

RIA in Bulgaria, Public Debate of Legislation

Georgi Iliev

Economic Policy Institute, Sofia

Bulgaria started building democratic institutions after the fall of the communist party regime in 1989, passed a new Constitution in 1990 and embarked on market reforms. The 45 years spent as part of the Soviet bloc have left a mark on Bulgaria's legislative system, and the legislature is still reforming to address the needs of a democratic and free-market society.

During the Soviet era, the procedure for passing primary and secondary legislation was simple as feedback was not important for the totalitarian regime. And yet, a basic component of RIA existed even then. An act regulating the passing of subdelegated (secondary) legislation dating back to the end of the 1960s envisaged that each legislative proposal should be accompanied by a reasoning on why such legislation was needed.

Budgeting in the planned economy was a matter of basic mathematics and strategic plans for development completely detached from efficiency. No feedback on the efficiency of legislation was sought from the public or the economy either. Getting feedback became a necessity only after democratic change brought to Bulgaria free elections, which are the paramount form of feedback in any democracy.

Regulatory impact assessment currently exists in Bulgaria only in its general form, which includes enumeration of the goals, multilateral meetings between the state institutions involved; consultations with business associations, NGOs and interested parties; evaluation of comments from the public and the media; and limited cost-benefit analysis. RIA does not go as deep as detailed cost-benefit analysis and does not make use of consultancy services. RIA is not obligatory, it is not supervised by a single institution and is applied on an ad-hoc basis, depending on the importance and complexity of the proposed legislation. And yet, even though some researchers claim that RIA can be efficient only if it is regularly and consistently applied, the occasional and partial use of RIA practices can still produce positive results.

Public debate of legislation to some extent compensates for the deficiency of other institutionalised RIA instruments in Bulgaria. Public debate, in its various forms, cannot give precise figures in money terms about the impact of a piece of legislation, but can pinpoint the interested or affected parties and help correct texts which favour small groups and go against the interests of large sections of society.

The wider use of public debate of legislation solves a major problem in RIA: the high cost of adding new bodies and commissions that address the deficiency of impact assessment. Public opinion, if stimulated to be expressed and delivered through a functioning feedback system, comes at a negligible cost.

A precondition for efficient legislation is that the legislative process should be transparent enough to allow citizens access to the preparation of legislation at each step of the process. The process should also give citizens sufficient instruments to be able to influence the passing of legislation. The legislators, on the other hand, should not only allow public access to the procedures, but also intentionally seek a reaction of the general public or groups of experts in a specialised field.

In addition to saving the time of the legislators, public debate of legislation can also uncover traps that otherwise might not be noticed. The cost of amending a piece of legislation is huge, even if we consider only the technical preparation and voting procedures, which can take several months for a single item of legislation. More importantly, however, a flawed law skews

the business and social environment and can often incur losses. The cost of a legislative amendment is in a way similar to the transaction cost in business, as both result in a change of the framework and the cost cannot be avoided in any of them. The major difference, however, is that large sectors of society are paying the cost for a legislative amendment and its application, while only the two participants directly involved pay for a business transaction.

Business and economy related acts have a fairly visible target group of companies, economic areas or people with a given profession, so the beneficiaries and the affected can be singled out fairly easily. In business related legislation it is not only easier to pinpoint who will benefit, but the costs or benefits are also easier to calculate, as the economy is based on quantifiable statistics. The beneficiaries from acts which regulate legal, social or administrative relations, however, are much more difficult to discern, while the cost can sometimes verge on mere guesses.

A major step towards assessing the cost of a legislation is the recent Act on Restricting Administrative Regulation and Control on Business Activities (passed in June 2003). The act envisages that each person or company which will be affected by a future subdelegated regulation will have to be notified about the passing of such a regulation and will have at least one-month to file objections against the regulation. An additional clause in the act envisages that the introduction of a new licensing or registration regime can be done only with an act of parliament and this act should be accompanied by a detailed reasoning on the need of this regime. These clauses are also meant to make the legislation in the business environment more stable and to prevent the need of amending legislation later, after the flawed regulation becomes obvious.

Public debate in Bulgaria has six major mechanisms through which it can affect the passing of legislation.

1) Parliamentary and institutional websites

The parliament made a major step towards transparency in 1998 by starting to publish a legislation programme for each of the three parliamentary sessions during the year. The programme is not binding but can serve as a source of reliable data about what changes can be expected in the legal environment. Before that the public and the business were able to act only after a piece of legislation was passed or even after its promulgation in the State Gazette.

The website of the parliament started posting some of the draft legislative proposals in the summer of 2000. The entire texts have been consistently posted since 2002. The websites of some ministries have also opened discussion forums which sometimes touch upon proposed legislation regarding their field of operation, among other things. The website of the Bulgarian president also had a discussion forum for a while, but was subsequently closed down.

What could be done in addition is creating discussion panels for each bill posted on the website of the parliament, so that the communication with the legislature can take place in real time and can be narrowed down to target concrete issues. Useful information on the public attitude towards a bill can also be obtained from the discussion panels in the online editions of the newspapers, as most online editions automatically set up discussion panels at the end of each article.

2) Meetings with interested parties

In order to cap on the expertise of various business associations, NGOs, universities and the media, 19 out of the 21 parliamentary committees have been holding increasingly regular meetings on the legislation they are preparing.¹

¹ (The committees which are not holding any public discussions are the EU Integration

Consultations with the public can be said to have started in earnest from the second half of 1997. The Bulgarian Industrial Association and the Bulgarian Chamber of Commerce and Industry have been the first and main participants in sittings of parliamentary committees, while the Bulgarian International Business Association has been more active in the relations with the cabinet.²

The Bulgarian MPs may soon find themselves having more time to spend on consultations with interested parties and experts if a controversial proposal for the introduction of fixed voting hours in parliament in only one day of the week is passed. The proposal was sparked by the consistent failure of MPs to turn up at the regular plenary sessions, but the alternative solution might improve the quality of the legislation passed, as MPs will have more time to spend on the preparation of legislation, among other things.

Meetings with interested parties are more often held on economic issues. This can be partly explained with the need of more precise quantitative assessment of the impact of legislation in the business field. On the other hand, the persons who initiate legislation are mostly people with law degrees (43 MPs or 18 pct the total number), who are more at ease with legal issues rather than with economic matters and need the advice of professionals. And thirdly, the business lobby is powerful and is courted by all political parties, so regular contacts with business representatives are helpful for the politicians.

A case in point for the role of public debate is the ongoing preparation of Bulgaria's eco-tourism strategy. The drafting of the strategy started with a conference attended by more than 200 experts in early 2002. The strategy is now being fine-tuned in a series of twelve separate meetings of six working groups of experts who belong to various fields: bio-diversity, marketing, SMEs, etc.

What is the most obvious deficiency of the discussion is the lack of a financial dimension. Adding a discussion on a cost-benefit analysis would provide a very rough estimate of the financial impact of each piece of legislation, but the results could serve as a basis for making more precise calculations later. Currently, the financial impact of new legislation is assessed only in the budgeting done by the Finance Ministry, as the ministry has to calculate the future expenses for the creation and maintenance of each new state body or structure.

As a result, the legislation which has an effect on budget spending is usually planned to be introduced with a delay. For instance, a newly passed Act on Football Hooliganism will come into force with a year's delay, because a body at the Interior Ministry will have to be set up to keep track of the problem. On the other hand, business regulations are not given such consideration and may get introduced more rapidly, to the detriment of the stability of the business environment.

3) Parliamentary information centre

Committee and the Citizens' Complaints and Petitions Committee. The EU Integration Committee does not resort to public discussions as its duties are restricted to making sure that proposed legislation complies with the *acquis communautaire*, which has already been tested and functioning for decades in a multitude of EU member states. The EU integration committee, however, is the only one in parliament that has to pass all decisions with the unanimous vote of all floor groups, which reflects the importance of consensus on EU issues. The committee on complaints and petitions, on the other hand, does not initiate legislation.)

² The Council of Ministers remains the body which is initiating the largest amount of legislation. The Council of Ministers tabled about 55 pct of all bills for the period July 2001 – June 2003 and MPs tabled the remaining 45 pct.

The parliamentary information centre was set up in June 2000 with the help of the US Agency for International Development (USAID). Its goal is to give citizens free access to passed or proposed legislation, shorthand records of the plenary and committee sessions and information about the performance of the parliament and the individual MPs, free of charge.

Among its RIA-support initiatives, the centre organises discussions and round tables on important and hotly debated legislation as well as occasional discussions on the Internet. As part of its regular work, the centre collects comments and recommendations on bills and existing legislation from the public and forwards them to the relevant parliamentary committees.

Sources of documents sent to the information centre:

Entries	July-Dec 2000	2001	2002	Jan-Aug 2003	Total
submitted by individuals	11	42	89	91	233
by NGOs, civilian institutions, schools	4	9	11	13	37
by companies, business associations	0	4	1	1	6
Total	15	55	101	105	276

The breakdown of the statistics shows that the parliamentary information centre is an important channel of public opinion for individuals, as citizens do not have access to the working meetings at which NGOs and business associations are invited and do not have any private contacts with committees or MPs which the business maintains. Until recently, the institution of Ombudsman did not exist in Bulgaria, so part of the documents sent dealt with purely individual issues and have no bearing on the legislation process. The legislation-related entries are 95 (or 34 pct of the total) for the period June 2000 to August 2003. In cases when the proposals were found really valuable, the person who sent them would be invited to attend sittings of the respective committee.

Entries connected with legislation

Types of entries	2000-2002	Jan-Aug 2003	Total
opinions on legislation	27	21	48
legislative proposals	25	18	43
entire drafts of bills	3	1	4
Total	55	40	95

Less than a dozen of the proposals have been related to bills which had not been enacted yet. This is indicative of the inability of citizens to keep track of the changes in the legislative process. The majority of the comments and proposals were connected with existing legislation, which falls under the ex-post assessment discussed further below. The reaction by the public came mostly after the passing of a given act as the second (definitive) voting on legislation in parliament is given most publicity in the media. The timing of this reaction is the least favourable for influencing the legislation, as the parliament is unlikely to consider amendments to an act that has just been passed under influence from outside the state institutions.

The majority of comments on bills came in the first eight months of 2003, which must have been helped by the increased publicity of proposed legislation, both through the Parliament's website and through the Parliamentary Information Centre.

Legal field of the legislative proposals and opinions³

Types of entries	2000-2002	Jan-Aug 2003	Total
connected with the business environment	27	13	40
citizen's rights, civilian issues	28	27	55
Total	55	40	95

The prevalence of proposals and comments on generally civilian issues is a sign that part of the Bulgarian citizens are increasingly acting not for the sake of individual interests, but for the sake of defending principles and personal stances. This is most visible in proposals for amendments to legislation dealing with classified information, personal data, discrimination, election procedures, referendums, smoking in public, judicial reform, immunity from prosecution and family and labour code.

This also borders on the polemic whether Bulgaria has a civil society. The people with medium income account for about 10-15 pct of the population. The other criteria for a civil society: having a stance and being willing to defend it, reduce the share of the population that qualifies to a meagre 2 or 3 pct of the total. In most cases, it is usually retired professionals who are willing to indulge in standing their rights: lawyers, university professors, doctors and architects. A much publicised case has been that of a retired lawyer, who won an appeal at the Supreme Administrative Court in 2001 against a government ordinance increasing the heating prices of the state-owned district heating companies.

Additionally, Bulgarians have a high power-distance indicator (according to Geert Hofstede's classification), which translates into less interest in public issues and wobbly belief that the individual can have a role in the juggernaut called state and affect the legislative process. The socialist rule prior to 1989 did not decrease the power distance as it maintained a cumbersome bureaucracy and little accountancy. The participation of individuals in the legislative process is therefore a challenge, both administrative (because bureaucracy is still widespread) and cultural, but as the statistical data show, this challenge is increasingly being taken on.

In an attempt to boost out-of-parliament participation in the legislative process and draw on foreign experience, the Parliamentary Information Centre is organising an internship programme for law students, lasting between three and six months, in which groups of students compare the legislation of various states and draft recommendations for the Bulgarian legal environment. This method is used both for preparing new legislation and for reviewing and amending existing legislation. The international applicability of a given piece of legislation to some extent does away with the need of RIA (as the incorporation of the *acquis* in the Bulgarian legislation has shown), but there are instances when the local environment is too different and necessitates some case-by-base assessment. A recent case of the need of taking into account the local environment were the negotiations with the EU on Bulgaria's keeping the brand marmalade to designate a type of jam made of hips. The word was preserved simply because it has gained popularity in Bulgarian, even though it went against EU standardisation regulations.

Following a policy of promoting transparency and the role of civil society, the parliament (with the help of the Parliamentary Information Centre) used to hold open-doors days between 1997 and 2001. The practice was suspended in 2001, even though it had the positive effect of making the legislature more tangible to the people and encouraging citizens to speak up on legislation issues.

³ The formal division into business-oriented legislation and civilian legislation is mainly based on whether the effect of a law would affect corporate interests more than individual interests. Taxation and social security legislation are thus counted as business-oriented, while healthcare and pensions are counted as civilian-oriented, even though both have a strong monetary element.

4) Parliamentary Complaints Committee

The parliamentary Committee for Complaints and Petitions of the Citizens was set up in July 2001 and has received about 5,000 complaints for the period July 2001 – December 2002, both at its premises in Sofia and the ad-hoc offices opened on single days in 14 Bulgarian cities during these 18 months. A total of 265 of the filed complaints contained proposals for amendments in current legislation. The committee has forwarded the proposals to the other parliamentary committees.

The major issues dealt with in the proposals are: role of the judiciary; penal code and code of civil procedures; property restoration, land restoration, state and municipal property; health insurance and obligatory social security; disabled people and ombudsman.

The committee seems to be a better conveyor of public opinion on legislation than the parliamentary information centre, thanks to its network of ad-hoc offices, but judging merely on the basis of the number of legislative proposals filed. The accent of the proposals, however, is twisted towards complaining not exactly from malfunctioning legislation, but rather from the mis-application of legislation by malfunctioning institutions, so only a percentage of the filed complaints contained valuable legislative proposals. Unfortunately detailed statistics about the complaints committee were not open to the public, unlike the statistics and files of the parliamentary information centre.

5) Role of the media

Apart from taking part in committee sittings in parliament, journalists are also a catalyst of the public opinion through the media. The print media in particular is strategically positioned both at the start of the process of generating publicity and at the end of the process of summarising the feedback from the general public.

The journalists who are present at the sittings of parliamentary committees spread the news and sum up the comments through interviews and limited-scale opinion polls. However, Bulgaria's dailies, which are predominantly tabloid (with the notable exception of two business dailies) tend to concentrate on unimportant and scandalous aspects of the impact of new legislation or legislative proposals. Hence the journalists collect feedback only on the limited aspects which they have initially thrown into the public space.

A recent case that gained nation-wide popularity was the lobbying of Bulgaria's five biggest sea and ski resorts to be given municipal status, so that they would be able to retain the local tourism fees for developing their own infrastructure. The far-reaching consequences of this widely publicised idea would have brought changes not only to Bulgaria's Regional Division and Spatial Development Acts, but also to the election legislation, as the resorts officially do not have permanent residents and if proclaimed separate municipalities, they would be run by mayors elected by the councils of hotel owners. These aspects of the dispute between the resorts and the centres of the municipalities within which they are located were sidelined by the media. Instead, what hit the headlines were threats of electricity and water supply cuts for the resorts by the mayors of the municipalities that enclose the resorts.

Another case in point was a proposal for a new regional division of Bulgaria into six economic planning regions, in accordance with the EU NUTS II territorial units. The print media gave the floor to the mayors of almost all of the 27 current regional centres, each of whom argued that their city should become the centre of one of the six regions. The main reason for setting up the six planning regions – attempting to improve regulation and supervision of the utilisation of EU funding was seldom mentioned and hence not commented.

Some aspects of complex financial deals on the side of the state have remained beyond the grasp of the general public and hence public opinion has proven to be a poor

evaluator of the real effect. Two examples from the last two years were the signing of a contract with UK consultancy Crown Agents for managing Bulgaria's customs network and a controversial swap of Bulgarian Brady bonds into eurobonds. Both deals have proved extremely successful from a financial point of view, even though the public was set against the deals by a scare-mongering media that was drumming imaginary corruption scandals.

This example bears proof to the conclusion that public debate on complex issues which go beyond the rights of the individual or his/her individual well-being should better be left to experts specialising in the given field, regardless of whether their opinion will be conveyed through a debate or not.

6) Presidential veto

Another participant in the supervision and correction of the legislative process is the President. Bulgaria is a parliamentary republic, so the president has limited powers in many aspects of the state government. In the field of legislation, the president's powers spread as far as being able to impose a veto with which an act is returned to parliament for further discussion. Each vetoed piece of legislation, however, can be easily overruled by parliament with an ordinary majority.

What is more important about the presidential veto, which has been used on nine occasions since the beginning of 2002, is the fact that a veto turns an act into a high-profile event nationwide. The veto buys time for restarting public debate on a given piece of legislation. Only one veto has so far been successful in stopping the passing of a bill in its original form. The debate in the media that is kick-started by a veto, however, can generate positive externalities for the legislative process in the future, since a veto can attract attention to a given sphere of the public life or business environment and can help in the passing of better-tuned legislation later (given that political interests are not a hurdle).

In the current parliament, the presidential objections are not given sufficient consideration (as the president was nominated by the left, while the ruling majority is centre-right). However, the previous parliamentary majority (1997-2001) and the previous president (1997-2001) both belonged to a rightist Christian-Democrat power, so when the president raised objections against a piece of legislation, it meant that the legislative process had gone awry and the MPs would think twice before overruling the veto.

The nine acts vetoed by the president since January 2002 were split into 6:3 in favour of the economic/financial acts over the civilian/individual rights issues. The most hotly disputed in society veto was on the Organ Transplantation Act and the veto successfully fanned the debate on this issue, with which the majority of Bulgarians are not familiar. The president has also vetoed acts on biodiversity and amendments to the family code, acts on social security, financial supervision, banking and privatisation, among others.

Good practices in RIA envisage that regulations should be as few as possible and minor issues should be regulated with the lowest possible tool, e.g. there should not be an act on roadside trees if a simple instruction will do. This also makes sense for the public scrutiny, as the public has easier access and much more say at a lower-hierarchical level than in the parliamentary legislation process.

The legislation statistics of the parliament for the two years between July 2001 and June 2003 show that a total of 568 bills were tabled and 296 were passed for the period. Some 21 pct of the drafted legislation were new bills, 54 pct were proposals for amendments and 25 pct for ratifications, whereas out of the passed legislation, 38 pct were amendments, 16 pct were new acts and 46 pct were ratifications. The significant legislative activity of the Bulgarian parliament since 1997 can be put down to the need of preparing the legal ground for Bulgaria's EU accession, rather than to an obsession with overregulation, but the lack of an institutionalised RIA

framework remains a deficiency in the work of the parliament that is visible from the significant number of amendments passed.

Apart from ex-ante RIA, ex-post evaluation of regulations and the public debate on such evaluations could also help by showing the legislators the deficiencies in past regulations. This can serve both as a means of encouraging the passing of amendments and as a tool to promote the wider application of RIA in avoiding legislative oversights or mistakes in the future. Moreover, ex-post analysis prolongs the period during which legislation remains an issue of public discussions and public scrutiny.

The realisation of the need of applying RIA is becoming increasingly widespread in the Bulgarian parliament. Various committees are studying best practices and examples, particularly from the experience of the OECD and the UK. The realisation of the need of applying RIA in subdelegated legislation is trailing behind, but the administrative decisions which get turned down by court are pointing to the proper methods in passing efficient subdelegated legislation. The ex-post analysis and assessments done by Bulgarian NGOs are also driving the process forward.

As a result, it can be expected that RIA will be institutionalised in the Bulgarian parliament prior to the country's EU accession, expected in 2007. At the current stage of development, what is most important is to convey the message that elements of RIA already exist and are applied in Bulgaria. They only need to be perfected and united in order to reach the well-rounded procedure that exists in the West.