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Improving Information to the Croatian Business Community — BIZimpact II

Consultation Arrangements for Economic Impact Assessment for SMEs

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Ministry of Entrepreneurship and Crafts **BIZimpact**

Improving Information to the Croatian Business Community



Pohl Consulting and Associates GmbH



0.I. PROJECT SYNOPSIS

Contract Reference:	Country of Assignment:	Project Duration:	Contracting Authority:
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Project Title:		Reporting Period:	Report Submitted on:
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Commission Representation in Croatia:		Project Manager: N/A	

The Overall Objective of the project is the: "Improvement of the business environment thus enhancing the competitiveness in the country" (ToR, p.8).

The Project Purpose is threefold:

- > Further develop the capacity of policy makers and business organisations to identify, analyse and communicate future impact of key regulatory areas for business in Croatia;
- Improve the awareness of the business community regarding these key areas;
- > Leverage the development of a stronger culture of entrepreneurship specifically focused on regional development.

The following Planned Results are anticipated:

- Economic Impact Assessment (EIA) [for SMEs] developed and implemented;
- Consultation process/Public-private Dialogue with business community and awareness of the business community in key legislative fields improved;
- Dissemination of Information and Awareness-raising upgraded;
- > Development of partners/regional capacities for information campaigns conducted.

Specific Objectives of the Assignment:

Component 1: Economic impact assessment for SMEs

Activities include:

- > Developing a methodology for Economic Impact Assessment (EIA) for SMEs (measuring the economic impact of new laws and regulations), including an "SME test" in line with best EU practice;
- Publishing a Manual and providing training on EIA for SMEs procedures;
- Developing an EIA for SMEs information base;
- Developing a Virtual Centre of Excellence on EIA for SMEs;



- Organising study tours;
- > Organising awareness-raising campaigns and events on EIA for SMEs.

<u>Component 2: Development of consultation process/Public Private Dialogue with business community</u> <u>within the context of EIA for SMEs</u>

Activities include:

- > Evaluating current Public-Private Dialogue mechanisms and recommending improvements relevant to the EIA for SMEs consultation process;
- Developing the consultation process and an accompanying manual;
- Developing a Croatian Business Test Panel;
- > Developing and implementing tools for e-consultation.

Component 3: Dissemination of Information and Awareness-raising

Activities include:

- Updating and republishing the existing seven Mini Guides for SMEs produced during the first stage of the project;
- Developing and publishing a new series of Mini Guides on new legislative areas, based on research of the needs of small businesses;
- Providing training to beneficiaries and other partners on the legislative areas covered by the new Mini Guides;
- > Developing and publishing a newsletter and e-newsletter containing essential information for small businesses.

Component 4: Development of partners/regional capacities for information campaigns

Activities include:

- > Assessing beneficiaries' communications activities and recommending improvements;
- > Developing Communication Strategies and Action Plans for each beneficiary plus an accompanying manual relating to the awareness-raising campaigns and activities of the project;
- Organising national visibility events;
- Organising regional information campaigns and visibility events;
- > Undertaking a survey of small businesses regarding their key information needs and priorities.

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The opinions expressed in this Report are those of the authors and do not necessarily reflect the opinions of the European Union or any other organisation mentioned. As a result, these will be verified before implementation of any of the recommendations contained herein.



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ACRONYMS

Acronym/term	Meaning
AZTN	Agency for Protection of Market Competition
BIZimpact II	Improving Information to the Croatian Business Community – BIZimpact II
ВТР	Business Test Panel
EC	European Commission
EIA	Economic Impact Assessment
EU	European Union
EUR	Euro
GLO	Government Legislation Office
HAMAG INVEST	Croatian Agency for SMEs and investments
НGК	Croatian Chamber of Economy
НОК	Croatian Chamber of Trades and Crafts
HSZ	Croatian Association of Cooperatives
HUP	Croatian Employers' Association
IA	Impact Assessment
IPA	Instrument for Pre-Accession Assistance
KE	Key Expert
MINGORP	former Ministry of Economy, Labour and Entrepreneurship
MINPO	Ministry of Entrepreneurship and Crafts
NGOs	Non-Governmental Organisations
OG	Official Gazette
PC&A	Pohl Consulting and Associates
PPD	Public Private Dialogue
RIA	Regulatory Impact Assessment
SME	Small and Medium-sized Enterprise
ToR	Terms of Reference



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1. EXECUTIVE SUMMARY

An analysis of Regulatory Impact Assessment (RIA) systems, the Republic of Croatia's included, demonstrates that the notion of consultation is part and parcel of the Regulatory impact assessment (RIA) processes. However, consultation is not the same as public private dialogue (PPD). Whereas the former refers to asking for comments, views and feedback from stakeholders, the latter refers to two-way communication built on mutual interests and potentially shared objectives to ensure a regular exchange of views. In the context of RIA, consultation is the aim of the exercise rather than private public dialogue per se.

The reason why consultation is critical to the RIA process is simple and compelling: laws and regulations are much more likely to be effective if the stakeholders that are likely to be directly (and indirectly) influenced by them are given the opportunity to present their views on issues such as the nature of the problem, the possible regulatory and non-regulatory options for solving the problem, the likely costs and benefits of the possible options, the likely implementation and enforcement consequences of the possible options / proposed solution, etc. Put simply, consultation leads directly to better laws and regulations.

Therefore, this report examines the Croatian RIA system and, in particular, explores the issue of consultation, based on the RIA Law (2011), RIA Regulation (2012), as well as the specific guidance issues by the body responsible for the RIA system in Croatia, namely the Government Legislation Office (GLO): "RIA Guidelines for Civil Servants" (GLO, 2012).

The conclusion is clear. Although there are provisions, guidelines and timescales for consultation, these are very broad in nature. In the context of the Economic Impact Assessment (EIA) for Small and Medium sized Enterprises (SMEs) Manual being developed by the BIZimpact II project, there is a need for further guidance for the Ministry of Entrepreneurship and Crafts (MINPO), as well as the key stakeholders of the SME sector.

Therefore, this report reviews the experience with RIA consultation, RIA procedures in Croatia, consultation tools available to MINPO and presents guidance on various aspects of consultation, in the context of the EIA for SMEs process.

The focus is on guidance on the following stages of the process:

- Procedure for Thesis and Initial IA;
- > Procedure for Regulation involving the Regular (non-RIA) Process;
- Procedure for Draft of the Proposal of RIA Statement;
- Procedure for Proposal of RIA Statement and Draft of the Proposal of Regulation;
- > Emergency / Accelerated Procedure (including EU Directives).

The content of this report, once discussed with the project beneficiaries, is to develop the content of this report (especially Chapter 4) into material to be incorporated into the Consultation Section of the EIA for SMEs Manual, which is being development under Activity 1.1. RIA Methodology of this project.



2. INTRODUCTION

2.1 Background

The "Improving Information to the Croatian Business Community" (BIZimpact II) project lasts for two years from March 2013 to March 2015 and is a follow-up to the first BIZimpact Project implemented in 2007-2009. It forms part of the "Regional Competitiveness Improvement Programme" funded by the European Union IPA Programme and the Government of the Republic of Croatia. The main beneficiary of the project is the Ministry of Entrepreneurship and Crafts (MINPO). Other beneficiaries include the Croatian Agency for SMEs and Investment (HAMAG INVEST), the Croatian Chamber of Economy (HGK), the Croatian Chamber of Trades and Crafts (HOK), the Croatian Employers' Association (HUP) and the Croatian Association of Co-operatives (HSZ).

The overall Project objective is to improve the business environment, thus enhancing competitiveness in the country. The specific purposes of the BIZimpact II project are to:

- > Develop further the capacity of policy-makers and business organisations to identify, analyse and communicate future impact of key regulatory areas for business in Croatia;
- > Improve awareness of the business community regarding key regulatory areas; and
- > Leverage development of a stronger culture of entrepreneurship specifically focused on regional development.

This report covers Component II (Public Private Dialogue), Activity 2.2 of the project, namely "PPD / Consultation Aligned to EIA for SMEs," focusing on the following elements (Inception Report, 2013):

- > Take as its starting point the minimum requirements of the RIA system, which allows three opportunities for public engagement (RIA Guidance for Civil Servants, GLO, 2012):
 - Proposal of the Plan of Normative Activities: min. 15 days during 1-30 September (websites);
 - Web consultations and public discussions on Draft of the Proposal of RIA Statement: min. 30 days (Expert Bearer of the Drafting of the Regulation; hereinafter Expert Bearer);
 - Web consultations and public hearings on Proposal of RIA Statement and Draft of the Proposal of Regulation: min. 15-30 days (Expert Bearer);
- Incorporate the procedures set out in the new EIA for SMEs Manual (as per Activity 1.1);
- Consider the recommendations on PPD/Consultation (Activity 2.1);
- > Based on the above, prepare the PPD section of the EIA for SMEs Consultation Manual.

The report represents an assessment of the current requirements for Consultation / Public Private Dialogue (PPD) in relation to the RIA system in Croatia, as well as recommendations for the improvement of the Consultation / Public Private Dialogue (PPD) in relation specifically to the EIA for SMEs system, as far as MINPO is concerned as an Expert Bearer. Based on the analysis and recommendations, the EIA for SMEs Consultation Manual will be prepared.

Thus, this report focuses on the following themes:

- What are the Consultation/PPD requirements for the RIA system;
- What are the Consultation/PPD requirements of the EIA for SME system;
- What are the Consultation/PPD recommendations;
- > What the EIA for SMEs Manual should incorporate as far as SME consultation is concerned.



3. CONSULTATION / PPD AND RIA

3.1 Introduction

This chapter examines the existing good practice in relation to four themes:

- Consultation and PPD in general;
- Consultation and RIA;
- RIA system in Croatia;
- Consultation in the Croatian RIA System.

The above lead to a set of conclusions regarding Consultation/PPD and EIA for SMEs.

3.2. Consultation and PPD in General

A key finding of a sample survey of 1,127 SMEs commissioned by the BIZimpact II project (BINS, 2013 carried out by Target) is that the current levels of SME participation in consultation and dialogue processes in Croatia is low, ranging from HAMAG-INVEST (2.2%), 9.2% MINPO, with the highest level of dialogue and consultation being experienced with HOK (21.1%) and HSZ (22.8%). The degree of satisfaction with such consultation and dialogue as exists ranges from 3.1 out of 5 (MINPO) to (3.6) HSZ. There is, however, strong interest in participating in future consultations and dialogue, such as the Croatian Business Test Panel (BTP); 57% of the SMEs participating in the survey expressed and interested, ranging from 47% of cooperatives to 67% of medium-sized enterprises.

The BIZimpact II report "Review of Public Private Dialogue and Recommendations" (2013) represents a detailed analysis of PPD, focusing on following main issues:

- What is PPD and its relevance to the SME sector;
- PPD mechanisms relevant to SMEs and EIA for SMEs;
- International good practice in relation to PPD for SMEs;
- Recommendations for PPD in Croatia.

The main points of relevance to this report, with its focus on RIA, include the following:

- > PPD refers to a structured interaction between the public and private sectors in promoting the appropriate conditions for SME development. It also refers to stakeholders working together to define and analyse problems, discuss and agree specific reforms and work to ensure that these become reality.
- Thus, PPD is more than just the provision of information (one-way process) and certainly more than consultation (asking for comments, views and feedback of stakeholders). Dialogue is clearly a two-way communication built on potential mutual interests and shared objectives to ensure a regular exchange of views. However, it is less than the ultimate form of engagement, namely partnership, which involves shared responsibilities between government and stakeholders in each step of the political decision-making process.
- As a general rule, there has to be sufficient time for consultation and/or PPD to be effective. The PPD and/or consultation period should be 12 weeks or eight weeks as the minimum when 12 is not possible (EC, Smart Regulation, 2010, p.10).
- Although there are various forms of engagement with the SME sector in Croatia, these do not yet go beyond information and consultation. However, the needs of good practice in policy making, as well as other requirements such as the Law on the Right of Access to Information (2013), Codex on Consultation (2009), RIA



Law (2011) and RIA Regulation (2012), increasingly necessitate a greater emphasis on effective PPD, both for the SME sector in general and for the EIA for SMEs and RIA process specifically, which ensures that:

- PPD is a phased, long term process that can take over three years to mature;
- > PPD is legitimate, inclusive, transparent, focused, flexible, representative and policy-oriented;
- > PPD is based on minimum standards to be adhered to in relation to content, target groups, time limits, acknowledgement and feedback, etc.;
- PPD is based on a formal/legal mandate, structure, participation, champions, facilitator, analytical outputs
 / recommendations, shared vision, monitoring and evaluation, sub-regional / sectorial structures
 (depending on needs), etc.;
- > PPD is based on a policy lead (Expert Bearer) that commits the necessary political capital, time and resources to ensure that PPD becomes effective and sustainable over time.

To conclude, PPD and consultation are distinct. Whereas the former refers to asking for comments, views and feedback from stakeholders, the latter refers to two-way communication built on mutual interests and potentially shared objectives to ensure a regular exchange of views. While both are relevant to the SME sector in general, this is not necessarily the case in relation to the application of RIA to the SME sector.

3.3. Consultation and RIA

It should be noted that when it comes to RIA, the issue is not so much "PPD" per se, as actually "consultation" that is at the forefront of consideration. Pinto (2013) stresses this critical distinction:

"Indeed, there appears to be a degree of confusion among policy makers in respect to the difference between "consultation" and "dialogue", which is symptomatic of the current situation in Croatia. But a reading of the literature and good practice in this area leaves little room for doubt in relation to the different levels of engagement between the public and private sectors, namely: level 1: information (one-way provision of information), level 2: consultation (asking for comments, views and feedback), level 3: dialogue (two-way communication built on mutual interests and potentially shared objectives to ensure a regular exchange of views), and level 4: partnership (shared responsibilities in each step of the political decision-making process)." (Pinto, 2013, p.6)

Therefore, what matters in the context of RIA is that consultation:

"... is a form of initiative where the public authorities ask NGOs [and other stakeholders] for their opinion on a specific policy topic or development. Consultation usually includes the authorities informing NGOs of current policy developments and asking for comments, views and feed-back. The initiative and themes originate with the public authorities, not with the NGOs [and other stakeholders]. Consultation is relevant for all steps of the decision-making process, especially for drafting, monitoring and reformulation." (Code of Good Practice for Civil Participation in the Decision-Making Process, 2009, p.8)

Consequently PPD, which is a much wider issue, is not a consideration in RIA since the laws and regulations typically originate from the public authorities, though aspects of PPD, such as establishing working groups of ministries and stakeholders, can and often do play a role.

A review of RIA systems throughout the world indicates that consultation is part and parcel of an effective RIA system. The reasons are not hard to establish. The process of consultation is essential in developing confidence about the workability of regulatory proposals, combined with ensuring that the various options have been properly considered not just by public authorities, but by those that are typically involved and affected by the issues of concern.



A number of suggestions are typically made in RIA Guidance, as far as consultation is concerned:

- It is a RIA necessity that public proposing new laws and regulations are required to demonstrate that consultation has been carried out with stakeholders / affected parties on the problem definition, the feasible options and the likely impacts of the those options;
- The magnitude of the proposals, in terms of the parties likely to be affected, is what typically determines who and how to consult. In other words, the consultation process is expected to be more comprehensive if the proposals are significant and likely to have far-reaching impacts;
- It is a requirement for the consultation process to begin as early as possible. This implies that if there is a twostage RIA system (e.g. Initial and Detailed Assessment), both would require consultation processes to be developed;
- In order to obtain quality feedback in the consultation process, it is important to ensure that the consultation is clear, concise and widely accessible;
- Consultation is fundamentally about asking for comments, views and feedback, however, a critical part of the process is the necessity for public authorities to respond (i.e. provide feedback) regarding the responses received and how the consultation process may or may not have influenced the law / regulation;
- > A critical factor in the whole process is to ensure that there is sufficient time for the stakeholders in the process to discuss and respond to the proposals. The EU recommendation is that this should ideally last 12 weeks but at the very least 8 weeks when 12 weeks is not possible. This is a generic guideline, rather than one specifically for RIA and would need to be adjusted in the case of a two stage RIA process;
- > Finally, it is widely recognised that the consultation part of the RIA process takes time to bed down. It is, therefore, important for Expert Bearers to establish a designated RIA Co-ordinator to be in charge of the process across all RIA consultations and to monitor, evaluate and improve the effectiveness of RIA consultation over time.

The above represents a set of general principles in relation to consultation and RIA systems, which combine with other principles, such as those of the European Commission (EC) in relation to RIA, as illustrated in the Box below.

Box 1: EC RIA Minimum Consultation Standards

Application of the minimum consultation standards advised by the EC:

- > Provide consultation documents that are clear, consistent and include all necessary information;
- Consult all relevant target groups;
- Ensure sufficient publicity and choose tools adapted to the target group(s);
- Leave sufficient time for participation [at least 8 to 12 weeks for open consultations and 20 days for meetings];
- > Provide collective or individual acknowledgement of responses and feedback [on the Internet within 15 working days].

Source: EC, Annex III: Annexes to Impact Assessment Guidelines, 2009, pp.14-15)

In terms of how these are actually applied in relation to Croatia, this depends of the RIA Law, Regulation and Guidance issues by the Government's Legislation Office. These are discussed in more detail below.

3.4. RIA System in Croatia

Following a presentation of the general principles of consultation and PPD, as well as a discussion of general good practice in relation to RIA and consultation, this section discusses the nature of the RIA system in Croatia, which has a number of key features:

- The Government's Legislation Office (GLO) has responsibility for the overall RIA system;
- The Law on RIA (Official Gazette 90/2011) was adopted in 2011 and entered into force in 2012;
- The Regulation on RIA (OG 66/12) also entered into force in 2012;
- The RIA Strategy and Action Plan were developed and approved (2012);
- Three RIA Guidelines were prepared for i) GLO ii) Public Servants and iii) Stakeholders (2012);



MINPO was re-established with specific responsibility for SMEs, including EIA for SMEs (2012).

The RIA Law (2011) and Regulation (2012) set the framework for the RIA system, namely:

- > RIA is mandatory for the one part of Government's Annual Plan of Normative Activities (defined in the Paragraph 1 of the Article 4 of the RIA Law);
- > There are four types of impact assessment (IA): fiscal, economic, environmental and social;
- GLO co-ordinates the implementation of the RIA Law, Regulation, Strategy and Action Plan;
- GLO is responsible for capacity building of civil servants in relation to RIA;
- GLO oversees the whole RIA system (individual initial IAs, as well as the detailed IAs);
- Each of the Expert Bearers have appointed a RIA Co-ordinator;
- Expert Bearers may (but do not have to) establish a RIA Unit;
- The RIA Co-ordinator co-ordinates IAs with initiators of legislation;
- Regulatory Thesis includes a description of the problem and main way to solve it. The Initial Impact Assessment gives a more detailed insight into the problem, its main fiscal, economic, environmental and social impacts, as well as a proposal for the normative solution to the problem;
- RIA Statements include an analysis of the current situation, policy options (at least two regulatory and two non-regulatory options, one of them previously proposed in the Initial Assessment), positive and negative impacts and fiscal impact;
- Consultation on Draft of the Proposal of RIA Statement is required, including posting on Expert Bearers' web sites for a period of at least 30 days;
- Competent Bodies must provide opinions within 15 working days of receipt of feedback;
- > Public discussions can last between 15 and 30 days, at least one presentation must be carried out (public presentation, round table, etc.);
- > The results of consultation, public discussions and any other events must be published by the Expert Bearer (i.e. Expert Bearer must give feedback and publish it on its website);
- > RIA Statements are final once the Competent Bodies give a positive opinion and GLO approves them;
- After positive opinions and GLO's approval, the Expert Bearer presents the Final RIA Statement and Proposal of the Regulation to the Government.

The Law, Regulation and Guidelines are not specific on Economic Impact Assessment (EIA) or any of the other prescribed forms of impact assessment. Responsibility for EIA is distributed among Expert Bearers, not least the following:

- Ministry of Economy (MINGO): focus on EIA for the economy as a whole, including large and/or state owned enterprises;
- > Ministry of Labour and Pension System (MRMS): focus on EIA for the labour market in general;
- Ministry of Entrepreneurship and Crafts (MINPO): focus on EIA for SMEs, Crafts and Cooperatives);
- > Agency for Protection of Market Competition (AZTN): focus on distortion of market competition.

Through the BIZimpact II project, ("Activity 1.1: Methodology and Manual on EIA for SMEs – including SME Test"), MINPO is developing the EIA for SMEs Methodology and Manual, explicitly setting out the exact nature of the EIA for SMEs (i.e. including Crafts and Co-operatives). This report, which connects with the EIA for SME Methodology and Manual, focuses specifically on the issue of effective Consultation in relation to the EIA for SMEs approach.

3.5. Consultation in the Croatian RIA System

Even before the RIA Law and Regulation were introduced in Croatia, it was widely understood that one of the key goals of the RIA system is to increase transparency by opening RIA process to the stakeholders, interested public and public in general. This is illustrated by the activities of the BIZimpact I project and the Impact Assessment Manual published in 2009 (see Box below).



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Box 2: Consultation and RIA

Consultation is a key part of policy-making as well as of Impact Assessment. It involves collecting the views and opinions of relevant and interested parties outside and inside government on policy proposals [...] Effective consultation is a key part of the evidencebased policy-making process. It helps in making better policy decisions since it provides information and evidence on the potential impacts of the policy options. It also contributes to more open government by improving the transparency and accountability of government. More specifically, consultation can:

- Provide wider sources of information, perspectives and potential solutions, and improve the quality of decisions reached;
- > Alert policy makers to any concerns and issues that may not be picked up through existing evidence;
- > Help to monitor the performance of current policies and whether there is need for change;
- > Foster working partnerships between stakeholder groups and the Government in addressing issues and seeking solutions;
- > Symbolise the Government's commitment to listening to the public and stakeholder groups when developing policy;
- > Help to build public trust in government and the legitimacy of decisions reached.

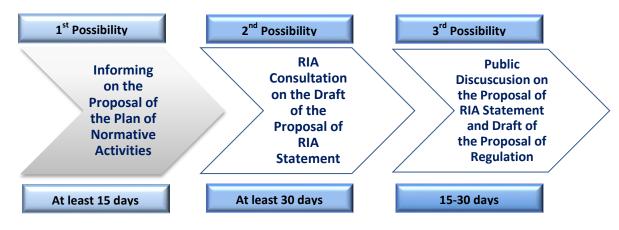
Source: MINGORP, Impact Assessment Manual, 2009

The "RIA Guidelines for Stakeholders, Public and Interested Parties" (Government Legislation Office, 2012) specifically states that:

"One of the goals of RIA is to increase transparency by opening the RIA process to the stakeholders, interested public and public in general. Parties that are not state administration and are affected by regulations should have the right to participate in the process of adopting regulations."

The GLO Consultation Guidance (2012) highlights three possibilities for the public to participate in the RIA process, as illustrated by the Figure below.





It is evident from the above that consultation is embedded within the RIA system. Some guidance is given for the three main stages, including the recommended number of days that might be involved but it is important to note that the number of days is not the maximum allowed; it is merely guidance on the minimum number of days, however, each Expert Bearer can exceed these, if appropriate. Furthermore, the RIA system is clearly in the early stages of implementation.

The three opportunities for public engagement Croatian RIA system foreseen by the RIA Guidance for Stakeholders are a good basis for further development; however, some issues are worth noting:

Firstly, a number of issues concern the Proposal of the Plan of Normative Activities, which is meant to last aminimum of 15 days during the period of 01-30 September and to be posted on the relevant Expert Bearers'websites.AtthispointitisevidentfromGLO'swebsite



(http://www.vlada.hr/hr/uredi/ured za zakonodavstvo/novosti i dogadanja/prijedlozi plana propisa za 2014

<u>godinu</u>) that 24 Expert Bearers planned legislative changes during the next year. Out of these, 16 of them actually posted the Proposal of the Plan of Normative Activities after GLO's deadline. Expert Bearers are only obliged to publish the title of the regulation, trimester in which they plan to work on the regulation and separate all planned regulations into two lists, namely, the RIA and non-RIA list. Furthermore, since this step is defined as "in order to inform" (RIA Act), Expert Bearers are not obliged to publish contact details for feedback and, should they decide to publish such information, do not have to accept any feedback received or to indeed to respond to such feedback. It is possible to conclude that the EIA for SMEs Manual should provide more specific guidance to MINPO on the above matters.

Secondly, the fact that the Consultation Guidance (2012) is silent on the Initial IAs is a major weakness. Good practice suggests that **consultation should occur throughout the RIA process**. Indeed, the evidence is the most effective use of consultation is when it begins before the initial IA is drafted (i.e. when all the options are still on the table, rather than when the proposed solution exists (i.e. Initial IA) rather than when the detailed RIA Statement has been prepared (i.e. when the process is approaching the finishing line and the law has been drafted). It is possible to conclude that the EIA for SMEs Manual should provide more specific guidance to MINPO on the above matters.

Thirdly, each Expert Bearer is free to undertake exercises relating to RIA consultation which are **"over and above" the minimum recommended by the GLO** through the RIA Law and Guidance, but this is currently not the practice. It would appear that all Expert Bearers will need to increase the last two of the three opportunities for consultation to at least 30 days in order to comply with the Law on the Right of Access to Information. Furthermore, this could theoretically be extended to 8-12 weeks to comply with the EU guidance on consultations (see EC, 2012). It is possible to conclude that the EIA for SMEs Manual should provide more specific guidance to MINPO on the above matters.

Fourthly, a significant amount of legislation appears to not be covered by the RIA system and the consultation process at present. In other words, since they are carried out under the **Accelerated or Emergency Procedure** (e.g. in past normally connected to the EU accession process), only the Thesis and Initial IA are drafted but consultation is not carried out. It is possible to conclude that the EIA for SMEs Manual should provide more specific guidance to MINPO on this possible loophole.

Fifthly, the GLO Consultation Guidance discusses two additional processes, namely in relation to the consultation on the **Draft of the Proposal of RIA Statement (30 days)** and **public discussions** on Proposal of RIA Statement and Draft of the Proposal of Regulation (**min. 15 to 30 days**). Since MINPO has not carried out any detailed assessments (i.e. has not yet prepared any RIA Statements) and the GLO Consultation Guidance is vague on these matters, the EIA for SMEs Manual should provide more specific guidance to MINPO and its stakeholders.

3.6. Conclusions

This chapter has examined good practice in relation to four themes:

- Consultation and PPD in general;
- Consultation in RIA;
- RIA system in Croatia;
- Consultation in the Croatian RIA System.



The conclusion is two-fold. What matters in RIA is consultation rather than PPD. Secondly, in relation to the preparation of the Manual on EIA for SMEs for MINPO and its stakeholders, there is a need to provide more specific guidance on five inter-related themes:

- > Procedure for the drafting of **Regulatory Thesis**, Initial IA and Proposal of the Plan of Normative Activities;
- > Procedure for Acts involving the Regular (non-RIA) Procedure;
- Procedures for Draft of the Proposal of RIA Statement;
- Procedures for Proposal of RIA Statement and Draft of the Proposal of Regulation;
- > Emergency / Accelerated Procedure (including EU Directives).

The subsequent Chapter presents what will become the Consultation Section of the EIA for SMEs Manual.



4. EIA FOR SMES HANDBOOK: CONSULTATION SECTION

4.1. Introduction

The RIA system in Croatia is predicated on the principle that consultation is essential to the process of creating better legislation. It is so important to the new RIA system that the Government Legislation Office (GLO), the body responsible for managing the RIA system in Croatia has disseminated guidance on the issue: "RIA Guidelines for Stakeholders, Public and Interested Parties" (GLO, 2012), which states that:

"One of the goals of RIA is to increase transparency by opening the RIA process to the stakeholders, interested public and public in general. Parties that are not state administration and are affected by regulations should have the right to participate in the process of adopting regulations. Throughout the RIA process, ... [stakeholders] have the opportunity to express their attitudes, to comment and to influence the content of the recommended regulation and the manner of its implementation."

The rationale for consulting with SMEs is simple: it is an obligation to consult those affected by a new initiative, as well as those that will implement it. Consultation is a prerequisite step in preparing meaningful and effective laws and regulations. Consultation is also a basis for ensuring that such policy initiatives are effective and efficient, while also being legitimate front the perspective of both the general public and stakeholders (see also EC, 2009, Annex 1, p.19).

The GLO Guidelines for the Stakeholders, Public and Interested Parties (2012) and the GLO Guidelines for the Public Servants (2012) represent the principal sources of guidance for MINPO and its stakeholders. It covers the following themes:

- What is RIA;
- > The Legislative Framework for RIA;
- > How to get Involved in the RIA Process;
- How to Participate in the RIA Process;
- > How to Increase your Influence in the RIA Process.

The Consultation Guidelines (2012) represents the principal source of information on consultation. However, the guidance is generic in nature and presents the minimum requirements for consultation. The Manual on EIA for SMEs represents an evolution on the GLO guidance in two main respects:

- It takes the RIA Guidance on the methodological aspects and applies it specifically to the SME sector (preceding section);
- > It takes the Consultation Guidance and applies specifically to MINPO and its stakeholders (this section).

Therefore, the remainder of this section represents a set of guidelines which are complementary to the GLO Consultation Guidelines yet sets out a series of procedures to allow Ministry of Entrepreneurship and Crafts (MINPO) to develop better regulations in relation to the SME sector.



The key elements are the following sections:

- Consultation Principles for the SME Sector;
- Consultation Tools for the SME Sector;
- Procedure for the Regulatory Thesis and Initial IA;
- Procedure for Acts involving the Regular (non-RIA) Process;
- Procedure for Drafting the Proposal of RIA Statement;
- Procedure for Proposal of RIA Statement and Draft of the Proposal of Regulation;
- Emergency / Accelerated Procedure (including EU Directives).

4.2. Consultation Principles for the SME Sector

Specifically in relation to the RIA system and the EIA for SMEs process, MINPO recognises the following principles (See Towards a reinforced culture of consultation and dialogue, EU COM (2002) 704 final):

- Clear consultation content: communications relating to consultation should be clear and concise, and include all necessary information to facilitate responses;
- > Target groups: open consultations should be communicated to ensure that relevant parties have an opportunity to express their opinions;
- > Awareness-raising: various communications channels should be deployed including internet (see also eConsultation, SME Forum and Business Test Panel below) and business associations;
- Time limits: a critical issue is the need for consultations to allow sufficient time for discussion and collecting feedback. The minimum requirements of Croatian law should be observed (see RIA Law (2012) and the Law on the Right of Access to Information (2013), namely 15-30 days. Whenever feasible, the EU recommendations (8-12 weeks for reception of responses to written public consultations and 20 working days' notice for meetings) should be observed, especially where extensive impacts are anticipated. The consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision-making.
- Feedback: the receipt of contributions should be acknowledged. Contributions should be analysed carefully to see whether, and to what extent, the views expressed can be accommodated in the policy proposals. Depending on the number of comments received and the resources available, acknowledgement can take the form of an individual response (by e-mail), a collective response (by e-mail) and/or collective response on the web page publicly available to interested parties / stakeholders/ business community.
- Results: the results of open public consultations should be displayed on websites linked to the single access point on the Internet. The results of consultations carried out in the RIA process will be summarised in the related reports.
- Monitoring and evaluation: the consultation process within the RIA system takes time to become so a designated co-ordinator should be in charge of the process across all consultations so as to monitor, evaluate and improve the effectiveness of consultation over time.

The Impact Assessment Manual (2009) produced by the BIZimpact I project is as relevant today in relation to the issue of consultation as it was in 2009. The Box below illustrates the Key Principles for an Effective Consultation Process, updated for the latest developments.



Box 3: Key principles for an effective consultation process

1. **Prepare well** before starting the process.

- > What methods of consultation will be used? How will the stakeholders to be consulted be identified? What resources are required? How will time schedule for consultations be linked to the policy-making / regulatory impact assessment cycle?
- 2. **Start early** in the policy development process to allow the general public and stakeholders to discuss and examine the preliminary ideas and give early feedback on the plans for the impact assessment.
- 3. Consultation is not a one-off event, but a **dynamic process involving several steps**. There is no one-size-fits-all solution for consultation processes, but certain minimum standards need to be applied consistently.

4. Identify and engage with a range of stakeholders.

- The term stakeholder refers to an organisation, company or individual who has an interest (or 'stake') in an issue or a decision being taken. Consulting rarely involves a uniform group (as the term 'the general public' implies), but a variety of people/organisations that will have a range of different views and interests.
- It is important to identify relevant interested parties and those whom the policy will be likely to affect. These groups should be contacted and engaged in discussion as early as possible in the policy development process.
- > Where possible, informal consultation with these stakeholders should be conducted prior to the written consultation process. Not only does this lead to a more informed consultation exercise but it also ensures that stakeholders are engaged early and have a better understanding of the policy.
- 5. **Publicise the consultation effectively**, making sure that all stakeholders are given **sufficient time** to contribute to the consultation.

6. Select the most appropriate methods of consultation.

- Consultative committees/Expert Groups/Workshops/Roundtables/ad hoc meetings, etc.;
- Written consultations;
- Open Hearings/ Public Meetings /Regional Roadshows;
- Electronic consultation methods;
- Questionnaires / focus group discussions, etc.
- 7. Be **clear about the policy proposal** on which you are seeking views.
- 8. Set a **deadline for written responses** but provide sufficient time for the stakeholders to respond.
- 9. **Analyse responses carefully and open-mindedly**, distinguishing between evidence and opinions, as well as being careful in drawing conclusions from a small number of responses or narrow range of interests.
 - Particular attention may need to be given to representative bodies, such as business associations, trade unions, voluntary and consumer groups and other organisations representing groups especially affected.
 - In order to ensure that responses are analysed correctly, it is important to understand whom different bodies represent and the methods used to gain members' input into the response.
- 10. Acknowledge the responses received and give prompt and comprehensive feedback. Make sure your stakeholders have access to individual and/or summary of responses report. Provide details of how, who and what was consulted. In the feedback report present the different positions expressed and if/how these have been taken into account.

Source: based on the Impact Assessment Manual, BIZimpact I, 2009.

4.3. Consultation Tools for the SME Sector

MINPO has developed a variety of electronic and other tools for consultation with the SME sector, all of which can be deployed for the EIA for SMEs process:

- eConsultation: Thesis, Initial IA, Proposal of the Plan of Normative Activities, RIA Statement and Proposal of the Regulation;
- Business Test Panel: Thesis, Initial IA, Proposal of the Plan of Normative Activities, RIA Statement and Proposal of the Regulation;
- SME Forum: Thesis, Initial IA, Proposal of the Plan of Normative Activities, RIA Statement and Proposal of the Regulation (if established by MINPO);
- Enterprise Europe Network and SME Envoy (in the context of EU matters);



> Other forms of consultation, such as workshops, conferences, working groups, etc.

Each of the key tools is discussed below and the links to the RIA process are set out.

4.3.1. e-Consultation (www.minpo.hr/econsultation)

The MINPO website includes an eConsultation page, which is the main tool for obtaining feedback from the SME community. The eConsultation is wider in its reach than the RIA process, but is value is particularly noticeable as part of the EIA for SMEs process. It covers all initiatives that affect the SME sector including the following:

- > New regulations and legislation (RIA Initial IA, RIA Statement, etc.);
- > New SME policies, strategies, action plans, programmes, projects, etc.

The eConsultation tool is open to all, such as members of the public, businesses, business associations, NGOs, etc. The eConsultation tool shows which consultation are open at any point in time, who is responsible for the consultation, the downloadable documents, the deadlines for submission of feedback, the methods for providing feedback, etc.

Anyone who has an opinion to give in relation to open consultations is free to submit comments, suggestions, alternatives, etc. as long as they register through a simple procedure. There is the possibility to agree or disagree with the comments made by registered users.

After the deadline for feedback, comments received are acknowledged. Following a pre-determined time (15 days), the policy officer responsible for the consultation responds with individual and group responses.

All MINPO responses on the consultations are highlighted in the website. All closed consultations are also available for viewing, including the feedback for past consultations.

The eConsultation process is used for the Proposal of the Plan of Normative Activities, Regulatory Thesis and Initial IA, as well as the RIA Statement stage of the EIA for SMEs process.

4.3.2. Business Test Panel (www.minpo.hr/btpanel)

Unlike the eConsultation tool, the Business Test Panel (BTP) is exclusively for businesses. This is because the general eConsultation process often does not attract sufficient feedback from individual enterprises.

The BTP comprises SMEs which agree to provide MINPO with feedback on consultation processes. Only registered SMEs can participate in the BTP and SMEs can deregister at any time since the process is entirely voluntary.

The value of the BTP lies in the fact that the consultation process can reach enterprises directly and obtain feedback of the following nature:

- > Usefulness of the proposal;
- > Costs of the proposal;
- > Benefits of the proposal, etc.

Once the BTP is up and running, it can be used for both the Initial IA and the RIA Statement stage of the EIA for SMEs process. The feedback obtained is faster and cheaper than using other methods such as quantitative / qualitative surveys. However, it should be noted that the BTP (just like qualitative methods) is not a statistically representative sample of all SMEs in the country; this is inevitable since it is a voluntary process of registration and participation which is not based on statistical sampling techniques.



4.3.3. SME Forum (www.minpo.hr/forum)

Following analysis and recommendations by the BIZimpact II (Review of Public Private Dialogue and Recommendations", BIZimpact II Project, 2013) MINPO is in the process of considering the possibility of establishing a PPD mechanism provisionally called the SME Forum. Although the decision has not yet been made, this development reflects a policy gap in the SME development area, namely that there is no dedicated tool for public private dialogue.

Should the SME Forum be established, it would initially focus on national policy, strategy and regulation as far as the SME sector is concerned. It would meet regularly (at least on a quarterly basis), prioritise the needs of the SME sector annually and work together, through working groups coordinated by a Secretariat, to achieve progress on behalf of the SME Sector.

The SME Forum would thus be an ideal tool for the consultation aspects of the EIA for SMEs.

4.3.4. Enterprise Europe Network (www.een.ec.europa.eu/about/branches/HR)

A further consultation tool to be used, especially in the context of EU-related matters such as EU Directives and DG Enterprise initiatives, is the Enterprise Europe Network (EEN), which is designed to assist SMEs to make the most of the European marketplace. Working through a network of 600 member organisations across the EU and beyond, it assists SMEs to develop business in new markets, source new technologies and access EU finance and EU funding. The EEN covers some 50 countries and includes chambers of commerce and industry, technology centres, universities and development agencies. In the case of Croatia, HGK coordinates a network covering Osijek, Rijeka, Split, Varaždin and Zagreb (3 branches).

In the context of new laws and regulations, including stakeholder feedback, the EEN seeks to facilitate SMEs facing problems doing business in other EU country, finding it difficult to comply with EU law, etc. but its focus is principally external, rather than internal to the country concerned. The EC aims to improve its legislation in respect to SMEs, so seeks feedback on what impact its legislative proposals and initiatives are having on small businesses.

When drafting proposed laws affecting SMEs, the EC uses the EEN to consults SMEs to make cut red tape and help SMEs make the most of opportunities in the single market using the following tools:

- SME Envoy: seeks to establish a close, direct link between the Commission, SMEs and their representatives. SME interests and needs can be better identified at an early stage and highlighted to the relevant points of contact, thus ensuring that concerns are taken into consideration and that adequate and efficient measures are implemented and overall the EU and national policy is more SME friendly, with a particular focus on the crafts sector, small businesses and sole traders. The SME panels (see below) are operated in liaison with the SME Envoy to ensure that the needs of SMEs are taken into account in EU law-making;
- > SME panels: these are organised to consult SMEs about forthcoming EU legislation and policies. The EEN partners select suitable SME participants, run the SME panels and provide the EC with the results, which are then used for preparing new legislative or policy proposals;
- SME feedback mechanism: allows the EEN partners to collect the views and feedback from SMEs on a broad range of EU policy initiatives, actions, legislation or programmes related to the internal market. Policy areas include the environment, sustainability, employment and social affairs, innovation support, taxation and customs and better regulation and simplification.



4.3.5. Other Forms of Consultation

The use of variety of other forms of consultation, usually physical in nature, is part and parcel of the RIA process, as well as more generally. This is both desirable and unavoidable since every consultation process needs to be customised to the specificities of its stakeholders. A combination of the following is likely to be used:

- Meetings / workshops / roundtables / stakeholder hearings / expert groups / consultative committees / ad hoc meetings / brainstorming: individuals or groups of stakeholders may be invited to present their views in relation to particular initiatives. These are likely to be used particularly at the initial stage, when the full range of options is still being discussed, since it is important to test options and possible costs and benefits, prior to investing time and other resources in finalising the Regulatory Thesis and Initial IA;
- > Working Groups: these may be established, involving public administration and relevant stakeholders representing the SME sector. These may happen as part of the Initial IA but is usually associated with Proposal of RIA Statement and Draft of the Proposal of Regulation;
- Public meetings / open hearings / conferences / regional roadshows: these may be held as part of the process of consulting more widely, possibly connected with regional roadshows to ensure that different parts of the country have the opportunity to present their views on proposals of national importance;
- Quantitative methods: these may be undertaken, especially where the impacts are likely to be significant in nature and where the BTP may not be sufficiently statistically robust to use on its own. These are likely to be associated with the RIA Statement;
- Qualitative methods: it is conceivable that other forms of consultation may take place, such as the use of techniques such as focus group discussions. The use of these additional tools will depend on the specificities of the legislative initiative, resources available, timeframe, etc. These are also likely to be associated with the RIA Statement.

The above is not a comprehensive list of all possible consultation methods. It merely highlights a range of options. Since there is no one-size-fits-all solution to the issue of consultation, the range of tools used has to be selected and planned for on a case-by-case basis.

4.4. Procedures for the Regulatory Thesis and Initial IA

Current Guidelines

The Consultation Guidelines (GLO, 2012) note the following issues in relation to first opportunity for consultation at the Initial IA and Regulatory Thesis stage:

- > The public is to be informed of the **Proposal of the Plan of Normative Activities** by the Expert Bearers to enable the public to understand the planned legislative activities in the forthcoming year;
- > The Expert Bearer is obliged to publish only the Proposal without any additional documentation (i.e. Regulatory Thesis and Initial IA);
- > The Proposal of the Plan of Normative Activities is to be put on the **web pages** of the Expert Bearers;
- > One document with two tables is put up: i) Table of regulations for which RIA is anticipated and ii) Table of regulations for which RIA is not anticipated;
- > The public may submit constructive **proposals, opinions and suggestions** in relation to the list of proposals that Expert Bearers intend to implement, including feedback to the Expert Bearer if a particular regulation is not in the list for RIA but the public believes that it will have a significant impact in a particular area/sector; however, it is not an obligation for the Expert Bearers to ask for Feedback;
- > The duration of the consultation is at least **15 days during 01-30th September** of current year for proposals for the forthcoming year.



Proposed EIA for SMEs Guidance

The above represents the minimum recommended activity. The previous analysis has set out the gaps that currently exist and the need for more specific guidance. As far as the EIA for SMEs process is concerned, the following is the **recommended procedure** for future consultation:

1. Preliminary Meetings/Workshops with Key Stakeholders/Experts (Jan-Aug of preceding year)

Once the MINPO has a clear idea of the problem that needs to be addressed and prior to drafting the Regulatory Thesis or the Initial IA, it will hold either individual meetings or group workshops with the identified key stakeholders/experts. The focus of the meetings/workshops is to:

- > Assess the range of possible regulatory and non-regulatory options;
- Assess the likely pros and cons of each of the possible options;
- > Assess the support among key stakeholders for the possible options;
- Assess the possible costs and benefits of the possible options.

Further meetings/workshops may be held, prior to the drafting and finalising the:

- > The individual Regulatory Thesis;
- > The individual Initial IAs;
- Proposal of the Plan of Normative Activities;

This will ensure that the MINPO is confident that what is being proposed is appropriate and feasible. The key stakeholders/experts will benefit from having been involved at an early stage, prior to options being closed-off from further consideration.

If so desired, the MINPO may supplement the above process through the use of the BTP to sound-out the likely costs and benefits of the proposed regulatory or non-regulatory options, prior to the finalisation of the Thesis and Initial IA.

2. Regulatory Thesis and Initial IA (01-30 Sep of the preceding year)

In order to prepare the Initial IA, MINPO will use the Initial IA template, modified for the purposes of EIA for SMEs. This will enable the specificity of the SME sector to be considered, as per the guidance provided in the preceding section of this Manual.

The Ministry will post the Proposal of the Plan of Normative Activities, which includes the table of regulations for which RIA is not foreseen and the table of regulations for which RIA is foreseen by the 1st September of the preceding year. For all proposed legislation, the MINPO will also publish i) the Regulatory Thesis and ii) Initial IA.

In all cases, the following additional information will be posted:

- > Period of consultation: minimum of **30 days**, starting on 1st September;
- Deadline: last day of September;
- Contact: name of the consultation coordinator for each consultation, telephone, fax and email address;
- > Explanation: brief overview of what the consultation is about and the specific feedback sought from the public consultation;
- Acknowledgement: method of acknowledging feedback received;



> Feedback: deadline and nature of individual/group feedback to be sent by the Ministry within **15 days** of the consultation being closed.

Furthermore, the MINPO will **inform by email the key relevant stakeholders of the nature, start and end date of the consultation process for each of the topics** covered by the Proposal of the Regulation Plan. This is to overcome the problem that stakeholders may not be aware of the existence of a consultation process.

3. Responding to the Consultation (<u>01-15 Oct</u> of the preceding year)

The MINPO will consider all relevant feedback received, including:

- > Whether to change the options / emphasis of the Regulatory Thesis and Initial IA;
- Whether the non-RIA list needs to be revised;
- > Whether to add news items / delete items from the Proposal of the Plan of Normative Activities.

Once this process is completed, the Ministry will send the required documents to GLO for processing, including the revised Proposal of the Plan of Normative Activities which will be included in GLO's Annual Plan of Normative Activities. Since, the deadline for submission of the Proposal of the Plan of Normative Activities to GLO is 31st October (RIA Guidelines for Civil Servants), MINPO will have a period of two weeks to liaise with GLO and align with GLO's suggestions and requests, if any. Once this is approved and added to GLO's merged Annual Plan of Normative Activities, the MINPO plans the RIA process for the regulations that fall into the RIA list (see GLO, 2012).

4.5. Procedure for Acts involving the Regular (non-RIA) Procedure

Current SME Guidelines

A certain number of the legislative activities which form part of the non-RIA list of regulations will drop out of the RIA process. This does not mean that they also drop out of the necessity to consult with stakeholders. The following elements of consultation are anticipated in relation to the draft Acts prepared, regardless of whether the RIA process is followed or not:

- > Working Groups to develop the legislation: such working groups should be established as a matter of course where the legislation does not involve minor changes.
- > The Working Groups will include members of i) the MINPO ii) relevant other Ministries iii) relevant key stakeholder institutions, which are likely to include HGK, HUP, HOK, HSZ, etc. The exact configuration will depend on the specific nature of the legislation.
- The above will ensure that consultation is built into the process of developing the draft Acts, however, this is not sufficient in terms of the necessary consultation. The above process would be enhanced through other elements, which will vary according to the specificities of the Act in question:
 - Business Test Panel: to determine possible costs and benefits of all options.
 - Meetings/workshops/focus groups/surveys: to add information and analysis.

Once the draft if ready, the following must be undertaken:

- Consultation: this will be a minimum of **30 days for simple regulations**. The key stakeholders will be informed of the nature, start and deadline of the consultation process, including acknowledgment and feedback.
- > Workshops/conferences/roadshows: the eConsultation process will need to be supplemented with **public** events (20 days) such as workshops and conferences so as to ensure as wide an involvement of stakeholders



as possible, allowing the opportunity for face-to-face contact between the MINPO and stakeholders. Where the draft Act is national in nature and involves significant changes, the assumption is that the MINPO will undertake regional roadshows to ensure awareness and spread geographical reach.

4.6. Procedure for Draft of the Proposal of RIA Statement

Current Guidelines

Turning the attention back to the list of regulations for which RIA is required, the Consultation Guidelines (GLO, 2012) note the following in relation to second opportunity for consultation at the RIA Statement stage:

- > The Expert Bearer plans the **RIA process** for the regulations that fall into the RIA list in the forthcoming year;
- The second opportunity for public consultation is when the Draft of the Proposal of RIA Statement is prepared by the Expert Bearer for each of the regulations for which RIA is required;
- It is mandatory to publish the Draft of the Proposal of RIA Statement on the website, including information on implementation of consultation, legal sources, direct and other stakeholders and manner of participation in the consultation process;
- > During the consultation, the Expert Bearer is **obliged to conduct at least one public discussion** on the subject of the consultation (e.g. round tables, public presentations, focus groups);
- The consultation lasts a minimum of 30 days but the Expert Bearer can extend the duration of consultation, depending on the complexity of the issue being consulted;
- > There is an obligation to publish information on the opinions, proposals and comments received in the consultation and public discussion processes on the website. It is possible to include other forms of dissemination of information, such as publications, newsletters, etc.

To be clear, no draft Act exists at this second stage of consultation. This is a RIA process concerning the regulations for which RIA is required. According to the RIA Act (2011) it is **mandatory** for the Expert Bearer to create **Draft of the Proposal of RIA Statement**, **conduct e-consultation and at least one public discussions** (as a minimum), **request feedback over a 30 day period** and **publish the feedback** received during e-consultation and other organised events (public discussion, round tables, etc.). It also states that Expert Bearer shall **consult all Competent Bodies** (Finances, Economy, SMEs, Labour and Pension System, Environment and AZTN). This must be done after they update the Draft of the Proposal of RIA Statement. These institutions must submit their opinion within 15 days of receiving all documents. Other stakeholders do not need to be consulted in this process. However, this general guidance needs to be supplemented in the case of EIA for SMEs as highlighted below.

1. Preparation of the Draft of the Proposal of RIA Statement

In order to prepare the Draft of the Proposal of RIA Statement, the MINPO will use the RIA Statement template, modified for the purposes of EIA for SMEs. This allows the specificity of the SME sector to be considered, as per the guidance provided in the preceding section of this Manual.

MINPO should consult the main stakeholders and draft possible options with them. In completing the RIA Statement template adjusted for the SME sector, it is unavoidable to assess the likely costs and benefits of each possible policy option, prior to making a decision about which to proceed with, as per the discussion in the preceding section of this Manual. The following are foreseen:

> Business Test Panel: obtain likely costs and benefits information directly from SMEs. These data can be cross-referenced with and enhanced with the EIA Database information, which is more generic in nature;



Meetings/workshops/focus groups/surveys: to add information and analysis;

2. Consultation of the Draft of the Proposal of RIA Statement

Once the draft RIA Statement has been prepared, highlighting the various possible options, as well as the proposed solution, it is put on the MINPO website for consultation:

- Consultation: to consult widely using the MINPO website for a minimum of 30 days. The key stakeholders will be informed of the nature, start and deadline of the consultation process, including acknowledgment and feedback.
- Incorporation of the feedback: the MINPO decides what, if anything, requires change, including the possibility that an alternative solution / emphasis may be required.

4.7. Procedure for Proposal of RIA Statement and Draft of the Proposal of Regulation

It is only when the Draft of the Proposal of RIA Statement has been prepared, consultation carried out and the feedback incorporated, that the draft becomes the Proposal of RIA Statement and the actual drafting of the Proposal of Regulation starts.

1. Preparation of the Proposal of RIA Statement and Draft of the Proposal of Regulation

This process follows the procedure laid out previously, as discussed in section 6.5 Consultation Procedure for Acts involving the Regular (non-RIA) Procedure including:

- Working Groups: to develop the legislation;
- Business Test Panel: to determine possible costs and benefits;
- Meetings/workshops/focus groups/surveys, etc.: to fine tune the Draft of the Proposal of Regulation / Proposal of RIA Statement.

Proposal of RIA Statement and Draft of the Proposal of Regulation are then sent to the consultation process.

2. Consultation on the Proposal of RIA Statement and Draft of the Proposal of Regulation

- Consultation: this will be a minimum of 30 days for simple regulations. In the case of complex legislation with significant impacts, this will last a period of 8-12 weeks, as recommended by the EC. The key stakeholders will be informed of the nature, start and deadline of the consultation process, including acknowledgment and feedback.
- Workshops/conferences/roadshows: the eConsultation process will need to be supplemented with public events (20 days) such as workshops and conferences so as to ensure as wide an involvement of stakeholders as possible, allowing the opportunity for face-to-face contact between the MINPO and stakeholders. Where the draft Act is national in nature and involves significant changes, the assumption is that the MINPO will undertake regional roadshows to ensure awareness and spread geographical reach.

3. Finalisation of the Proposal of RIA Statement and Draft of the Proposal of Regulation

After the public discussion has been carried out and both documents up-dated, they are sent for the opinion to the Competent Bodies (ministries in charge of finance, economy, SMEs, labour and pension system and environment, as well as AZTN) and for GLO approval, in line with the provisions of the RIA Act. Before this step has been done, it is necessary to ensure that the structure and quality of the Proposal of the RIA Statement are free of deficiencies in order to obtain GLO approval. The Control List in the RIA Statement template is included in Annex 7.8 of the GLO Guidelines for Public Servants.



After receipt of positive opinions and approvals, not least that of GLO, the two documents become final; the Final Proposal of the Regulation and the Final RIA Statement.

The Final RIA Statement and the Final Proposal of the Regulation are then sent to the Government's adoption procedure; that is, they are submitted to the sessions of the Government's working bodies.

4.8. Emergency / Accelerated Procedure (including EU Directives)

The RIA Act also covers the issue of urgent or accelerated procedures; EC Directives typically tend to fall under this category. In particular, the RIA Act refers to this scenario:

Regulation not subject to RIA procedures: "In the case of a regulation proposed for adoption in an urgent procedure, which is not subject to regulatory impact assessment under Article 11, paragraph 1, of this Act nor paragraph 2, subparagraph 1 of this Article, *it is obligatory to prepare an initial assessment in accordance with the stipulated form*. The initial assessment shall be enclosed with the draft proposal of the regulation which is also the final proposal of the regulation. This provision shall apply except in the case of urgent adoption of regulations for immediate elimination of the threat of damage." (2012, Article 13, 4).

It is clear from the above, that an Initial IA must be carried out, even in the case of regulations prepared under the urgent or accelerated procedures. The only exception to this provision is the case of urgent adoption of regulations for immediate elimination of the threat of damage.

Box 4: Applying RIA to EC Directives

EU Regulations: EU Regulations differ from Directives and other EU legislation in that they apply directly in all Member States and supersede any conflicting national laws. The RIA for a Regulation, therefore, need not examine alternative options. It should, however, assess the impacts of introducing the legislation, so that Ministries and other stakeholders are fully aware of them, and can take any necessary action to prepare for the change.

Minimum Requirements of EU legislation: For all other EU legislation it is important to identify the minimum requirements. Implementation options which go beyond these minimum requirements would not normally be chosen unless there are exceptional circumstances, in which case they should justified by a cost-benefit analysis and extensive consultation with stakeholders.

Flexibility in implementation: Many EU Directives contain both prescriptive elements and aspects giving flexibility. The RIA should identify what degree of flexibility exists, and how this relates to Croatian policy goals. The impact assessment should work out an optimum solution which achieves the objectives of the Directive in a way which is the most consistent with government objectives and the least burdensome for stakeholders.

Clarity of meaning: If the meaning of a Directive is not clear this should be pointed out in the RIA. A choice will have to be made between leaving the wording ambiguous or elaborating on it. If the provisions of a Directive are ambiguous, leaving the wording unchanged reduces the risk of legal challenges. However, this can merely serve to transfer the risk to business. Where there is doubt about the precise legal obligation, the RIA should assess the risks, costs and benefits of each option, covering their economic, social, environmental and legal aspects. The solution chosen should be the best option consistent with the need to minimise the burdens on stakeholders, allowing for associated risks.

Streamlining existing legislation: European legislation often covers the same ground as existing national legislation, often in different ways and to a varying extent. This creates the danger of overlaps and contradictions. To avoid this, the RIA may need to examine carefully the whole area of legislation in the area covered by the Directive. EU legislation should not be regarded as an add-on, but as an opportunity to streamline the existing legislation and create a single coherent regulatory regime that is up-to-date and consistent with EU norms. This may entail repealing or revoking the existing legislation and its administrative structures, and starting afresh with a new regime. When the existing legislation and administrative structures have become highly complex through their evolution over time, fundamental reform can be highly beneficial in terms of both cost saving and effectiveness. The RIA should assess the potential costs and benefits of taking this approach.

Using RIAs by EC and other countries: Most EU Directives issued since 2002 will have had an RIA under the EC's own RIA procedures. This will have examined impacts more generally at the EU level, but is likely to include information that is relevant to Croatia. RIAs carried out by Member States in transposing the legislation may also contain useful ideas and information. It may also be valuable to contact counterparts in Member States and other candidate countries to find out how they have dealt with the issues. Particularly useful guidance may be obtained from the Network of EU Environmental Lawyers and the Network of Heads of European Environment Protection



Agencies.

Source: UK (2007) Department for Business, Enterprise and Regulatory Reform (BERR) Transposition Guide: how to implement European directives effectively

The EC Commission's consultation process is not normally limited to national governments. It typically involves individuals / expects / firms /organisations, etc., although inevitably submissions covering all 28 Member States carry most weight. Nevertheless, it may be appropriate, indeed critical, for the MINPO to consult the relevant SME stakeholders, thus developing a Croatian perspective or position in relation to particular EU regulations (as well as programmes, initiatives, etc.).

The Enterprise Europe Network (EEN) is an obvious starting point since it has the consultation tools focusing on the SME sector:

- SME Envoy: his/her objective to establish a close, direct link between the Commission, SMEs and their representatives. SME interests and needs can be better identified at an early stage and highlighted to the relevant points of contact, thus ensuring that concerns are taken into consideration and that adequate and efficient measures are implemented and overall the EU and National Policy is more SME friendly, with a particular focus on the crafts sector, small businesses and sole traders. The SME panels (see below) are operated in liaison with the SME Envoy to ensure that the needs of SMEs are continuously taken into account in EU law-making;
- > SME panels: these are organised to consult SMEs about forthcoming EU legislation and policies. The EEN partners select suitable SME participants, run the SME panels and provide the EC with the results, which are then used for preparing new legislative or policy proposals;
- SME feedback mechanism: allows the EEN partners to collect the views and feedback from SMEs on a broad range of EU policy initiatives, actions, legislation or programmes related to the internal market. Policy areas include the environment, sustainability, employment and social affairs, innovation support, taxation and customs and better regulation and simplification.

The Croatian Chamber of Economy (HGK) is responsible for the EEN in Croatia and its network covers the following locations: Osijek, Rijeka, Split, Varaždin and Zagreb (3 branches).



5. REFERENCES

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Government Legislation Office (2012) Guidelines for Stakeholders, Public and Interested Parties.

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MINGORP (2009) Impact Assessment Manual, BIZimpact I Project.

Pinto, R. (2013) "Review of Public Private Dialogue and Recommendations", BIZimpact II Project.

Renka, H. (2013) "eConsultation Tools", BIZimpact II Project.

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Government of Croatia (2009) The Code of Practice on Consultation with the Interested Public in Procedures, the Official Gazette, no. 101/98, 15/00, 117/01, 199/03 and 30/04 and 77/09) of Adopting Laws, Other Regulations and Acts.

Conference of NGOs of the Council of Europe (2009) Code of Good Practice for Civil Participation in the Decision-Making Process.



6. ANNEXES

Annex I: Frame for Consultations/PPD in General and for RIA

General

Legislation

- The Law on the Right of Access to Information (2013),
- The Code of Good Practice for Civil Participation in the Decision-Making Process (2009),

Guidelines

> Guidelines for Implementation of the Code of Good Practice for Civil Participation in the Decision-Making Process (2010)

RIA

Legislation

- > RIA Law (2011);
- RIA Regulation (2012);
- > Government Rules of Conduct (2011);
- > Parliament Rules of Conduct (2013).

Guidelines

- > RIA Guidelines for Civil Servants (2012);
- > RIA Guidelines for GLO (2012);
- RIA Guidelines for Stakeholders, Public and Interested Parties (2012).

EIA for SMEs

Guidelines

Manual of EIA for SMEs (forthcoming);



Annex II: Expert Bearers and Competent Bodies

The **Expert Bearer Drafting the Regulation** (hereinafter: **Expert Bearer**) is the central body of the state administration and any other body, which, in line with its prescribed scope of work, is authorised to submit a regulation for adoption to the Government of the Republic of Croatia.

Expert Bearers in the RIA process are:

- Ministry of Agriculture
- Ministry of Construction and Spatial Planning
- Ministry of Culture
- Ministry of Defence
- Ministry of Economy
- > Ministry of Entrepreneurship and Crafts
- Ministry of Environmental Protection and Nature
- Ministry of External and European Affairs
- Ministry of Finances
- Ministry of Healthcare
- Ministry of Justice
- Ministry of Labour and Pension System
- Ministry of Maritime Affairs, Transportation and Infrastructure
- Ministry of Public Administration

- > Ministry of Regional Development and EU Funds
- > Ministry of Science, Education and Sport
- > Ministry of Social Policy and Youth
- Ministry of Tourism
- Ministry of War Veterans
- > State Geodetic Directorate
- State Hydrometeorology Institute
- State Inspectorate
- State Institute for Intellectual Rights (Ownership)
- State Institute for Metrology
- > State Institute for Statistics
- State Institute for Radiology and Nuclear Safety
- State Office for Central Public Procurement
- State Office for Croats Abroad
- State Office for Renovation and Housing

The **Competent bodies** are the central bodies of the state administration in charge for the following areas:

- Economy;
- Health and Social Welfare;
- Environmental Protection;
- Finance.

Competent bodies in the RIA process are:

- Ministry competent for economy;
- Ministry competent for entrepreneurship and crafts;
- Ministry competent for labour and pension system;
- Ministry competent for environmental protection and nature;
- Ministry competent for social policy and youth;
- Ministry competent for finances;
- > Agency for the protection of the market competition for the impacts on the market competition.



Annex III: RIA Terminology

Regulatory Thesis is the starting document for drafting of regulations. It presents (maximum of one page) the main intention of a future regulation.

Information obtained by the **Initial Impact Assessment** is entered into a prescribed template. It includes information on the problem, possible solution and main fiscal, economic, social and environmental impacts. Depending on the results of this assessment, the planed regulation goes either to the regular procedure or to the detailed RIA.

The **Proposal of the Plan of Normative Activities** contains a list of all normative activities that an Expert Bearer plans for the forthcoming year. It contains two lists of regulations: the RIA and the non-RIA regulations and must be published on the Expert Bearer's website for a minimum of 15 days during 01-30 September. After this period, the document is sent to the GLO for its opinion.

GLO aligns all Proposals of the Plans of Normative Activities with the individual Expert Bearers until 31st November and them publishes the **Annual Plan of Normative Activities**.

Regulatory Impact Assessment Statement (RIA Statement) is an official document, which contains the results of the implemented RIA procedure. Depending on the stage of RIA process it can be have different titles:

- **Draft of the Proposal of RIA Statement:** at the start of the drafting process, the first version of the document that goes to public consultation;
- > Proposal of RIA Statement: the second version of the document, up-dated in line with the results of the consultation and opinions of the Competent Bodies;
- Final RIA Statement: upon termination of the second round of consultation, it becomes final after updating in line with the results of consultation, positive opinion of all Competent Bodies and GLO approval. This is the last version of the RIA Statement which is presented to the Government, along with the Regulation for deliberation and adoption.

The **RIA co-ordinator** is the person in each Expert Bearer that is in charge of the overall RIA process, in coordination with the **Government's Legislation Office**. The RIA co-ordinator organises, co-ordinates and is responsible for all steps of the RIA process in each Expert Bearer.

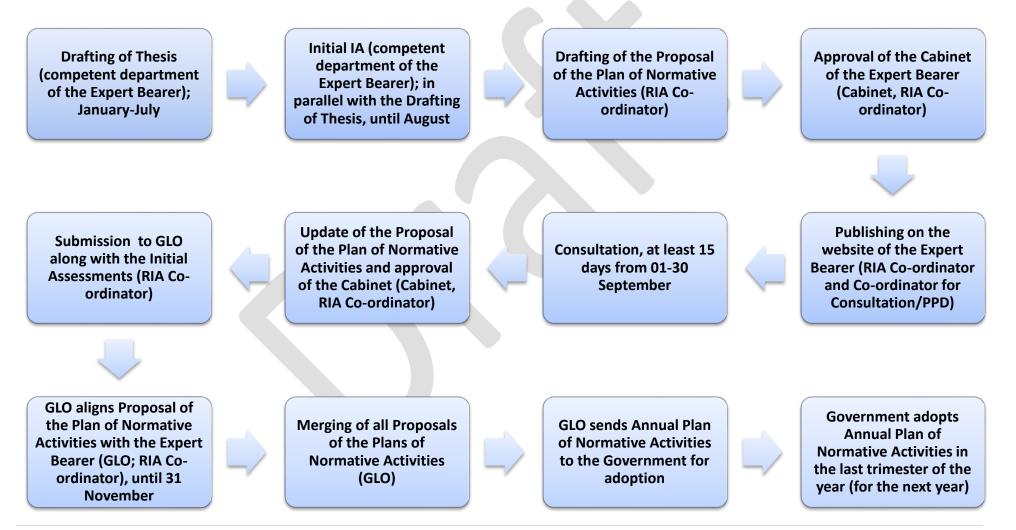
The **Consultation co-ordinator** is the person in each Expert Bearer that is in charge of consultation/PPD in in coordination with the **Government's Office for NGOs**. In the RIA process, the consultation co-ordinator liaises with the RIA co-ordinator in relation to the activities connected with consultation/PPD.



EIA for SMEs PPD -Draft

Annex IV: Overall RIA Process





EIA for SMEs PPD - Draft



This step is finished with the creation of the Annual Plan of Normative Activities. It is consisted of two lists:

- Non-RIA Regulation (go to regular procedure);
- RIA Regulation (detailed impact assessment needed).

Depending on the type of list, the process branches into two options:

- > Process with Non-RIA Regulation;
- > Process with RIA Regulation.

These two processes are illustrated below.

2a: Process with Non-RIA Regulation

Work on the Draft of the Proposal of Regulation (competent department in the Expert Bearer), in line with the schedule defined in the Annual Plan of Normative Activities

Publishing on the website for a public discussion (competent department of the Expert Bearer, Consultation Coordinator), 15-30 days

Approval of the Cabinet in the Expert Bearer Update of the Draft of the Proposal of Regulation (competent department of the Expert Bearer)

Submission of the Final Proposal of Regulation to the Government



Adoption by Parliament



Improving Information to the Croatian Business Community: BIZimpact II Service Contract No. IPA2007/HR/16IPO/001-021401 EIA for SMEs PPD -Draft

2b: Process with RIA Regulation

Draft of the Proposal of RIA Statement (competent department of the Expert Bearer), in line with the schedule defined in the Annual Plan of Normative Activities

Publishing on the website (RIA Coordinator and Coordinator for Consultation/PPD)

Consultation on the Draft of the Proposal of RIA Statement (Expert Bearer), at least 30 days Publishing of response to the consultation on the web page (RIA Coordinator, Consultation Co-ordinator), after consultation

Public discussion on the Proposal of Regulation and Proposal of RIA Statement (Expert Bearer), 15-30 days

Publishing on the website (RIA Co-ordinator and Coordinator for Consultation/PPD) Drafting of the Proposal of Regulation and Proposal of RIA Statement (competent department of the Expert Bearer)

Obtaining opinions of the Competent Bodies (Expert Bearer), 15 days

At least one public event such as round table, public presentation, etc. (RIA Co-ordinator), in parallel with public discussion

Publishing of responses on the web page (RIA Coordinator, Consultation Coordinator), after public discussion and event(s) Submission to the Competent Bodies for opinion and GLO for approval (RIA Coordinator) Submission of the Proposal of Regulation and Final RIA Statement to the Government (Expert Bearer, GLO), after positive opinion of Competent Bodies and GLO approval

EIA for SMEs PPD - Draft



Whole Legislation Process – from Thesis to the Parliament

