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From wrong transposition to false implementation - the case of waste management regulation in Macedonia

The Community Acquis as major EU integration requirement

Acquiring of the accumulated European Union legislation is a prerequisite for all candidate countries requesting membership to the EU. Hence adopting it through transposition should be the fastest and safest way. But is it? Chasing the EU membership dream, combined with an overwhelming bureaucratic desire to regulate each aspect of doing business, currently results with more than 300 prepositions of new regulations, changes and amendments to existing regulations each year, thus wreaking havoc upon all participants in the economy.

Faulty transposition with serious implication

Back in July 2013 another wrongful transposition from the Community Acquis of Waste Management regulation in Macedonia resulted with 80 trading companies (brokerages) being banned from the trading market with non-dangerous waste. Although with a previous revision to the same regulation in April 2012, that imposed a mandatory obligation to purchase 10 year licenses for trading with non-dangerous waste, still they ended as collateral in the pursuit of Macedonian government trying to resolve a dangerous problem regarding massive looting of public property made out of steel and aluminum (example sewer lids). Their solution, among other details, to ban everyone from trading with non-dangerous waste except those who possess licensed locations for treatment and storage of waste is actually controversial as previously all looted public goods used to be sold by the thieves at the same licensed waste locations that are now being rewarded with a privileged position while those not even being part of the problem

Executive Summary

A serious implication was set in motion by another faulty transposition in Macedonia of the Community Acquis regarding waste management regulation that costs our economy an estimated 50 million euros per year. By persistently omitting Directive 2008/98/EC a bureaucratic ordeal has been imposed upon trade with non-dangerous waste. This policy brief analyses how can a candidate country for EU membership overcome faulty transpositions using the Regulatory Impact Assessment procedure. Our proposal is to set a prerequisite in the RIA analysis when a change to the national legislation is motivated by requirements of the European Integration Process then its transposition must be at least 90% to the respective regulation in the Community Acquis or no change should be allowed at all. This recommendation is being motivated by the principals of financial and performance accountability for policymakers which are currently dormant. But by rising the awareness of general public for the effects it can have through the RIA mechanisms, especially consultations with concerned parties, accountability of policymakers could finally be woken up.

are punishedⁱ. Exclusion of traders and brokerages is having a far wider implication to the economy for they served as a multiplication factorⁱⁱ. In any business environment, they fill the gap between sellers and buyers preferences regarding advance or postponed payments respectively, and in doing so they increase the whole economy turnover. Therefore, by preventing traders/brokerages to participate in waste management, not just an effective mediator has been taken out of the equation for efficient waste management, which by the way is the sole purpose of the Regulation itself, it is also costing the Macedonian economy an estimated 50 million euros per year.ⁱⁱⁱ

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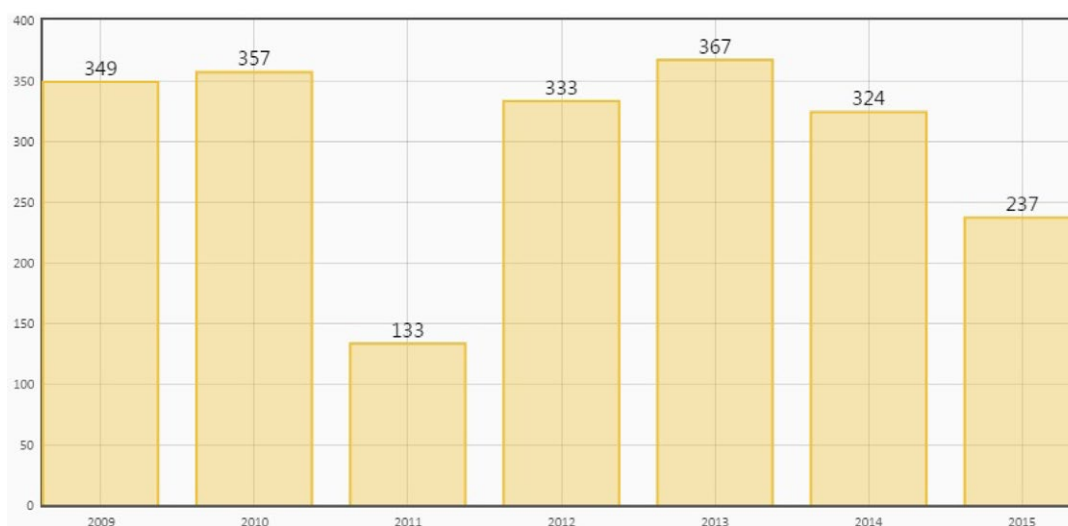


Figure 1: Adopted regulations in Macedonia per year
source: <https://ener.gov.mk/default.aspx?item=analysis>

Trial and error in perpetuity

So far, from 2008 till 2015^v, there have been thirty three changes to the waste management regulation in Macedonia. Although in each and every one of those changes, the Community Acquis has been cited as the essence, not a single one fully complies with the respective regulation in the Acquis. Thus, huge public resources are also being spent in vain each year with no accountability at all.

What causes the problem?

A simple omission of a very important directive, Directive 2008/98/EC, is the source of the whole bureaucratic ordeal regarding trade with non-dangerous waste. It clearly explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), and defines how to distinguish between waste and by-products. Additionally, a Regulatory Impact Assessment (RIA¹) tool is used to examine and measure the likely benefits, costs and effects of every new or existing regulation. It is a sort of control stage which also checks whether a regulation is in line with the community acquis. But the fact that thirty three changes have been made so far to the regulation, with each respective RIA claiming all to be in line with the community acquis while none actually was, implies that the RIA tool in Macedonian legislation currently is a mere pro forma since moral and mandatory accountability are not being exercised at all.

1 The implementation of RIA supports the process of policy making by contributing valuable empirical data to policy decisions and by building a comprehensive and well-informed framework to foresee the consequences of potential regulatory policy options. An effective inclusion of this tool into the regulatory processes requires general acceptance from the public and the private sectors. The process of RIA includes consultation with concerned parties to define more precisely the effects of new regulation on them.

By omitting Directive 2008/98/EC 33 times in 7 years, which if we are to join the EU must be implemented eventually, Macedonian policymakers have proven that they are immune from moral and mandatory accountability.

Lot of Macedonian traders were forced to move abroad in order to continue their businesses in Macedonia as activities of foreign traders are not affected by this regulation, hence the rebound in trade for 2014 in figure 2 and 3. For more details please refer to Endnote I.

Policy options and recommendations

An assessment of the current issue clearly confirms the following implication, implementing Directive 2008/98/EC and enforcing accountability through the RIA process. **By-products are not a Waste** thus by simply implementing Directive 2008/98/EC a distinction will be defined between waste and by-products^v, consequently the market for by-products will be deregulated as unnecessary regulatory obstacles will be eliminated (such as licenses and permits for each transaction^{vi}). Hence it is needed an immediate government mandate requiring for a strict and proper transposition of the Waste Management regulation according the Community Acquis.

Additional recommendation, if the goal is EU membership, would be a safety mechanism in each RIA analysis proposed as a mandatory prerequisite stating that if a change to the national policy is motivated by requirements of the European Integration Process then its transposition must be at least 90% to the original or no change should be allowed at all.



Figure 2: Example of how wrong transposition effects the economy
source: <http://comtrade.un.org/> & authors calculations

Accountability per se must be mandatory^{vii} in order to avoid purposely conducting faulty RIAs. According Bianculli et al (2015, p.83) policymakers can be required to render account for various aspects of their conduct, but most effectively it would be through their *finances and performances*. *Accountability for finances* refers to policymakers explaining how they have spent the money with which they have been entrusted, typically encompasses a justification of the way in which taxpayers' money is spent. *Accountability for performances* refers to whether regulations are producing the results that they were designed to produce, therefore an evaluation of the actual performance must be conducted.

Achieving both accountabilities is possible through the RIA process for it has mandatory consultations with concerned parties in its core, as their suggestions and comments are intended for better construction of each assessed regulation. Also they all remain as permanent written record, publicly available at the official RIA channel – ener.gov.mk. This is very important for post-implementation revision, a requirement of the RIA process, where written records of previously suggested issues are indicating a negligible conduct from the responsible policymaker and can be used in revoking the necessary accountability, either by the responsible institutions or by the concerned parties themselves.

Respectively, in the case of Waste management regulation, according finances accountability thirty three faulty changes to a single regulation must not be considered as wisely stewarded public resources. According performances accountability, cutting the trade turnover, stockpiling landfills, closed businesses and dismissed workers must not be considered as a successful performance.

But in order to achieve them it is necessary to increase the number of participants actively contributing during each RIA, i.e. a critical mass is needed to create "noise" that can capture the attention of relative high instance factors. As

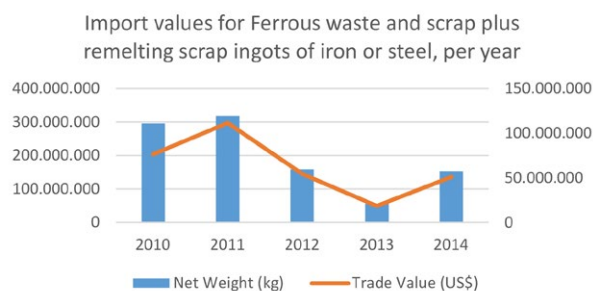


Figure 3: Example of how wrong transposition effects the economy
source: <http://comtrade.un.org/> & authors calculations

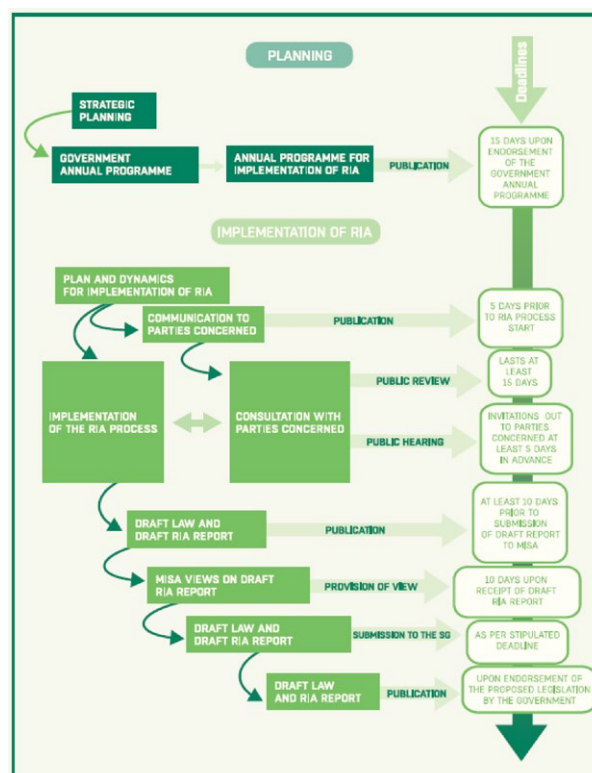


Figure 4: RIA process and planning schematic presentation
source: Regulations Governing Regulatory Impact Assessment (2013, p.17)

otherwise it is convenient for the responsible policymakers to simply ignore it. Hence the main problem is lack of critical mass, because there will never be accountability if no one asks for it. Therefore low awareness and understanding of the RIA process by the concerned parties is a key issue that must be tackled. With various educational seminars, workshops and public forums it can be explained to the general public how can they prevent faulty policy transpositions and how can they fight false implementations through the RIA process. It is necessary to rise this awareness for all stakeholders affected by faulty transpositions of EU legislation (Business sector, Academia, Civil sector - NGO's, Students...) as only through enforcing accountability upon policymakers we can obtain better quality of our national legislation.

References

"Regulatory Impact Analysis" <http://www.oecd.org/gov/regulatory-policy/ria.htm>

"Regulations governing Regulatory Impact Assessment" (in Macedonia) <http://www.mio.gov.mk/files/pdf/Regulations%20Governing%20Regulatory%20Impact%20Assessment%2006.pdf>

Bianculli A. C., Marin X. F., and Jordana J. (2015) *"Accountability and Regulatory Governance"* London UK, Macmillan Publishers Ltd

O'Sullivan A. & Sheffrin S. M. (2003) *"Economics: Principles in Action"* Needham, Mass.: Pearson Prentice Hall. p. 287

Endnotes

I Also indirectly, this exclusion is only for domestic traders as export/import permits for foreign traders are being obtained by their clients who have integrated ecological permits. Consequently a lot of Macedonian traders moved abroad in order to continue their businesses in Macedonia, hence the rebound in trade for 2014 in figure 2 and 3 which actually is a benefit for the foreign country where they are registered and further incentive for other Macedonian traders to follow suit as foreign companies are excluded from value added tax (which is a huge burden to a domestic trader who must pay in advance when importing and wait up to 9-12 months for a reimbursement when exporting).

II **Traders/brokerages** are the x factor that enables markets to expand (O'Sullivan and Sheffrin, 2003) for their business consists of searching out buyers when their customers wish to sell and locating sellers when their customers wish to buy, usually deals are arranged with other brokers who represent their customers, thus by increasing the possibility and frequency of trading markets expand.

III **Exclusion of traders/brokerages** results with lost in total turnover from trade with by-products and lost opportunities for additional incomes to the whole economy, **roughly this Regulation costs Macedonia an estimate of 50 million euros per year in lost business opportunities** (producers and consumers of by-products, traders/brokerages, supporting logistic parties such as forwarders, transporters, telecommunications, commercial banks and etc.)

IV A list of all 33 changes to the waste management regulation in Macedonia can be accessed here:

<https://ener.gov.mk/default.aspx?item=search&term=%D1%83%D0%BF%D1%80%D0%B0%D0%B2%D1%83%D0%B2%D0%B0%D1%9A%D0%B5%20%D1%81%D0%BE%20%D0%BE%D1%82%D0%BF%D0%B0%D0%B4>

aspx?item=search&term=%D1%83%D0%BF%D1%80%D0%B0%D0%B2%D1%83%D0%B2%D0%B0%D1%9A%D0%B5%20%D1%81%D0%BE%20%D0%BE%D1%82%D0%BF%D0%B0%D0%B4

V Defining difference between waste and by-products: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0059&from=EN>

VI **Import and Export permits** are obligatory for by-products since they are regarded to be waste, hence a minimum of 30 days is required after correctly applying for a permit before one is being issued, and in a commodity market governed by LME prices such a delay usually is disastrous to any business deal.

VII **Mandatory accountability** is defined by Bianculli et al (2015, p.79) as the degree to which a policymaker is required to offer information on, and explanations of, his or her conduct to another policymaker, and may be sanctioned for this conduct.