

THE SERBIAN REGULATORY REFORM AND GOVERNANCE

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Abstract

More and more, society is becoming aware that regulations, while necessary, also impose high costs on individuals, businesses and the public sector. Regulations that are unclear, obsolete and badly designed prevent achievement of the intended social and economic goals. Therefore, governments all over the world initiate programs on better regulation.

As the Serbian government recognized the problem of a large number of inefficient regulations in its system, it enacted in July 2008 its regulatory reform project or its well known “guillotine” involving the one-time rendering of inefficient regulations ineffective or their amendment.

After introduction, it is elaborated upon the drivers of the OECD and the European Union Policy on Better Regulation, their experience in improving regulatory environment and policy lessons gained.

The next part examines how the Serbian government actually goes about creating better business regulation. Here is the review of the Serbian Comprehensive Regulatory Reform or Regulatory Guillotine as a first stage in the Strategy of Regulatory Reform.

The last part of article points to the coming challenges in governance architecture for steering regulatory reform in Serbia: credibility, evidence based solution for any kind of regulation problem, legitimacy, transparency.

Keywords: Regulations, regulatory reform, governance, guillotine

JEL classification: G28, G38, P11, R38

1. INTRODUCTION

Many relevant studies produced by international institutions show that the Republic of Serbia has made important steps in improving its legal system in last several years. Three important drivers directed improvement across a front of regulatory governance: a process of European integration, strong support of international community and pressure coming from the private sector.

However, in everyday life the Serbian citizens and enterprises still face a large number of regulations and the complex and expensive regulatory environment that hinders growth and competitiveness. Measuring by WEF Global Competitiveness Index, Serbia ranked 91

out of 131 countries and by WB Doing Business in 2007 Serbia was ranked 84, in 2008 – 86, in 2009 – 94 out of 181 countries. In terms of Kaufmann's regulatory quality Serbia in 2007 got low rank, 40.5% (in percentile rank 0 - 100) especially in comparison to Croatia 61.5%, Macedonia 52.7%, Bulgaria 66.3% and Slovenia 72.7% [1].

It is noticed that there are simultaneously a lack of necessary regulations in some areas and overregulation in others, that many regulations can not applied (a lack of enforcement institutions or funds for application), are not enforceable (unclear or inconsistent with other regulations), adopted in nontransparent manner creating unequal conditions to stakeholders, so generating legal insecurity and unnecessary cost to private sector. Outdated regulations and inefficient regulatory techniques survive deep in the regulatory jungle, because there is no accountability for their performance and no review and updating process in place. Foreign investors and domestic ones alike are often discouraged from investing because regulatory regime falls short of good governance. Governance is core element of the transition from state-led development to one rooted in resource allocation through market. In search for better governance, regulatory reform is critical [2], [3].

After this introduction part which points shortly to the size of regulatory problem in Serbia, the second part of paper is elaborated upon the drivers of the OECD and the European Union Policy on Better Regulation, their experience in improving regulatory environment and policy lessons gained. The third part examines how the Serbian government actually goes about creating better business regulation. Here is the review of the Serbian Comprehensive Regulatory Reform or Regulatory Guillotine as a first stage in the Strategy of Regulatory Reform. The fourth part points to the coming challenges in governance architecture for steering regulatory reform in Serbia.

2. THE DISCOURSE ON REGULATORY POLICY AND GOVERNANCE

Today many scholars agree that the history of regulation is better understood if it is views through lenses of the reactions to the changing objectives and requirements in different countries industries and policy context than lenses of coherent government strategy. Following the rapid growth in the scope and scale of regulatory interventions through most of the twentieth century (regulatory inflation), shifts in the economic environment begun to reveal more clearly the previously hidden cost of obsolete, low quality and constantly expanding regulatory structures. The emergence of the deregulation in 1970s constituted some of the first attempts to address the question of the nature of regulation, and its limits as a policy tool. These first efforts at deregulation were driven by economic downturn and were based on the view that a large number of regulations were hampering the economy by strangling innovators and entrepreneurs. These actions of deregulation were only partially successful. However, as the process continued, deregulation gave way in the 1980s and 1990s first to regulatory reform, then to regulatory management. This change entailed a shift away from question of what regulation should be eliminated towards how regulatory structures could be improved [4].

The current debate on better regulation highlights: not only does better regulation aim at less regulation per se, but also at finding more effective structures and ways of designing and enforcing regulation without creating unnecessary burden. The better regulation approach emphasizes methods and tools that can deliver clear evidence in order to create more effective policy making processes. Better regulation became permanent, rather than episodic in nature. At the broadest level, this shift has meant providing explicit public support for the

regulatory reform agenda, by adopting a reform policy at the 'whole of government' level often with timelines, targets and evaluation mechanisms [5].

The whole OECD experience on regulatory reforms confirms that an effective regulatory framework needs to be made-up of three pillars which are mutually reinforcing: regulatory policy, regulatory institutions and regulatory tools. Both the OECD and World Bank have prioritized regulation in their programs for good governance. By doing so, they acknowledged the potential of regulatory reform in terms of governance, participation of stakeholders and more balanced state-society relations. What started out as a movement to open up economic sectors to competition has now become a debate about models of governance, accountability and the role of public interests in regulatory choice [6], [7].

Regulatory reform i.e. improvement of the quality of regulation in the EU becomes particularly significant after the adoption of the Lisbon Strategy and the 2001 Report of the so-called Mandelkern group [8]. The Group Report provides recommendations at the level of the member countries' governments and European Commission level, emphasizing six areas of regulatory framework improvement: (1) policy makers should consider all possible options and select the one that is most suitable to given circumstances; (2) using Regulatory Impact Assessment (RIA) as a method that enables the effective conducting of the policy on the basis of previously collected evidence; (3) consultations as a tool by which publicity is achieved in the process of the regulation adoption and reduce the process prolongation due to the appearance of contradictions; (4) simplification is not the same as deregulation, but a tool by which easier understanding and greater efficiency are achieved; (5) all persons to whom the regulation refer should be able to have simple access to regulation; (6) improvement of regulation requires a formation of appropriate institutions that will be responsible for implementation of regulatory framework improvement strategy. The report proposed an Action Plan and set out seven core principles for better regulation: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity.

Having reached the half way stage of the Lisbon process started in 2005 the European Commission decided to re-launch the strategy with the focus on growth and jobs and a streamlined process to enhance member states' ownership to their reform programs. Better regulation is not a matter for EU alone. The EU on its own can not boost productivity and employment, member states also must play their part through developing and implementing better regulation policy and using better regulation tools effectively. The importance of better regulation is mirrored in the Integrated Guidelines for Growth and Jobs [6], where it is provided that member states are recommended following tasks in order to create more competitive environment: (1) reduce administrative burden that bears upon enterprises, particularly on small-medium enterprises (SMEs) and start-ups; (2) improve the quality of existing and new regulations through a systematic and rigorous assessment of their economic, social and environmental impacts; (3) encourage enterprises in developing their corporate social responsibilities.

On November 14th 2006 the European Commission presented the results of better regulation in the EU. It is ascertained the progress and made an ambitious set of proposals. The most important concerned the reduction of administrative burden of existing regulation for companies by 25%, by 2012 which could lead to an increase of an estimated 1.5% in EU GDP and more investment for growth and new jobs, amounting to EUR 150 billion. It also invited member states, taking into account their different starting points and traditions, to set their own national targets of comparable ambition within their spheres of competence by 2008 [9].

In this discourse on regulatory policy and governance it should be also noticed that the relations between regulation and competition have changed. Regulation and competition became aligned in a way that was inconceivable to Stigler (he wrote in 1970s, with much conviction: "regulation and competition are rhetorical friends and deadly enemies...", 1975, 183), and is still difficult for many to appreciate. The regulatory toolbox has expanded and, more importantly, contains new techniques of 'regulation-for-competition'. The advantage of the notions of regulation-of-competition and regulation-for-competition over the notion of re-regulation is that they reflect positive relations between regulation and competition and suggest that it may be possible to promote competition via administrative controls [10]. However, regulation-of-competition and regulation-for-competition differ in degree of intervention by state authorities and in the capacities of the state to monitor and enforce competition. While both require the establishment and the strengthening of governance capacities, regulation-for-competition requires far more intrusive capacities. This is best indicated by the contrast between economy-wide responsibilities of national competition authorities in the case of regulation-of-competition, and sector-specific responsibilities of regulatory authorities in the case of regulation-for-competition. The broader responsibilities of national competition authorities allow them less influence on market actors who know their industry well. These broader responsibilities also imply that competition authorities adopt a reactive approach to anti competitive measures. In regulation-for-competition, the responsibilities of regulatory authorities are confined to a sector or industry, giving them much more influence over market actors. These authorities are proactive and involved in market design and control to an extreme extent in some cases.

By today a large number of the EU member countries took measures in order to simplify regulatory environment and improve the operation of the government administration. SIGMA [11] reported in 2007 that a number of new member states (NMS) begun to develop an explicit policy on better regulation. In the Czech Republic the government adopted regulatory reform strategy in 2007 which largely relies on European Union's better regulation strategy and in Poland the government adopted a three year regulatory reform plan on August 2006. In Hungary, Slovenia, Lithuania, Latvia, Slovak Republic and Croatia, a large number of better regulation tools are in place and better regulation is mentioned as a priority area in their national development plans.

It can be concluded, particularly important to the Serbian scene, that the clearest lesson of the last 15 years is that modernizing the regulatory role of state is a good governance agenda, not a narrow deregulation agenda. Regulatory reform is not about limiting the role of the state, but about redefining the capacities and the role of the state to meet evolving needs. Governments, especially in new democratic states, such as Serbia, must learn when and how to regulate in a market economy, not to abandon their legitimate roles in the face of market forces.

3. REGULATORY REFORM IN REPUBLIC OF SERBIA WITH FOCUS ON COMPREHENSIVE REGULATORY REFORM

The inherited regulatory setting from the ex Yugoslav Republic together with introduction of new legislation after its dismantling (which is characterized by the lack of insight on the impact of the legislation on the stakeholders, lack of coordination between different ministries in elaborating it and a poor enforcing capacity) make regulatory reform in Serbia very important. In 2003, the Council for Regulatory Reform and Quality Control was established

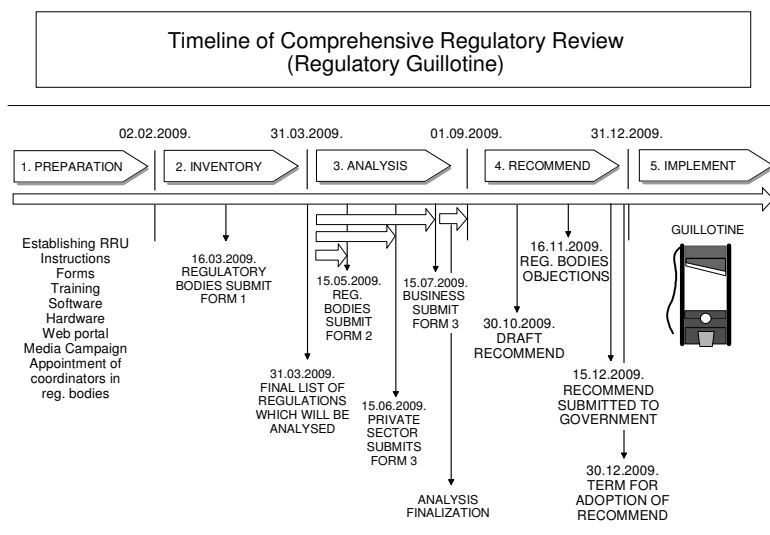
in order to assist the government in the regulatory reform process. The Council elaborated the regulatory reform strategy for 2008/11 which is aimed at the establishment of a regulatory system which: (1) promotes economic development and social prosperity; (2) supports national competitiveness and protects public interest; (3) reduces administrative business cost at least 25% by 2011 and accelerates administrative procedures by introduction a “one-stop-shop” system and principle “the silence of administration”; (4) improves the international rating of the Republic of Serbia in terms of business environment quality, especially in Doing Business studies of World Bank and the World Economic Forum by minimum 20 places.

In order to achieve these objectives, the regulatory reform strategy provides for activities in four areas: (1) one-time elimination of redundant and unnecessary regulations – Comprehensive Regulatory Reform (CRR); (2) strengthening regulatory impact assessment (RIA); (3) establishing the tools for maintaining the quality of regulatory environment; (4) establishing the tools for coordinating regulatory activities [12].

In the following pages, the attention is focused on actual assessment of these changing areas and future challenges.

Recent world-wide experiences show that the first the most obvious task in changing regulatory system is elimination the enormous stock of existing obsolete regulations. For this task there is an innovative reform instrument called Regulatory Guillotine [13]. The term Regulatory Guillotine has been used for several years to describe variations of the basic reform, but regulatory guillotine is a trade mark of Jacobs and Associates Inc. It was first pioneered in 1984 by the Swedish government which was facing regulatory confusions caused by a century of accumulation of rules. The Serbian strategy for regulatory reform uses as the official name the Comprehensive Regulatory Reform, but in the public more often name guillotine.

Guillotine is suitable top-down approach and is recommended for governments decided to move rapidly through the transition process from state-led growth to market-led growth. It is based on the view that the regulatory problem is vast and systematic and that isolated and marginal reforms such as liberalization and deregulation agenda can produce some immediate results that can be satisfying politically, but have limited long-term value for business growth, because gains are easily reversed by bureaucracies operating under old habits and incentives.



Source: [www.srp.gov.rs]

Figure no. 1 Regulatory guillotine

The Serbian CRR or the popular regulatory guillotine is going to be implemented in period 2008/10 with the scope of making an inventory of all regulations and a rapid review of relevant regulations in order to identify redundant and inefficient ones (Figure 1).

The CRR is going in following phases.

(1) Preparatory Phase. The government established the Regulatory Review Unit (RRU) with tasks to undertake the preparatory activities for reform implementation (necessary instructions, forms, software, hardware, media campaign).

(2) Inventory Phase. The ministries (24) and other regulatory bodies (76) are instructed to submit the list of all regulations in use within their scope of work. Based on the lists of submitted regulations, the RRU composes the final list of all regulations and enters them into the data base (inventory, stock). The first thing that can be noticed is that the inventory consists of a large number of regulations (5515) in comparison to neighbouring countries (Hungary, Croatia, Macedonia, BiH) and even Mexico. A half of them (2525) were adopted in period 2001/09. Out of the total number, 218 regulations have never published and concerning to the type of regulations dominates instructions and decrees. The most of them come from Ministry of Internal Affairs (108) and then the Republic Authority for Health Insurance (24) – and only 19 published. In the structure of regulations according to their impact on the economy there are 1392 with direct impact, 2543 with indirect and with no impact 1580. Out of the total of open dossiers (2150), by RRU, 1848 were active and 302 non active (Table 1).

(3) Analysis Phase. For each regulation within their competence or applied by them, from the final list of inventoried regulations, the regulatory bodies are obliged to (a) conduct an assessment of impact of that regulation on business, (b) complete and submit to the RRU, in electronic and written form, the regulatory assessment form available on CCR web site, with proposal that this regulation be eliminated, amended or be kept as it is (un-amended), along with a justification of that proposal. It is expected that the most important input in this

phase will be the input of stakeholders (citizens, entrepreneurs, Chambers of Commerce, Business Advisory Council etc.) who have the opportunity to express their views about the regulations by filling the questionnaires published on CRR web site. The RRU initiates the establishment of an electronic register of regulations. The areas of analysis are: financial system, fiscal system economy, agriculture, labour employment, social protection, environment and planning, judiciary, education, culture, information, health and sports and state administration. Taxes and customs rates, military and defence and international multilateral agreements are excluded from analysis (Table 2).

Table no. 1 Inventory Phase

INVENTORY	
From 02.02.2009. Until 31.03.2009.	
REGULATORY BODIES	
Total regulatory bodies	100
Ministries	24
Other regulatory bodies	76
REGULATIONS	
Reported by the regulatory bodies	5515
Published	5297
Unpublished	218
International agreements	app. 1500
Total	app. 7000
Regulations which impact the economy	2974
Directly	1392
Indirectly	2543
No impact	1580
Number of opened dossiers	2150
Active	1848
Non-active	302
TYPE OF REGULATION	
Laws	1018
Decrees	817
Regulations	1991
Instructions	500
Decisions	580
Orders	86
Other	545
Regulations adopted in the period 2001-2009.	2525

Source: [Own calculation based on data from www.srp.gov.rs]

Table no. 2 Analysis Phase

REGULATIONS ENTERED IN ANALYSIS PHASE from 31.03.2009 until 01.09.2009.	
LAWS	251
DECREES	189
REGULATIONS	819
INSTRUCTIONS	135
DECISIONS	293
OTHER	113
ORDERS	48
TOTAL	1848

Source: [Own calculation based on data from www.srp.gov.rs]

If it is looked deeper it can be seen that the plan for changing regulations looks like as this: with 4019 regulations there are no planned changes, 1216 regulations will be changed in following days of year, with 205 regulations changes are under way and with 75 regulations changes are finished and regulations are in procedure of adopting.

(4) Recommendation. The RRU composes draft recommendations and submits them to all regulatory bodies, the EU Integration Office and Secretariat for Legislation. The regulatory bodies return comments to the recommendations and after that the RRU composes the final recommendations which were submitted to the government in the form of 3 packages. Package I contains the regulations to be cancelled or amended by government, ministries or government agencies; Package II contains the regulations to be made ineffective or amended by the Parliament; Package III contains the regulations proposed for eliminated or amended by independent agencies reporting to the Parliament.

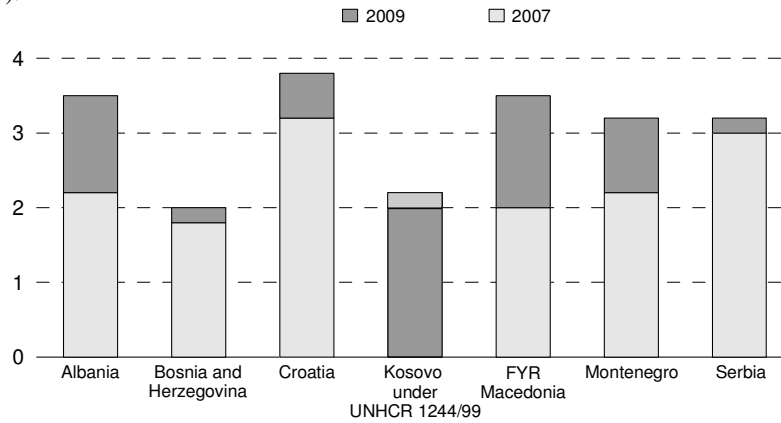
(5) Implementation Phase. Having adopted the RRU recommendations, the government instructs the regulatory bodies to prepare the official proposals for eliminating or amending the regulations included in the packages. The long term objective is the creation of the electronic regulatory registry and its integration into the process of publishing new regulations. Electronic registry will enable greater legal security, transparency, improved access to regulations, low transaction cost for investors, strengthening the responsibility of regulatory bodies and setting up a system of continuous review of the regulatory system.

The first and very important benefit of the guillotine is that for the first time the Serbian government was able to build a comprehensive inventory of regulations. The inventory revealed that the regulatory problem is larger than previously knew and that there is substantial illegal behaviour among regulators that was imposing large and unknown costs on business due to regulatory insecurity. Of course, using the inventory to establish an electronic registry with positive security will be the way to sustain this benefit in the future. The simple number of eliminated regulations will be itself a poor proxy for cost, since government can easily cut trivial regulations without much impact on cost levels. Qualitative assessment of the content of the guillotine in Serbia will show whether the regulations with substantial cost and rent seeking implications were eliminated. The most important benefit will be seen in next period and will be reflected in how the guillotine prepares government to go forward in institutionalizing the regulatory quality, and creating processes and organizational conditions for continued reform to the regulatory role of the state.

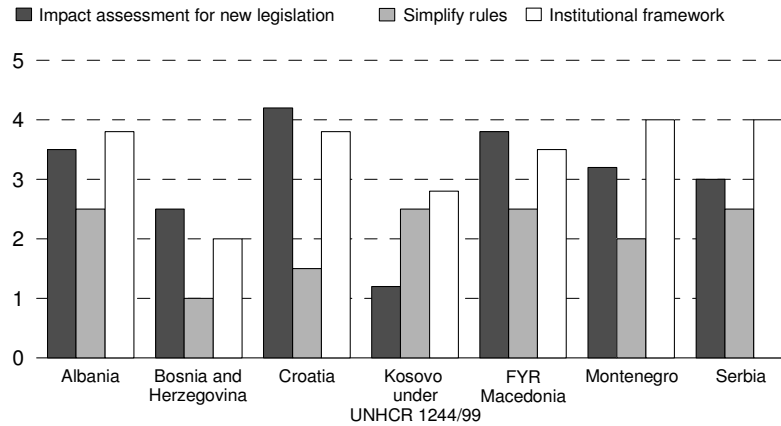
How much will the guillotine cost? Most of the cost of the guillotine is the cost of labour to count and review the regulations. Not only in Serbia but in many other countries

anybody know how many regulations actually exist (many have never been counted or even published) so, it may be difficult before the end of guillotine to estimate total cost. Past experiences showed that costs have ranged from \$1.5 million in small countries to \$7 million in large countries and that in most countries they have been shared between government and donors.

The last Report on the Implementation of the European Charter for Small Enterprises in Western Balkan [14] assesses that the all countries in Western Balkan has improved their regulatory environment measured by three elements: regulatory reform, institutional framework and RIA. Croatia made more than Serbia on the way of better regulation during 2007/09 and currently all but two countries (B and H and Kosovo) are above level 3, considered a threshold at which a solid legal and institutional framework is in place (Figure 2a and 2b).



Source: [SME Policy Index 2009]
Figure no. 2a Better legislation and regulation



Source: SME Policy Index 2009
Figure no. 2b Better legislation and regulation by 3 elements

4. WHAT ARE THE CHALLENGES?

This concluding part of paper is dealt with the coming challenges in governance architecture for steering regulatory reform in Serbia.

The implementation of regulatory policy and the usefulness of regulatory tool depend on the existence and functioning of right set of institutions. They include regulatory oversight bodies at the centre of government and independent regulators in addition to other key contributors to regulatory quality.

In assessment of government officials, local stakeholders and international staff of OECD Invest Compact (2006, 2009) The Serbian oversight body, the Council for Regulatory Reform, stands out among those in SEE countries [14]. It meets the most key criteria for a regulatory oversight body. Independent regulation has become fashionable in recent years - first for monetary policy and then for competition bodies. The focus has been on preventing political interference with regulatory decisions, rather than the relationship between regulators and regulatees. Much of the debate has focused on the perceived "incompetence" from government, but behind this popular argument lie two factors: the problem of regulatory credibility, and commitment by central government; and the capture of the political process by regulatees, thereby using government to constrain the behaviour of regulators [15].

The credibility and commitment problem is well known. Less clear is how such institutions should be designed in response. First, independence can only be relative. Second, independence works best when there are clear and separable objectives and clear and separable instruments and these objectives command a wide political consensus. Where objectives are multiple and where they conflict, the trade-offs are political and best managed through political process.

RIA as a tool to evaluate the costs and benefits of new legislation has been applied in Serbia since 2004 and formally introduced into the legislative system through the Rules of Procedure of the Government in 2005. The Government of Serbia received EUR 2.4 million in support for developing RIA from the Swedish International Development Cooperation Agency (2006-2010) and help from the World Bank Group. Currently the type of RIA analysis applied in Serbia is a "soft" RIA due to the limited resources available that should be invested in a full RIA and is focused in the first phases on damage control. However, further improvement is necessary both in terms of personnel and methods used. A new law on RIA, providing for transparency and application of more sophisticated measures is envisaged.

Here there are many challenges. How can we best leverage information and analysis so that they facilitate rather than frustrate the regulatory reform agenda? How do we incorporate the many voices of democratic society into the regulatory process, while still moving forward efficiently? This means that we have to look at evidence - based policymaking through a variety of lenses. We have to examine how different players, including parliamentary actors and external organizations, can help to facilitate the use of evidence in regulatory process. Applying a more technical lens, we also have to investigate how tools such as cost-benefit analysis, impact assessment and e-law making can contribute to the better regulation agenda. For the Serbian regulatory reform it has to highlight that the targeting RIA where regulatory outcomes will have a noticeable economic impact has two significant benefits. First, focusing RIA resources on key areas enhances the credibility of its results and increases rewards that ensuing policy improvements bring. Second, because the RA process has to be supported at both the administrative and political level, it is important that stakeholders

do not view RIA as simply a costly bureaucratic process that analyses insignificant policy proposals with little to be gained by the exercise. RIA is a challenging process that needs to be built up over time. It has to be integrated into the policy making process and so it leads to significant cultural change within regulatory ministries and among consumers of the analysis, primarily ministries and legislators.

Improving regulatory transparency is also important element of sound regulatory policy. In intricate administrative and political situation such as in Serbia, transparency may complement efficiency and accountability principles. Transparency can address many causes of regulatory failure, such as regulatory capture and bias towards concentrated benefits, market uncertainty, inability to understand policy risk and lack of accountability. Improving transparency can also encourage the development of better policy options and reduce arbitrariness and corruption. Consultation with consumers, business and civil society also help build the legitimacy and promote issues of equity and fairness among citizens. The Serbian Rules of Procedure of the Government prescribe mandatory public consultation on laws that significantly change the legal regime in a certain area, or are of particular interest to the public. In other cases, public consultation is not mandatory but can be performed if the proposer of the law considers this necessary.

The regulatory reform strategy should have further positive effects on the enhancement of the transparency of laws and regulations through public consultation. According to this strategy, each ministry should establish a consultation plan to ensure that all major interest have early and meaningful access to draft laws and regulations. This plan should involve representatives of business interest and NGOs to the extent possible.

All these mean that to change the culture for better regulation, a change in the culture of policy making is needed [16]. Strong support and commitment by the head of government is essential - otherwise, better regulation initiatives might get stuck in line with ministries' interests. If better regulation is key factor of the political agenda, it can be promoted in the public and people can get involved without rising expectations to unsustainable levels. Quantifiable targets are the first step. Transparency in measurements and publishing results enhances credibility. Sharing performance data is the next step to involve people. Simplifications and reductions should be noticeable and felt by businesses and the public.

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