle in responding to these changes in the market. Strategic foresight and anticipatory governance are two streams of OECD research may support countries in preparing in advance for future changes, and can form the first pillar of a Slovak Republic strategy for future proofing regulation.

Strategic foresight

Preparing for future uncertainties is an important element of better policy making. However, in times of rapid change, growing complexity and uncertainty, it may be challenging to plan for future events. There are shortcomings to approaches that attempt to predict the future or concentrate only on the most probable developments. A solution is to take into account multiple future possibilities to help governments become future-fit in such challenging contexts.

In Slovakia, the Institute for Strategy and Analysis (ISA) has been established as an analytical unit of the Prime Minister and the Government Office. According to its website (ISA, n.d.[8]), its mission is to provide analytical support to the Government's economic and social policy strategy. The Institute is concerned with the examination of regional development and the effectiveness of the use of the European Structural and Investment Funds in different areas such as regional policy, health policy, education, etc. Other topics include innovations and co-operation between academia and private sector. Recently, the Institute has started a project on reforms in higher education, and has become a Secretariat for the National Productivity Board. The Board has the primary task of monitoring, analysing and evaluating the productivity and competitiveness of the Slovak Republic (ISA, n.d.[9]).

The ISA produces short analyses and commentaries on current development of social and economic affairs in the country. It also conducts modelling using standard methods (i.e. regressions, time series, or spatial models) on the areas noted above. Complex future modelling is performed by the Institute for Financial Policy (IFP), the Council for Budget Responsibility (RRZ) and the National Bank of Slovakia (NBS).

The field of strategic foresight gives governments an approach to identify a number of different plausible future developments, explore what impacts they could have and identify potential implications for policy (OECD, 2019[10]). It can support better policy making by improving anticipation by identifying and preparing sooner for new opportunities and challenges, spurring new policy innovations to address these opportunities and challenges, and stress-testing existing or proposed strategies against a range of future conditions. In doing so, it is important for policy makers to look beyond the silos and consider how multiple developments can intersect and interact in unexpected ways. Effective foresight also benefits agile policy making, as sometimes policy processes can be slower than the changes that may be occurring.

Strategic foresight benefits policy by revealing implicit assumptions, challenging dominant perspectives, and engaging with surprising and significant disruptions that might otherwise be dismissed or ignored. Foresight uses a range of methodologies to reveal and discuss useful ideas about the future (see Box 9.3).

Box 9.3. Strategic foresight methods

Horizon scanning: seeking and researching signals of change in the present and their potential future impacts. Horizon scanning is the foundation of any strategic foresight process. It can involve desk research, expert surveys, and review of existing futures literature.

Megatrends analysis: exploring and reviewing of large-scale changes building in the present at the intersection of multiple policy domains, with complex and multidimensional impacts in the future.

Scenario planning: developing multiple stories or images of how the future could look in order to explore and learn from them in terms of implications for the present.

Visioning and back-casting: developing an image of an ideal (or undesirable) future state, and working backwards to identify what steps to take (or avoid).

Source: (OECD, 2019[10]).

Effective foresight requires it to be integrated as a sustainable, on-going and widespread element of policy making to avoid it being relegated as a niche responsibility for a small group of experts or one-off projects. (OECD, 2019[10]) identifies five broad areas where action has been taken to build effective foresight systems:

1. **Demand**: Sustained demand from senior levels in government and the public service can help to ensure that the necessary institutional changes, resource allocations and practices are put in place, and permission is granted to focus attention on foresight and to explore issues proactively.
2. **Capacity**: Governments need to draw on intellectual capacity and skills needed to implement foresight thinking and apply it to policy making. On the one hand, this requires individuals trained in the theory and practice of foresight methods, and skills to design and facilitate strategic dialogue with policy experts. On the other, governments may want to provide basic foresight and futures literacy[1] training programmes to public servants.
3. **Institutions**: Arrangements may take many forms, but for many governments the key is having at least one central dedicated foresight unit to champion, conduct and co-ordinate foresight work across government. Departments and agencies may also wish to develop their own dedicated foresight teams to support the application of foresight in their mandate area.
4. **Embeddedness**: Foresight serves as an integral part of policy making, and not an isolated or 'extra' option to consider. Foresight can be used at any point in the policy cycle, from initial scoping to design and implementation, through to review and testing of existing strategies. It is important to involve public servants, senior public servants, politicians, citizens and other key stakeholders. This is because foresight is about engaging action, not simply 'studying the future'.
5. **Feedback**: Building a foresight system requires feedback and review to improve and respond to new circumstances, as well as adequate evaluation to demonstrate positive impacts or identify possible areas of improvement.

Anticipatory innovation

While strategic foresight is the structured and explicit exploration of multiple futures to inform decision making, anticipatory innovation is the framework that allows it to happen in practice by allowing for systematic embedding and application of foresight throughout the entire governance architecture (OECD, 2019[10]). Simply, it seeks to institutionalise and operationalise strategic foresight methods and related innovative methods into policy analysis, engagement and decision making (OECD, 2018[11]). It is about exploring new frames of reference and paradigms about how things can work, which then inform what should be done.

At its core, anticipatory innovation is about recognising and engaging with deep uncertainty about not only what works, but also what is appropriate or possible (OECD, 2018[11]). It works together with foresight tools and methods to create knowledge to anticipate future challenges and opportunities by exploring new frames of reference and paradigms about how things can work, which then inform what should be done. However, it does not seek to predict the future but, rather, help to shape how the future might play out.

Anticipatory innovation functions best when it is used as part of a portfolio approach that invests in multiple strategies to avoid being blind-sided, leaving government with a range of choices available to help them respond (OECD, 2018[11]). Anticipatory innovation focuses on picking up weak signals and engaging with them before a new course or paradigm is locked in. It explores things that may fundamentally challenge a system and current paradigm. It reads signals that may foretell these challenges, but also actually exploring options on the ground and innovating around them.

The future is highly uncertain, and can take many twists and turns. Investment in anticipatory innovation can therefore be challenging. Most of the time, the benefits of anticipatory innovation are only clearly seen in absentia – i.e. when no anticipatory innovation has happened, and there are then issues that arise, such as a lack of preparation for the major changes brought by social media to the information ecosystem surrounding politics and citizen engagement. Therefore, this process does have a difficult time demonstrating return-on-investment, as there is no counterfactual to calculate differences. This is where anticipatory innovation has tended to be focused on areas where there is a clear and recognised cost to being surprised, such as defence, agriculture, cyber-security and health (OECD, 2018[11]).

Some of the other issues particular to this process are:

- Disconnection from core business. Anticipatory innovation can be seen as something frivolous, esoteric or removed from the day-to-day pressures and priorities. This can lead to resentment or distancing of the work, as it is not seen as relevant.
- Out-in-front. Anticipatory innovation can sometimes be too far out in front of the curve, and thus misinterpreted or simply not understood. This can harm the ability of anticipatory innovation to meaningfully influence the present.
- Too big picture. Anticipatory innovation can be seen as too removed or distant from what matters, meaning that the work may not be engaged with.
- Challenging values. By calling into question the current state, anticipatory innovation can challenge people's beliefs and assumptions about how the world works, and the place of them and their work within it. Due to this, anticipatory innovation can be actively resisted or worked against, being seen as an attack on existing values.

In order for anticipatory innovation to occur, several factors are necessary (OECD, 2018[11]):

- Structural autonomy. Anticipatory innovation is about different possibilities, and thus sits uncomfortably with delivering on existing and thus very tangible priorities. Where anticipatory activity is not shielded structurally, more immediate priorities are likely to always have pre-eminence.
- Political or institutional cover. Being about weak signals and exploration of potentially radically different possibilities means that anticipatory innovation can be seen as frivolous or even fanciful. Topics like artificial intelligence or the risks of automation may throw up weird ideas. Without some form of political coverage or institutional legitimacy, such activity is unlikely to last.
- Longer-term commitment. Making significant progress with anticipatory innovation will usually not occur quickly, as it requires new knowledge, mixing different perspectives and capabilities, the exploration of multiple potential options, and investment to help shape preferred futures.

In addition to these, there are also a number of relevant supporting factors to help anticipatory innovation thrive. First, there needs to be a clear sense of consequence such that the general risks and pitfalls of being blindsided and caught unprepared are understood and appreciated. Second, giving explicit freedom to consider the unimaginable can help ensure more radical ideas can not only be considered, but actively explored. Finally, encouraging unconventional partnerships and relationships can provide the space to engage with different perspectives that may not seem immediately relevant.

(OECD, 2018[11]) also advocates for clear line of sight to decision makers, involving senior leaders into anticipatory processes, and creating a catalogue of examples and cases where failure to develop options in advance lead to crises to support the long-term sustainability of anticipatory innovation. Conversely, focusing on the overly-practical applications, making anticipatory work compete with business-as-usual activities, and not defending "out there" thinking can make anticipatory governance vulnerable to disruption or derailing its use.

Incorporating future proofing as part of the regulatory policy making cycle

The previous section introduced different strategic level processes and institutions that could be created to focus on modelling, preparing and integrating solutions for future scenarios that could impact the fitness of regulatory stocks. This section will focus on the way current regulatory strategies and processes could be made more innovative throughout the regulatory policy making cycle that could help future proof the existing stock of regulations.

As a tool of government, regulations consist of rules that identify permissible and impermissible activity on the part of individuals or firms with sanctions or incentives to ensure compliance (OECD, 2018[3]). For the purposes of this review, future proofing regulation was defined by the EC above as focusing on promoting the development and success of SMEs. The assumption then is that the system of regulatory policy making and resulting regulations have an impact on SME development and success.

There is evidence to support this assumption. OECD (2018[12]) argues that medium to large companies have an easier time complying with regulations compared to SMEs as these larger companies have a greater ability to internalise the costs and deal with the administrative burdens. The focus of this section then is to introduce different ways of creating regulations throughout the policy making process such that the burdens on SMEs are considered and reduced. In turn, this should help support greater entry of SMEs into the market, as well as help them grow and stabilise as viable businesses.

Incentivising innovation through different approaches to regulation

The traditional approach to regulatory policy making is through a prescriptive-based approach. This approach prescribes a set of standards and focuses compliance efforts on the degree to which an entity followed the rules. On the one hand, this can hinder SME development by placing a high cost on compliance – especially if necessary regulatory obligations are scattered throughout may different legislative and regulatory texts. On the other, this crowds out innovative businesses who do not fit within the prescriptive model and actions are thus deemed to be "illegal".

OECD research[2] has identified a wide range of alternative approaches and tools to regulation that can help foster greater innovation and reduce compliance costs to varying degrees:

1. **Performance or outcome-based regulation:** Specify measureable outcomes (performance measures, risk thresholds, etc.) that allow businesses greater opportunities for innovation, as long as it is easy to demonstrate that the desired performance has been achieve (Roca et al., 2017[13]). Since the outcomes are defined, firms and individuals are then able to choose the process by which they will comply, which enables them to identify more efficient and lower costs solutions. This can also simplify regulations as the outcomes are identified, rather than a large list of prescriptive requirements.
2. **Management-based regulations**: Also known as "enforced self-regulation" (Ayres and Braithwaite, 1992[14]), these aim to shift decisions to businesses with the most information (Roca et al., 2017[15]) as these businesses have the best understanding of the risks and benefits in a given sector. Typically, such regulations require businesses to maintain a range of processes, systems, and internal management practices to achieve goals defined in the regulations which could be

outcome based. Regulators generally do not need to check direct compliance with legislation, but rather to audit the corporate management systems, and in some cases to review documentation provided by businesses to show compliance. While this gives greater flexibility, it also increases the risk of capture and further compounding natural monopoly characteristics.

3. **International regulatory co-operation (IRC)**: In some instances, such as emerging technologies, products generated by companies may span multiple industries and jurisdictions (Saner and Marchant, 2015[16]), requiring a co-ordinated approach among regulators. IRC takes many forms and types, and can differ in geographical scope from bilateral to multilateral (OECD, 2013[17]). These range from the most binding through the harmonisation of rules through to the lightest being exchanges of information among regulators.
4. **Self-regulation and co-regulation**: These are instruments with no government involvement. Self-regulation typically involves a group of regulated entities voluntarily developing rules or codes of conduct that regulate or guide the behaviour, actions, and standards of those within the group. While taking many different forms, co-regulation generally involves governments given explicit legislative backing in some form for the regulatory arrangements developed by industry.
5. **Regulatory experiments**: This involves a wide range of regulatory approaches that allow for greater flexibility for companies through temporary regulations. This includes sunset clauses that define goals and enable adjustments over time, to creating "regulatory sandboxes" that allow firms to roll out and test new ideas without being forced to comply with the applicable set of rules and regulations. Foresight and anticipatory innovation, discussed above, also have a role to play in this area as well by creating different futures and setting up rule-making processes to leverage on the feedback.

Good regulatory practices

Taking a different approach to regulating in support of future proofing regulation needs to be supported with the right tools to make a difference. This means reflecting the outcomes desired via future proofing in the policy making tools to ensure these outcomes are considered and addressed. In the case of the Slovak Republic, the focus is on better business outcomes. The OECD would also encourage social and environmental outcomes to be included, such as gender, as these are often key drivers for inclusive growth and sustainability in the long run.

For regulatory policy, the good regulatory practices (GRPs) of *ex ante* assessment, stakeholder engagement and *ex post* review are useful for identifying and reviewing which regulations are essential for achieving given outcomes, ultimately making regulatory compliance as straightforward and meaningful as possible. Each are described in detail in the respective chapters above, so this section will focus on their potential role in the future proofing agenda.

In regards to the Slovak priorities, GRPs facilitate a stable and enabling regulatory environment for businesses that can help boost investment, trade and entrepreneurship. While GRPs identify benefits for businesses of all sizes, they are special helpful for SMEs who are comparatively less adaptive to – and potentially disproportionately affected by – the stock and flow of regulations (OECD, 2018[12]). A burdensome regulatory environment may irritate a larger enterprise but cripple an SME, shrinking the latter's already limited resources and inhibiting its creativity to succeed.

As SMEs are an important driver of most economies around the world, a key part of future proofing regulation for the benefit of businesses is to ensure SMEs can reap the benefits of future changes. However, as OECD research notes, SMEs are lagging behind in the digital transition as most of them ignore the potential benefits derived from the adoption of digital technologies, cannot clearly identify their needs, or do not have enough capabilities or financial resources to access and effectively use digital instruments (OECD, 2019[18]). These issues intersect with key issues for the Slovak economy noted in Chapter 1, including shortages in skilled labour to take advantage of technological change and an aging

workforce. GRPs then offer a way to explicitly incorporate SMEs and related challenges for the Slovak economy into regulatory policy making to ensure their role in the future economy is considered and addressed.

Future proofing regulation then entails incorporating these key elements of a 'future proof' Slovakia into the GRPs. For *ex ante* regulatory impact assessments, this means including categories that measure the impacts of regulatory changes on key elements of the Slovak economy, including SMEs, as well as more broadly on marginalised or under represented social groups and environmental outcomes. Actively reaching out to these groups and including their voices in stakeholder engagement processes helps the government understand more deeply how policy can affect these groups now and in the future. Finally, reviewing *ex post* the stock of regulations to see where bottlenecks create difficulties for these groups can help amend and revise regulations to make them fit for purpose going forward. Supporting this with strong oversight is a critical link that can support implementing these formal requirements.

Using behavioural insights as an innovative regulatory policy making tool

It is also important to think beyond using regulatory policy processes and practices more effectively to address future needs. Governments need to consider how new innovations in policy making can provide new tools and methods for making more effective policies. This section will specifically focus on the benefit and method for applying behavioural insights (BI) to regulatory policy as a method for creating better policy now and for the future.

OECD countries around the world have been turning to innovative policy-making methods and tools as a means of making more effective public policy (OECD, 2019[19]). BI was one of the earliest tools adopted by governments, beginning with the UK in 2010. Policy makers often assumed that humans make "rational" decisions and built policy based on this model. However, BI has demonstrated that social context and behavioural biases systematically influence people's abilities to act rationally, and often counter to these models of rational decision making.

The initial rise of BI came from a demand for more effective and efficient policymaking, in particular achieving better outcomes without resorting to additional rules or sanctions (OECD, 2017[20]). This was popularised as "nudging," which is "any aspect of the choice architecture that alters people behaviour in a predictable way without forbidding any options or significantly changing their economic incentives" (Thaler and Sunstein, 2008[21]). Over the next decade, behavioural research and application has demonstrated that BI is more than just nudge, but rather a suite of behaviourally informed approaches to designing and delivering policy (OECD, 2019[22]).

It is for this reason that policy makers around the world have turned to the field of BI for a clear methodology that generates evidence on how people "actually" behave. The field of BI is fundamentally about analysing policy problems based on lessons derived from the behavioural and social sciences, collecting evidence of which solutions works and which do not, and applying these findings to improving the outcomes of public policy.

This has been especially important for regulatory policy, where much of the early influence of behavioural insights was seen (Lunn, 2014[23]). Regulatory policy, especially in the field of economic regulation, draws heavily on deductive models – applying economic concepts of rationality and incentives to solving issues in regulation and market failures. One of the earliest contributions of behavioural insights to regulatory policy has been to support possible alternative, non-rule based interventions (Lunn, 2014[23])and has evolved since they to include different ways BI can support better regulatory policy making for support behaviour change in individuals and organisations (OECD, 2020[24]).

As with future proofing regulation, it is the desire of the Ministry of Economy to also develop a strategy to use BI in regulatory policy making. At the time of writing this review, the development of this strategy was still in the nascent stages. The section aims to help support the Ministry in the development of this strategy by introducing the BASIC methodology for applying behavioural insights, connecting BI with other work done in the Slovak Republic, and bringing lessons from around the world that may support the further development of BI.

Current practice of behavioural insights in the Slovak Republic

The Slovak Republic established a centrally-located team to conduct BI, known as Behavioural Research and Innovations Slovakia (BRISK). BRISK was established in February 2019 and sits in the Office of the Deputy Prime Minister for Investments and Information Technology (BRISK, 2019[25]). It has been given a four-year mandate to investigate the applications of BI in the Slovak Government, with a focus on a behaviourally-informed digital public administration and simplifying communication. It will also create methodologies and manuals for use by the Slovak Public Administration.

BRISK operates a partnering approach, whereby they can also receive requests by other government entities to support behaviourally-informed work. They have identified some early projects on matching job seekers with positions with the City of Bratislava and trials on taxes with the Ministry of Finance. They are also working with the Public Procurement Office to digitalise end to end the procurement process, which is in line with their focus on digital public administration.

BI has also been used on a more ad hoc basis previously inside the Slovak Public Administration. According to the (Lourenço et al., 2016[26]), there were at least three previous uses of behavioural-informed or aligned initiatives in Slovakia: increasing organ donation with the Ministry of Health, increasing tax compliance with the Ministry of Finance, and raising enrolment in pension schemes with the Ministry of Labour, Social Affairs and Family.

(Lourenço et al., 2016[27]) also notes at least three institutions academic supporting BI in government:

- The Institute of Experimental Psychology, Slovak Academy of Sciences: Conducts research in behavioural decision-making and on the influence of personality and cognitive variables on the process of decision making and self-regulation in naturalistic situations.
- The Centre of Trans-disciplinary Studies of Institutions, Evolution and Policies (CETIP): A collaborative research network dedicated to generating novel ideas in environmental research, education and policy making. CETIP's main mission is interdisciplinary research across natural and social sciences. It focused in particular on incorporating institutional, behavioural and ecological economics into the environmental governance and policy making. Based in Slovakia and associated with the Slovak Academy of Sciences, CETIP is a supra-regional network involving scholars from Slovakia, Czech Republic and Slovenia.
- The Faculty of Economics, Matej Bel University, Slovakia: Created a “calculator of future savings” using behavioural levers such as framing and anchoring to explain the impact of savings strategies on the final pension pot. Moreover, the “Savings Manager” is a research project focused on streamlining and automating savings to avoid sub-optimal decisions. Further research is oriented on “decumulation” strategies. Another study – Annuity Selector – applies principles of behavioural economics to show where, how and why a suboptimal choice is made. This study informed the law on old-age pension saving to improve the annuity selection process.

How to apply behavioural insights: The BASIC Toolkit

A key feature of the BI methodology is its empirical approach, driven by experimentation and piloting. This approach also allows policy makers to experiment and test solutions at smaller scale to determine the best course of action. As a result, governments can test multiple policy solutions with the beneficiaries at once before committing to resources to implementing full policy solutions that may need to be revisited later.

OECD (2019[22]) released the BASIC Toolkit. BASIC is an acronym for the five steps policymakers can go through to apply BI to public policy:

- **Behaviour**: Identify and better understand the behavioural policy problem from the non-behavioural policy problem;
- **Analysis**: Review the available evidence to identify the behavioural drives of the problem;
- **Strategies**: Translate the analysis into behaviourally-informed strategies;
- **Intervention**: Design and implement an intervention to test which strategy best addresses the problem; and,
- **Change**: Develop plans to scale and sustain behaviour.

The BASIC Toolkit equips the policymaker with best practice tools, methods and ethical guidelines for conducting BI projects from the beginning to the end of a public policy cycle. Earlier BI frameworks have primarily focused on the end stages of the policy cycle such as experimentation or compliance while less emphasis is placed on the behavioural analysis of a policy problem (OECD, 2019[22]). BASIC aims to bridge this gap by providing guidance on how to apply to BI to *ex ante* appraisal as well as the *ex post* evaluation stage of a policy cycle. This approach is reflected in the five stages of BASIC (Table 9.1). By understanding how and under what circumstances BI can be applied to cause behaviour change, policymakers are far more likely to design and deliver more effective policies.

Table 9.1. Applying BASIC to reduce missed medical appointments

Stage	Description	Example
BEHAVIOUR	Identify and better understand your policy problem.	Reduce costs incurred by unused government services caused by citizens failing to attend their medical appointments.
ANALYSIS	Review the available evidence to identify the behavioural drivers of the problem.	People have limited attention and recall but tend to respond to environmental cues.
STRATEGY	Translate the analysis to behaviourally informed strategies.	Send timely SMS reminders that include the cost of a missed appointment to the health system.
INTERVENTION	Design and implement an intervention to test which strategy best addresses the problem.	Test whether the new SMS reminders are more effective in reducing missed appointments than the status quo.
CHANGE	Develop plans to scale and sustain behaviour.	Share results with citizens, apply findings to system-wide reminders and monitor long-term consequences of the intervention.

Institutional design of behavioural insights around the world

OECD (2017[20]) presents the finding of the first ever international study of BI institutions, which surveyed 60 units applying BI around the world. They survey finds that support for BI can come from various places. It is often driven from high-level leadership with the intention of using BI to improve policy making, often with the support of partnerships with academic or non-profit institutions that can lend capacity and capabilities within government. Where support did not come from high-level leadership, it was supported by agency heads and senior management or directly from ministers. In some cases, the use of BI can be driven by units or divisions with the institution, often dedicated to economic analysis and statistics, or a combination of leadership's commitment paired with some push from a unit or division. In a few cases without leadership or institutional support, BI was driven by individual initiatives or external support, often in the form of external funding.

OECD (2017[20]) further finds a variety of institutional models that stem from this support. It argues that they can broadly be condensed into three:

- *Central steering model*: specialised units usually within the Centre of Government focusing fully or in part on applying, supporting, and advocating for the use of BI across government.
- *Specialised model*: Existing units within a department or specialised agency at central government or local government levels applying BI.
- *Project model*: BI used by practitioners or policy makers for specific projects or through specialised teams.

These models are not mutually exclusive. They co-exist, evolve over time and develop patterns of co-ordination (both formal and informal) between the different models.

Expertise in applying BI can be either via internal or external sources. Many governments around the world hire experts or behavioural scientists with degrees in psychology, social sciences, anthropology, economics and neuroscience, among others, to work on BI within the organisation. Many institutions combine these experts with staff from other disciplines to offer a multi-disciplinary approach to applying BI. Other institutions have either recruited experts to work part-time or have engaged external experts on a consultancy basis to help advise, design, develop and conduct the research, surveys, experiments and trials for behaviourally informed initiatives (OECD, 2017[20]). In the case of Slovakia, the presence of analytical units with experts in related fields provides a potential ready-made opportunity to leverage some internal expertise to support the application of BI internally.

In regards to resources needed to conduct BI experiments, OECD (2017[20]) finds that costs are often not an issue with often minimal (i.e. few thousands) costs associated with conducting interventions. Some, however, did cost more – in rare cases over a million. This may be a result of the embeddedness of BI, in that it is using existing government budget so the cost to government is negated.

Ethics are often cited as a concern when deciding to start applying BI. The survey conducted for OECD (2017[20]) finds that this is actually a barrier for surprisingly few, possibly because the respondents were operating in large part with support from senior leadership. Nonetheless, addressing this concern has been a focus of the behavioural community (OECD, 2017[28]). In response, ethical guidelines are included in the BASIC Toolkit (OECD, 2019[22]), noted above, that present guidelines for applying BI responsibly according to:

- *General guidelines*: Always conduct an ethical evaluation of behaviourally informed interventions; note that public acceptance of BI does not make it always ethically permissible; and, carefully consider issues related to consent and awareness.
- *Before beginning an intervention*: Consider establishing an ethical review board; ethical supervision of data collection, use and storage; observe existing ethical guidelines and codes of conduct.
- *Each stage of BASIC*: Specific guidelines are enumerated and can be found in OECD (2019[22]).

Assessment and recommendations

The Ministry of the Economy is taking positive steps with the goal of elaborating strategies on future proofing regulation and applying behavioural insights. The Ministry has clearly identified these areas as being important to designing and delivering more effective and efficient regulatory policy, which should have positive outcomes. This is also in line with OECD member and non-member countries around the world who are adopting innovative approaches to policy making. However, the focus of this strategy is on business outcomes and should be extended further to include important societal and environmental outcomes, such as for gender or under-represented groups, which are also key drivers in promoting better economic outcomes.

The challenge will be developing and implementing these strategies in an environment of competing priorities. The Ministry is taking on a number of ambitious reforms, including the RIA 2020 strategy and use of artificial intelligence. Collectively all these reforms, strategies and priorities will take up significant resources. This could result in two negative outcomes, especially for the strategies on future proofing and behavioural insights. One the one hand, these latter strategies are not currently in development and have been delayed in favour of prioritising the RIA 2020 strategy. There is a risk that they experience significant further delays as finite human and financial resources may continue to be diverted away to supporting other institutional priorities. On the other, incentives may encourage a rushing of these strategies to keep from further delays and progressing in line with the other priorities. Such a rushed or under-considered design and implementation could lead to a lack of confidence and trust in these new innovative methods, leading to a lack of take up, reduced overall impact, and a reticence of engaging in similar reforms in the future due to a perceive "failure" in the previous iterations. Either allocating or obtaining the right amount of resources to the development and implementation of these strategies will be essential for their longer term success.

The Ministry may find further challenges in demonstrating the effectiveness of these strategies amongst the outcomes from all the other reforms and new programmes under way. Lessons learned from the roll out of innovative strategies around the world, especially behavioural insights, have demonstrated that effective implementation is supported by two elements: a clear idea of areas where the innovative approaches can be applied with success and a defined period of time to deliver these results. For example, when the United Kingdom created the Behavioural Insights Team (BIT), they were mandated to deliver a ten-to-one return on investment over the first two years, which forced BIT to focus on a narrow set of policy problems that could demonstrate the effectiveness of BI (Halpern, 2015[29]). This may be difficult for the Ministry as multiple reforms compete for time, money and attention for senior decision makers.

Considering the broader objectives of the Slovak Government in implementing similar reforms provides an opportunity to gain senior level support and maximise the impact of these strategies. There is clear focus from the Centre of Government to develop capacities to use strategic foresight, anticipatory governance and behavioural insights with teams established in the Office of the Government and the Deputy Prime Minister's Office. These units have experts with background in these subject areas, and experience already in developing strategies and implementing them. Connecting and partnering with these institutions would provide the Ministry of the Economy an opportunity for accelerating the development of their strategies and reforms, as well as for collaboration, mutual learning, and expanding impacts on a broader level. This may also provide sustainability in terms of political support and funding if the Ministry can demonstrate the wider impacts and connections of their efforts.

Mobilising analytical units may offer significant internal support for the roll out of these strategies in the medium to long term. Implementing strategies on future proofing regulation and behavioural insights will require expert support. For countries, this typically comes in one of two forms: hiring experts with a mandate to build capacity to deliver over a several year mandate or using external experts in consultancy-style relationships to design and deliver on initial projects. The Slovak Government is in a position of strength, as they have already build analytical units in some ministries that are stocked with experts in various technical fields, and are well regarded for their technical and academic knowledge and skills. Mobilising these experts may provide ready-made and in-house solutions to the initial roll out of both strategies, enabling short implementation periods and faster results.

The OECD Secretariat makes the following policy recommendations:

- **Develop and gain high-level support from senior levels in government for both strategies**. This should include a clear idea which policy areas in most need of these approaches and identify projects that could return early positive returns to demonstrate the effectiveness of the tools. The Ministry should use this strategy and its positive outcomes to "make the case" for human and

financial resource allocations to support these strategies, and how to differentiate the outcomes of these strategies compare to the others.

- **Carefully consider how best to institutionalise and embed these two strategies in the work of the Ministry**. Work by OECD member and non-member governments around the world on both strategic foresight/anticipatory governance and BI gives many examples of how to institutionalise teams. Careful consideration needs to be given towards how these teams are created, and especially how they are embedded in the policy-making process to ensure their work is not isolated or disconnected from real policy development and implementation.
- **Establish connections and collaborate with other parts of the Slovak Public Administration who are currently working on foresight/anticipatory governance and behavioural insights** to co-ordinate approaches and leverage collective expertise, as well as address policy problems in a joined-up approach. Special attention should be paid to ensuring that efforts are not duplicated and that senior decision makers see the mutual benefit of these approaches across government. This could be especially relevant for the BRISK team in the Deputy Prime Minister's Office who has a mandate to support Ministry in applying BI. Establishing an informal or formal co-ordination network could provide an early win opportunity.
- **Consider various approaches to developing expertise and capacity to deliver efficiently on these new strategies**. Internally, explore the opportunity to leverage the expertise of analytical units to support foresight/anticipatory governance and behavioural insights. Externally, the Ministry could consider partnerships with universities or private partners to lend expertise and support, either via consultancy-type contracts or secondments to work with the Ministry.
- **Create opportunities for change as these new strategies are designed and implemented**. For instance, consider workshops and capacity building events to introduce and capacitate Ministry officials on the benefits of foresight/anticipatory governance and BI. Pay special attention to establishing linkages between those who will be doing innovative work and officials who need to be incorporating the findings into their policies. Use success stories to create broader support for the use of these tools. Finally, disseminate findings to both internal government audiences, including senior decision makers and politicians, as well as externally to the respective communities so that other countries can learn what works, as much as what did not.

Notes

[1] Future literacy has been defined as the "capacity to explore the potential of the present to give rise to the future" (Miller, 2007[30]) which means recognising that developments in the present are signals of what the future might hold.

[2] Presented in a working paper *Regulatory Future of Emerging Technologies: A Scoping Paper on Gaps and Opportunities*, presented to the Regulatory Policy Committee in November 2018.

References

Ayres, I. and J. Braithwaite (1992), *Responsive regulation : transcending the deregulation debate*, Oxford University Press. [14]

BRISK (2019), *Behaviorálny výskum a inovácie Slovensko*, https://lepsiesluzby.digital/ (accessed on 7 February 2020). [25]

Deloitte (2017), *The future of regulation: Principles for regulating emerging technologies*, https://www2.deloitte.com/us/en/insights/industry/public-sector/future-of-regulation/regulating-emerging-technology.html (accessed on 7 February 2020). [7]

EESC (2016), *Future proof regulation: Exploratory opinion from the Slovak presidency*, https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/future-proof-regulation-exploratory-opinion-slovak-presidency (accessed on 7 February 2020). [1]

European Commission (2019), *The Innovation Principle*, European Commission, Research and Innovation Deaprtment, https://ec.europa.eu/info/research-and-innovation/law-and-regulations/innovation-friendly-legislation_en (accessed on 7 February 2020). [5]

European Commission (n.d.), *Better regulation: why and how | European Commission*, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en (accessed on 7 February 2020). [4]

Halpern, D. (2015), *Inside the nudge unit: how small changes can make a big difference*, Penguin Random House UK, London. [29]

ISA (n.d.), *Inštitút pre stratégie a analýzy*, https://www.vlada.gov.sk/institut-pre-strategie-a-analyzy-isa/ (accessed on 7 February 2020). [8]

ISA (n.d.), *National Productivity Board*, Inštitút pre stratégie a analýzy, Bratislava, https://www.vlada.gov.sk/data/files/7654_nrp-sr-isa-en.pdf (accessed on 6 March 2020). [9]

Lourenço, J. et al. (2016), *Behavioural Insights Applied to Policy: European Report 2016*, European Commission, http://dx.doi.org/10.2760/903938. [26]

Lourenço, J. et al. (2016), "Behavioural Insights Applied to Policy: Slovakia Country Overview", in Lourenço, J. et al. (eds.), *Behavioural Insights Applied to Policy: European Report 2016*, European Commission, Brussels, https://ec.europa.eu/jrc/sites/jrcsh/files/jrc-biap2016-slovakia_en.pdf (accessed on 7 February 2020). [27]

Lunn, P. (2014), *Regulatory Policy and Behavioural Economics*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264207851-en. [23]

Miller, R. (2007), "Futures literacy: A hybrid strategic scenario method", *Futures*, Vol. 39/4, pp. 341-362, http://dx.doi.org/10.1016/j.futures.2006.12.001. [30]

OECD (2020), *Behavioural Insights and Organisations: Fostering Safety Culture*, OECD Publishing, Paris, https://dx.doi.org/10.1787/e6ef217d-en. [24]

OECD (2019), *Embracing Innovation in Government - Global Trends 2019*, https://trends.oecd-opsi.org/ (accessed on 7 February 2020). [19]

OECD (2019), *OECD Digital for SMEs Global Initiative: Concept Note*, http://www.oecd.org/going-digital/sme/resources/D4SME-Brochure.pdf (accessed on 7 February 2020). [18]

OECD (2019), *Regulatory effectiveness in the era of digitalisation*, https://www.oecd.org/gov/regulatory-policy/Regulatory-effectiveness-in-the-era-of-digitalisation.pdf (accessed on 7 February 2020). [6]

OECD (2019), *Strategic Foresight for Better Policies*, https://horizons.gc.ca/en/our-work/metascan-3-emerging-technologies/ (accessed on 7 February 2020). [10]

OECD (2019), *Tools and Ethics for Applied Behavioural Insights: The BASIC Toolkit*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9ea76a8f-en. [22]

OECD (2018), *Good Regulatory Practices to Support Small and Medium Enterprises in Southeast Asia*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264305434-en. [12]

OECD (2018), *Innovation facets part 6: Anticipatory innovation*, https://oecd-opsi.org/innovation-facets-part-6-anticipatory-innovation/ (accessed on 7 February 2020). [11]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [3]

OECD (2017), *Behavioural Insights and Public Policy: Lessons from Around the World*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264270480-en. [20]

OECD (2017), *Behavioural Insights in Public Policy: Key Messages and Summary from OECD International Events*, http://www.oecd.org/governance/regulatory-policy/OECD-events-behavioural-insights-summary-may-2017.pdf (accessed on 7 February 2020). [28]

OECD (2016), *The Governance of Inclusive Growth: An Overview of Country Initiatives*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264265189-en. [2]

OECD (2013), *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264200463-en. [17]

Roca, J. et al. (2017), "When risks cannot be seen: Regulating uncertainty in emerging technologies", *Research Policy*, Vol. 46/7, pp. 1215-1233, https://doi.org/10.1016/j.respol.2017.05.010. [15]

Roca, J. et al. (2017), "When risks cannot be seen: Regulating uncertainty in emerging technologies", *Research Policy*, Vol. 46/7, pp. 1215-1233, http://dx.doi.org/10.1016/j.respol.2017.05.010. [13]

Saner, M. and G. Marchant (2015), "Symposium: Proactive International Regulatory Cooperation for Governance of Emerging Technologies", *Jurimetrics*, Vol. 55, pp. 147-178, http://dx.doi.org/10.2307/24395569. [16]

Thaler, R. and C. Sunstein (2008), *Nudge : improving decisions about health, wealth, and happiness*, Yale University Press. [21]

OECD Reviews of Regulatory Reform

Regulatory Policy in the Slovak Republic

TOWARDS FUTURE-PROOF REGULATION

Slovakia has introduced important reforms to strengthen its regulatory policy framework, but certain challenges remain. This report assesses the country's regulatory management capacity by taking stock of regulatory policies, institutions and tools, including administrative simplification policies, *ex ante* and *ex post* evaluation of regulations, stakeholder engagement practices, multi-level regulatory governance arrangements and innovative approaches to regulation. The review describes trends and recent developments, identifies gaps in relation to good practices and offers policy recommendations based on best international practices to strengthen the government's capacity to manage regulatory policy. Improving the entire regulatory policy cycle will ensure that regulations are built on a foundation of solid evidence and public participation and are designed to improve the security, health and well-being of citizens at a reasonable cost.

Operational Programme
Effective
Public Administration

European Union
European Social Fund

PRINT ISBN 978-92-64-86984-4
PDF ISBN 978-92-64-48215-9

9 789264 869844