

IMPLEMENTATION **THE MISSING LINK** **IN** **PUBLIC ADMINISTRATION REFORM** **IN** **CENTRAL AND EASTERN EUROPE**

Edited by

William N. Dunn

Katarína Staroňová

Sergei Pushkarev



NISPAcee

THE NETWORK OF INSTITUTES AND
SCHOOLS OF PUBLIC ADMINISTRATION
IN CENTRAL AND EASTERN EUROPE

Implementation – the Missing Link in Public Administration Reform
in Central And Eastern Europe

NISPAcee
The Network of Institutes and Schools of Public Administration
in Central and Eastern Europe

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Chapter 1

Implementation – the Missing Link

William N. Dunn, Katarína Staroňová, Sergei Pushkarev

Implementation is one of the fundamental problems in the efforts to reform public administration in Central and Eastern Europe. It is the “missing link”¹ between management policies designed to achieve administrative reforms and the achievement of goals such as those designated by the OECD’s Public Governance Committee (OECD 2005) for example:

- making government more responsive, transparent and accessible through freedom of information legislation, public consultation, integrity measures and other initiatives;
- instilling a performance approach in the public sector through performance management, evaluation, performance budgeting and other systems;
- changing accountability and control systems by moving from ex ante to ex post control, the use of independent auditors and other procedures;
- facilitating reallocation and restructuring of governments through the devolution of authority to lower levels of government, privatisation, creation of new regulatory bodies, whole-of-government reorganisation and other innovations;
- organising and motivating public servants by increasing managerial flexibility, the use of individual employment contracts, performance pay and other measures; and
- integrating a market approach into government operations by using contracting out, establishing internal markets and other initiatives.

In pursuing these goals of administrative modernisation, the implementation of the plethora of administrative directives of the *Acquis Communautaire* is foremost among the management policy issues facing Central and Eastern Europe². These directives constitute one of the most ambitious, broad, and practically significant public management reform policies in the world today. The *Acquis* is a public management reform policy designed to change entire systems of management – human resources and personnel, budgeting and financial management, strategic planning and policy, local government decentralisation, privatisation of public enterprises and other vital management processes. Although there are other broad management reform policies competing for the attention of political leaders – for example, the Anglo-American New Public Management – nothing rivals the European *Acquis* in scope and practical import.

1 The term “missing link” has been used since Hargrove (1975) to refer to the gap, separation, or division between desired outcomes and their realization through public policies and programs.

2 The term “public management policy” Barzelay (2002) refers to choices among alternative management policies and programs. Adopting the New Public Management, or transposing and enforcing directives of the *Acquis* in EU accession states, are problems of management policy analysis – not management, per se. Management cannot be part of the whole and the whole at the same time.

The Missing Link

Since its inception in 1999, the NISPACEE Working Group on Public Sector Quality has focused on the quality of public administration. Among the issues that have been addressed by this working group are the promotion and measurement of quality in public administration, the role of public consultation and e-government in improving the quality of service delivery, concepts and methods for assessing the quality of public governance and the quality of policy analysis, research and expertise in policy formation and implementation. In 2005, following the interests of working group participants, our focus shifted to implementation.

The practice of public administration in Central and Eastern Europe (CEE), and indeed most regions of the world, shows that the stage of policy implementation is extremely weak. The recognition that implementation is a significant problem tends to arise only when laws are passed. The understanding of implementation is typically limited to the adoption of basic and statutory laws, with little or no attention to political, economic and managerial factors that enable and constrain legal processes. To be sure, ministries and other agencies in CEE, with the support and encouragement of advisors assigned by European and American donors, deliver a panoply of training programs and special consultancies (e.g., the “twinning system”) designed to secure the unified application of new laws. Despite these efforts, however, there is considerable uncertainty about the implementation of management reforms under the *Acquis* and other broad initiatives, including the New Public Management.

Most European countries lack a coherent modernising agenda in relation to problems of policy implementation and the institutionalisation of monitoring and evaluation procedures that permit us to discover whether implementation is producing the intended consequences. In the absence of effective implementation, efforts to reform or transform public administration are essentially empty. Juraj Nemeč aptly sums this up in Chapter 8 of this volume: “When implementation fails, policy-making loses its purpose, mission, credibility and effectiveness.”

Papers in this volume address some aspects of this “missing link” in Estonia, Hungary, Kyrgyzstan, Macedonia, Poland, Slovakia and Central and Eastern Europe as a whole. Papers address problems of Implementation as these are Related to Local Government Reform (Chapter 3 by Kristiina Tonnisson); The Use of Expert Advice from Foreign Consultants (Chapter 4 by Iwona Sobis and Michael S. de Vries); Local Government Training and Organisational Learning (Chapter 5 by Bolotbek Orokov, Dan Durning, and Sergei Pushkarev); Contracting out Emergency Medical Services (Chapter 6 by Veiko Lember); The Perception and Use of Regulatory Impact Assessments by Policymakers (Chapter 7 by Magdalena Shaldeva); The Role of Measurement in Implementing Health Care Reforms (Chapter 8 by Juraj Nemeč) and A Comparison of the Conduct of Regulatory Impact Assessments in Slovakia, Estonia and Hungary (Chapter 9 by Katarina Staronova, Aare Kasemets and Zsombor Kovacsy).

The Implementation Muddle

Despite decades of research on policy implementation, “we know surprisingly little, not only about cumulative research results, but also about several other key aspects of this research field (Saetren 2005, p. 559).” Although most of this research has originated in North America and Western Europe and for this reason tends to be ethnocentric, the growth of implementation research is surprisingly robust. “The overall volume of publications on policy implementation has not stagnated or declined dramatically since the mid 1980s as is commonly asserted. On the contrary, it has continued to grow exponentially through the 1990s and into the 21st century. The ethnocentric bias of this research field toward the Western hemisphere has been and still is strong (Saetren 2005, p. 559).”

Hence, research grows, but it does not cumulate. One reason is that the meaning of the term “implementation” appears muddled. Although nearly everyone agrees that implementation is a process of carrying out laws, plans, policies, and programs, there is little consensus on what this “carrying-out” process is. The lack of consensus about implementation in general, is echoed in assessments of the implementation of the New Public Management, which has been described as “perplexingly equivocal” (Manning 2001; Polidano 1999).

Implementation is often seen as an exclusively legal process. This misconception is based on the erroneous belief that, when laws are adopted and assigned to appropriate ministries for enforcement, a process of “implementation” has occurred. This *lexical* understanding of implementation pervades discussions about EU accession and pre-accession, especially discussions about processes involving the legal transposition and application of directives of the *Acquis*. Nevertheless, we should not conclude that lexical refers only to legislative enactments that prescribe invariant behaviours under the law. The term also applies to other assumed invariant relations (“laws”) of the natural and social sciences, as well as to analogous assumed invariant relations (“quasi-laws”) of professional practice. Examples are: laws of diminishing utility in economics; incremental decision-making in public administration, and “best practices” in budgeting, financial management and accounting. When implementation is explained in terms of these and other assumed lawful regularities, the understanding of implementation is lexical.

Implementation is *contextual* as well as lexical³. After laws, statutes, directives, and best-practice rules are transposed, that is, incorporated into laws, statutes, executive orders and court decisions, they are (to one degree or another) enforced and applied in particular contexts. The central feature of this process of contextualization is the compliance of actors with rules of different kinds, some of which (e.g., best-practice rules) are not, at least prior to incorporation, legal enactments. They are what Leiber (2005) and others (Borzel, Hofmann, and Sprungk 2003, p. 13) designate as “rule-consistent behaviour for those actors, to whom a rule is

3 Here we are drawing on social constructivist concepts of “lexical” and “indexical” meaning.

formally addressed and whose behaviour is targeted by the rule.” Hence, implementation is rule-consistent behaviour⁴.

Implementation in Central and Eastern Europe

So far, we have addressed the state of implementation research in general, emphasising the importance of clearly defining what we mean by implementation and noting that implementation research does not constitute a coherent and well-tested body of knowledge. At this point we would like to briefly comment on the state of research and writing on implementation in Central and Eastern Europe.

Research and writing on implementation in CEE is relatively small when compared with literature on implementation in North America and Western Europe. During the early post-socialist transition period (1989-1995), occasional books, book chapters, journal articles and conference papers on implementation, addressed specific policy sectors as well as implementation in general. Literature on specific policy sectors included the environment (Hardi 1992) and privatisation (Bohm and Krecic 1991), as well as political and economic reforms in general (Przeworski 1991). Much of this literature appeared in the form of case studies reporting on processes of reform and the transition from communism.

Naturally, the later pre-accession period (1995-2000) was dominated by reviews, research, and reports on the opportunities and problems associated with accession to the European Union by CEE countries (Nunberg 1998; Barr 1997). Since 2000, the topic of EU accession has dominated the CEE literature on implementation. Much of this literature is, again, sector-specific (e.g., Velluti 2005; Mitsilegas 2002; Botcheva 2001; Pickvance 2000; Exter 2001), although some authors treat implementation in a more general way (Kostadinova 2003; Morlino 2001). The implementation literature on Russia and the CIS is still emerging (see Ciottoni et al. 2005).

Thus far, there is no theory of implementation developed specifically for the region.

When (and if) implementation theories are used, they are borrowed from Western literature. For example, Potucek et al. (2003, p. 67) suggest that the following Western theoretical models could be used:

- The authoritative model, emphasising such instruments as directive instructions, planning, control, hierarchy and accountability;
- The participative model, relying more on indirect instruments of control, such as setting goals, spontaneity, training, adaptation, negotiation, cooperation and trust as suitable methods and conditions of implementation;
- The coalition of the actors’ model, resulting from the assumption of a plurality of actors, who participate in the actualisation of a particular policy and who communicate between one another, negotiate and reach compromises, but who

⁴ Legal compliance is one form of rule-consistent behavior. Another form is the administrative rules and organizational routines on which the New Public Management is based (see Barzelay 2001).

at the same time, share a definite common set of values and who are striving to achieve the same objectives; and

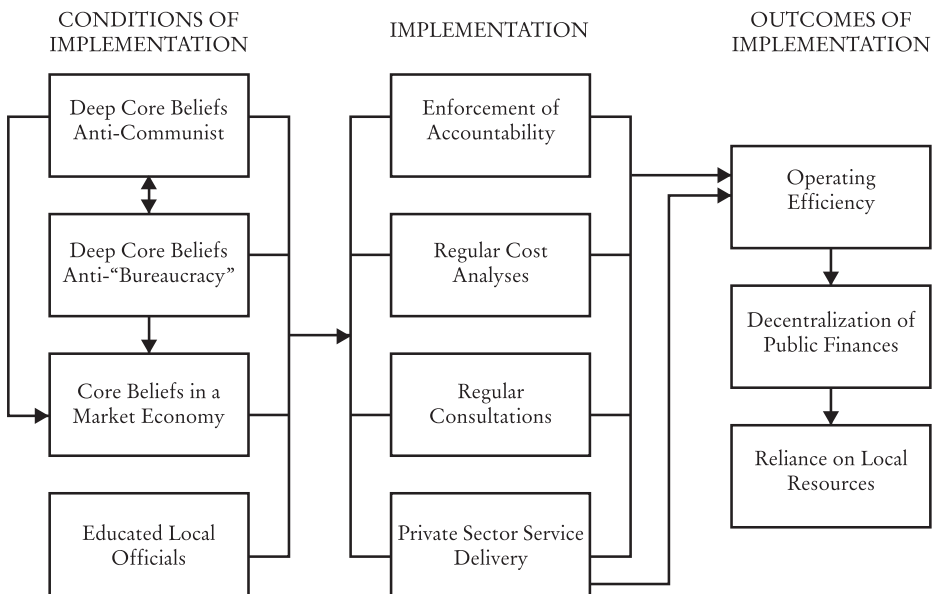
- The endless learning model, where those who enact policy, in an effort to achieve an optimal solution, gradually (often by making use of the method of trial and error or by sheer imitation), optimise the structure of their objectives and the techniques used to achieve them.

The contributors to this book have used different theoretical frameworks to analyse the implementation process. We see this as an advantage rather than a deficiency, because the implementation literature in CEE needs to explore different theories and approaches and test their applicability in the region. Only then can we expect theories to be adapted, or even original theories, appropriate to problems in the region, to be evolved.

Implementation – A Means not an End

Implementation is rule-consistent behaviour aiming at the achievement of desired outcomes. As such, implementation is a means, not an end. Indeed, implementation may completely succeed, but fail to achieve desired outcomes. This can be seen by visualising the outcomes of a New Public Management program in Estonia⁵. The diagram includes preconditions believed to affect the process of implementation as well as implementation outcomes (Figure 1).

Figure 1
Implementing the New Public Management in Estonia



⁵ Based on research reported by Tonnisson in Chapter 3 of this volume.

Figure 1 shows that conditions (and preconditions) of implementation include what Weible, Sabatier, and Lubbell (2005) and Sabatier and Jenkins-Smith (1999) call “deep core” and “core” beliefs. The preference for a given management policy, represented here by New Public Management, is likely to be strongly influenced by deep core beliefs developed under socialism. In the Estonian context, deep core beliefs are anti-socialist (communist) and anti-bureaucratic. In turn, these affect the core belief in the appropriateness of a market economy. All beliefs (deep core and core) affect four sets of rule-consistent behaviours which Tonnisson (Chapter 3), in her survey of 231 Heads of Local Government, attributes to the New Public Management⁶.

Summarising the extent of rule-consistent behaviour associated with the implementation of NPM, as Tonnisson defines the term, it seems clear that NPM has been effectively implemented⁷.

- Managers are held accountable for their performance in 87 per cent of municipalities;
- Costs of municipal services are compared with those of the business sector in 78 per cent of municipalities, with the voluntary sector in 74 per cent of municipalities and with other local authorities in 94 per cent of municipalities;
- Decisions are reached through a process of in-house consultations in 98 per cent of municipalities; and
- Managers are encouraged to facilitate private sector involvement in 94 per cent of municipalities.

Deep core beliefs (anti-communism and anti-bureaucracy) affect the core belief in a market economy, and all three beliefs affect the implementation of NPM, as does the presence of a relatively educated pool of managers (Figure 1).

But implementation is a means, not an end. This is evident when we examine several outcomes of implementation: operating efficiency, decentralisation of public finances, and reliance on local resources to meet centrally mandated services (Figure 1). Although Tonnisson provides no direct evidence, she doubts that efficiency has been improved, *despite* the fact that the behaviour of most local governments is consistent with rules that managers are held accountable for their performance, cost comparisons are conducted regularly and the private sector is involved in providing services.

Perhaps more important is the finding that there is a significant problem with the decentralisation of public finances – the central government is reportedly *centralising* public finances in 86 per cent of municipalities. Finally, with the exception of only 14 out of 231 municipalities, central government does *not* allocate sufficient

6 Tonnisson draws on the British “Best Value” Program, which contains the “4Cs” of challenge, compare, consult, and compete. We have extracted from each of these sets a rule (Tonnisson calls them “principles”) that formed the basis for the responses to a 43-item questionnaire administered to 231 Heads of Local Government in Estonia. How the Best Value-4C Program was transposed in Estonia is not explained.

7 See Tonnisson, Chapter 3: Tables 3-5 and 7.

resources to provide services mandated by central authorities. Thus, expected outcomes are weakly, if at all, related to the successful implementation of the New Public Management. Implementation, however successful, is a means to an end.

Two Steps Backward – Conditions Affecting the Process of Implementation

The most important condition of effective implementation is the alignment of rule-consistent behaviour with the desired outcomes. In this context, Tonnisson suggests that the establishment of a classical (Weberian) bureaucracy may provide better results than the New Public Management under the conditions present in many post-socialist countries. Peters (2001, p. 176) has raised the same question, asking whether it might be more desirable to build a classical (Weberian) bureaucracy than to implement the New Public Management. Despite the appeal of the latter, expected outcomes, such as efficient administration and democratic governance, may require the establishment – perhaps for the first time – of rules of classical legal-rational bureaucracy including adherence to formal procedures, strict role specialisation, autonomy from external influence, high ratio of supervisors to supervised, hierarchical span of control, secrecy through segmented communications⁸.

The development of classical bureaucracy, however, may be unrealistic unless core beliefs change, particularly those of anti-communism and anti-bureaucracy, including the mistaken belief that communism (properly speaking, socialism) is synonymous with classical bureaucracy. As Tonnisson puts it, communist governments were, in principle, hierarchical bureaucracies and communist governments and hierarchical bureaucracies were considered as synonyms. “Anything connected to classical bureaucracy was communist and since communist was bad, then anything connected to bureaucracy was bad as well. Thus, there was a general belief: the less bureaucracy we have, the less communist we are” (see Tonnisson, Chapter 3).

The preceding analysis points to the importance of examining backward linkages between desired outcomes and the implementation of management policies, such as the New Public Management. So far, we have taken only one step backward, distinguishing between the outcomes of implementation and the antecedent rule-consistent behaviours that arguably may produce these outcomes. Here, we found that the *non-implementation* of management policies, such as the New Public Management, could be a prerequisite of eventual success in creating administrative efficiency and democratic governance.

As important as this might be, we need to move even further in reverse, taking two steps backward. This allows us to examine conditions that facilitate and retard the process of implementation. The vast academic literature on policy implementation (see Saetren 2005), along with records of professionals’ experience (e.g., Osborne and Gaebler 1992) and governments (e.g., the New Zealand

⁸ Many of these characteristics were, for the most part, lacking in the socialist countries of Central and Eastern Europe.

Treasury's *Governmental Management*), points to a handful of essential conditions that plausibly affect implementation. Many of these conditions are examined in the contributions to this volume. They are stated below as guidelines for establishing or improving conditions that facilitate and delay implementation.

Guideline 1 (Management Policy Design). The design of a management policy should be based on an implementation theory containing clearly articulated goals and objectives and an explanation of why rule-consistent behaviours and organisational routines are expected to produce predicted outcomes.

The capacity of state and local governments in CEE to prepare a policy design and manage the implementation accordingly, is still weak (see Staronova, Chapter 2). This low capacity relates to both general analytic skills, as well as to specific field-oriented skills. Also, the number of officials in ministries dedicated to the analytical design of implementation is small, and many other crucial factors are still not in place. As Veiko Lember points out (Chapter 6), there are only two persons working as contracting officials in the Estonian Health Care Board. Continuing, Lember observes that the policy design for contracting out takes into consideration strictly input-based and resource allocation factors, rather than output, outcome and impact considerations. As a result, the government has turned the contracting idea upside down. Instead of supplying services with a given level of output quality and at the lowest possible price, the current system yields an unidentifiable level of quality and outputs at a fixed cost. Similar experience from the Slovak health system is documented by Juraj Nemeč (Chapter 8), who argues that none of the hospitals under scrutiny had prepared and used a public procurement plan where problems and goals could have been analysed.

Often, the administrators that should be involved in the design of a policy do not involve stakeholders and the result is the separation of design from implementation (Staronova 2004). Kristina Tonnisson (Chapter 3) shows, in her research on local governments in Estonia, that many stakeholders are not consulted. For this reason, implementation design is based on invalid, inadequate or outdated information – or without any information at all.

In many practical contexts, this guideline is challenging, mainly because problems of designing management policies tend to be relatively badly structured (Dunn 2004, Chapter 3). The policy designer is much like Herbert Simon's architect who has been commissioned to design a custom house for which standard plans (by definition) do not exist. The designer must search for alternative building materials, building contractors, engineering specifications and the like, in order to build the custom house. The adoption of a standard plan, however, is likely to result in a fatal error: Solving the wrong problem.

Guideline 2 (Clarity and Specificity of Rules and Operating Routines). Prepare formal rules and operating routines with maximum clarity, specifying targets of enforcement and application, including financial and human resources needed for

implementation. To our knowledge, this guideline is almost never fulfilled in CEE countries (see Lember, Chapter 6).

Without a clear design, it is extremely difficult to have clear and specific rules and operating routines. Lember has shown in his research that the county governors had no guiding framework or procedures for conducting the contracting out. Moreover, even legal and administrative mechanisms were not clear on which of them results in low accountability and implementation problems. In Estonia, the process of contracting out was designed in such a vague way that private contractors could not be held accountable for most of the results and outcomes not achieved (see Chapter 6).

Guideline 3 (Management and Policy Skills). Develop management and policy knowledge and skills through targeted recruitment, problem-focused training and the provision of expert advice through technical assistance. The lack of training of public employees affects the very ability of the government to implement its policies and programs. Educational opportunities in the area of policy design, analysis and implementation are, in CEE countries, insufficient or non-existent (Staronova 2004). At a national level, the civil servants who are responsible for filling in information on impact assessment in Macedonia had never received any training in this area (see Shaldeva, Chapter 7). Similar results can also be found in Slovakia, Estonia and Hungary, although at the moment, a training manual and set is being developed in these countries (see Staronova, Kasemets and Kovacsy, Chapter 9).

This proves especially true with ‘street level bureaucrats’ in local governments who deal with numerous day-to-day problems. In these circumstances, as research from Kyrgyzstan shows, (see Orokov, Durning and Pushkarev in Chapter 5) employee skills and training become a crucial factor in policy implementation. In Kyrgyzstan, most local government employees have not received any training on how to carry out their responsibilities, although most of them cope with new competencies such as waste disposal, tax collection and military draft. Such a situation is not unique for Kyrgyzstan, but can be observed in most CEE countries. The consequences of the lack of training in Kyrgyzstan were noted: employees are often uninformed about changes in national laws; sometimes they lack the basic analytical and problem-solving skills and emergency management replaces routine local government operations. Thus, the persistence of crisis management makes it virtually impossible to analyse, plan and implement local policies.

Nor are there any local specialists in charge, which, taken in combination with a transition process where many ‘experts’ from international organisations and Western countries come to CEE countries to advise, result in a dubious effect. The retrospective stories on the practice of external advisors from the Swedish public authority reveal that they were simply not experienced enough to provide advice (see de Vries and Sobis, Chapter 4). The EU advisors had insufficient knowledge about CEE countries and likewise the public officials from CEE countries (due to

their limited skills and knowledge in the field) were unprepared to meet Western consultants.

Guideline 4 (Core and Secondary Belief Change). In cases where core beliefs delay the acceptance of secondary beliefs about appropriate policies, focus on changing beliefs about the efficacy and desirability of particular policies, rather than attempting to change deep core beliefs that are relatively fixed. For this purpose, build coalitions of advocates (advocacy coalitions) to promote changes in secondary beliefs, for example, beliefs in the efficacy of formal performance appraisal and the benefits of specialisation, rather than beliefs about the equivalence of bureaucracy and communism (see Tonnisson, Chapter 2; Weible, Sabatier, and Lubbell 2004).

Guideline 5 (Anticipatory Impact Assessment). Employ procedures for regulatory impact assessment to anticipate, to the extent possible, political, economic and financial problems that may destabilise the implementation process. Recognise that regulatory impact assessment, while useful in facilitating implementation, must itself be implemented.

Empirical research shows that the employment of impact assessment techniques is extremely limited (see Staronova, Kasemets and Kovacsy, Chapter 9). Although CEE countries do require information on the effects (mostly fiscal, environmental and social) prior to the decision being taken, the practical implementation is weak and mostly only formally filled out. Thus, the quality of such information has low value. Similarly, the evidence proved that active consultation of stakeholders is minimal. All these factors contribute to low knowledge and information that could be utilised in the development of implementation design and planning.

Guideline 6 (Institutionalise Monitoring and Evaluation). The measurement of outcomes, including the selection and application of appropriate indicators and indices, assumes institutionalised procedures for monitoring and evaluation. The institutionalisation of monitoring and evaluation systems is at best weak and usually non-existent, in CEE. A good example of the problems which occur in the absence of such systems is the analysis of Slovakian health care by Nemeč (Chapter 8).

Guideline 7 (Management Policy Communication). Employ multiple forms of written and oral communication to maximise the use of information about implementation theories, impact assessments, outcome measures and so forth. Effective implementation requires that scientific and technical information reaches intended targets and beneficiaries.

CEE countries are gradually on their way to employing various methods and techniques of analysis. However, additional problems exist where these methods are employed but do not reach the proper audience. Some research has shown that politicians and other civil servants expect to receive a ready-made draft bill and they hardly spend time reading the accompanying documents – they check the technical, rather than analytical quality (Staronova 2004). The respondents admitted that they only read the relevant parts of the draft bill during the process of review, not the whole bill and they completely ignored the accompanying materials. This

becomes a vicious circle: where there is no demand for quality analytical materials/studies, there is no supply of them either, and vice versa. However, research from Macedonia (Shaldeva, Chapter 7) shows change in this approach: 72 per cent of State Secretaries always read the Memorandum (with the impact assessment included) as the first paper in the package of documents, with a smaller percentage reading only the Memorandum.

Conclusion

Evidence from the practice of policy making shows that implementation and policy design are linked vessels: if policy design fails it is likely that policy implementation will also fail. Both stages – policy design and policy implementation – are extremely weak in central and eastern European countries. The conditions that facilitate and retard implementation – and more importantly, the outcomes and impacts that are the expected results of implementation – are outlined in the remaining chapters of this volume.

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Chapter 2

The Characteristics of Public Administration Reform in Transition Countries vis a vis Implementation Capacity

*Katarína Staroňová**

Abstract

The range of public administration reforms addressed in transition countries have focused mostly on accountability mechanisms, public management, and privatisation that introduced new actors in policy making such as market and civil society. General administrative capacity, including the capacity to design and implement programs and policies, of central state and local governments was viewed as a marginal element of the ongoing reforms. Civil society actors, markets and various interest groups and other actors have important functions to fulfil. However, it is only governments with the legitimacy of being democratically elected who supervise and act as primary political agents in shaping and implementing public policies and/or overseeing their implementation by civil society or market actors. This chapter suggests that the reforms made focused on behavioural changes in the public administration and only little real impact or learning occurs which results in a relatively limited capacity to govern, including implementation capacity.

Introduction

State bureaucracy under the communist regime was extensive and in some cases bureaucracies focused their resources and activities on maintaining themselves. The administration was based on the rejection of a separate public service identity, due to the lack of a separation of power (Goetz 2001, Verheijen 2001, Elster, Offe and Preuss 1998). Instead, the united state administration comprised all tiers of the state apparatus, with strong hierarchical controls and subordination. The mixing of party bureaucracy and state administration had severe consequences on the personnel system, which relied on politicised cadres and a party-controlled nomenclature where Party decisions took precedence over legal norms. Thus, the central administrative functions placed the emphasis on economic planning and social control where the state administration became a mere tool for the implementation of party decisions, with no role in policy development. In addition, the administrative system had previously been a key instrument of suppression in the hands of politicians (Verheijen 1995).

When addressing administrative reform in transition countries, many scholars have referred to the fact that governments confront multiple internal challenges, such as distrust of bureaucracy and higher demands for public services, simultaneously with economic, political and institutional transition (Agh 2001, Elster, Offe and Preuss 1998). The risks and challenges of such a process, where all types of

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institutional reforms occur simultaneously are discussed by Jon Elster, Claus Offe, and Ulrich Preuss in their 'Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea' (1998). Here, three main elements of the risky situation are highlighted: first, the absence of a leading authority to define what needs to be done; second, the naïve hope that civil society would fill the gap and finally, the continuity of past authority at the micro-level; which, together, challenge the constructive rebuilding of society. In particular, the role of civil society, although undoubtedly playing a crucial part in the process of democratisation, is greatly exaggerated in the transition context. Sometimes, it is even expected that civil society will assume some of the government's tasks. In this regard, Yehezkel Dror (2001, p.x – Preface) argues that "the view that markets, civil society, non-governmental organisations and other social structures can compensate for inadequacy in performing crucial functions [of the government] is a chimera". Although, he acknowledges the importance of the functions that these 'other governance levels' fulfil, he notes that it is central government that needs to be targeted, as it is the only body that has the legitimacy of being democratically elected and thus can claim to represent the public interest as a whole. Therefore, although it should be the government in charge of collective action, that government must have the capacity to govern and thus implement its goals and policies.

Nature of Public Administration Reforms

Against the communist legacy, the key challenge of post-communist transformation in the public administration has been to 'governmentalise' (Goetz and Wollmann 2001) the executive, i.e. to enforce the rule of law and to de-politicise and professionalise staff, in accordance with the values of the classical Weberian style of public administration. Public sector reform has, accordingly, centred on attempts to introduce civil service practices, to introduce basic law-making, an enforcement framework and the development of public services. These 'first generation reforms' in the terminology of Attila Agh (2001) thus focused on the political and economic aspects of the ongoing transition. Thus, the first phase public administration reform agenda for transition countries was to tackle the problems that were a legacy from the communist type of administration. The first phase reforms can be summarised as follows:

1. Re-establish the *legitimacy and accountability system* of public authority and of the civil service;
2. Re-introduce *institutional pluralism*, allowing a range of separate agencies and groups to influence the use of public power;
3. Increase the *efficiency* of the administrative state: the central management system of government, such as budgeting and performance management, regulatory reform, strengthening government-citizen relations, human resources management and ethics.

1. Changes in the structures of legitimacy and accountability

The reform has focused particularly on re-defining accountability systems to provide a number of specific safeguards against the misuse of power by either politicians or

civil servants. These were to maintain the unique authority of political appointees such as ministers or deputy ministers in relation to sectoral policy development and the relevant allocation of resources, but also to ensure that there is no possible ambiguity with respect to the role division between the minister (political function) and civil servants (career functions) in order to increase their responsibility and accountability. In this sense, the assignment of authority, responsibility and accountability for carrying out duties appropriate to departments and certain other offices were defined by introducing civil service legislation and a civil service training system.

The adoption of civil service legislation was considered by the EU to be a basic condition. It was also considered as the main reform tool for addressing problems such as politicisation, fragmentation and instability, by securing civil servants' independence from politicians. Despite the trend in introducing NPM elements, such as output based- and performance-based management, the main emphasis was on the reduction of the civil service's vulnerability to changes in the government. Civil service laws were passed

Table 1
Civil Service Reform Legislation Passed after 1989 in CEE

CEE State	Start of Negotiations for EU membership *	Laws on the Civil Service
Bosnia and Herzegovina	-	2002 Civil Service Law on all three levels of governments
Bulgaria	2000	1998 State Administration Law, amended 2001 1999 Civil Service Law, in force 2000 (7 amendments, last in August 2004)
Czech Republic	1998	2002 Civil Service Law (most parts of the law will come into force from January 2005)
Croatia	2005	2001 Civil Service Law (new draft under discussion)
Estonia	1998	1995 Public Service Act, in force 1996: public administration concept 1998 (new draft under discussion)
Hungary	1998	1992 Civil Service Law (47 amendments, last in 2004)
Latvia	2000	1994 Law on Civil Service; 2001 Law on State Civil Service
Lithuania	2000	1999 Civil Service Law, amended 2002; 1995 Law on Officials
Macedonia	-	1999 Civil Service Law (7 amendments, last in 2003)
Poland	1998	1996 Law on Civil Service (first law in 1982), amended 1998
Romania	1998	1999 Law on the Status of Civil Servants
Serbia and Montenegro	-	April 2004 Civil Service Law in Montenegro January 2005 (prospects) Civil Service Law in Serbia (1991 Law on Labour relations in state administration) No law on union level.
Slovakia	2000	2001 Civil Service Law, in force 2002, (13 amendments, last in 2004)
Slovenia	1998	Civil Service Law 1990

Source: Antoaneta Dimitrova (2002), p. 183; updated and inclusion of Balkan countries by the author as of 2004

Note: The EU accession negotiation process has not yet begun (as of 2004) with the following countries: Bosnia and Herzegovina, Macedonia, Serbia and Montenegro.

in all new member countries (however, in Slovakia this did not happen until 2001) and other transition countries are currently adopting them (see Table 1 for an overview). However, in many of the countries, the political tensions when adopting these laws were tremendous and the EU added additional pressure by warning countries that their entry chances could be diminished if the reform was not passed¹.

2. *Changes introducing institutional pluralism*

The basic principle under communism was unitary power, i.e. the state owned all aspects of the public sector and thus was able to exercise its power and political control over all spheres of social life. The ultimate aim of the transition was to devolve power from the central state, which has coincided with the New Public Management (NPM) trend in OECD countries. In practice, this meant that the following processes were taking place: devolution of power to self-governing authorities (de-concentration and decentralisation processes) and devolution of power to private owners operating in a free market (privatisation, restitution processes). At the same time, due to the direct or indirect influence of NPM, state institutions were further cut by providing legal and managerial autonomy to subordinated agencies (agencification). These so called ‘centrifugal’ reforms (Coombes 2001) have focused on alternatives to the state, such as privatisation of previously publicly provided services, contracting out, creating quasi-markets within government agencies. These tend to be very popular in transition countries as a reaction to the former regime and thanks to strong support from western governments and the EU.

As a result, not only the private enterprise sector was formed, but also the system of non-state bodies was established, including local, regional and functional self-governments. At the same time, the concept of civil society began to develop, together with an enormous number of non-governmental organisations wishing to create an alternative to bureaucracy, in terms of economic and social purposes as well as control and legitimacy over government practices.

3. *Changes to increase efficiency within public administration*

The major aim of public sector reform was the drastic reduction in the overwhelming former public (or state) sector in line with the New Public Management ‘doctrine’ that emerged in Western Europe. There is no doubt that there was an absolute need for cuts in the old and oversized bureaucracy, which under communism, was designed to control and restrict and thus was highly inefficient. Unfortunately, a

1 The case of Slovakia provides an illustration of delays, political negotiations deadlocks and a major coalition crisis that were solved by compromises but which, as a consequence, were reflected in the inconsistencies of the public administration laws. See Staroňová Malíková (2003) for a detailed analysis of coalition influence on public administration reforms.

* For a detailed discussion of the accession phases see Lippert, Umbach and Wessel (2001). They define the 5 stages of Europeanisation: 1) pre-stage: first contacts on trade co-operation; 2) first stage: European Agreements that institutionalised political dialogue and offered membership perspectives; 3) second stage: pre-Accession administrative adaptations; 4) third stage: membership negotiations and 5) fourth stage: post-accession path dependence.

number of countries ordered sharp cuts in real government expenditure, which led to radical cuts in staff numbers to the percentage set by government, in many cases without studying the implications for individual institutions (UNDP 2002). It is misleading to believe that a simple formula based on the appropriate 'size' of a government will cure the inefficiency and lead to a level of efficient well-established systems. Instead, a government must build up its professionalism and it can only do so by increasing its capacity to design and deliver public policies that target the problems in society.

A different approach to public administration reform has been undertaken with an effort to rationalise the structure and management processes in the state administration, based on the conduct of a Functional Review. Functional reviews have focused on the identification of data related to each function performed by the ministry, including the categories of each function, outputs, service users and the budget and staff required to perform these functions. This reform tool attempted to address the issue of the 'leftover elements' (UNDP 2002) of the previous system, such as redundant tasks, institutions (or institutions dealing with research or service delivery) or functions that were still operating in the state budget and were causing inefficiencies in the system. On the basis of an analysis, it has been identified whether or not certain institutions will continue to perform a particular task or function, or whether these should be transferred to the private sector, decentralised, de-concentrated or given to an agency (agencification).

Capacity to Govern and Implement Public Policies

Without denying the importance and necessity of the reforms conducted in the first stage of the transformation, many of the initiatives relied more on faith and prescriptions than on strong conceptual foundations or careful analysis of historical and comparative experience. Thus, the initial approach in all three areas of public administration reform was largely reform 'by legislation' or direct policy transfers across cultural boundaries. Naturally, such a setting of reforms raises questions as to what extent the transformation of public institutions have occurred, are the NPM reforms understood by civil servants and have adequate accountability and supervising mechanisms been built, has subsequent adaptation of the governance models occurred?

The administrative and political cultures vary widely across transition countries and with the ambitious aim of transforming the way the state operates, some process of cultural adaptation is essential. Blind import of NPM models may become counterproductive as opportunities for corrupt behaviour may emerge as a result of inadequate institutional organisation or understanding of processes. This may lead to an easy 'state capture', influence and administrative corruption (Hellman, 2000) by interested parties due to formal ties as a legacy or due to weaknesses or absence of accountability mechanisms in legal and regulatory framework.

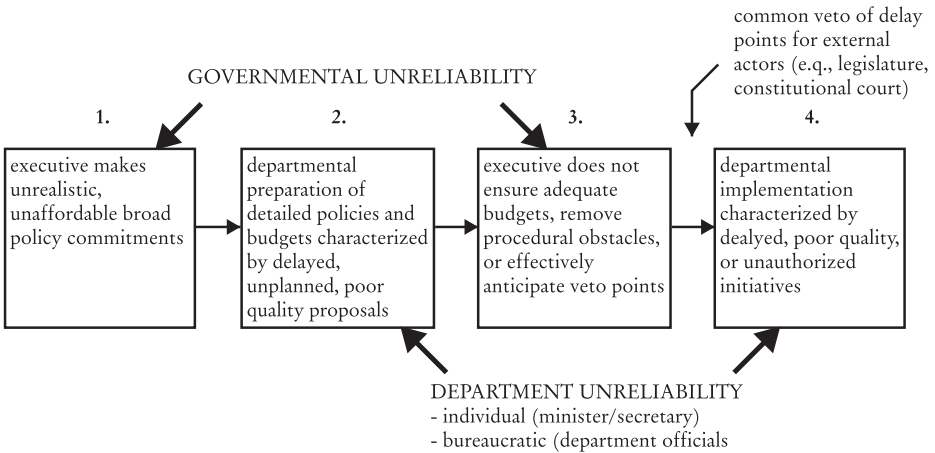
Another example of the consequences of the incapacity to govern problem has been shown through World Bank research. Governments that routinely break

their promises will be less likely to realise their development aspirations and most importantly, they will be not able to meet the challenges of the modern world.

The central premise of the research conducted by Gord Evans and Nick Manning (2003) is that a well-designed, well-supported government decision-making and policy-making system will reduce the level of ‘executive policy unreliability’. This concept is defined as “the degree to which the broad policy commitments of the executive are not implemented, or only partially implemented, within a reasonable timescale” (Manning Evans 2003, p. 3), whereas the policy commitments denote previously announced intentions for specific laws, regulations, action plans, programs and relevant budget allocations. In their study, the authors have distinguished several components in executive policy unreliability (see Figure 2):

- a) departmental unreliability where the primary cause lies with the department mandated for policy development;
- b) individual ministerial unreliability resulting from action or inaction of individual government members;
- c) bureaucratic unreliability when civil servants create obstacles to policy implementation.

Figure 2
Executive Policy Unreliability in the Policy Process



Source: Gordian Evans and Nick Manning (April 2003), p. 12.

The implications of the executive policy unreliability are far-reaching, particularly in the ability of implementation design and process. For example, the EU policy process permanently and persistently co-exists with other overlapping policy processes, notably the national policy processes and rely on the implementation abilities of national governments. Also, EU policy-making embraces a broad agenda for co-operation, with more attention to be paid to the ways in which national policymakers address their dilemmas and implement a national way of tackling

the problem. Out of five different types of EU legislation,² the majority is to be addressed at a national level by having a choice when it comes to the development and implementation or when active input from member states is expected at the supranational level. Thus, a great deal depends on the institutional capacities and institutional performance of each member state. Much hangs on whether there exists a national capacity to develop and implement policies in order to meet EU set objectives in the directives, whether the outcomes of the national policy process actually delivers results that meet the context and the purposes or simply whether there is a capacity to govern and implement.

When we consider that in the previous regime the policy development and policy/program implementation function of the central state apparatus and local governments of the transition countries was weakly developed and, at the same time, the state bureaucracy was comprehensively politicised (Goetz and Wollman 2001, UNDP 2002), it is quite surprising how neglected this area remained. For example, the focus of the World Bank's 169 operations to reform public administration in 80 countries between 1987 and 1998 "has been and remains on addressing fiscal concerns" (Orr 2002, p. 9) which raises primary concern in building sufficient government capacity to deliver basic tasks and services. It was as late as 2000 when the World Bank (2000) acknowledged that it should "*continue to shift [its] focus from the content of public policy to the way policy is made and implemented*", and "*rather than focus primarily on providing policy prescriptions, [the World Bank] needs to focus more on helping countries develop the processes and incentives to design [and implement] good policies themselves.*" This has meant a major turning point in the approach which earlier emphasised a "smaller, the better" approach to the state (Agh 2001) and the recognition that the crucial 'future-influencing' or 'higher order' tasks (Dror 2001) of the government could be handled only by governments themselves (Dror 2001, Peters 2003b, Agh 2001 among others).

Capacity Building Efforts

In transition countries, the institutional design and capacity building for governance involves a broad range of tasks. Crafting the new democratic institutions has been a challenge for both the domestic elites and a range of international organisations or foreign donors who have strived to assist in the process. A very prominent feature in institution building, employed by a range of international organisations including the EU, World Bank and the IMF, is the employment of a) *western models or templates*, b) *conditionalities or thresholds* and c) *subsequent adjustments to the first two*. Conditionalities, be it in the form of structural adjustments programs or borrower's conditions on loans or as set criteria for negotiations are the frequently utilised meth-

2 There are five different types of EU legislation: regulation, directives, decisions, recommendations and opinions. Regulations are binding in their entirety and directly applicable in the individual member states. Directives, by contrast, are binding only as to 'the result being achieved' – they lay down an objective and leave it to each member state to achieve this objective by the most suitable means developed by individual member states. Decisions are binding in their entirety but binding only to those member states to which they are being addressed. Recommendations and Opinions are not binding at all. See more in Helen and William Wallace (2000).

ods³. The EU began to use conditionality in its first agreements with CEE countries (Copenhagen criteria and later the Agenda 2000 that also set out the administrative criteria) and later in its annual Progress Reports, which also became the basis for its PHARE programs which were the main vehicle of financial support to CEE countries. Similarly, the World Bank put conditionalities on loans and grants for technical assistance in institution building. Imitating Western structures, where EU and other organisations assumed the role of ‘tutors’ (Jacoby 2001) became an inevitable part of all assistance programs, ranging from the PHARE / CARDS programs (and the twinning component where western experts come to the beneficiary country) to technical assistance, in the form of western consultants to direct transformation of existing western structures to the local environment.

Undoubtedly, this arrangement has many advantages, such as a rapid process, a political and expert linkage of the elites, provision of the focus and framework for transformation, lesson-drawing and learning from advanced countries and others, which can be found in the immense volumes of literature on ‘policy borrowing’ and ‘policy transfer’. However, all this literature assumes that such policy transfers are voluntary from the borrower’s side and most importantly, the borrower has the capacity to analyse the potential benefits, costs and adjustments required for such a policy transfer to be successful. Thus, all the benefits may be short term rather than long term, particularly when indigenous capacity to govern is considered.

The European Union has played a significant role in the entire process, as the countries of CEE have aspired, or still aspire, to joining the EU. Through the accession process – via conditionalities and negotiations – the EU influences the development of governance, including the policy-making processes and intra-governmental relations, and thus in this way the efficiency and effectiveness of implementation of both *acquis communautaire* and or indigeneous policies and programs. ‘Governance by enlargement’ was a commonly applied term, which initially denoted an extension of the existing EU’s *modus operandi* of governance. This ‘Europeanisation process’ (Dimitrova 2002, Grabbe 2001, Lippert 2001, Agh 1999) of policy implementing and policy-making is supposed to create demand for making changes in the subsystems to improve the efficiency of the policy-making and policy implementing systems⁴. Creation of such a demand is even more important for the small latecomer states, since weaker small states have to follow the EU rules

3 It is not the goal of this chapter to provide comprehensive analysis of the scope and nature (or advantages or disadvantages) of conditionalities or western models imitations; rather it comments upon the way of institution building by international organisations and its possible consequences for the indigenous capacity to govern implement.

4 The definition of “Europeanisation” varies, but for the purpose of this chapter, I will utilise the definition developed by Wessels quoted in Lippert, Umbach and Wessels (2001, p.1) – “shift of attention of all national institutions and their increasing participation – in terms of actors and the intensity – in the EC/EU decision making cycle”. However, I will argue that the increased participation remains on a formal level, rather than due to an increased capacity to do so.

more closely and effectively than previous EU entrants (Agh 1999)⁵. In any case, once having joined the EU, every member state, regardless of the time of joining, is expected to participate actively in the design and implementation of EU policies and to that end, the building up of the indigenous capacity is crucial.

This one-way process of western model adoption or conditionality fulfilment has implications on the governance style within the EU and by enlargement (see Table 2 for the summary of differences between the two styles of governance). In the EU, all relations between the actors are based on the same power base and are produced by constant interaction, bargaining and networking. In the enlargement process, this relationship is asymmetrical as it flows from the EC to the candidate states where the candidate states accept and adopt the norms, processes and rules in the form of the *acquis*. Some scholars object to the fact that the process is more complex and that CEE elites have relative freedom to choose whether to imitate western models or not (Jacoby 2001). Regardless of the fact of whether the CEE elites willingly adopt western models or not, the process is inherently risky. Building of governance on conditionalities contains several features, which do not exist in the relationships among developed countries, notably asymmetrical and hierarchical relationship among actors, institution building rather than value allocation and conditional behavioural change, rather than problem solving (Dimitrova 2001). Thus, Dimitrova argues, the design of new institutions and new rules may be a successful step, but the question remains of whether the main actors are united around the main ideas so that the new rules have a chance to endure. Even more importantly, once countries that, with time, become accustomed to the governance by enlargement style, where there are almost no institutional choices and the relationship is asymmetrical and where they are full members of the EU, suddenly expected to behave in the “EU new governance” style, they will lack the capacity to do so.

Table 2
Modes of Governance – within EU vs. by Enlargement

Characteristics	“New Governance” within EU	Governance by enlargement
Steering	Allocation of values in everyday politics	Institution – building
Relationship between Actors	Non – hierarchical	Asymmetrical, hierarchical
Governance Style	Problem – solving, bargaining	Conditionality

Source: Dimitrova (2001), p. 176.

The OECD studies (in particular SIGMA papers 23 and 26), together with the World Bank’s studies and annual assessments of administrative capacity conducted by the European Commission prior to accession, began to point out continuing weaknesses in the indigenous capacity to govern, particularly in the policy-mak-

5 The first EU member states were directly involved in the drafting of the ‘rules of the game’ which implies that any state joining at a later stage has to adjust to EU requirements and procedures. Thus, the role of the particularly small states (as the impact on the policy processes is bigger with smaller states) is to be more adaptive than innovative. See more in Atilla Agh (1999).

ing systems. The baselines (see table 4) are thus a working tool developed by SIGMA to provide a basis for conducting assessments of central management and control systems⁶. Although the SIGMA papers are a valuable tool for assessing the indigenous capacity, the OECD is not directly involved in the building up of capacity to govern, which still remains an illusive concept, particularly if we consider that baselines for policy-making and coordination use terminology and concepts which are alien to civil servants in CEE. Thus, most of these papers remain unread or misunderstood by the principal target audience – civil servants in the CEE region.

Conclusion

The overview of CEE public administration development suggests that significant movement forward has taken place, particularly in the reforms that have redefined civil service status, reoriented state power to different layers within society and introduced new processes for bringing higher efficiency into the public sector. Although these reforms can and do bring positive results, the way they were conducted is not a sufficient foundation for creating an indigenous capacity to govern and thus implement relevant public policies and programs. Even when the basic principles of modern administration have been established, often they have not been followed up by institutional and behavioural capacity building that would support and ensure sustainable, systematic value change in the actual exercise of policy/program design and implementation. Some direct transfers of policy ideas of the New Public Management into different administrative and political systems unprepared for new tasks may cause subsequent problems in the implementation of policies and programs.

The reform processes that have focused on developing administrative capacity or ‘institution-building’ were defined as the creation of institutions necessary for the adoption of the *acquis communautaire*. The internal capacity to govern and implement indigenous policies or implement the *acquis communautaire* was not a topic of reforms. It is difficult to judge whether international organisations’ and EU administrative criteria have been successful in rebuilding the institutions of transition countries to ensure effective functioning as full and active members, including effective implementation of programs and policies. The Europeanisation perspective certainly helps to identify important drivers in administrative (and other sectors’) development; in this respect, it links in with the broader role in democratic transition and consolidation in CEE. It certainly provides an external guidance power in the complexity of the transition process, by giving clear targets and criteria to fulfil. However, the Europeanisation perspective becomes problematic when considering the creation of indigenous capacity to deal with new

6 For an overview of SIGMA’s approach to institution building in CEE see Benedikt Speer (2001). He differentiates 3 phases in the program development (1992-4, 94-96, 96-2000) where it is in the third phase that SIGMA begins using the term ‘good governance’ and applies it, apart from to the efficiency criteria, to terms such as democracy, rule of law, etc and begins to recognise the importance of building up government capacity.

conditions; in sum, in building up the administrative capacity to govern: design and implement. The reforms and adjustments made by transition countries tend to be mainly instrumental, involving external behaviour, rather than deep inner learning. The empirical research in this volume is aimed to map the implementation stage of policy-making capacity at both central and local levels, and to discuss the current experience with implementation efforts.

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Chapter 3

Why CEE Countries, NPM Principles and Bad Policy Implementation Could Easily Be Fatal Friends: The Case of Estonian Local Governments.

*Kristiina Tõnnisson**

Abstract

This chapter presents a case study of Estonian local governments. The study combines the empirical research on Estonian local governments conducted in January 2005 within the conceptual framework known as 4C (*compare, consult, compete, challenge*). While identifying conditions and factors that facilitate and delay implementation of policy decisions at the local level, the study demonstrates that in many cases, Estonian local governments are not yet ready to take advantage of NPM principles. Since it is often the case that CEE countries do not have appropriate systems in place, considerable impact can be achieved through paying more attention to the aspects of traditional public administration.

Introduction

A central issue in social sciences is the relative importance of constraints and choices in analysing, understanding and explaining the various processes and developments (Hrebiniak, Joyce, 1985). This issue has also been debated in public policy literature (Boyne, 1996). Theories emphasising the importance of external constraints imply that “force of circumstance” leaves policymakers limited space to act since many events are beyond their control. This paper tries to study this subject further by analysing specific conditions in transition countries that affect the quality of policy implementation.

How can we define “force of circumstance” for those implementing policy decisions resulting in bad policy implementation? Which factors facilitate and which factors delay the implementation of policy decisions at the local level? How can we evaluate the relative importance of existing constraints and choices? This paper tries to look critically at the current socio-political circumstances and to analyse the outcomes of various developments. It concentrates on management of implementation of policy decisions within transition countries in the light of NPM principles and in the case of Estonian local governments.

1. NPM in transitional countries

Different social, economic and political processes around the world have forced public organisations to undergo major changes. These changes have been significant, both in developed and transition countries, causing tense transformation both in a positive and a negative sense. Transition countries have found it extremely difficult since they have had to transform almost every sphere of their lives. Following

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the collapse of the Soviet Union and its system, CEE countries have undergone a “wave” of democratisation. Some (Offe, 1996; McFaul, 2002) consider it to be the fourth wave of democratisation during the second half of the 20th century.

These trends are accompanied both by the inheritance of the communist past and by the new situation of becoming member states in the enlarged European Union. In many respects, CEE countries are trying to copy Western practices and examples. This assimilation is forced and driven primarily by internal forces. However, a significant level of external political demands is also present. Transition countries want to become more “western” and Western European countries are welcoming the liberal changes.

In order to understand transition countries, one should be aware of the Soviet legacy in these countries. “...Bolshevik ideology and the policies conducted from Moscow 1917-1989 are key to understanding the post-state socialist transitions in the former Soviet Union and its satellites” (Tomusk, 2003, p. 79). First, communist governments in these countries were, in principle, hierarchical bureaucracies. Second, communist governments and hierarchical bureaucracies were considered as synonyms. Thus, bureaucracy itself or as it was in the Soviet case – excessive bureaucratic power – was regarded as being communist. Also, communist systems were regarded as bureaucratic and vice versa. Anything connected to classical bureaucracy was communist and since communism was bad, then anything connected to bureaucracy was bad as well. Thus, there was a general belief that the less bureaucracy we have, the less communist we are.

This first period of transition happened to coincide with the general boom of the New Public Management (NPM) movement. The new approach went by many names: “managerialism” (Pollitt, 1993), “market-based public administration” (Lan, Rosenbloom, 1992), “entrepreneurial government” (Osborne, Gaebler, 1992), “post-bureaucratic model” (Barzelay, 1992), “goal achievement model” (Wood, 1995) or “user-oriented management” (Flynn, 1993). The new managerial approach was the result of both pushes (attempts to avoid crisis) and pulls (attempts to act more businesslike) (Cohn, 1997, p. 585). Hughes (2003, p. 66) claims that “instead of being *reforms* to the public sector, new public management represents a *transformation* of the public sector and its relationship with government and society”. The aim was to create a recognisable increase in public organisations’ effectiveness, efficiency, adaptability and capacity. It pushed authorities to pay more attention to the effectiveness of outcomes, to the identification of alternatives, and to the mobilisation of organisations for critical changes. The idea behind the approach was to make the public sector more flexible and accountable to the public. In many cases, the new approach succeeded in its aims.

The changing world made “the adoption of a managerial approach *necessary* but the kind of management must be specific to the conditions of the public sector” (OECD, 1991, p.10). “Imported practices may fail, or be ineffectively implemented, if they are inconsistent with the core values of local settings” (Lachman, Nedd, Hinings, 1994, p. 52). What works in one public sector circumstance might not

work in another political, social, or economic setting. Despite its popularity a decade ago and despite its various positive outcomes, the new managerial approach also has a fair amount of critics.

There is a general belief that the principles of the approach may lead to less stable organisations and less dedicated public officials. In addition, they may blur distinctions between politics and administration; between public and private. This may affect public organisations in unpredictable ways by introducing unforeseen actors, roles and practices in the public sector. The outcome can be a higher level of adaptability and 'local' appropriateness but probably at the cost of inconsistent models and principles. As an outcome of NPM, many public organisations in pro-NPM Western countries became more autonomous, but it also meant a greater fragmentation of service delivery, policy making and implementation.

Even if, in many cases, the appropriateness of NPM approaches is questioned in the Western world, it is still quite unquestionably fashionable in transitional countries. In developing countries, this model has been considered as a necessity for implementing economic liberalisation policy initiatives, in order to take advantage of globalisation (World Bank, 2002). Transition countries are still more blind to the unexpected erosion of expectations and the high number of questions, leaving the number of available answers far behind. "Public bureaucracy and democratic polity should be seen as complementary; both are needed in our society... As long as democracy is valued, the big questions of public administration must go beyond the big questions of public management" (Kirlin, 1996, pp. 416-8). "NPM has led to very negative consequences, especially, but not only, in CEE... therefore... NPM is the wrong way for Estonia to go." (Drechsler, 2004, p. 392). Over-attention to perfecting administrative processes could be harmful to democracy and the general development of the country.

There are quite a few voices suggesting that nowadays governance should replace government and all developed societies should aim for this replacement. Governance refers to "... a change in the meaning of government, referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed" (Rhodes, 1996, pp. 652-3). At the same time "it is a code for less government" (Stoker, 1998, p. 18). In many respects governance is aiming for a reduction of classical public administration that many transitional countries seem to actually lack.

A general understanding of what is "public responsibility" and "how to run networks" should be in place before implementing these principles. If this is not the case, the new systems might grow out of control rather quickly and start to work against their *raison d'être*. If, during the Soviet era, there were at least formal bureaucracies in place regardless of whether they were effective or not, then during the NPM era there are mainly autonomous self-governing networks that are much more difficult to manage.

2. Bad policy implementation

There are various criteria for judging and/or characterising governments. One of the common criteria says that “government is characterised by its ability to make decisions and its capacity to enforce them” (Stoker, 1998, p. 17). Based on the statistics of how many new laws and rules have been accepted during the last decade in Estonia, the ability of the Estonian government to make decisions is not the worst. However, the second characteristic – the capacity to enforce them – is rather questionable. As often is the case in many transition countries, implementation and the questions of how to enforce the laws will receive attention first after these laws have been passed, leading to the famous “implementation gap”.

It is heavily argued that the stage of implementation is extremely weak in the policy making processes in CEE countries. Even if both politicians and administrators support the general purpose of a specific policy, it does not mean that there are clear ideas and visions on how “to do it”. Often the link between the ones making policy decisions and the ones implementing them is too weak. Stakeholders have not been consulted, decisions are made without appropriate information to hand and no analysis has been made about the outcomes and future effects, etc. That is why implementing NPM principles might make matters worse, since they might obscure the purposes, boundaries and targets even more.

If policy decisions are not followed by implementation, policy making will lose its purpose and inspiration. Without implementation, all good ideas and intentions become slogans and theoretical exercises. Even half-way implementation or within a limited scale does not lead to the expected outcomes. Hence, the general problems of implementation are uncommon not only for transitional societies, but for developed countries as well.

3. Profile of Estonia

After regaining its independence from the Soviet Union in August 1991, Estonia began immediately to implement major economic reforms. The main objective was to create an open and market-based economy based on neo-liberal, right wing ideas upheld by many politicians and visionaries in the country. Liberalisation of prices, industries and trade policies paved the way for rapid transformation. Of course, increased growth and success did not arrive overnight. The transformed economic system began with major drawbacks and at a slow rate, but step by step, the new system began to bear fruit.

Because of its rather strong general support for right wing ideology, Estonia could be considered as one of the most pro-market and right wing countries in Central and Eastern Europe. According to the Index of Economic Freedom (Feulner, 2005) Estonia continues to have the most competitive business environment in Central and Eastern Europe. A strong neo-liberal and *laissez faire* approach to economics has been creating a situation whereby the public sector in general has been regarded as retarded or as a relict from the past, from the former system. “Estonia is one of the CEE countries closest to NPM reforms.” (Drechsler, 2003,

p. 36). That is why “decreasing the role of the state” was seen as the way to go, the way markets mechanisms should have been supported the most. The main idea was to create as many markets as possible so they could take over the distribution, management and control of society’s economic and social processes.

When compared with other CEE countries, Estonia has transformed rather successfully (EBRD, 2004; EC, 2002). Its rapid increase in productivity could be explained by the catch up model (Abramovitz, 1986), according to which relatively backward countries grow faster than advanced countries, because they are able to jump over some of the development stages of developed societies. The driving force was the desire to become a member of the EU and NATO and to be integrated into the new and old Europe. As Paas states, (2002) Estonia’s favourable location between East and West and market economy experience of the period between the two world wars was also an important initial condition as a determinant of transition, influencing economic development. Due to its very small home market, Estonia was forced to expose itself to the international market and to upgrade its standards earlier than many other post-socialist nations. Thus, exports, its small local market and desire to belong to Europe have been the driving forces behind Estonia’s improved economic performance.

4. Conceptual framework of 4C

A continuous theme for many countries around the world has been the improvement of public services and policy implementation. Various frameworks and approaches have been applied and various countries have tried to find their own solutions. Seven years ago the UK’s labour government introduced Best Value (DETR, 1998a), “a duty to deliver services to clear standards – covering both cost and quality – by the most effective, economic and efficient means available” (DETR, 1998a, p. 64). Best Value was a part of a broader set of changes in the workings of local government, intended to improve policy implementation. It involved the implementation of the 4Cs. First, municipalities needed to *challenge* why a particular service was needed at all. Second, they needed to *compare* their performance with other providers across a range of relevant indicators. Third, they needed to *consult* with local taxpayers, service users and the wider business community in the setting of performance targets and lastly, they needed to *compete* in the sense of demonstrating that the preferred means of delivering a service had been arrived at through a competitive process. Even if now, Best Value in the UK has already been replaced by the Comprehensive Performance Assessment (DTLR, 2001), the approach is still relevant and has been used in order to analyse the situation in the public sector.

To some degree, 4C framework was consistent with broader changes in the public sector, characterising the shift from public administration to New Public Management. The framework reflects well the mindset of NPM and carries some of its core values: attention to efficiency and effectiveness, exploring alternatives for service delivery, partnerships and continuous improvement, etc. Reviews based

on 4C can identify areas and issues that need to be changed in order to improve both service delivery and policy implementation. The 4C framework could be considered as a part of the NPM approach, whilst emphasising the same principles and putting effective management to the fore.

While concentrating on four main activities, the 4C framework also sheds light on other processes going on in organisations. “However, the success of the initiatives of Best Value... - intended, broadly, to improve services, increase efficiency and enhance managerial accountability – is not regarded as self-evident” (Wilson, 2005, p. 231). Following closely the 4C principles increases risks and that is why the pace of change needs to be managed carefully. Hence, while using the 4C framework, it is possible to track various developments within a specific context.

5. The Local Government Leader Survey

The 4 C framework was taken as the basis for the local government leader survey in Estonia. First, it captures the complexity of the current management issues and second it reflects the actual challenges most municipalities are facing in Estonia. Thus, the model was easily adapted and easily understood. While many challenges facing local governments are similar both in the UK and Estonia, applying the model would give a good basis for further comparative analysis between those two countries. At the same time, it gives a good overview of the current situation and problems in Estonian municipalities.

The variable explored in this study is 4C, consisting of challenging, comparing, competing and consulting. While NPM implementation and its requirements might be considered as the concept of interest, 4C as a model or an example of the NPM approach accurately reflects the situation, while emphasising the same aspects as NPM. Among the variables there are quite strong links: a high level in one area is expected to result in a high level in another area. While trying to capture the situation in Estonian municipalities, based on Heads of Local Governments opinions, the hypotheses of the study would be: first, there is a strong link between being pro-NPM and considering it as successful. Second, there is a much weaker link between being pro-NPM and being successful. The hypothesis takes into account the general pro-NPM attitude in society and attempts to analyse the situation in the case of Estonian municipalities.

A national e-survey of all 241 Heads of Local Governments (chief executives) in Estonia was undertaken during January-February 2005. The survey received 231 responses, a 96% response rate (see Table 1). The questionnaire consisted of four different sections. First, there were general questions about the profile of the respondents. These results are described in the following sub-section. The second section consisted of statements about the situation in Estonian local governments in general. The third section focused on the respondents' own local authorities. The last section consisted of open-ended questions where respondents were asked to identify the main achievements in their own local governments and the main challenges the municipalities in Estonia will be likely to face in the future. In addition

to the e-questionnaire available surveys, statistical data and written documents are used for the analysis. The scale of this response (96%), combined with the level of personal, as opposed to delegated responses, (81% of respondents were Heads of Local Governments), lends particular legitimacy to the survey.

Still, one needs to be cautious about social desirability bias. In order to avoid too high a level of response bias, the study was anonymous and respondents were informed that the data would be analysed at a general level only. Then again, the idea of the study was to find out the opinions of the Heads of Local Governments that the survey hopefully managed to accomplish. The study did not intend to reflect the “deeper picture”. While analysing the internal consistent reliability of some responses, Cronbach’s alpha method was used.

The construct validity of the survey is rather high, based on the described relationship between both 4C and NPM and based on the relationship among the 4C’s separately. The answers about 4C can measure the situation well about NPM in general in Estonian local governments. On the other hand, the face validity of the questionnaire is not too high. If the person says that they deliver a high quality service, we actually do not know if this in fact reflects the reality. That is why it is hard to judge the objectivity of the given responses, since there is no further evidence available. For that, further research is required, followed by appropriate interviews and feedback of the citizens.

6. Profile of the respondents

Table 1 shows the general profile of the respondents. Since Estonian local governments are relatively small (85% of them have less than 5000 inhabitants), the majority of the respondents (70%) represented local governments with less than 3000 inhabitants. Half of the Heads of Local Governments have worked in this position for five or less years. Also, the length of the career in the represented municipality was not longer than 5 years for most of the people (43%). Significantly, 62% of respondents had experience of working in the private sector. If previous experience in the private sector could be considered as advantageous in introducing NPM principles in Estonian local governments, municipalities are well prepared for NPM reform.

Concerning the age of the respondents, most of them are between 31 and 50 years old (61%), from whom the majority (39%) is in the age group 41-50. It is interesting to note that in Estonian central government, the majority (52%) of public administrators are younger than 41, whereas the majority of public administrators at local level (65%) are older than 41 (Riigikantselei, 2003, p. 55). The balance between male and female respondents favoured the males – 77% of males compared to 23% of females. Concerning the educational background of the respondents, 51% of them had higher education or even an academic degree. On the other hand, one quarter of respondents had only a secondary or professional education.

Table 1

A profile of the respondents to the national electronic questionnaire survey

Status	%	Gender	%	Private Sector Experience	%	Qualifications	%
Head of Local Govt (LG)	81	Male	77	YES	62	Secondary education	7
Deputy Head	4	Female	23	NO	38	Professional	19
Head of Dept	5					Diploma	23
Other	10					Bachelors	38
						Masters	12
						PhD	1
Total	100		100		100		100
Population of Authority	%	Age group	%	Number of Years...	...in LG%	...as Head of LG%	
<1500	31	<30	7	5 or less	43	48	
1501-3000	38	31-40	22	6-10	30	13	
3001-6000	17	41-50	39	11-15	22	15	
6001-10000	7	51-60	27	16-20	3	3	
10001-50000	5	>60	5	> 20	1	1	
>50000	2			N/A	1	20	
Total	100		100		100	100	

7. Main results which have emerged so far

7.1 General research findings

The overall responses present a very positive picture in Estonian local governments in general. It can be seen that there is an overwhelming support (98%) for the view that local governments continually seek to improve services, as well as policy implementation. There is equally strong opposition to the view that local authorities have sufficient resources to supply services that central government expects them to deliver based on the laws (94%). Thus, many municipalities believe they find themselves in the situation where they would like to improve their policy implementation, but they do not have the resources to do so. At the same time, many comments showed that continuous improvement, stated by most municipalities, might just be a “public face”.

The lack of resources is reinforced by support for the view that local government finance is over-centralised (86%). Further evidence of a lack of autonomy is given by the responses as to trends in the ‘free money’ element of local authority budgets. The view was clearly expressed (89%) that this element is decreasing. However, when asked if powers devolved to municipalities to organise local life are too limited, 57% disagreed. Also, some comments showed that Estonian local governments have enough theoretical power, but not real power based on financial resources – they have the power to provide services but do not have the commensurate levels of financial resources or discretion.

Table 2
 Respondents' Views on Local Governments in Estonia.

Statement	Strongly Agree/ Agree%	Disagree/ Strongly Disagree%	No Response%
In Estonia, there is a strong commitment to continually seek improvements in service delivery	98	1	1
In Estonia, central govt allocates sufficient resources to local govt to deliver central services	6	94	
In Estonia, central govt is in the process of centralising public finances	86	14	
In Estonia, the% of 'free money' in local govts' budgets has continuously decreased	89	9	2
In general, locally elected politicians exercise too much power in comparison with senior managers	31	68	1
In Estonia, what central govt expects of local govts is not always clear	82	17	1
In Estonia, the public has a low opinion of public administration	36	64	
In Estonia, the powers devolved to local govts to organise local life are too limited.	43	57	

Open-ended questions revealed that the most common additional reasons for mistrust and dissatisfaction of the respondents towards central government are: a very low tax base for the municipalities; continuous trends towards centralisation; increasing responsibilities and tasks, together with inadequate resources, illogical reforms and the bottom-down attitude of the state. “A constant complaint ... of local governments... is that fragmentation of policies, programs and funding flows from above makes effective action at the point of impact extraordinarily difficult” (Kirlin, 1996, p. 417). Also, the current study showed that particularly significant was the overwhelming support (82%, 27% strongly agreed) for the view that the role of local government is not as clear as it should be, with confused expectations on the part of central government. Thus, in addition to the systematic problems of the Estonian public administration system e.g. the low level of co-operation between institutions, the low level of administrative capacity and the unsupportive public administration culture etc., Estonian local governments face an additional problem – confusion and/or conflict between the central and local levels.

In general, central government can play a double role towards local governments. On the one hand it may assign certain tasks and functions to municipalities i.e. those in the “government chain” and on the other hand it might offer some security as “an elder brother” by providing financial assistance, guidance, advice, policy frameworks, etc. Open-ended questions showed that Estonian municipalities feel that central government is performing mainly the first role. During the last decade, the tasks of municipalities have constantly increased, but without the appropriate financial input from central government. Already in 2000, a study revealed that in order to perform all the tasks that central government has assigned to local governments, Estonian municipalities lack around 2 billion Estonian crowns (Lauritsen, 2000, p.15). A recent study also proved that there is a shortfall between the

finances and the tasks that central government has assigned to municipalities (Kirss & Allsaar, 2003) resulting in the Association of Municipalities of Estonia writing a public memorandum proposing that the task division between the state and the local governments should be reconsidered and more appropriately balanced.

Even if this unbalanced task assigning is often true, there are also enough reasons to believe that sometimes the municipalities have adapted “wait and see” attitudes (Tönnesson, 2004). They are accustomed to being too dependent on the state so their own efforts to find solutions and to create new knowledge are often too low. On the other hand, additional comments indicate a perception that in many cases, central government, deliberately or otherwise, hinders the development of the municipalities e.g. by maintaining all the important decision-making processes. The situation, to some degree, is based on mutual distrust.

Such rivalries between the central and local levels are not usually the concern of the citizens. They are not interested in which authorities have which portfolio and which responsibilities. They are interested in seeing the public sector working and they are interested in receiving quality services. That is why stakeholders’ who lack input or are untrusting or apathetic is a country-wide problem and not simply a problem of a specific municipality.

Despite the perceived ambiguity over the local government’s role, the respondents present a reasonably healthy picture of local governments in general. With regard to the relationship between officers and politicians, two-thirds, (68%) indicated the ‘balance of power’ was appropriate, although 31% believed local politicians exercise too much power vis-à-vis senior managers. Since most Heads of Local Governments have come from the political body of local governments, they are partly politicians, partly administrators. First, they have been elected to the political body of the municipality and later they have been nominated as Heads of Local Governments by the same political body. It is also interesting to see a positive correlation between the position of the respondents and their standpoint on power relations. Heads of Local Governments tended more to answer that the balance of power is appropriate (70%), though those in different positions tended to see the balance of power as inappropriate (63%).

It was interesting to see that the majority of the respondents disagreed with the statement that the public has a low opinion of the public administration in Estonia in general (64%). However, a large proportion (36%) strongly agreed/agreed, perhaps reflecting public opinion polls in recent years which have revealed that most Estonian citizens do not have a positive image of the public sector. 68% of citizens believe they do not have any possibility to affect local governments’ policy decisions or implementations (Faktum, 2003). This perhaps is the result of three things. First, it reflects the former soviet legacy when the public sector was simply another arm of the communist party system, implementing repressive actions towards the citizens. Second, it perhaps reflects the current public attitude that the “private sector” (associated with free market, economic development, innovation, etc) is regarded as superior to the “public sector” (mostly associated with political

battles, inefficiency, bureaucracy, etc). Third, the image of the public sector may be undermined by journalists who have a tendency to highlight unethical goings-on and major mistakes made by public officials and the political ‘power games’ which take place. However, previous studies have also shown that there is a correlation between people’s attitudes and personal experience (Tönisson, 2004). Those who have had recent personal experience with the public sector in Estonia have a more positive attitude towards the Estonian public administration than those who have not.

7.2 Challenging

As Table 3 shows, respondents overwhelmingly indicate that the need for services is reviewed at least once every three years. These answers might reflect either the fact that the situation is rather good or it might reflect the fact that the situation is bad but the administrators do not want to, or are unable to recognise it. Consistency reliability concerning the first two questions is 0.74. Since, in most municipalities there is no built-in formal process of reviewing services, it is questionable if overburdened public administrators (96% of respondents feel that their workloads have been significantly increased during the last years) have time left for extra tasks.

Table 3
 Respondents’ Views on Own Authority: CHALLENGE

Statement	Strongly Agree/ Agree%	Disagree/ Strongly Disagree%	No Response%
My authority reviews the need for the services we provide at least once every 3 years	87	12	1
My managers are encouraged to question the need for each service to be provided	87	13	
My colleagues are aware of the organisation’s strategic goals	92	7	1
My colleagues are committed to the organisation’s strategic goals	91	8	1
Innovation is a strong characteristic of my organisation	55	44	1
In my authority, individual managers are held accountable for performance	87	12	1

Over 90% of respondents indicate that their colleagues are both aware of and committed to the organisation’s strategic goals. Since consistency reliability concerning these questions is 0.83 one might conclude those who are aware of the goals are also committed to them. However, it is interesting to note that 44% disagreed/strongly disagreed with the view that innovation is a strong characteristic in their organisation. The respondents might not have considered innovation important or they might have considered it important, but just do not exercise it. Anyway, it is hard to imagine that these municipalities can strongly challenge themselves. Those who have implemented innovative practices have done so mostly in the areas of ICT, managerial practices, environmental policies and public-private partnerships.

A large proportion (87%) of the respondents believe that the managers of the municipalities are held accountable for performance but, at the same time, only

60% provided any examples when invited to do so. Most of them consider managers to be accountable through reporting systems to the political bodies or to the public, but also through colleagues’ trust, elections, public attention and financial bonuses. Only a few of the municipalities have some performance-related pay system in place and financial bonuses are mostly paid based on additional projects’ income, if at all. It seems reasonable to conclude there would appear to be a lack of managerial accountability. Although there are formal reporting requirements, these are such that they do not adequately hold managers accountable. Acting within the law is, of course, necessary and it is right this should be demonstrated, but this does not help ensure managerial accountability in terms of efficiency and quality of service provision. The responses indicated an over-reliance on “soft accountability” measures, including colleagues’ trust and public attitudes.

7.3 Comparing

One important instrument of local government reforms and a key component of Best Value in the UK is to ensure local authorities compare themselves with other providers, thereby enabling them to benchmark themselves and to judge and monitor their level of efficiency. Since “benchmarking at the local level is methodologically relatively easy and not as politically contentious” (Bovaird, Löffler, 2002, p. 9), one might expect that it is happening quite often. To this end, the respondents were asked to indicate on the basis of their own authority the extent to which this peer review was undertaken.

Table 4
Respondents’ Views on Own Authority: COMPARE

Statement	Strongly Agree/ Agree %	Disagree/ Strongly Disagree %	No
My authority:			
Compares the costs of its services with the business sector	78	20	2
Compares the costs of its services with the voluntary sector	74	24	2
Compares the costs of its services with other local authorities	94	5	1
Compares the quality of its services with the business sector	76	21	3
Compares the quality of its services with the voluntary sector	83	16	1
Compares the quality of its services with other local authorities	92	7	1

Based on Table 4, it would seem that Estonian local authorities compare the cost and quality of the services they provide, not only with other local authorities, but also with voluntary sector organisations and with the business sector. Based on the current responses, the main benchmarking is with other local authorities (94%). One-fifth of respondents do not compare their service costs (20%) or service quality (21%) to those which prevail in the private sector. At the same time, one must understand that some local government services do not have parallels in the private sector. Also, the willingness to compare public services with those provided by the third sector is relatively low. Internal consistency reliability concerning the

questions of comparing the cost (0.77) and the question of comparing the quality (0.78) was rather high. Thus, for municipalities it is more important to compare these aspects rather than the question with whom to compare.

Since the response rates both to “cost” and “quality” questions are similar, one might assume that while comparing the costs of the services, Estonian municipalities also compare the quality of the services. At the same time, comparing the quality is not as easy as comparing the cost and this requires additional resources. Since not all local governments have this, it is questionable if they really do that or they believe they do.

7.4 Consulting

There has been a radical change in interpreting the role of “policy making” and “service delivery” in the public sector. More accountability of the public sector to its stakeholders was one of the central themes of public sector reforms in the eighties and nineties (Aucoin, Heintzman, 2000). No longer is policy making seen as a simple top down process and a centrally governed action. It is now seen as the negotiated outcome of many interested stakeholders and as a process based on various networks that operate from a different logic to conventional management. Networks rely on trust, reciprocity and a broad communication process as being the mechanisms to bind actors together into collective action (Ansell, 2000). These features also require different managing approaches and strategies since they are mostly relationship-oriented and therefore not always synonymous with conventional management ideas (Kickert, Klijn, Koppenjan, 1997). They are based more on horizontal than vertical management; they require more skills and knowledge to manage relationships than just to manage outcomes and they require constantly adapted and accepted changes, not simply to make adjustments when there is no any other way.

Decisions to consult, how to consult and what to expect from consulting and stakeholders’ engagements are ultimately political decisions. The different rationales also produce different processes and a different level of engagement. The political push to consult might lead to “window dressing” i.e. when consulting is taking place for its own sake. Although the views of citizens seldom seem to be the driving or shaping force for particular reforms, they can be an important background influence (Pollitt, Bouckaert, 2004). That is why pure consulting does not say much about real citizens’ involvement. Especially in transition countries where it is fashionable to follow the practices of developed countries, consultation is often happening because of outlook, not because of content.

Table 5
Respondents’ Views on Own Authority: CONSULT

Statement	Strongly Agree/ Agree %	Disagree/ Strongly Disagree %	No Response %
In my authority, decisions are generally reached through a process of in-house consultation	98	1	1
My authority undertakes extensive consultation	84	15	1

It would appear that consultation is extensively undertaken in Estonian municipalities. 98% of the respondents believe that decisions are reached through in-house consultations and the majority of municipalities (84%) undertake extensive external consultation. Previous studies have shown that many public administrators are afraid to make decisions on their own and they like to share responsibilities as often as possible (Tönnisson, 2004). This might explain why the in-house consultation rate is extremely high. Regarding the nature of outside consultation, respondents referred mostly to public meetings (73%), to consultations with other local authorities (71%) and with local businesses (63%). Thus, municipalities use more or less equally both in-house consultation and extensive consultation. Among “other forms of consultations” the respondents pointed out public discussions through local media, feedback via internet sites, consultations with partner institutions abroad, satisfaction surveys among customers and discussions with politicians.

Table 6
Methods of Consultation

Method	%
Public meetings	73
Formal consultation with local agencies	71
Formal consultation with local business	63
Formal consultation with local NGOs	60
Discussions with user representatives	42
Market research surveys	10
Other	10

Comments showed that consultations have been happening mainly on the issues of development plans, tourism and infrastructure. It seems that consultation generally takes place in areas where it has been required by law or it is needed because of funding requirements. Very few municipalities have consulted about the delivery of services or about principles that might directly affect customers and that has not been required from others. Thus, consultation at the local level seems to be derived more from an “outside push” than an “inside call”.

On the one hand, one might blame municipalities for being reluctant and passive and not supportive, but on the other hand, not consulting might be better than simply paying lip service and actually ridiculing the whole process. Broader consultations require much more time, effort and skills than are currently available. From this perspective, Estonian local governments are doing rather well. Municipalities are practising consultation, but they have not blindly rushed into implementing it everywhere. The fact that only 20% of local governments compare the costs and the quality of their services with the business sector, but three times more municipalities (63%) consult with local business, might also show that some answers are based more on the practical deeds and others on the theoretical plans.

7.5 Competing

The fourth C – *competing* – is becoming more and more important, both in the light of a scarcity of resources and also competitiveness in general. Competitiveness has become a key component of many countries’ strategies, as well as for the EU. Estonian and British Prime Ministers consider it to be the main area of attention and effort “...the highest priority for Europe now is enhancing competitiveness” (Parts, Blair, 2003). Public organisations are forced more and more to follow the principles of competing. They are forced to create alliances and partnerships, both within public sector as well as between public and private organisations, in order to implement policies more effectively and in order to survive in an increasing competitive process.

Public-private partnerships can be considered to be hybrid organisations as they blend together the public and private sectors (Starr, 1990) to offer services and create values across sectors’ boundaries. It requires two or more organisations to work together in a collaborative relationship and both or all of them should put some effort into making this relationship work. Partnerships can be seen as a developing mutual relationship in which both parties take risks – one has to trust the other and vice versa. Since this is not always the case, partnerships might look good on paper and in theory, but not always in the real world. Often, municipalities struggle heavily to keep partnerships going, especially when they have had no previous knowledge and experience in this field.

Table 7
Respondents’ Views on Own Authority: COMPETE

Statement	Strongly Agree/ Agree %	Disagree/ Strongly Disagree %	No Response %
My managers are encouraged to facilitate private sector involvement in the delivery of services	94	6	
My managers are encouraged to explore opportunities for strategic alliances/partnerships in service delivery	93	6	1
My colleagues possess the skills local govt administrators require to deliver excellent services in a market economy	86	13	1
My authority experiences difficulty in recruiting particular types of professional expertise	60	39	1
My colleagues are familiar with the concept of contracting out	84	14	2
My authority prefers to deliver services directly rather than contract them out.	44	55	1

It would seem that in Estonian local governments there is a very clear predisposition to involving the private sector in service delivery (94%) and to exploring opportunities for strategic alliance in service delivery (93%). Internal consistency reliability concerning these questions is 0.75. However, 44% of Estonian local authorities prefer to deliver services directly, rather than contract them out, though 84% of the respondents are familiar with the concept. It might mean that even if they know the concept, they are not willing to carry it out or it might also mean

that some services are delivered better by public agencies or that there are no appropriate private companies. In order to find out the reasons, more research is required about the contradiction between the facts that both involvement of the private sector and strategic alliances are supported, but at the same time, almost half of the municipalities prefer to deliver the services directly. Additionally, it might refer to the move from the “public management arena” back to the “public administration area”, but it is hard to believe, since the “public management area” has not yet really reached the Estonian local municipalities.

All these strategic alliances and partnerships are good on the one hand, but on the other they should raise some additional attention. It is surely a justified and preferred action to a certain degree. At the same time, there are enough reasons to believe that implementing new working principles or new ideas before having a working system in place and without adequate information in hand can harm public institutions even more. Pollitt (2002, p. 278) argues that “countries have not started from the same point, either in terms of the make-up of their public sectors or in terms of the way they think about the role and character of the state”. Involvement of the private sector and delivering services via networks can be easily violated in transitional countries where “the ways of doing” are still in the process of developing. Secondly, in those areas where users and key stakeholders should play key roles in the definition and delivery of the services, it is pointless for agencies to form stronger, closer and better partnerships unless they also closely involve citizens. Partnerships themselves should not be outcomes, they are merely possible ways of serving the public.

In the situation where partnerships should be more and more tested and facilitated, rather than implemented and policy implementation should be more and more negotiated rather than planned, municipalities require new skills and knowledge. The study showed that the majority of municipalities (60%) experiences recruitment difficulties, mostly in recruiting lawyers (31%), city planners and those with the ability to think strategically and speak foreign languages (all 23%). Additional comments pointed out the lack of specific EU knowledge and project management skills within local governments. “Hence, for civil servants working at local, regional or central government level, their daily work increasingly obliges them to act internationally” (Verheijen, Connaughton, 2003, p. 841). Membership of the EU and the general movement towards globalisation force public administrators to gain these new knowledge and skills as quickly as possible.

These skills and abilities do not grow overnight – they require time and effort. Even if a certain municipality is able to demonstrate them, it does not mean that Estonian municipalities are doing well. “Even if each individual public organisation approaches perfection, the totality of their effects may be found wanting” (Kirlin, 1996, p. 416). In addition to having knowledge, the appropriate system to take advantage of this knowledge, both within one organisation as well as among other organisations, should be in place.

Conclusions

The study has shown that many Estonian local governments believe they are broadly taking advantage of new managerial principles and they also believe they are somewhat effective in doing it. While combining the results with the broader picture, the situation is much more alarming and needs to be studied further. Thus, the survey confirmed both hypotheses.

From the perspective of Best Value and the 4C framework, the situation in Estonian municipalities looks quite positive. Many principles and ideas carried out by NPM and Best Value have been followed by the Estonian municipalities. They have tried to be “liberal” and “pro-market”, to compare costs, increase quality and collaborate in networks. However, some contradictions contained in the answers require further research and raise caution about the appropriateness of implementing NPM principles in Estonia.

According to the study, NPM principles have made Estonian local governments more similar to each other. Often they have implemented the same ideas and managerial approaches. Another question is if these approaches have actually made them more effective and efficient. On the one hand the municipalities themselves believe in their positive development, but on the other, the social desirability bias should be taken into account while analysing the results. While combining them with a theoretical background of the appropriateness of NPM in transitional countries, the situation might be alarming: NPM has facilitated the creation of a “positive public face” that is actually different from the reality.

Good policy implementation relies both on the core centres of public management as well as of public administration. In addition to efficiency and effectiveness, it is important to focus on other values as well, such as accountability, democracy, etc. In particular, transition countries should consciously bear that in mind. It might happen that they do not have strong enough “public administrations” to be able to take full advantage of NPM principles. In this case, new managerial approaches might actually be more harmful than helpful. If implemented with caution and in the appropriate way, they could give public organisations the push needed for continuous improvement and development. That is why NPM should be considered in a particular context and in a particular time, if not, NPM, transition countries and bad policy implementation might easily become fatal friends.

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Chapter 4

The Non-implementation of Western Assistance Programmes: The Advisor's Point of View

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Abstract

In the transition process, many 'experts' from international organisations and Western countries came to CEE countries to advise them how to become EU members and to improve their situation. Despite the spread of such experts and the costs involved, little is known until now about the substance of their advice, nor of the extent to which such advice had an effect, that is, was implemented. This chapter addresses this issue. It starts by summarising the literature about the desired substance of advice. The empirical part is based on interviews with western advisors.

Introduction

During the transition from socialism to a market economy many donors, experts, advisors and consultants from international organisations and Western countries came to Central and Eastern Europe to enable the post-socialist countries to become EU members, to advise them on policy issues and to help them improve their situation. Much of that advice, however, fell flat. Sometimes the advice was out of politeness on the part of the local and national officials and was taken for granted. Sometimes it was merely rejected, but hardly ever was it implemented in the way designed by those advisors. In a previous publication (De Vries & Sobis, 2005) we argued that this could be due to a certain position taken by those advisors, namely that they acted as standard setters or fashion-setters (cf. Røvik, 1996; Brunsson and Jacobsson, 2000; Sobis, 2002), not taking into account the specific circumstances and characteristics of CEE countries, which were very different from those in the home-countries of the experts and which could have prevented the implementation of standards based on the latter situation.

However, the outcomes of that research were mainly based on the opinions of the local officials in CEE countries. They especially criticised the US and French 'experts' for not listening, being arrogant and giving unrealistic advice.

That makes one wonder about the opinions of the advisors themselves. What is their opinion about their advice? Are they satisfied with the results of their work? What did they do to prepare themselves? What were their aims and objectives, and how did they try to achieve them? Did they do what advisors are expected to do in theory? What are they expected to do, anyway? And even if they conform to the requirements set out in theory, but the outcomes are still disappointing, do they, as one might expect, return the ball and blame the officials for not listening,

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being stubborn and stupid? Do they in general agree that a problem exists and where do they seek the causes thereof?

Their opinions and unexpected views about the real cause of the problems of the failing of such advisory projects have turned our investigation in a new direction. Before we present that conclusion, we will first give a concise overview of theoretical lines that might be interesting to take into account. Secondly, we present our data and methods. Next, we describe what we think is known until now about the role of foreign experts during the transition process. Subsequently, we will present the criteria against which to judge the actual role of these experts and finally we will present the preliminary outcomes of a survey among Swedish experts who advised CEE-countries during the transition-process.

Theoretical angles

Several theoretical angles might be interesting for doing research on the insufficient effects of policy advice. On the normative side, one can judge any seeking of advice as a development to be promoted. The more knowledge governments base their decisions on, the better the policies one might expect.

This is seen, for instance, in the classic works of Dror. In his classic work *Policy making under adversity* (1986) he recommends all kinds of institutional reforms related to the growth of expertise in government. He mentions, *policy planning and policy analysis units* near heads of government, as islands of professional excellence near main decision-making loci, temporary assigned people from within or outside government, having an academic background, knowledge of policy sciences, able to carry out evaluation studies in a professional way, investigating all the phases in the policy process, introducing heterodoxy, with the head of government as the client (Dror, 1986, p. 281). *Think tanks* for in-depth work on main policy and policy making issues constitute the second recommendation, which has to consist of high quality staff, creating doubt and questioning conventional wisdom, who are free in designing and evaluating options with direct channels to top-level decision making. Subsequently Dror proposes independent policy audit, cadre development and national policy colleges. These are all recommendations about institutions in which the role of intellectual challenges, knowledge, insight and learning are crucial in order to increase effectiveness of societal problem handling. In his eyes, the capacity to govern is mainly a matter of knowledge and experience, and if this is not available, one should look elsewhere. This is where the outside experts might come in. They are needed for the enhancement of mental-intellectual capacities in order to be able to make sound diagnoses, recognise tacit patterns, to enhance imagination, creativity and intuition (Dror, 1986, p. 122). Expertise could be of help in formulating an integrative policymaking philosophy, the debunking of policy orthodoxy, diagnostics, agenda setting, alternatives innovation, providing broad and long term perspectives, and techniques for handling complexity. In these processes, intellectuals and, especially, social scientists could play a significant role.

However, there are also other ideas about the role of knowledge. Some scholars argue that information is used only as a symbol and a signal that decisions are made as good decisions should be made (Feldman & March, 1981); others stress that it is not the lack of information that troubles the public sector, but the ambiguity involved in many problems (Feldman, 1989). That such information is not used i.e. does not result in implementation is, in this view, nothing to be worried about. It is not meant to be used. This angle is especially found in neo-institutional theory with regard to organisational changes and rational choice theories. Here, information gathering by government and also in the private sector is seen as something that has to be done, because one wants to create the image that one is a good decision maker. It is not the actual use of information, but the symbolic effect that is important. The informal rule is that a decision maker should be informed before making a decision and therefore, decision makers hire consultants and experts in order to give exactly this image. It is a communication device in order to get the things done, that one wants to get done. Expertise is needed to increase the number of arguments in order to get more support. The substance of reports is much less important, because these reports do not serve substantial goals but strategic goals. Reports are needed to pile up the desks and show anyone who objects that there is plenty of evidence to prove him wrong. It is not the logic of consequentiality that counts, but the logic of appropriateness. Advisors and consultants should help the interests of the policymaker in his function as a policymaker. They should not and probably will not, give advice that runs counter to those interests.

A downright critical approach is found in the organisation-theory point of view in which one looks upon experts, advisors and consultants as standard setters. When coming from western countries to CEE-countries, experts can be conceived as laying a blanket of western standards upon CEE-policies. The Western experts are not only the "outside experts" in the sense that they come from a consulting firm in the same country and try to provide public officials with advice. In CEE countries, they are really from the "outside", in the sense that they are "foreigners" in relation to another state, another social order, another culture with its cultural codes, understanding for moral, norms and values etc. In the – to them completely alien conditions – they try to provide public officials with advice, elementary know-how, pragmatic ideas and solutions to the problems of the post-socialist countries, that these experts imagine. This kind of advice would be visible in the increased organisational similarities in Europe and even in the world, through the spread of institutional standards and organisational fashions by *foreign experts*. Scandinavian researches (Czarniawska and Sevón, 1996; Brunsson, Jacobsson et al., 2000; Røvik 2000) have focused on organisational changes and consequently, on policy-making processes through putting some emphasis on the more frequently role of multi-standard organisations and their representative experts for spreading "institutionalised standards" and "organisational fashions" that lead to organisational similarities. The Scandinavian studies emphasised the experiences of the Western highly developed countries. When reading these studies, one has the impression that the Western *expertise* ought to work correctly everywhere. However, the study

conducted by Sobis (2002) dealing with the Polish public employment service in transition during 1989-1998, has shown that the theories from the high-developed Western countries did not always fit the post-socialist countries that created a capitalist economic system without capital. This is an example that can serve the EU aid-programmes addressed to CEE countries in order to help them respect the EU norms in ten economic arenas and join the Community.

This approach is more critical, because some researchers (Wedel, 1998; Puhani, 1999; Sobis, 2002) show that foreign experts sent to CEE countries lacked the necessary imagination on the major problems that the post-socialist countries faced during transition and that the assistance programmes were far off the political, socio-economic and even cultural reality in these countries. Research in this area also showed that the Western theory propagated by the EU and ILO experts e.g. to create a market economy with a correctly working employment policy and the remedial measures to counteract increasing unemployment, did not solve the major problems in this arena within CEE countries. The actors from the macro, as well as from the micro levels, had to learn the new rules, procedures, routines and working methods to create the so-called modern public administration and modern organisations by a trial-and-error method. Not one institutional standard or organisational method could be implemented without the last say of the policy-makers and their understanding for the norms of rationality, financial possibilities and method. It is an understatement that one can conclude from such studies, that foreign experts did not contribute to problem solving as much they were expected to.

Hence, the research into the role of experts is not just one of explanation and description, but also one of normative judgement. The three theories are very different in this latter aspect. The first theory emphasises the need to add expertise into the public sector for substantial reasons. The second stresses that such expertise is not really needed, because it does not prevent decision makers from doing what they intended to do beforehand and such advice is only of strategic use. The third theory states that standard setting is the rule and that decision makers are subject to such outside experts because they are dependent on the outcomes of the process and the recipient could even be worse off because the standards do not fit the specific features of the context in hand.

One way to investigate the validity of these theories is to look at the behaviour of politicians and public administrators who are the recipients of such expertise. Many scholars have studied how the recipients of Western assistance perceive the donor organisations and their representatives, i.e. experts, advisors, consultants, and evaluators during transition (Wedel, 1998; Puhani 1999; Sobis, 2002; De Vries & Sobis, 2005). The outcomes of such research, however, vary in their corroboration of the theories. Were the recipients better off afterwards? Did they perform better or more similarly to comparable organisations in the West? Or were the foreign experts just telling them what they wanted to hear without subsequent results. Sometimes one gets this result and sometimes another.

A second angle that might shed some light on this problem is to ask the experts themselves. How did they behave? What did they do in order to prepare themselves for the job? What actions were undertaken? This is interesting, because if they intensively prepared themselves to the situation they were to be confronted with, the point made by Dror (1986) might be valid. In that case, expertise is meant to improve the situation and resolve the problems the recipients face. If, however, the experts prepared themselves by just looking at how to transfer their own standards to the recipient organisation, this is indicative of the critical point of view. In this case, expertise is not used in order to resolve the problems of the recipients' organisation, but to make the performance of that organisation more similar to that of similar organisations in the home country of the expert. And then, of course, experts can simply prepare themselves by asking what it is the recipient wants to hear and advise him accordingly. This would be indicative of the neo-institutional point of view.

Data and methods

This research is anchored in the previous research conducted by Sobis (2002) and de Vries and Sobis (2005). In this paper, we want to find criteria to judge experts' advice and to hear from the Swedish experts *how they experienced and perceived their participation in the assistance programmes addressed to the post-socialist countries, shortly after 1989?*

The research is based on document analysis and retrospective in-depth interviews with the Swedish experts working in Russia, the Baltic countries and other central and eastern European countries.

Regarding document analysis, we have collected documents, reports and manuals for trainers from the home pages of the European Union's assistance programme to Poland and Hungary: Action for the Restructuring of the Economy (PHARE programme), the European Federation of Management Consultancy Associations (FEACO), the Swedish International Development Co-operation Agency (Sida) and the Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee) in order to describe, compare and summarise the literature about the desired substance of advice and what policy concerns experts, consultants and other trainers when giving advice to assistance recipients. We have also used some reports prepared by Sida – their evaluation of the assistance programme to Poland, Russia, and Latvia in the field of labour market reforms.

Concerning the Swedish experts, the aim was to interview in-depth the persons who were involved in various aid-programmes shortly after 1990. At the beginning of transition in CEE, there were about ten people in Sweden working as experts for CEE countries. Some of them were members of the Swedish Society for the Study of Russia, Central and Eastern Europe and Central Asia. It is a forum for the exchange of information and ideas among specialists from a number of different fields such as political science, sociology, economics, geography, history and philology, but also translators, diplomats, journalists and teachers. The society

is politically independent. In the autumn of 2003, an open letter was sent to all members of society looking for potential respondents. Participation in the research was voluntary and it was extremely important to guarantee anonymity to the respondents. The duration of interviews varied from one to two hours.

This part of our research is far from representative for all Swedish experts, but the empirical material proved to be very rich, thanks to the respondents' engagement and good will to give us all the information about their first experiences from CEE during the period from 1989 to 2004.

The guide to the interviews was divided into four thematic blocks. The first block of the questions addressed to the respondents aimed to get elementary information about respondents and their formal education, actual professional specialisation, why they became experts involved in the assistance programmes to CEE and in which way. The second block focused on the very concrete assistance programmes, in which the respondents were involved and could describe the donor's organisation, the assistance recipient's organisation and their own role in the programme. In this block, some questions also concerned the main principles for financing the assistance projects decided by the donors and the respondents' private opinions about how the money should be matched to the assistance recipients. The third thematic block dealt with the respondents' concrete experiences when working in post-socialist countries. These questions were aimed at understanding the problems they faced and their working methods with the assistance recipients. Finally, some questions were addressed only to the respondents who were involved in the different assistance programmes many times. On the one hand, the aim was to confront the respondent's earlier experiences with his/her later experiences to see the differences in approaching the recipients' needs. On the other hand, the aim was to get to know something more about how the respondents perceived the increasing corruption when providing the assistance programmes to CEE, especially at the beginning of transition within the post-socialist countries.

Main criteria to provide the aid recipients with advice

At first sight, research into the practice of outside advisors seems to show little promise. This is the case because all aid-providing donor organisations have very strict rules and criteria to which advisory agencies and consultancy firms have to comply. Some examples may suffice to make this point. One might look, for instance, at the rules made by the European Federation of Management Consultancy Associations (FEACO), which is the umbrella organisation for 22 management Consultancies Associations. It covers 21 European countries and represents over 3,800 firms in Europe, with over 105,000 with a total turnover of about 18 billion Euros, equal to about 38% of the total management consultancy market in these countries. The "Guidelines for Professional Conduct" of FEACO require member associations and their member firms to observe the following rules:

A consultancy shall at all times maintain the highest ethical standard in the professional work undertaken and in matters relating to a client's affairs, act

solely in the interests of the client. Where a consultancy is a subsidiary of a parent body, which is not in the public practice of management consultancy, all advice will be untied and independent of any influence of that parent body.

It shall be regarded as unprofessional conduct for a consultancy:

Rule 1: To disclose or permit to be disclosed confidential information concerning the client's business and staff.

Rule 2: To accept work for which the consultancy is not qualified.

Rule 3: To enter into any arrangement which would detract from the objectivity and impartiality of the advice given to the client.

Rule 4: Not to agree with the client in advance on the terms of remuneration and the basis of calculation thereof.

Rule 5: To do anything likely to lower the status of Management Consultancy as a profession (FEACO, 2002).

FEACO requires each member of a National Association to confirm on an annual basis to its National Association that the staff of consultancy organisations adheres to the Guidelines of Professional Conduct. Any member who, in the opinion of its National Association's ruling body, fails to comply with the Guidelines of Professional Conduct is liable to suspension from membership of that Association and the privileges accorded to it by FEACO. Moreover, it is the duty of the National Association and the right of any member of that Association or aggrieved person to lay before the National Association's ruling body any facts indicating that a member has failed to observe the Rules laid down in the Guidelines of Professional Conduct.

One can also look at the requirements of national consultancy agencies, such as the Swedish International Development Co-operation Agency (Sida), which presents its international co-operation in the following way; "Sida is responsible for most of Sweden's contributions to international development co-operation" (Sida, 2004). The main goal is to improve the standard of living of poor people and, in the long term, to eradicate poverty. Sida is also responsible for co-operation with countries in Central and Eastern Europe to create stable democracies, efficient market economies and social welfare. As a government agency, Sida follows two annual directives and letters of appropriations from the Government and has to report to the Ministry for Foreign Affairs about its activities. Sida has extensive ties with other Swedish government agencies. These can provide expertise in public administration that has developed over decades and centuries. Swedish agencies share their knowledge and experience in efficient administrative systems, information technology and leadership in areas such as taxation, audit, statistics and governance. Many Swedish counties and municipalities co-operate actively with the public sector of their counterparts abroad in twinning projects, especially in Central and Eastern Europe e.g. Belarus, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, Slovakia, and Ukraine. Co-operation with the future EU member states, the three Baltic countries and Poland is being gradually phased out: "The contributions vary depending on the requests and needs

of the countries. (...) The programmes of co-operation contribute to laying the foundation for normal neighbourly relations that can live on without government involvement” (Sida, 2004). They emphasise that Swedish trade and industry, municipalities, county councils, county administrative boards, government agencies and NGOs also play an important role in international co-operation. However, it seems that they do not co-operate with the Swedish trade and industry. Sida is supporting the long-term reform process almost entirely from funds coming from a special budget for Central and Eastern Europe and from the special Baltic Sea programmes. It can be seen that all kinds of ethical and professional standards are in place in order to prevent that the aid should be wasted money. Of course, this is a good practice.

In scholarly literature about how experts should behave, similar criteria are given. One could look for instance at Mirosław Grochowski and Michal Ben-Gera (2002) who wrote the manual: *How to be a better advisor*, in which they present basic rules for professional conduct and three models of advising.

They divide experts into two groups: advisors and consultants who almost possess the same set of basic skills, both are oriented to making a change by means of their products but some differences between them are clear. A consultant is a person who is in the consulting business and works for a consulting firm. “Working on an assignment, he/she is looking for opportunities for attracting new firms that will contribute to the growth and development of the consultant’s own business organisation” (Grochowski and Ben-Gera 2002, p. 11). An advisor, instead, does not work on a business basis. They may have another job without being paid. Advisors are not seen as “profit-driven people”; their work is more of a mission” (Grochowski and Ben-Gera 2002, p. 12).

Advising is seen as a way of professional development with room for the preparation of advice i.e. to formulate goals and objectives, measures, a timetable and budget. However, the advising project should also offer some learning opportunities. The aim is to provide policy-makers with the information they want. Advisors cannot forget that various individuals and groups make policies. The advice will be useful only if the advice is well defined, addresses the right people and is presented in a proper format to them (Grochowski and Ben-Gera 2002, p. 19). It should be emphasised that the outside advisors bring their knowledge and experiences concerning specific topics to a new environment with unknown codes of behaviour, rules and procedures: It is not possible to prepare valuable advice and send the advice to the right recipients, unless the advisor is familiar with what policy-making is and how policy is made in the real world. Advisors should be prepared to perform different roles and functions to achieve the goal provision to the client of timely, well justified, and appropriately presented advice (Grochowski and Ben-Gera 2002, p. 17).

Concerning the models of advice, Grochowski and Ben-Gera describe: 1) the expert model, 2) the doctor/patient model and 3) the co-operative model. In the first model, the client is expected to identify a problem, analyse it and articulate

it to the advisor. The last is called to find a solution to the problem. The model is used when the client does not have sufficient specialised knowledge about the issue, while the advisor is perceived as the expert in this organisational field. In the doctor/patient model, the advisor is expected to be able to identify the problem, to analyse it and to find the remedies to solve the problem. The co-operative model, as the name suggests, builds on co-operation between the advisor and the client when identifying the problem, analysing it and finding a solution to solve the problem. In the last model, the advisor, perceived as an outsider, is not expected to impose solutions: "The advisor plays the role of an expert and facilitator in the process of identifying the best solutions" (Grochowski and Ben-Gera, 2002, p. 23).

Each of these models has its advantages and disadvantages. This manual confirms that much has been done to improve international co-operation between advisors and clients. It is not surprising that other authors, dealing with the guidance for professional conduct, focus on more detailed aspects of advice. Ieva Lazareviciute (2003) focuses in another manual on six topics: 1) Beginning the training, 2) The policy process, 3) The product, 4) The client, 5) The advisor, and 6) Energisers. The publication should be treated as "a source of suggestions and ideas to the trainers" (Lazareviciute, 2003, p. 9). This manual provides a training framework that is completed with summarised key information, descriptions of practical exercises and notes for the trainers, as well as handouts that can be used in the training events. At the end of the manual, she includes a suggested training programme for a 3-5-day event.

In less recent, classic literature on the subject, similar criteria are formulated. One can refer to the classic books by Steele, (1975), Walton, (1969), Lindblom & Woodhouse, (1968), Block (1981), Argyris, (1999) and Schein, (1999). They point, among other things, to the requirement of sincerity; the different roles advisors can assume such as expert, partner or accomplice; the communicative; the necessary analytical and advisory skills and the need to make one's limitations explicit, as well as the limitations of the analysis. As Dunn (1994, p. 267) pointed out, the procedure of recommendation involves the transformation of information about policy futures into information about policy actions that will result in valued outcomes. He argues that such claims consist of actionable, prospective, value laden and ethically complex elements. According to him, advice is always about choices and the advisor should at least be able to identify the alternatives, make a decent impact assessment thereof and because of multiple advocacies, be skilled in the approach of triangulation. Failing advisory work can, according to him, be due to ignoring certain options, failing to communicate that decision-makers face unpopular options, bias and one-sidedness and uncritical behaviour on the part of the client or the advisor. (See also George, 1980, pp. 23-24).

Common to this literature is that three elements of advice stand out. First, advisory work should have added value to the client; second, such advice is always value-laden and full of ethical dilemmas and third, there should be mutual trust between client and advisor (Peterson, 1996; Peterson and Hicks, 1998). In our

case, for instance, trust is required between the aid-providing donor organisations and/or their representative, experts, consultants, advisors and evaluators, and the aid-recipients. If such trust is absent, the aid-recipients will not heed the foreign experts' advice. Hughes et al. (2002, p. 231) emphasise that "it is important that coaches also determine the level of mutual trust. They have to improve the relationship if necessary before targeting development needs or providing feedback and advice". *Trust* is thus an important concept for international co-operation when providing the Western aid-programme to CEE.

That such trust is not self-evident is argued by Wedel (1998) in her book "*Collisions and collusion: The strange Case of Western Aid to Eastern Europe 1989-1998*". She contends that during the first stage of international co-operation, in the framework of the aid-programmes, euphoria was seen in Central and Eastern Europe. The expectations were that the Western world would help them and would improve the situation. However, people realised very quickly, according to Wedel that the West either could not, or did not want, to really help them. The aid programmes did not take strategic issues into account in many cases and were not very helpful to the aid-recipients. She emphasises that the Central and East European expectations were, to a large extent, unrealistic. The same might be true for the other elements of sound advisory work. The next section presents a preliminary investigation among Swedish experts, consultants and evaluators and gives a startling account of what seemed to happen, in reality, when giving advice to transitional countries.

The advisory process from the point of view of Swedish experts

From the interviews with the Swedish experts working in Russia, the Baltic countries and other Central and Eastern European countries, it appears that they were involved in various aid-programmes shortly after 1990. Because of their earlier experiences in CEE, professional skills, language competence and abilities, their role in the aid-projects varied with the aid-donors' actual needs. Sometimes they were employed as experts having contact with Government officials in the aid-recipient countries. Sometimes they worked as consultants co-operating with regional and local officials and very concrete organisations. Sometimes, they conducted an evaluation of an aid-project. Most often, they were working at the aid-recipient office. At the beginning of transition in CEE, there were about ten people in Sweden working as experts for CEE countries.

They can be seen as the pioneers who had neither any practical experiences in conducting aid projects to the post-socialist countries, nor any guidelines for the professional conduct of such assistance. They had prepared a foundation for other experts who appeared in time and who could build on their work. The pioneer experts to CEE essentially contributed to the creation of the guidelines for the professional conduct of assistance. Some of them are still working in the countries waiting to join the European Union.

The Swedish experts' retrospective stories, dealing with their experiences from Central and Eastern Europe and their understanding of the situation, teach us a lot about the foreign experts' role in the decision-making processes there. Of course, we are aware of some dangers the retrospective interviews can cause for the interpretative work of that empirical material – the human memory can be deceptive, but we are also aware that these interviews constitute a unique source of information about the first aid-programmes to CEE, seen from their perspective. In that sense, they have not only historical value, but can also structure the more extensive interviews we are planning to carry out. The advantage of a retrospective interview is that the respondents are expected to have acquired the necessary distance to the events and their own role in the aid programmes. To protect them, we avoid a detailed presentation of the respondents.

The experts about themselves and their competencies

We were interested in what people, from the Western high-developed countries, became experts working in the framework of the Western aid programmes addressed to CEE countries after 1989. What knowledge and skills meant that their participation in these programmes was perceived as legitimate by the aid-donors to employ them? In other words, were the right people sent to CEE-countries?

From the interviews, it appears that after 1990, the international multi-standard organisations such as the OECD, EC, World Bank and IMF were looking for persons with special skills and especially various language competencies, to employ them in the Western aid-programmes addressed to Central and Eastern Europe. The aid-donors asked, among others, the Swedish Ministry for Foreign Affairs about assistance to find professionals who could participate in such programmes. The first aim was to describe the actual needs of the potential aid-recipients to base the many-sided assistance programmes on.

Since 1992, the Swedish Ministry for Foreign Affairs, in co-operation with the Ministry of Finance, were involved in aid to Russia, the Baltic and other post-socialist countries. Swedish public officials were hunting for experts among university researchers and teachers through their private connections. They also advertised in newspapers, in order to recruit university graduates. But, as one of the respondents confessed: "the private canals became the most effective recruiting method to this job".

At the same time, another actor appeared on the assistance scene i.e., the Swedish International Development Co-operation Agency (Sida) that aimed at assisting the neighbouring countries around the Baltic Sea and other post-socialist countries. They had their EU representative, who recommended some Swedish experts to participate in the EU aid-programmes to CEE.

The Swedish experts usually had a wide academic education in socio-economic and judicial issues. They can be divided into four groups:

1. Experts who had relations with public administration at the national and ministry level.

2. Experts, consultants and evaluators who co-operated with public officials and the concrete organisations at the sub-national, regional and local level.
3. Experts who also had relations with the public as well as the private sector and who were working at the various levels of the state organisation. They participated in various assistance programmes addressed to CEE countries
4. Consultants who only had relations with the private sector in CEE countries.

We have found two main explanations behind the respondents' answer to the question; *why did you become an expert involved in the aid-programmes to CEE countries?* Some of them thought they had the necessary professional skills and private connections to the former post-socialist countries through (e)migration, having family relations, a personal network and language competence. Other experts had a genuine interest, from their early youth, almost always in the Russia culture, literature and socio-economic aspects. Their admiration of Russian culture was the incitement to learn the Russian language and study Russian socio-economic issues that gave some outcomes in the form of networks there with researchers and some authorities. One of the respondents said; "In Sweden, people quite often combine various types of academic knowledge with a foreign language that provides them with special professional skills". Our respondents emphasised that their skills, language competence and social network proved very useful and was requested by the aid-donors:

I was asked to participate in the aid-programme. It was natural. I was working as a junior research fellow and was interested in labour market questions. I had a large network of people who were doing research on the Russian economy and the economy of other Eastern European countries. In this field I was out and about a great deal. There were always some relations with employers. Moreover, I have a good specialisation and there are only a few people in Sweden with these skills – two, in fact. Thus, I was given two consultant jobs in Russia through my connections. The language was very important then and was an absolute condition to participate in the aid-programme. I did not receive any training from the aid-donors. I went there just to see what aid-donors ought to do there. I did not prepare myself for this work. Twice I was sent out in this way; the first time in 1992 and the second time in 1996.

Or:

I had a good knowledge of Russia, especially about its public administration and economy. However, I was lacking information about Sweden in this regard. I had to study some questions from the Swedish perspective e.g. the legislative regulations dealing with value-added tax and tax-readjustment, but I had never been the sole expert there. I could always invite other Swedish experts to co-operate. They did not need to have any knowledge about Russia. In my job in Russia,

the most important thing was to understand the Russian legislative process and to find out what they really needed, what could be interesting for them and possibly borrow from the Swedish system. I simply translated the Russian question into the Swedish language in order to make the Swedish experts understand what they were expected to talk about.

If generalisation is possible, stories tell us that communication skills were the most important requirements for these early advisors. They were selected on the basis of their knowledge of the Russian language, their networks and interest in the field. Any preparation to do a good job, however, seems to have been lacking. It seems that the aid-donors took it for granted that the experts did not need any training to participate in the aid-programmes because their academic education and/or professional skills were in line with the donors' demands. Moreover, their language competence was a deciding factor in employing them at the beginning of transition in CEE. If this really is the case, one might question whether the right criteria were used to recruit the experts and whether they were indeed suited to the job to be done.

The Swedish experts about the aid-programmes, in which they were involved

We were interested in the *opinion of our respondents about the aid-programmes in which they were involved after 1990*. They made a clear distinction between the aid-programmes addressed to Russia and the aid-programmes addressed to other central and eastern European countries:

Russia was not expected to join the EU. It was the Russians who put together an agenda for assistance. They did not care about Western demands. They had no calendar to follow. The Russians had more interest in academic discussions to study the Western theory before decision-making so that they would know what was the most convenient for their actual situation (...) In fact, no one theory suited their needs; perhaps some parts of various theories proved useful. Thus, their situation as aid-recipients was not comparable with other post-socialist countries, which had to follow the EU plan of procedure.

The respondents were critical about the first assistance programmes sent by the Swedish Ministry for Foreign Affairs and the Ministry of Finance to Russia. All those interviewed had previously been in Russia a couple of times, either when collecting empirical material for a research project or for some other reason. The exchange of knowledge between the Swedish and Russian scientists and in other networks proved to be an extra advantage to participate in the aid-projects for Russia some years later. When the respondents went to Russia again, they were in no doubt which people they wanted to meet, but sometimes did not have a clear idea on what they were to achieve:

It was very tough at the beginning. I was really angry. I had a boss in Stockholm while I was in Russia. There was very little understanding what we should be doing there. I had to ask my boss about everything. I was not prepared to carry out this project ... Then we had to fix computers and printers, i.e. the necessary equipment to communicate with Stockholm. We needed money, but our boss had not thought about that. We had to find a method whereby they could send us money each month. In the beginning, we covered the costs of the aid-project from our private cards. It was awful.

When I came to Moscow in 1996, the aid-branch was quite new. I had no expectations but I understood very quickly that it would be a long time before I could start the aid-project. Can you imagine, the great power asked about assistance! To win their trust was really a challenge for us.

The quotations above confirm that respondents had quite problematic experiences with regard to their participation in the aid-programme to Russia. For the first respondent, the working conditions proved extremely hard, simply because the Swedish Ministry for Foreign Affairs and the Ministry of Finance were unprepared to carry out the aid-project at the beginning of assistance. The practical issues such as an office for the Swedish experts, accommodation and salary were already sorted out by the time the second respondent arrived. Thus, it was much more important for the second interviewee that there was a very limited time for carrying out the aid-project. The Swedish public authority simply was not sufficiently experienced in giving the aid-programmes.

A bitter critique concerned the EU aid-programmes that disposed of a huge aid-budget and were addressed to other post-socialist countries. In an official rhetoric, the aid-donors assured the aid-recipients that assistance ought to contribute to their adaptation process to a market economy and to approach EU demands. However, one of the respondents said:

In a capitalist economy, money is expected to make more money. If the EU had decided to invest in the post-socialist countries, then they knew very well what outcomes they expected to receive in return.

First, the EU had sent Western consultants who were expected to describe the needs of the aid-recipients. It was very quickly evident that the EU had very bad consultants at the beginning. In Russia, for example, some consultants had serious problems with the Taxation Authorities. The EU consultants also did not have sufficient knowledge about the country to which they were sent:

I have seen some students in this job. How could they describe a quite complicated issue without knowing anything about the country in which the project would be conducted? This job demanded specialisation in some research fields. The project was expected to give a positive impact on economic development.

Certainly, such unprepared policies had to have negative consequences for the implementation of the very concrete aid-projects. Moreover, the EU ignored the fact that the legislative changes, necessary for building a market economy, had not been carried out in the post-socialist countries in most socio-economic spheres:

A lot of assistance was conducted in a very naïve way. For example, they sent consultants without preparing institutional ground to carry out reforms. To change anything, you have to know what you are going to do. You need the legislative functions and you have to see if the laws have gone through Parliament. In practice, it is the only way that the law can work correctly. It is a political process. Legislation governs all activities. Laws cannot collide with the people who are in the system and with their mentality. If there are lacking certain elements in the system, you cannot expect to have any positive results from the aid-project.

In the opinion of the respondents, public officials from the post-socialist countries also proved to be unprepared to meet the Western consultants. They were lacking knowledge about what assistance they could obtain in practice from the aid-donors. They could receive only expertise, advice and training while most aid-recipients were only interested in receiving money or electronic equipment. The most frequent sentence the Swedish experts heard from the aid-recipients, was: "We only need equipment. If we had the money to buy computers, we could fix everything ourselves". In fact, they could not obtain money in cash. The International Monetary Fund and the World Bank created a special loan with a low rate of interest for the aid-recipients for the purchase of computers, printers and faxes etc. The borrowed money was expected to be reimbursed to the aid-donors with a profit. Then, the EU promised to provide the aid-recipients with technical assistance to install the electronic equipment.

Another cause for the advice being inconsequential was that money had to be spent, no matter how. On average, the EU aid-projects assigned 200-300 million Euros to a country for a two-year-project in the organisational field. The aid-recipients' absorption was rather limited. Under no circumstances could they spend such a huge sum within two years. Thus, the Western consultants produced plenty of reports and written material that no one saw and for which the aid-donors had to pay a great deal: "*They produced more and more reports to spend money*". The aid-recipients were not amused by such EU aid-projects. Moreover, a respondent explained: "*To implement a project would take about two to three years. The bureaucratisation was enormous*".

It may be justified to conclude that the experts recognised the problem that their advice was not implemented and often went up in smoke. They blame this not on themselves, but on the problematic conditions they had to work in. No preparation, too much money with too little time to make something of the project, the different expectations on the side of the recipient and experts and no substantial commitment from the aid-providing donor organisations.

The situation changed somewhat for the better when the EU started co-operation with organisations specialised in giving assistance to the Third World. Sida was one of them. They essentially contributed to the implementation of the EU PHARE programme to CEE countries e.g. in the Labour Market and Labour Protection arena.

Sida's working principle has been to detach the same experts for many years in the aid-programme, addressed to the same aid-recipient. In this way, they tried to ensure continuity in giving assistance: "*they preserve the institutional memory*". Poland is a good example, with regard to the aid-project dealing with the Labour market and Labour Protection arena. Sida asked the Swedish National Labour Market Administration (AMS) responsible for labour market issues to conduct an aid-project in Poland. The Employment Agency in Lodz very quickly became the model labour office and received the AMS assistance programme in 1993-94 (Sobis, 2002). AMS did not produce excellent documentation of the aid-project, but it was at least transparent how much money the aid-recipients received, how much money was spent and on what. One of the respondents was of the opinion that the consultants from AMS and Sida worked more effectively than the EU consultants. Moreover, Sida's projects were shorter, more flexible and demanded more discipline from the consultants in conducting the aid-projects.

Usually the organisations that wanted to conduct a project, initiated direct contact with the aid-recipients themselves. Thus, the Swedish AMS initiated the first contact with the Polish Labour Market Board to agree about the general conditions of the aid-programme. They were clear on what assistance they could provide the aid-recipients with. They also based their work on some principles in giving assistance. These involved that the recipient also had to contribute to the advice, thus making a commitment on the recipients' side. This could take the form of providing accommodation to the consultants or facilitating their travels in the country and guaranteeing that the Swedish consultants could meet Polish public officials, if necessary. If the aid-recipient accepted these conditions, the aid-project conductor (AMS) wrote a proposal and sent it to the aid-recipient to sign. After accepting the written version of the aid-project and signing it, Sida prepared a contract e.g. between AMS and the Employment Agency, for instance, the Labour Office in Lodz, to start the project. The aid-recipients knew exactly from the beginning what promises had been made, what means had been assigned and what assistance they could expect to receive. The Swedish consultant could not receive payment for her/his work without the signature of the aid-recipient on the invoice that confirmed the aid-recipient's acceptance of the reports and the documents written by the Swedish consultants. Through such incentives, the mutual co-operation between the aid-donors and the aid-recipients became transparent. It should be emphasised that Sida had no formal connections with the European Union. However, they applied to the EU for financial help and received money in the framework of the PHARE programme.

Since 1997, Sida has carried out an evaluation of all Swedish assistance programmes implemented in CEE countries within the labour market arena. That evaluation was conducted independently from the aid-projects and the evaluators were not involved in any of them. The Swedish evaluators began their work after the aid projects were completed. With regard to the Polish example, Sida asked the Polish Labour Market Board and the Swedish AMS about assistance in preparing the working conditions for the evaluators: *“AMS co-operated with many Employment Agencies in the region and they were always willing to help the evaluators”* explained one of the respondents. The aim of the evaluation was, on the one hand, to know if the aid-project would have to be continued in the future and what assistance would be necessary. On the other hand, the evaluators had to make sure that the aid-project was conducted in agreement with the plan of procedure and that the aid-recipients were pleased with the assistance provided to them.

The work of this organisation shows that it seems possible to get things implemented. They did not just provide money, but were themselves committed and asked the same commitment from the recipients. This supports the feeling that in order to get new policies implemented, one needs commitment on all sides, from the aid providing organisations, to the recipients and the experts.

The experts' understanding of their role for decision-making processes in CEE

Thirdly, we asked the respondents about *how they perceived their role in the aid-programmes to CEE*. The answer to this question is ambivalent. The respondents shared the opinion that they essentially contributed to speeding up the modernisation process in many public authorities. They contributed to making public officials understand how important it is to have modern working methods in many organisational fields. However, they were rather sceptical regarding their influence on problem-solving in the public administration of CEE countries that they have met during transition. Coming back again to the example of the labour market and labour protection reforms, the respondents were of the opinion that they did not contribute in decreasing the unemployment rate, which was the major social problem in the CEE countries:

We immediately saw – when we went to the Employment Agencies – the long corridors full of people taking their place in the long queue. What an idea to implement a “pilot” aid-project and create a model labour office, without any concrete purpose. It is impossible to continue such a job without having any influence on legislation. It is the most important issue that I tried to emphasise when meeting the public officials.

With time, I have learned to inform the aid-recipients what working methods would be useful to them and under what conditions. (...) You can influence the situation through social dialogue with employers, employees, the state and the Federation of Trade. They have to agree

concerning many aspects. It was difficult to explain to public officials that they have to co-operate together in creating new jobs and that they have to have a dialogue with workers and local authorities to improve the situation at hand. Some CEE countries were successful with the pilot aid-projects. They had clients among the public officials and they implemented the labour market remedial measures to combat unemployment and they developed training programmes. Then, you can have the feeling that you have influenced the decision-making process. They followed your advice.

The centralised power relations in most CEE countries were seen as a major obstacle to create such a social dialogue. Not only that, the money coming from the aid-programmes should be divided more rationally, in the opinion of the respondents:

First of all, the aid-donors ought to employ local experts in order to create an expert team for the aid-project. Local experts have the necessary knowledge about a country, they are highly motivated if they receive a salary and furthermore, they learn something new. This knowledge would remain in the aid-recipient's country and the local actors could create a balance between the foreign experts and the national decision-makers to work more effectively with the reforms.

You have to be very well anchored in local events. It is not sufficient to come here and tell your truth and your story. It is not enough to read the daily press concerning the issues to be able to give advice. It happened often that the Swedish experts or consultants did not understand the Russian order. Local knowledge and co-operation is necessary to find a piece of the puzzle that can be useful in the whole context of the new system. Many aspects that we have in Sweden can be totally uninteresting to Russia.

The respondents also expressed their concerns about the possible improvement of the Western assistance to CEE. For them, it was an important issue that the aid-donors ignored. Namely, that they did not create possibilities to a prolongation of aid-projects, due to the situation of the aid-recipient's country:

Sometimes we have a "crazy" short time to conduct an aid-project. You receive payment for one expert-day and have to accomplish all the expert-days. It demands extreme concentration. The EU aid-projects usually have a deadline for completion. It happens quite often that the project begins too late, but you still have to respect its deadline. It is absurd! You hardly have the time for the preparation phase of an EU aid-project.

Moreover, the respondents emphasised the lack of coordination of aid-programmes among the various aid-donors. The aid-providing organisations did not co-operate and were not working towards the same goal. For instance, the

Western experts expected to meet frequently at conferences, where they could exchange opinions and experiences as a necessary condition to the international coordination of the aid-programmes to CEE. In the respondents' opinion, not one of the aid-providing donor organisations kept free space and time for such activities. It seems that the international organisations did not recognise the need to orchestrate any form of "amalgamation of wishes". As one of the respondents told us about Sida:

I think that they sent many Western consultants to create good working labour markets and employment in Eastern Europe, but this is not sufficient. It is also advantageous for the West. You give money out but you create employment for your own people.

But these things do not only apply to international organisations. The Swedish Ministry of Finance had the same approach:

Most of the costs involved in the aid-project went to Western experts. In our project, that does not represent all the aid-programmes, we financed everything connected to our needs: the office in Moscow, Western consultants and training achievements. However, the Russians paid for their trips to Sweden.

These points result in the conclusion that maybe the experts and the recipients as actors were not causing the problem, but that the main cause has to be found within the aid-providing donor organisations. One question is whether they were really aiming at getting things changed and new policies implemented in CEE-countries. It seems that it can also be argued that these organisations were mainly interested in running their own internal organisational affairs with departments trying to secure their own position within the organisation. As organisations they were trying to secure their position in competition with other aid-providing donor organisations. And as money providers, they were not so much committed to improving the situation in CEE countries, but more to worrying about procedures to be followed properly, deadlines to be met, keeping projects within the budget constraints and probably (self-) employment.

Conclusions and reflections

The research question underlying this paper about the role and norms of international advisory work is what we should think about the role of expertise in the transition process and to present a (unfortunately still) preliminary analysis in order to find an explanation as to why so much advisory work fails to be implemented. First, we presented some theoretical lines that might be interesting to take into account. Secondly, we described what we think is known about the role of foreign experts during the transition process. Then we presented examples of criteria against which the actual role of experts might be judged and finally, we present the outcomes of a preliminary survey among the Swedish experts that advised CEE countries during the transition-process.

The investigation among the experienced Swedish advisors in the central and eastern European countries corroborates Wedel's (1998) observation. The findings show that talking to experts presents a more benevolent picture of their work than talking to the recipients. However, according to the theory on expertise, pilot research has shown that the foreign experts and consultants agreed that they were not always successful and also not always acting in conformity with the criteria. Good preparation, trust and commitment were missing in many advisory projects in CEE countries. The aid-recipients in many cases had reason to be disappointed with the Western aid-programmes to CEE. The respondents, especially those who conducted an evaluation of the aid-programmes, confirmed the cynic approach and pointed to the problems within aid-providing donor organisations who secured almost only Western interests when assisting CEE. It is important to note that it is not only the recipient organisations that are disappointed about western aid in the form of western expertise, but that the experts themselves are equally critical and also indirectly questioned the moral standards of Western assistance and the behaviour of Western experts. They emphasised that they frequently had to operate in situations which were characterised by ambiguity, ignorance, uncertainty and sensitivity in which it was impossible to apply ethical rules.

Although the experts seem to mainly put the blame for all this on the aid-providing donor organisations, one might also conclude that the experts themselves were violating the criteria, which says that one should not accept an advisory function if one does not feel competent. As we have seen, this incompetence was sometimes compensated by producing thick, but useless, reports and the experts did not object to the organisations using them as accomplices not for the benefit of the clients, but for the benefit of the donor organisations which were securing their own interests.

We have the impression that no guidelines for professional conduct of aid-projects can be successful, in practice, without also making significant structural changes within aid-programmes. The Swedish experts themselves thought they had only played a minor role between the powerful aid-providing donor organisations and the aid-recipients. The EU, Sida and even the Swedish Ministry for Foreign Affairs or Finance employed them without giving them enough time for preparation and without any possibility to prolong the aid-project in the cases where it was necessary. This outcome suggests that a necessary angle to the problem could well be the role of these organisations, their motives and rationale and that more attention should be given to the ethics, trust and commitment issues of the aid providing donor organisations. More and more, we have the strong feeling that much advisory work from western consultants in CEE countries during the transition phase fell flat due to such reasons. Two sides, the recipients as we investigated before, and the experts, as investigated in this paper, agree on that. However, without carrying out an investigation among the aid providing donor organisations, we are still unable to pinpoint the problem to its real cause. That search continues and moves towards the aid-providing donor organisations.

On a final note, we do not imply that donors' or recipients' behaviour is to blame for the money wasted on advice that comes to nothing. Neither had any experience in the transition from a command economy to a market economy. They had to learn their new roles and strategic behaviour from the very first through "learning by doing". Even if the aid-donors' imaginations about assistance proved unrealistic and our respondents had a strong feeling that they were hindered in their contribution to the modernisation process of Central and Eastern Europe, especially in the later phases, the relations between aid-donors and aid-recipients showed an inclination to build long-term trust, commitment and mutual co-operation, which eventually turned into a partnership relationship some years later.

Despite all the problems, the "co-operation model of advising" was appreciated by the Swedish experts as the most effective assistance to CEE countries. The model not only demands foreign experts to be in the right place at the right time, but also to have an anchor in the local network and understanding for occurring processes. The problem was simply that the too restrictive boundary conditions under which they had to operate, hardly allowed for meeting these demands.

The positive aspect is that the respondents presented some pragmatic ideas on how to improve Western assistance to CEE. Being well prepared, creating commitment, seeking co-operation among aid-providing organisations, modesty as a basic attitude for experts, a good understanding of the specific national regulations, seeking collaboration with local experts, and not being tied to unrealistic deadlines, seem to be the major remedial measures for effective aid-projects. It would also be unfair not to see the positive outcomes in terms of the modernisation of CEE countries. The first steps on the way to integration and international co-operation in the framework of the EU have, despite all the problems mentioned, been taken.

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Chapter 5

Learning For Successful Implementation: Employee Training and Development in Kyrgyzstan

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Abstract

This chapter is a case study of training opportunities available to local government employees in Kyrgyzstan and the potential impact the training may have on effective policy implementation. The chapter draws on the existing theories that professional and well executed training may lead to more effective policy implementation.

The authors found that there are conflicting forces which preclude and facilitate local government development in Kyrgyzstan. General lack of funding, lack of training, *de facto* non-existent written policy regulations in local government make effective policy implementation virtually impossible. However, despite high dependency on the central authorities in implementing their mandate and a generally depressed economy, local governments have some opportunities to receive professional training for their employees.

Introduction

A local government cannot effectively implement its policies if it is administratively incapacitated (Smith, 1998, p 89). In Kyrgyzstan, as in other developing and post-Communist countries, the lack of adequate public employee training is a very serious problem. As McCourt and Sola (1999, p.63) noted, "Training of the public servant protagonists of reform has been viewed as an essential component in reform efforts as widely separated as civil service reform in the transitional economies of Eastern Europe (Collins, 1993), economic reform in Myanmar (Cook, 1993) and democratisation in local authorities in Nigeria (O'Donovan, 1992)".

Traditionally, public employees' skills and knowledge are not considered in implementation analysis (Mazmanian and Sabatier, 1989; Pressman and Wildavsky, 1973). For example, Mazmanian and Sabatier (1989) suggested six conditions of effective implementation, including (1) clear and consistent legislation, (2) sound implementation theory, (3) appropriate structure of the implementation process, (4) agency leaders are managerially and politically skilful, (5) the program has political support, and (6) the program objectives are not compromised. The implementation literature discusses systemic variables, program and organisational design, policy consistency, political support and other system-wide factors influencing successful implementation. On the other hand, human resource management literature usually does not go beyond generally linking effective human resource management and high-performing organisations. For example, David Carnivale suggested that

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“high-performance work organisations... strengthen the skills of employees through a strong commitment to human capital development and organisational learning programs” (Condrey, 1998, p. 243).

Because of its acuteness and seriousness, the lack of training of public employees in Kyrgyzstan has become something more than a human resource management problem, as it affects the very ability of the government to implement its programs. This is especially true in the case of rural local governments where “street level bureaucrats” deal with numerous day-to-day community problems with little funding, a lot of discretion and responsibility. In these circumstances, employee skills and training become a crucial factor in successful program implementation.

Training theories and approaches

Public employee training is one of the factors of effective policy implementation. An untrained and low skilled public employee cannot be an effective provider of public services. Different training strategies bring about different results. For this reason, it is useful to look into some of the training theories.

The nature of the training in the public sector has changed over the recent decades. Traditionally, training was considered to be job-focused, limited to the technical skills and abilities needed by public employees to perform specific tasks. As such, it was differentiated from education, which was considered to be broader in scope, more oriented toward a range of future jobs and generally provided by institutions of higher learning. Traditionally, individuals obtained their education first and subsequently received training in the work environment.

Recently, the distinction between training, education, and development has become blurred (Van Wart, Cayer, and Cook, 1993). As public organisations find themselves needing to help employees learn about new technologies and skills, training, in many instances, has begun to look like what has traditionally been called education. The ongoing debate in academia over the content of the courses suggested in MPA and PhD programs is illustrative of the nature of these discussions.

The literature suggests a number of typologies and taxonomies of training. The nature of this article does not allow going into more details. A brief annotation of those taxonomies is provided in Table 1.

Table 1
Taxonomies of training suggested in the literature.

Technical: - Procedural - Mechanical - Professional	Non-job specific: - Basic - General	Management: - Supervisory - Management - Executive	Employee enrichment
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Source: Adapted from Montgomery Van Wart, N. Joseph Cayer, and Steve Cook, Handbook of Training and Development for the Public Sector, San Francisco: Jossey-Bass Publishers, 1993, pp.21-34.

According to DeSario et al (1994), training “refers to learning experiences designed to enhance the short-term and/or long-term job performance of individual employees”. In this respect, training is viewed as part of an on-going developmental process. Training needs to be linked with the organisational mission (Eurich, 1985; Fischer, 1989; Latham, 1988; Miller, 1989). So, when local governments plan their training activities, they need provide the link with the organisational mission and local budget and implementation.

Some authors suggest considering training as investment decisions (Eurich, 1985), and they should be made after careful consideration. It is usually advised that training activities should be examined from the perspective of their ability to influence individual job performance, rather than isolated experiences that may or may not contribute to the organisation’s success.

McGehee and Thayer (1961) are usually regarded as the authors of the first textbook on training in organisations. They suggested a three-fold approach to determine the types of training and development experiences that should be implemented, including organisational analyses, task analyses, and person analyses. Accordingly, organisational analyses focus on the organisation’s ability to support training. Task analyses focus on the knowledge, skills, abilities, and other personal characteristics required to perform the agency’s task. Person analyses focus on the needs of the individual, identifying personal characteristics possessed by the particular individual.

There are two basic questions which must be addressed in the design of training activities. The first is the question of how a given course should be delivered. Who should participate? Where should the course be held? What types of learning tools should be used in the program? A second question is the creation of a learning experience that improves the transfer of knowledge. It is not enough for the trainees to learn; they must be able and willing to use new abilities in their jobs.

From the field of adult education, it is well-known that adults learning differently from children. First of all, adults have to know why they should learn something. Thus, employees need to see training experiences as relevant to their current work environment. Second, trainees need to be self-directed and should be active participants in the learning process. Third, both trainees and trainers must recognise that adult employees have a greater volume and different quality of experience than youth.

In the design of training and development activities, a wide variety of instructional media is available to trainers and managers (Campbell, 1988; Goldstein, 1986; Latham, 1989). There are different instructional techniques that can be used, including lectures, case studies, simulations, role-play exercises, and small-group discussions. Regardless of the particular technique, trainees should be active participants in the learning process. They should have an opportunity to practise their knowledge and skills in a scenario that closely resembles the actual job situation. Also, participants should receive feedback.

The Context of Training in Kyrgyzstan

A number of papers address the issue of training of public employees in Kyrgyzstan. They draw a very different picture of Kyrgyz public employees. According to Boehm (1999, p.5), “the ‘beneficiaries’ are typically... “receptive”, “willing to change”, “cooperative”, “open-minded” or “easy to work with”. The Kyrgyz government is the “good pupil”.

However, the other study found that “the government is frequently criticised for being “passive”, “without initiative and vision”, “too uncritical”, “not very constructive” and sometimes also as “corrupt and nepotistic” or deeply entrenched in a conservative power-bloc consisting of officials from the old regime and strong kinship and family-ties” (UNDP 1995a).

This paper addresses an important issue in Kyrgyzstan: most of the employees of Kyrgyzstan’s local self-governments at the village level have received no training on how to carry out their jobs and implement government programs. Villages, governed by elected bodies, operate with limited funding. As elsewhere in the world, they employ front-line workers who provide the most basic services to local residents. In most ways they are the face of government seen most often by citizens: they manage water systems, pick up garbage, collect taxes, assist in emergencies, register important documents, and even assist in making sure that local men of military age report for service.

In order to address the issue of training and policy implementation, the researchers obtained the necessary data from the employees of the Leninskoye village government, the Academy of Management and other sources available in Kyrgyzstan. The Leninskoye village government serves about 12,000 residents of four villages. The village administrative office is located a twenty-minute drive to the north of Bishkek. The village government has 14 employees – the number allowed by the Government Resolution # 608 as of September 5, 2002, for a village government of its size – to provide a wide array of services.

Local Government Employee Views of Training Needs

In order to understand local government employees’ training experience, researchers conducted a survey of their training needs. The employees of Leninskoye village government were asked to complete a questionnaire related to their past training and future training needs. A copy of the questionnaire is attached as appendix 1.

Like other village government employees in Kyrgyzstan, the Leninskoye village employees have had few opportunities to participate in training. As employees noted, the lack of opportunities for training comes because few training courses are available to them, they have too little time to take part in training, reliable transportation is a problem and they lack resources to pay for training. These obstacles for effective training are very common even in the developed countries, and require a lot of changes and investment in human capital. The employees also pointed out the fact that there were neither financial nor career incentives for them.

The compensation system is very rigid and does not provide for salary increases associated with training completed or the degree obtained.

A special section of the questionnaire was devoted to the employees' training needs in terms of general vs. special training. This distinction refers to whether the employees needed basic and general training in understanding how the government operates, general management skills, skills in applied policy analysis, or they needed more in-depth skills associated with their particular positions. As it turned out, the employees felt that they could benefit from both types of training. This is a very important observation, as the Leninskoye village government operates, essentially, like a team: often they perform each others' jobs (if someone is sick or on a business trip) or work together in case of an emergency or important village event. In effect, almost everyone in the village government has to know how to perform all the other jobs in the village government. Although this organisational design can be susceptible to criticism for numerous managerial, organisational and logistical flaws, under the circumstances, employee training becomes an immediate factor of successful government operations and program implementation.

Overall, employees felt that at least twelve days of training per year is necessary, which can be spread over two hours twice a week. Because of the transitional nature of the public sector in Kyrgyzstan, legal information is especially sought after. The employees think that they will greatly benefit from short sessions devoted to reviews of new laws and regulations which affect their activities.

The consequences of the lack of training are clear. Village government is carried out by people who work hard, but do not have all the skills and knowledge they need for best performance. According to the assistant village manager, most people working in village government are not prepared through education or training for their work. Employees learn through on-the-job training, but have few opportunities to expand their knowledge and skills.

He also noted another problem caused by lack of training: employees are often uninformed about changes in national laws that affect them or that they should implement. As a result, it may be months before they learn about new laws important for their work.

The survey and conversations at the training sessions with the village government employees showed a strong interest in having more opportunities for training. However, the employees remain concerned that the costs of training and the time away from their jobs would make such training impossible.

Training Opportunities

Lack of adequate and sufficient training significantly hinders effective program implementation in Leninskoye village government. Untrained public officials having to perform various jobs at different times, is a recipe for disastrous implementation. Clearly, any type of professional training would be beneficial for these employees. What are the training opportunities that the Leninskoye village government

employees have? How adequate are they? Do employees have enough time and resources to complete the training? Can we expect that successful training will lead to better policy implementation at the local level?

As it turned out, there were opportunities which local government employees could seize. The main opportunities include:

Academy of Management. It has a grant from the Hanns Seidel Foundation, located in Munich, Germany, which supports the development of training courses and materials. For example, the Academy recently published training materials on Financial Basis of Local Self-Government, Organisational and Legal Basis of Local Self-Government, and Economic Basis of Local Self-Government in the Kyrgyz Republic. However, Dr. Uzakbaev, the Rector of the Academy, suggests two problems in making these courses more widely attended:

1. The Academy has no way to contact directly village government across the country to invite them to training. Instead, it relies upon the Oblast governor's office to make the contacts with local and village governments to inform them of the available training sessions. This is because the public administration system is very hierarchical in Kyrgyzstan, and local governments – although independent from the central government by law – are very much dependent on higher authorities in many ways.
2. Village government employees lack incentives to participate in training programs. Completing a training program has no discernible benefits for the participants in terms of pay and promotions.

He suggests that training will become of greater interest to village governments when new legislation is passed to provide incentives for participating in such programs. Apparently, the national government has a new policy on local government training that encourages training and draft legislation, if finally approved, would provide some funds and incentives for training.

United Nations Development Program. It has several programs that operate at village level. One the main program is UNDP Local Self-Governance Program (LSG), which has a whole program component on Institution and Capacity Building. The goal of the component is the establishment of the system of effective and efficient local governments, promoted through developing the capacity of local authorities. UNDP works on developing human resources in the government and local communities and cooperate with educational institutions in developing strong system for training of municipal servants. Together with the Academy of Management LSG Program works on developing Training Centre for Municipal Servants which is under the Academy of Management. Since 1999, the LSG Program has been conducting training for several thousand people in villages every year. LSG Program conducts following courses:

- organisational and legal basis of local self-governance
- financial and economic basis of local self-governance
- human resources management

- social mobilisation issues
- local development funds
- grants for developing village infrastructure
- and other topics that have direct relationship to local governance.

In spite of the impressive curricula, this program is yet to produce an effect on local government policy implementation in Kyrgyzstan. It simply does not have sufficient qualified personnel and other resources to make a difference on its own.

Urban Institute (funded by USAID). It has, as its main aim, to create the basis for decentralisation through development of legislation, promotion of a dialogue and co-operation between local governments and citizens, and strengthen local governments' capacity to deliver services. The program covers both cities and big villages in Kyrgyzstan. The program is part of a regional project in four Central Asian republics and largely continues activities implemented under UI's previous project in Kyrgyzstan in 1999-2002. The program aims at the improvement of effectiveness among local governments in cities and large villages through direct training and technical assistance, while also providing avenues for citizens to engage in self-government, both through their local governments and through housing associations. UI also provides assistance to national government partners to develop legislation and decentralisation policies aimed at greater level of autonomy for local governments and housing associations that in turn will make their activity more effective and responsible.

One of the primary areas of activity of UI is Development of Training Capacity, supporting the development of trainers and institutions capable of delivering training to complement technical assistance activities and promote local governments' effectiveness.

Training accompanies all project components. Course participants are deputies of cities and village councils, employees of city and village councils and partnerships of housing owners. Urban Institute training courses are conducted in an interactive regime and are aimed at their participants receiving specific knowledge and obtaining practical skills within the framework of the functions performed by them. The needs in education are determined during the course of joint activity with local governments. Training materials are drafted with regard to the specific peculiarities of each community. The Urban Institute conducts the following training courses:

- Communal property management basis
- Budgeting strategy and citizens' participation in this process
- Condominiums (partnerships of housing owners) activity
- Local government concept
- Budgeting strategy
- Strategies for budget development
- Local economic development strategy
- Local governments & mass media

Congress of Local Communities and Association of Village Municipalities are two non-profit organisations that also, from time to time, conduct training courses for village authorities.

These two organisations can also be useful for capacity building, in terms of receiving new information on local governance in Kyrgyzstan. As representatives of the Leninskoye village government indicated, they want to have information about new laws and regulations on time. These two organisations can provide many opportunities in these regards. They can also support local governments in Kyrgyzstan in terms of organising joint training activities for villages situated in the same region and reduce the cost of the training.

The role of the *Apparatus of the Minister of Local Self-Governance and Regional Affairs* (AMLSG) in providing necessary normative, financial, and any other kinds of support to village governments in terms of employee training organisation.

According to the National Strategy of Decentralising State Administration and Developing Local Self-Governance in the Kyrgyz Republic approved by the Decree # 381 as of December 17, 2002, of the President of the Kyrgyz Republic, AMLSG plays one of the most active roles in issues of municipal servants training. AMLSG together with UNDP, Urban Institute, the Academy of Management, the Congress of Local Communities and other international and domestic institutions took the most active part in developing national legislation in this area. One of the most important acts is the Law on “Municipal Service in the Kyrgyz Republic”, which considers training of employees as a necessary activity for all local authorities. Together with educational institutions, primarily the Academy of Management, AMLSG is responsible for the creation of Republican and Regional Commissions on personnel policy and municipal service, development of the Plan of cadres preparation for local authorities and the development of national policy in personnel training, particularly the Concept on Municipal Servants Training. That is why the outputs of a given project should be shared with AMLSG for their consideration and following political actions, especially in terms of distribution positive results throughout the whole country. One of the instruments of distributing the results to and receiving feedback from interested parties is organising the seminar or round table discussion where the project outputs can be presented. Taking into account that the training for Leninskoye VG personnel was postponed to the end of July, it was impossible to conduct a one-day seminar with the participation of AMLSG and other interested parties at the beginning of August because of the annual leave of most AMLSG people, including the first deputy minister Mr. Fattakhov, who is responsible for working with the project.

The best description of the role of the *Academy of Management* in training issues is given in the Concept on Municipal Servants Training approved by the Decree # 76 as of March 1, 2004 of the President of the Kyrgyz Republic. According to the Concept on Municipal Servants Training, the Academy of Management, as well as other main educational institutions, conducts training of municipal servants. But its main role is that the Academy of Management serves as the Secretariat of the

Board on Education and Training of Municipal Servants of the Kyrgyz Republic (the Board) that was created according to above said Concept and approved by the same Decree of the Kyrgyz Republic's President. The Board is created for formulation and implementation of public policy in the area of local governments training. Members of the Board are representatives of the Presidential Administration, the Apparatus of the Prime-Minister and other Governmental institutions and representatives of educational and civic organisations. There are thirteen members of the Board. The President-Rector of the Academy of Management is the Executive Secretary of the Board.

The Secretariat of the Board, which operates on the basis of the Academy of Management, provides organisational and technical support to the activities of the Board and coordinates the activity of all organisations involved in the training of municipal servants. The Academy of Management, as the Secretariat of the Board, is also responsible for planning, programming, monitoring and the evaluation of national policy activities in the area of municipal training.

Within the framework of this given project, the Academy of Management was responsible primarily for providing organisational support to the implementation of the project. Materials gathered during the project implementation will be useful in conducting training for other local governments in the Kyrgyz Republic, and also implementing educational degree programs for working with students. Publication of the project materials will be done before the seminar with participation of AMLSG is conducted.

The village faces many barriers to providing the training needed and wanted by local government employees. The largest barrier is financial. Simply stated, the village government operates with too few funds for its basic needs. It faces large demands for services – demands that far exceed resources. In this situation, it is difficult to justify substantial expenditures on training. Thus, at present, training is possible only when highly subsidised.

In addition to the resource problem, the village policy is constrained by the lack of involvement of the national government in the promotion of training in local self-governments regardless existing activities in the process of the implementation of National Strategy on Decentralisation of State Administration and Development of Local Self-Governance, the Concept on Municipal Servants Training, the Law on Municipal Service and others. Apparently the existing legislation is not fully developed enough to eliminate these barriers. In the next few years, they may be eliminated by adjusted legislation and in the best case scenario, national laws will both encourage local training by providing incentives for employees to participate in training and by providing some funding for it. In this situation, Leninskoye will be in a position to implement its training policy.

Before national legislation is fully enacted, Leninskoye can encourage its employees to attend the training that is now offered by different institutions that have received external funding, including government resources (in 2004, the

Government of the Kyrgyz Republic appropriated about 15 million soms (about \$352,000 USD) for training of civil servants at national and local levels), to subsidise it. To do so, it needs an employee who will maintain contact with the organisation offering training to make sure that the village is informed about the training opportunities that are available and to encourage trainers to offer the programs most valuable to village employees. It is not necessarily because Leninskoye village needs additional persons in the government. The role of training coordinator can be played by one of the existing employees, for example, the deputy head of the village government.

Conclusion

Various studies of local government policy implementation in developing and transition countries testify to concerns about excessive central control, inadequate financial resources, the use of local government for party political clientelism, shortages of management skills, inadequate means of cooperation, the poor quality of public officials and shortages of management skills (Smith, 1998, p. 89). This is all true for Kyrgyzstan and its local governments. The legacy of Soviet bureaucracy – where party membership and personal connections were more important than professionalism and efficiency – still persists. What makes the transition to effective local governance especially difficult is the fact that “in Kyrgyzstan ... there has never been any democratic regime” (Boehm 1999, p. 6). There can be several lessons drawn from this case study.

- Unless political and budgetary decentralisation occurs, the key to more effective local government employees is in the hands of the Kyrgyz central government. It has the funds; it has the administrative system in place. Local governments are too dependent on the central government in a myriad of ways to improve their policy implementation on their own.
- Kyrgyz local governments seem to have some training options for their employees. These options are limited and the constraints are numerous, but some of the more active local governments should be able to take advantage of these opportunities.
- Usually, local government institutions are automatically believed to benefit citizens in terms of better service, conducted by civil servants. However, these institutions might also be abused in order to coerce control and put the population under surveillance. Administrative systems of central and local bureaucracy are not innocent technical devices, but powerful political instruments to control people. More professional bureaucracy through better training is one of the ways to deal with this threat.
- Local governments in Kyrgyzstan have varying access to existing training resources. In this respect, the Leninskoye village government is very well positioned: it is situated only 30 minutes ride from the capital city of Bishkek. The head of the local government and other employees are able to travel to Bishkek for various seminars and workshops, unlike public employees in distant eastern and southern parts of this mountainous country.

- Effective policy implementation is made hardly possible by a general lack of basic bureaucratic procedures, norms and regulations. For example, the Leninskoye village government does not have written policy documents and regulations: most activities are undertaken *ad hoc*, and the exercised discretion is enormous. One of the functions of the village government is to assist local residents in residential homes' repairs following severe weather damage. It is done on a case-by-case basis, without any guidelines. This practice, certainly, can make the local government more responsive and flexible, but it creates conditions for unfairness, favouritism and abuse of public funds as well.
- Local government employee training is a very significant and effective way to improve policy implementation in local governments in Kyrgyzstan. It will take decades before well-educated public administrators create a critical mass in Kyrgyzstan, while changes for the better are needed now. Those who receive training become agents of change in their local governments. They start to think and act differently.

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Appendix 1.

Local Government Employee Questionnaire

The Academy of Management under the President of the Kyrgyz Republic and partner organisations plan to conduct training for the employees of your local government later this year. You are invited to take part in the pre-training survey. This does not mean you are enrolling in the training by participating in this survey. Depending on the type of training required and trainers' capacities, you may be eligible to participate in the training. The way you answer the questions in this questionnaire does not affect your eligibility.

Please complete the following questionnaire so that we know better your training experiences and needs. Individual answers will be kept confidential and only generalised data will be available for those interested.

We appreciate your cooperation.

YOUR POSITION WITHIN THE LOCAL GOVERNMENT

1. What department are you working for? _____
2. What is your present position? _____
3. Time served in this position ____ years ____ months
4. Does it have (mark all that apply):
 - Managerial responsibilities?
 - Supervisory responsibilities? Direct supervision of other employees?
 - Technical requirements (require specific skills or knowledge obtained through special training; educational credentials; certification)
 - Labour position (requires general skills; most work done under direct supervision)
5. Have you held other positions with this or other public agency during the past five years?
 - Yes (proceed to question 6)
 - No (proceed to question 7)
6. If yes, what were they? _____

TAKEN TRAINING COURSES?

7. Have you taken any training courses during the past five years?
 - Yes (proceed to question 8)
 - No (proceed to question 25)

IF YES,

8. What training courses have you taken? _____

9. Why did you attend the training program(s)? _____

10. How many times have you taken training during the last five years _____
times
11. Duration of the training _____ days
12. How many series has the training had? _____
13. Was the training related to:
- Direct duty performance's knowledge and skills
 - General range of interest (kind of theoretical issues that may help in understanding some principles, concepts, etc.)?
 - Other
14. What was the area of the training's specialisation (mark all that apply)?
- Public management
 - Public finance
 - Public personnel issues
 - Public policy
 - Public law
 - Other (please indicate) _____
15. Who (what organisation) provided the training _____

16. What was the source of financing for your participation in the training course(s)?
Mark all that apply.
- From the budget of your local government
 - From the budget of central government
 - From your personal budget (the budget of your family)
 - Other source (please, name the source _____
_____)
 - I do not know

IF YES, VALUE OF THE TRAINING?

17. Did the training courses help you to improve your work?
- Yes
 - No
18. Did the training courses contribute to a promotion?
- Yes
 - No
19. Did the training courses contribute to an increase in pay?
- Yes
 - No

20. Did you learn anything new from the training courses?
 Yes
 No
21. Did the training courses make your job more interesting?
 Yes
 No
22. Were the training courses worth the cost?
 Yes
 No

IF YES, WHO ARE THE **BEST TRAINERS**?

23. How would you describe the quality of the training courses that you have taken?

24. Who (what organisation or person) has provided the best training? Why?

IF NO,

25. Why have you not taken any? (Choose up to *three reasons* and mark them 1, 2, 3 starting with the primary reason)
- Lack of finance to cover the cost of training
 - Absence of need to take training
 - Low personal motivation
 - Training is not encouraged by superior officials or even
 - The leadership is against the training because it takes time and you are distracted from the fulfilment of your direct duties
 - Training does not help to improve your work
 - Training does not help (or not necessarily) in personal career development
 - Training does not contribute to an increase in pay
 - Other reasons (if needed, use additional space for explanation) _____

IN GENERAL, WOULD YOU **AGREE OR DISAGREE** WITH THESE STATEMENTS:

26. I have had adequate opportunities to take training courses
- Yes
 - No

- 27. Increasing the number of training courses employees are taking will not help improve the village government
 - Yes
 - No
- 28. My bosses/supervisors need more training
 - Yes
 - No
 - Not applicable
- 29. My employees (the workers I supervise) need more training
 - Yes
 - No
 - Not applicable
- 30. My colleagues need more training
 - Yes
 - No
- 31. The leaders of this village need more training
 - Yes
 - No
- 32. I need more training if I want an increase in pay or a promotion
 - Yes
 - No
- 33. I need more training in:
 - public management
 - public finance
 - public personnel issues
 - public policy
 - public law
 - other (please indicate) _____
- 34. I do not need more training for my job
 - Yes
 - No

LOOKING MORE CLOSELY AT YOUR JOB

Often, jobs can be defined as the tasks and duties that must be carried out. Usually the tasks and duties require (1) some formal level of education, (2) knowledge about certain topics, and (3) skills required to carry them out.

- 35. Please list the major tasks and duties of your job _____

(Please use additional space on the back side of this sheet indicating the number of question if needed)

36. For each of these major tasks and duties, note the knowledge and skills needed to perform the work well _____

37. Identify for these major tasks and duties any useful or desirable improvements in your knowledge or skills. In other words, what improvements in knowledge or skills could help you perform your job better? _____

38. Thinking about these possible improvements, what training courses would be valuable? _____

TRAINING PREFERENCES

39. Assuming that training programs were being designed for the village, what kind of training would you prefer? (Mark all that apply)

- Seminars
- Lectures
- Workshops
- Other types _____
- Shorter training programs
- Longer training programs
- Concentrated training programs (all courses in one week)
- Spread out (courses offered over a longer period of time, e.g., one a week for a month)
- Other suggestions _____

40. Who (what institutions) should provide training programs? _____

INFORMATION ABOUT YOURSELF

41. Your age _____ years

42. Your gender

Female

Male

43. Education (highest degree earned)

High school

Vocational (среднеспециальное или среднетехническое)

Your major _____

College

Your major _____

Graduate

THANK YOU VERY MUCH FOR PARTICIPATING IN THE SURVEY!

Chapter 6

On Importance of Ex Ante Analysis in Implementing Contracting Out: Lessons from the Estonian Emergency Medical Service

*Veiko Lember**

Abstract

In spite of the fact that more public services are contracted out every year in Central and Eastern European and other transition countries, empirical evidence demonstrates ongoing problems in implementing the process. The chapter suggests that instead of learning only through market testing, governments should concentrate more on ex ante analysis. For that, an integrated framework is proposed, which is tested on the Estonian emergency medical service case.

Introduction

For many governments in Central and Eastern Europe (hereafter referred to as CEE) contracting out is one of the main governance tools to use for solving problems concerning public administration and public services. In transforming its society from communism to democracy, Estonia, along with many other CEE countries, has taken the neo-liberal economic theory as the cornerstone for the reform. In Estonia, the concept of “minimal state” has been playing a central role in this process as was demonstrated by the large privatisation process of state-owned enterprises in the 1990s. In theory, this neo-liberal idea should lead to a situation where public services are also privatised and, as Niskanen put, it “The bureaucracy as such would disappear, except for the review and contracting agencies” (1968, p. 305). Nowadays, it is not expected that the traditional public bureaucracy should disappear – rather, it is believed in many countries that most public services should be tested in the market in order to find out the best delivery mechanism¹.

By now, as an outcome of this ideology, the Estonian public sector has contracted out several important public services to private organisations, during which, however, the pre-established goals have not been met and where the overall implementation of the contracting process can be assessed as poor. Public scandals, even in cases of contracting out of technical services, such as ferry line operations, parking enforcement and property management, are some of the indicators describing the situation (Milve, 1999; Riikoja, 2004, Tänavsuu, 2005; State Audit Office, 2005)². This and other evidence from CEE countries (e.g. Nemeč, 2004, p. 4) demonstrates ongoing problems in implementing public policies through market mechanisms.

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1 One of the best examples trying to follow the core principles of public choice school is the Compulsory Competitive Tendering and Best Value programs executed in the United Kingdom. See, for example, Entwistle and Martin, 2005.

2 There are, however, many opposite examples, such as privatisation of the enforcement procedure (see Annus, 2003), which can be regarded as a successful implementation of contracting out process.

Hence, is it justified to expect that market testing is the most suitable tool for deciding between in-house provision and contracting out? Or is it more sensible to exploit integrated analytical tools before making a contracting out decision? The reason behind the doubt is that although market testing can result in promises from contractors to increase cost efficiency and quality, the government may still fail to realise the promised benefits. The existing information about contracting out processes in the CEE region gives a basis to set up a hypothesis that many failures in implementing contracting out could be avoided if sophisticated policy design tools were executed that would analyse the perspectives of governments to benefit from contracting out.

The current article aims to give answers to the questions raised by studying contracting out of the Estonian state-wide emergency medical service. It is a service where there exists different delivery mechanisms around the world, ranging from completely governmental provided and financed forms to wholly privatised mechanisms (Poole, 1995, pp. 3-6). The article first proposes a framework of ex ante analysis for a contracting out initiative, which is followed by an overview of the implementation of the Estonian emergency medical service privatisation³. Finally it will be demonstrated how the proposed framework could have benefited for the Estonian medical service privatisation and how the framework contributes to the overall contracting discussion.

The starting point for policy design in contracting out public services⁴

The conventional reason used to justify privatisation initiatives has been the need to use markets as an incentive mechanism to enhance efficiency, economy and effectiveness in public service delivery (Savas, 1987, pp. 96-97; Osborne and Gaebeler, 1992, p. 98). It is believed by the pro-marketers that the actual price of services can be learned only through testing the market. The treatments, where contracting out was seen as a universal panacea for the public sector problems (e.g. Osborne and Gaebeler, 1992), have been challenged by the vast literature demonstrating the problematic nature of implementing public service contracting (e.g. Johnston and Romzek, 1999; Milward and Provan, 2000; Hodge, 1998; Sclar, 2001). There exists a growing concern that the transitional context makes it even more problematic to successfully contracting out public services (Brown, 2001, p. 749; Keefer, 1998, p. 17; Nemeč, 2001, pp. 69-72). As the following section suggests, at least three groups of limiting arguments can be outlined, which challenge the universal applicability of the contracting out approach and which should be studied by governments before the contracting out process is to be implemented. These are political, legal and administrative-economic limits⁵. The next section forms a basis for the analysis of the Estonian emergency medical service case study.

3 From this point forward, the author uses the term of privatisation as synonymous with contracting out, unless stated otherwise.

4 This section is based on the previous work of the author, see Lember, 2004.

5 See also Hirsch, 1995; Boston, 2000

Political limits

In reforming public administration, the state can favour, above all, some other purposes or values not identified in the conventional debate but that could be achieved through contracting out (Hood, 1997, p. 120). Increasing the state's overall steering capacity, fulfilling 'amoral' goals or positive discrimination are some of the examples here (DeHoog, 1996, p. 538; Hood, 1997, pp. 123-130). In such cases, interacting with the market does not depend on economic reasoning or an *a priori* superiority of the market, rather, the market is valued as long as it helps to achieve certain political goals. Hence, the implementation of contracting out depends on the ability of the contracting tool to achieve political goals, either publicly declared or hidden ones.

Legal limits

If a service includes the use of coercion and discretion, or is critical to the whole of society – that is, it has an inherently governmental nature – it cannot be contracted out on an economic basis (Moe, 1987, p. 545; Moe and Gilmour, 1995, p. 142; DeHoog, 1996, p. 531; Dudley, 1996, p. 70; Boston, 2000, p. 317). Several authors have emphasised that privatisation may worsen the administrative, as well as the political accountability, in providing public services (Saloman, 1981, p. 260; Johnston and Romzek, 1999, p. 392). The issues such as immeasurability of service outcomes, monitoring problems, public access to terms and conditions of contracts, more complex compliance and discipline mechanisms and the lobbying of private firms have been found to have important influence on the accountability of contracted out services.

Administrative and economic limits

According to Lane (2000, p. 223), contracting out tends to work better in the case of simple and technical services, where outcomes are measurable and competition is present, whereas more problems arise with complex social services. In the case of technical services, there are more chances that the government retains a controlling position, knowing, as Kettl (1993,) puts it "... what to buy, who to buy it from, and what it has bought" (p. 180). Hart *et al* (1997, p. 1128) explain that the role of competition for the contract as an incentive mechanism is overestimated and in the case of lengthy contracts, the role of *ex ante* competition for achieving certain outcomes is insignificant. In the presence of ineffective user choice (i.e. ineffective *ex post* competition) and long-term contracts, the private contractor can pursue, due to the large amount of uncontractable quality factors, his own interests without fearing the termination of the contract (*ibid.*). The threat of contract termination as an incentive mechanism is claimed to be "mythical" (Keating, 1990, p. 142) especially in cases of social services with big entrance barriers like prisons. In order to overcome these principal-agent problems and to make the contracting relationship work, the government has to make substantial investments into the selection, negotiation, writing, monitoring and evaluation procedures of the contract (Domberger, 1998, p. 61) which constitute the heart of the implementation

process of contracting out. At the same time, the government has to find a balance here because at a certain level, these transaction costs may outdo the expected gain from contracting mechanisms (Williamson, 1996, p. 25). In addition, there exist administrative factors such as a weak civil service, which limit the applicability of the contracting out tool by the governments (Lember, 2004, p. 430).

Contracting out of the emergency medical service in Estonia

The empirical analysis on the medical emergency service case employs both quantitative as well as qualitative data. The information for the study is drawn from a number of legislative and administrative documents, including different auditing reports and state budgets and from statistics and calculations provided by government. Additionally, there were two interviews conducted, held with a public official, as well as with the representative of a contractor. The interviews were semi-structured and concentrated on the implementation phases of the contracting out process.

In 2001, as a result of adopting the new act and other documents regulating the health care provision, the Estonian state forced the emergency medical service (from this point forward referred to as EMS) providers along with other medical services providers to be privatised⁶. The idea of the change was to finish the creation of fully functional health care markets where the privatised, previously governmental organisations competed with private providers for contracts awarded by the state (see e.g. Jesse et al, 2004, p. 117)⁷. This marketisation was introduced to increase the efficiency and effectiveness of the EMS and other health care services through building up an incentive based system (*ibid.*). Prior to the regulative change introduced in 2001, the EMS provision was under-regulated, lacking clear legal and administrative mechanisms (State Audit Office, 1999). The county governors, without any guiding framework for conducting the procedures, were made responsible for contracting with the EMS providers, whereas the resource allocation decisions were made by the Ministry of Social Affairs (*ibid.*)⁸. The basic controlling tool was the demand that the contractors had to have an operational licence for providing the EMS (*ibid.*).

After the minimum legal framework was introduced and the putative privatisation was finished, the government thought that it was time to switch to the competitive contracting regime in administrating the EMS, in spite of the fact that there were

6 According to the law, only private legal persons and governmental rescue service agencies can be the providers of EMS. As of 1999, 59% of the EMS providers were governmental organisations, 21% not-for-profit organisations, 11% for-profit-organisations and 9% had unclear legal status (State Audit Office, 1999). However, all of the providers were more or less controlled by local or central governments. As of today, most of the EMS providers are controlled by local governments.

7 All other health care providers contracting for public resources, except EMS providers, compete for the contracts awarded by the autonomous public law body, the Estonian Health Insurance Fund.

8 According to their legal status, the county governors in Estonia are representatives of the central government in counties.

still many political and policy related issues that remained open⁹. Financing of the EMS has, through the years, been dependent on the political will of parliament, which makes the EMS budgetary decisions on an incremental basis. Now, the Ministry of Social Affairs has elaborated a cost model for the EMS, which serves as the main information tool for the EMS stakeholders, although the model does not take into account the changing nature of the wage conditions¹⁰. The policy process has largely been influenced by the Estonian Association of Emergency Medical Aid (EAEMA), whereas the internal capacity of the Ministry of Social Affairs has remained weak (State Audit Office, 1999; 2004)¹¹. Currently there are only two people working as contracting officials in the Estonian Health Care Board. Regardless of the fact that there exists a strategic plan for EMS, which was elaborated by the EAEMA, many crucial factors are still not in place. There is no common understanding regarding what kind of EMS Estonia should concentrate on, the functions of different parties in first level medical aid are not clearly divided and the work of the alarm centres are ineffective (State Audit Office, 2004).

Stemming from the new legal situation, all the organisations that were or wanted to become EMS providers had to apply for the operational licence, where they had to prove their ability to cope with the input requirements set by the government. The result of the licensing, which was carried out in 2001, was that all previous providers and one new provider were accredited¹². The licence gave the providers the opportunity to deliver the service until the new state-wide bidding process was to be initiated. As of today, the bidding process has been postponed several times and has still not been carried out, mainly due to the incipient policy and the unwillingness of the state to pay the market price for the service¹³. All the licensed providers have been offered temporary contracts, which are subjected to annual review. During the negotiation process, the Health Care Board acts as the contracting agency, whereas the providers are represented by the (local) government officials or executive personnel. The negotiations comprise only a limited range of topics, concerning mainly what kind of service is the provider able to

9 It was never a classical privatisation – the governmental organisations were just changed into government owned private legal persons, meaning that the government’s direct participation was maintained.

10 In spite of the existence of the cost model, the shortage of the EMS budget in 2005 is around 30 %, as estimated by the representative of a contractor.

11 During recent years, the Estonian Health Care Board, which is a sub-unit of the Ministry of Social Affairs, has started to make some progress by establishing a special office responsible for EMS. The capacity of the office is still limited, as has been admitted by the interviewees of the current study and State Audit Office (2004).

12 As a result, there is only one private EMS provider in Estonia which is 100% based on private capital and is not controlled by municipal or state authorities.

13 One of the causes was the fear that in order to enter the market, the possible private providers make low bids and, once gaining a stronger position, demand a higher price. The other reason was the fact that the government had no criteria (price and other measurable outputs) elaborated which would allow them to favour some providers over others and the resources for allocation were fixed in advance by the legislator.

deliver for the pre-established budget allocated by parliament. Although the legal documents provided the Health Care Board with an opportunity to design output-based contracts, the contracts employed are strictly input-based and resource allocation is dependent on the cost model authorised by the ministry.

There are no output-based administrative and incentive mechanisms introduced in the contracting system and the government does not measure the outputs of the service. Monitoring and controlling of EMS providers have been extremely vague until now (State Audit Office, 2004) and, for example, the first time the Ministry of Social Affairs audited the EMS system was as late as in 2004. The main controlling mechanism relied upon, so far, is self-control, which basically means two things. Firstly, it is hoped that the medical code of ethics is strong enough to keep the system functioning. Secondly, the government occasionally orders a quality monitoring service from EAEMA regarding the input quality standards.

Analysis of the implementation process

As can be seen from the previous section, the contracting out process of the Estonian EMS was incipient and is still unfinished. In spite of the changed delivery mechanism, the government has not altered the internal administration routines – no shift from traditional administration to contracting management has occurred. The next section, which follows the logic of the analytic framework described earlier in the article, seeks the factors that caused these implementation problems.

Political limits

It seems to be clear that the political goals of the Estonian government do not allow the contracting out of the EMS in accordance with the logic of privatisation and the initial plans of the privatisation. At the beginning of health care reforms, it was hoped that privatisation would enhance the quality of medical services and keep the costs under control, but in reforming the EMS, the government's sole purpose was to keep the costs under a certain level – enhancing the quality was never the main issue. The way the EMS was contracted out helped the government to keep the system running at a satisfactory level and below the actual market prices, without any considerable interruptions or failures. The service has been delivered despite its constant under-financing, mainly due to the fact that public authorities have maintained a controlling position in almost all provider organisations and there exist large providers – sub-units of hospitals – who are interested in using their EMS units to get patients into their hospitals. At the same time, the delivery mechanism has no effect on the motivation of the suppliers to provide the service with the best possible quality, which is why the current system leans mainly on the medical ethics of the EMS personnel. What the government has achieved is that the contracting idea is been turned upside down – instead of supplying services with a certain level of output quality and the lowest possible price, the current system guarantees an unidentifiable level of quality and outputs with a fixed amount of money. There was an obvious conflict between the logic of contracting out and the goals of the government and because the political purposes

could not be achieved through contracting out, privatisation was implemented only partially. This problem could have been avoided if the conflict had been taken into account in the policy design process.

Legal limits

There are no constitutional or other legal limits for contracting out the EMS in Estonia. The EMS, as part of the medical services is a simple administrative task, which, according to the Estonian legislation, can be subjected to contracting out (Aedma and Parrest, 2004, p. 29) and which is currently regulated in the Health Care Administration Act. Stemming from the fact that there exists a high public interest regarding the EMS, the service can be perceived to be inherently governmental in its nature. Therefore, securing the clear accountability structure of the EMS needs to be solved here. This is, as the following section explains, mostly dependent on the administrative and economic mechanisms.

Administrative and economic limits

At first glance it may be thought that the creation of a competitive market is one of the main problems that the CEE countries must face while privatising public services. This should especially be the case with EMS where there exists high entrance barriers to the market in terms of the need for a high-skilled workforce and big investments. But in 2004, there were 26 different EMS providers with 90 ambulance cars in Estonia, which indicates that there may be actually too many small providers on the market. Furthermore, the short term contracts and the presence of ex post competition are factors that support the probability of a successful privatisation in the Estonian EMS market.

However, the contracting system of EMS has failed to set up a competitive environment, which would motivate the providers to deliver the service efficiently. Although it may be claimed that the system is cost-efficient, there is no information available on what kind of service the providers deliver for the money allocated, which means that the true price of the service remains unclear. On the one hand, the government does not measure how much resources are spent on achieving the expected results. On the other hand, the government has never specified what results are expected to be reached. Robert Poole Jr. has claimed that: "There is considerable agreement on how to measure the performance of a paramedic system. It should have a rapid response time, relatively low cost per unit of activity, and high productivity" (1995, p. 8). In spite of the fact that there exists some information on response time, it has never been made the subject of the contracts with the providers, which means that the performance measurement as an incentive mechanism does not influence the EMS in Estonia.

It can be argued that the main reason, next to the political limits, why the efficiency goal could not be fulfilled was the lack of internal administrative capacity to administer contracting relationships. The fact that no competition has been carried out and the system is still based on temporary contracts, on the fact that

no incentives or administrative mechanisms were exercised or elaborated in order to influence output of the services, that no systematic controlling and monitoring tools were elaborated nor implemented, and that the contracting relationships are run by only two employees illustrate that claim. The contracts foresaw only the possibility to influence the procedural matters (e.g. technical and personnel input), which is the main tool for a traditional delivery mechanism in a bureaucratic organisation. Furthermore, the government sees contracting out not as an implementation problem, but as a legal issue. In responding to the State Audit Office remark on the weak administrative capacity of the Ministry of Social Affairs in organising EMS, the ministry declared that a new post for a lawyer was to be created (State Audit Office, 2004). In addition to the capacity problems, the outcome of the contracting out process is influenced by the shortcomings in overall EMS policy. The main cause of why the contracting out process was not carried to the end, as was referred to by the government, was the lack of resources. At the same time, 27% of ambulance callouts do not fall under the responsibility of EMS (State Audit Office, 2004) because the policy regulating the first level medical aid is not clear and ambulances are used for functions not inherent to the EMS.

In order to put an end to a situation where providers are awarded temporary contracts, the government is planning, among other solutions, to increase the state's role in delivering the service by contracting the EMS service to central government controlled private legal persons or to rescue agencies. This would mean that the government abandoned the idea of a competitive market and increased direct control over the provision. If the current system could be described as a semi-market, where the government negotiates with different providers, with different levels of governmental control, then the planned change would bring about a situation of the government sitting at both ends of the negotiation table. This, in turn, makes the usefulness of the contracts as a legally binding and complicated administrative mechanism rather questionable.

To sum up the administrative and economic problems, it can be said that the process of contracting out was designed in a way that private contractors cannot be held accountable for most of the results and outcomes not achieved. Due to the fact that EMS is a critical service for society and that there exist considerable administrative shortcomings in administering the system and that the government has lost a considerable amount of control over the EMS provision, it is suggested here that this "pseudo-contracting" should have not been initiated. From a political point of view, the unfinished contracting out process of EMS accomplished its initial goal – to keep the costs under control. But one can argue that if the only goal was to keep costs under control, then it is easier to do it through a bureaucratic organisation, especially when the government takes its own cost model as the basis for awarding contracts. And secondly, if the quality of EMS was to be taken seriously, then the dominance of the cost related political goals over the performance related purposes can work only in the short run, as it does not motivate the providers to deliver the best possible service in the longer term.

All in all, although the emergency medical aid system is now being based on contracts, the process has not followed the logic of contracting management; it has never been implemented according to its initial goals and no assessment can be made in terms of efficiency.

Conclusion

As the current case study shows, poor analysis done in the policy design phase can be one of the most crucial factors that cause the implementation failure in contracting out public services in CEE countries. Behind the mask of “pseudo-contracting” governments may actually hide a blurred delivery system, which fails to fulfil the initial goals. The Estonian EMS case demonstrates that the emergence of serious problems during the implementation process of contracting out could be avoided if there was a bigger emphasis put on ex ante policy analysis. If more systematic analyses on contracting out were carried out by the Estonian medical service reformers, it would have been seen earlier that the classical contracting out approach is not suitable for reforming the Estonian EMS. The current study confirms that there are at least three groups of aspects – political, legal and administrative/economic limits – that should be taken into account when a contracting out option is weighed. The main lesson stemming from the presented case study is that the relevant information is often already accessible in the policy design phase of the privatisation process. At the same time, it is vital to analyse all relevant aspects together. If, for example, the analysis is limited only to economic arguments, one may conclude that in order to solve the existing problems of the delivery system of the Estonian EMS, the government should change itself from a traditional bureaucratic organisation to a contracting organisation, as the competitive market is already present. But first, as we see from the current analysis, there may exist political and administrative limits that make the economic arguments non-relevant. And secondly, radical change in organisational culture is not an easy task to fulfil.

Therefore, it can be argued that market testing is not the best way to understand the suitability of the contracting out tool because it does not take into account the government’s ability to cope with the logic of contracting out. The study confirms that the framework proposed in the article may help governments in deciding about the privatisation option. There is just one assumption and that is that the CEE and other transitional governments should not treat the neo-liberal economic ideas (e.g. compulsory market testing) as a goal, but as a means to an end which has a limited range of applicability.

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Chapter 7

The Effects of Policy Impact Assessment in the Decision Making Process in the Government of the Republic of Macedonia

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Abstract

The purpose of this chapter is to evaluate the effects and usefulness of the policy impact assessment requirement introduced by the Memorandum of the Government. Extensive reforms in Macedonia led to massive overproduction of legislation that causes serious problems with sub-optimal policies and poor implementation of legislation. The main motive for introducing impact assessment in Macedonia was to bring about institutional change and to improve the policy process that would eventually lead to better implementation of policies. Results show that Ministries do not include any substantive information on impacts of policies. The majority of reviewed Memoranda have a formal and legalistic approach. The policy impact assessment in the Republic of Macedonia is just beginning. Much has to be done to develop an IA system and to eventually make it sustainable.

Introduction

Policy impact assessment, or widely-known as regulatory impact assessment (RIA), is a technique for improving the empirical basis for regulatory decisions. It does this by systematically and consistently examining the potential impacts arising from government action and communicating this information to the decision makers in a way that allows them to consider the full range of benefits and costs that will be associated with the proposed regulatory change. Impact assessment is not a technocratic tool that substitutes for or replaces other decision methods in the regulatory process, but it can play an important role in strengthening the quality of debate and understanding in the decision making process.

The Republic of Macedonia is making serious efforts to reform its policy development and coordination system. The central coordinative body of the Government – the General Secretariat – underwent significant reform undertaking new planning and coordination functions to ensure for the Government, the Prime Minister and Ministers the necessary information and policy advice to enable them to set priorities and make well-informed and coherent decisions.

The purpose of this paper is to evaluate the effects and usefulness of the policy impact assessment requirement introduced in the Republic of Macedonia, through the Government Memorandum that should be developed and submitted with all proposals presented to the Government for review and adoption.

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It has been widely accepted that impact assessment tools contribute to improving the quality of the policy analysis and making the policy and regulatory process more transparent. There is remarkable diffusion of impact assessment practices both internationally and in the EU (Radaelli, 2005). Most OECD countries have been using this tool and, since 2001, there are persistent efforts to introduce and develop impact assessment systems in the EU member states. In 2002, the European Commission introduced a new impact assessment procedure designed to contribute to an effective and efficient regulatory environment.

It seems, however, that although the starting point for most of the countries that have introduced impact assessment has been better policy making and better regulation, the goals of the impact assessment have been different in different countries. In the United States, impact assessment procedures are mostly focused on assessing the efficiency and effectiveness of regulation. For some governments, assessment does not go much further than compliance cost assessment in some EU member states, impact assessment is merely a check-list process, or it is focused only on achieving simplification (Radaelli, 2005).

Whatever the driving motive is, establishing an impact assessment system is not an easy task. Comparative studies¹ on impact assessment emphasise several prerequisites that are essential for an impact assessment system to be effective. Such prerequisites, among others, include:

1. Legal requirement that makes impact assessment compulsory for the ministries which initiate different policies and legislation;
2. Establishment of a central unit responsible for “quality control” of impact assessments that accompany policies and legislation reviewed by the Government;
3. Allocation of sufficient resources and training of ministry staff in impact assessment techniques;
4. Systematic consultations with interested ministries, NGO’s, local governments;
5. Promotion of standardised impact assessment methods through the introduction of methodologies, handbooks, etc.;
6. Existence of reliable databases and baselines;

The choices about the methods and the organisation of impact analyses can be carried out successfully only if there is a demand for their outputs. The survival of the system depends on whether it is used and perceived to be useful to the political system and the decision-makers.

Introducing IA in Macedonia as a tool for better design of policies

The Republic of Macedonia is undergoing a significant overhaul of the existing structures, systems and legislative framework. Significant reforms are being undertaken in the social and health sector, in the adjustment to and development of the market economy and in the public administration and in other sectors.

1 Italian, Irish and Dutch Presidencies of the Council of the European Union: A Comparative Analysis of Regulatory Impact Assessment in Ten EU Countries, a report prepared for the directors of Better Regulation Group, Dublin, May 2004, www.betterregulation.ie

All these challenges have a considerable impact on the quality of the policies and regulations. Since its independence in 1991, Macedonia has been faced with massive proliferation of legislation mainly linked with three key challenges:

1. Disintegration from the Yugoslav federation and establishing its own constitutional and legal order;
2. Development of the market economy, and building and regulating the new relations among the actors in the market;
3. Implementing the EU integration process and approximating the national legislation to the EU legislation.

These processes have led to intensive legislative activity and the adoption of sub-optimal policies. Ministries responsible for policy making rarely involve stakeholders in the policy process other than other Ministries that have an interest in the issue. More often, the policy formulation process does not take account of the impacts on the institutional capacities or budgetary funds leading to poor design of policies and legislation that cannot be implemented.

The pressures and focus on improved implementation will become even more pronounced as Macedonia moves into the next stage of the EU accession/negotiation process. In its Council Decision on the Principles, Priorities and Conditions Contained in the European Partnership, the European Commission (EC) noted: "It should be recalled that where legislation is concerned, incorporation of the *acquis* into legislation is not in itself sufficient; it will also be necessary to prepare for its full implementation²."

Clearly, the EC will put a special emphasis on the implementation of legislation and EU standards in the coming stage of the accession process. Less than optimal adoption of EU policy will not only increase costs, but could also decrease the benefits in terms of economic efficiency and competitiveness that are expected from EU accession.

The main objective of introducing impact assessment in Macedonia is to change the way ministries think about policies – it should prompt them to think about the options, raise the right questions through a consultation process and present the alternatives and the costs of the proposed policies. The idea is to bring institutional change and to improve the policy process that would eventually lead to better implementation of policies.

In June 2003, the Government introduced the requirement for the Ministries and other bodies responsible for developing and proposing policies and legislation to prepare and enclose the so called Explanatory Memorandum. The Explanatory Memorandum has to be submitted with all documents inducing legislation, reports, programs and strategies that go to the Government for discussion and decision. Its structure builds on the standard steps in the policy formulation process. The Memorandum includes the following sections:

2 Commission of the European Communities (2004). "Council Decision on the Principles, Priorities and Conditions Contained in the European Partnership with the former Yugoslav republic of Macedonia", COM(2004), Brussels.

1. Decision(s) required

This section should include a brief description of the purpose of the proposal. The description should be brief and focused so that decision-makers know what is expected.

2. Options considered

This section should include the options that were considered by the proposing ministry. Critical descriptive or contextual information should be provided for each option, preferably with a one or two sentence commentary. The commentary should include the major implications, including the pros and cons.

3. Main outcome of consultations

This section should indicate the stakeholders, that is, Ministries, NGO's, and other target groups for which the proposal would have a major impact and highlight those which have been consulted and have substantive unresolved concerns.

4. Recommended option and rationale

This section should indicate the recommended option and justification as to why the recommended option has been chosen over the alternatives. Where possible, links should be pointed out to the Government's strategic priorities and other commitments and decisions. Considerations based cost-effectiveness and on public attitude are also useful in this section.

5. Cost of the recommended option

This section should be based on the detailed analysis reflected in the Fiscal Impact Assessment Form and it should indicate the expected cost of the recommended option, and, where appropriate, suggest the source of funding (e.g., Ministry's own funds, next year's Budget, reserve, donor funds, etc.).

6. Expected impacts

This section should summarize the impact this decision may have on such things as the public, target groups, taxpayers, the economy, employment, the environment, etc. This summary should draw on the analysis and any quantitative research contained in the package.

7. Harmonisation with EU legislation

This section should include a brief description of the aspects of the proposal that have been harmonized with the EU legislation. It should be based on the statement that is also part of the package of documents presented with proposals to the Government and it contains a detailed analysis of the proposed draft in relation to the harmonisation aspects with EU legislation.

8. Communication messages

This section should suggest a small number of key communication messages that should be used when announcing and/or explaining this decision and why the Government decided to adopt it. This is particularly important in cases where a decision can be expected to be unpopular with the public at large, or with specialized publics.

Its purpose is to provide Ministers with the most important information that they need in order to discuss the material brought to them and to make the necessary decisions. Factual information should be drawn from the different policy steps developed through the policy formulation process and presented in the supporting documents such as the Explanatory Note that describes the problem analysis, the Fiscal Impact Assessment which shows the costs for implementation of the proposal and sources of funding and other analytical appendices. In fact, the Memorandum serves as an “executive summary” organised largely in the form of a policy memo that summarises the entire package of documents submitted for review to the Government.

The Explanatory Memorandum can also serve as a checklist both for proposing Ministries, which are primarily responsible for creation of policies in the relevant area and for the General Secretariat, responsible for ensuring that coherent and coordinated policies are presented to Government for decision and in ensuring that all aspects of the proposed policy have been considered.

Goals, Expectations and Challenges of Impact Assessment in Macedonia

The initiative to introduce impact assessment is part of a wider reform process introduced by the Government and intended to improve the overall policy development process and to introduce sustainable instruments, procedures and capacities in the Government of the Republic of Macedonia that will ensure assessment of policies and policy instruments, their probable costs, consequences and side effects thus leading to implementable, sustainable and effective policies.

Studies of impact assessment practices (Radaelli, 2002; Hahn, 2004) suggest that impact assessment does not perform in an institutional vacuum. When introducing IA, one should draw on the lessons of other countries; however, directly “imported” IA practices cannot work on their own. There is a wider context in which IA can work. In order to be effective, impact assessment should be part of a wider reform process encompassing institutional design and learning, administrative reform and changing of attitudes, and proper IA process. The issue of legitimacy of IA is linked with the existence of oversight mechanisms involving central or coordinative agencies tasked with quality control.

The first step in the efforts to develop better policy making was to introduce the requirement for impact assessment through the Memorandum. However, as the research results presented below indicate, the quality of information included in the Memorandum is not satisfactory. Ministries do not include any substantive (qualitative or quantitative) information that would give evidence on the analysis of impacts and options of policies presented to Government. There is a lack of understanding and skills necessary for impact assessment – the majority of civil servants have legal backgrounds and they are looking at the Memorandum as a paper with some information that has to be produced at a specific point of time in the policy process instead of looking at IA as a process. The function of impact assessment as a tool for raising the right questions is completely neglected.

The oversight mechanism that should have the role of a “checkpoint” and as a quality control is still underdeveloped. The institutional arrangements to support this role are in place. The new Policy Analysis and Coordination Department established in the General Secretariat of the Government should cooperate with ministries and ensure that key options, implications and stakeholders have been considered in the early stages of development of the proposal. It should be responsible for ensuring that conflicts between ministries have been resolved at the technical level before they are presented for discussion to the Government. Although there have been some training activities recently, the understanding of the role of the Department is still poor.

The procedures, instruments and tools that should ensure a reliable process of impact assessment at all stages of the policy cycle are not in place. A Policy Analysis and Coordination Methodology has been drafted recently. The Methodology describes the stages in the decision-making cycle and the information, analysis and consultations needed at each of these stages. It also describes the tasks of the General Secretariat and its role in the policy process. There are also plans to support the Methodology by a Handbook on Policy Impact Assessment describing the key impact assessment instruments and tools. Extensive training programmes, both for the staff in Ministries and for the Policy Analysis and Coordination Department, will have to be delivered in order to develop policy making and analytical capacities.

In order to ensure sustainability, the impact assessment system needs support from the political will. This is a key issue that determines not only setting up and developing the impact assessment system, but defining its area and its limits.

Research Design

The purpose of the research was to measure and assess the contents and usefulness of the Explanatory Memorandum. The research sample included three groups:

- State Secretaries as decision makers – the purpose of including this group was to test whether they find the Memorandum and the information contained therein useful when making their decisions. The sustainability of policy impact assessment will only be maintained if there is a demand from the decision makers.
- The Secretary General and staff in the General Secretariat – the role of the Policy Analysis and Coordination Department in the General Secretariat is to offer advice and act as a check point ensuring quality of impact assessment. The sample included State Advisers appointed for each of the Ministries and responsible to give opinion on the proposals coming from Ministries.
- Staff in ministries – they are responsible for developing policy proposals and summarising the results of impact assessment in the Memorandum. The sample included randomly selected staff responsible for development and drafting of legislation and other proposals in all 14 ministries.

The research instruments included questionnaires and content analysis. The purpose of the questionnaires was to measure the usefulness of information. Two questionnaires were developed:

1. *Questionnaire for decision makers* intended to measure three key elements of information utilisation by decision makers: (a) use of information in decision making; (b) usefulness of information to individual decision makers; and (c) quality of information. (See Annex 1)
2. *Questionnaire for staff* in the General Secretariat and in ministries modified to fit the roles of these two groups have in the impact assessment system. It was designed to measure: (a) usefulness of the Memorandum; and (b) procedural issues related to the preparation of the Memorandum. (See Annex 2)

Content analysis

The purpose of the content analysis was to assess the quality of the information offered by the ministry staff who prepared the policy or legislation. Ministries present different documents for review to the Government including strategic documents, laws and regulations, reports (so called Information), decisions, decrees, etc. The content analysis was focused on three types of documents that need to be accompanied by a Memorandum, that is, strategies and programs, laws and amendments to laws and reports (so called Information).

Sampling – The sample included two randomly selected Memoranda in all three groups of documents submitted by 7 selected ministries which represent half of the total number of Ministries in Macedonia.

Time element – in order to assess whether there has been any development in the quality of analysis and information provided, the first randomly selected sample in each of the groups of documents was a Memorandum submitted in the first 6 months after the requirement was introduced and the second sample included Memoranda submitted in the last 6 months.

Structured review – Assessment criteria were used in each of the sections of the Memorandum.

Research results

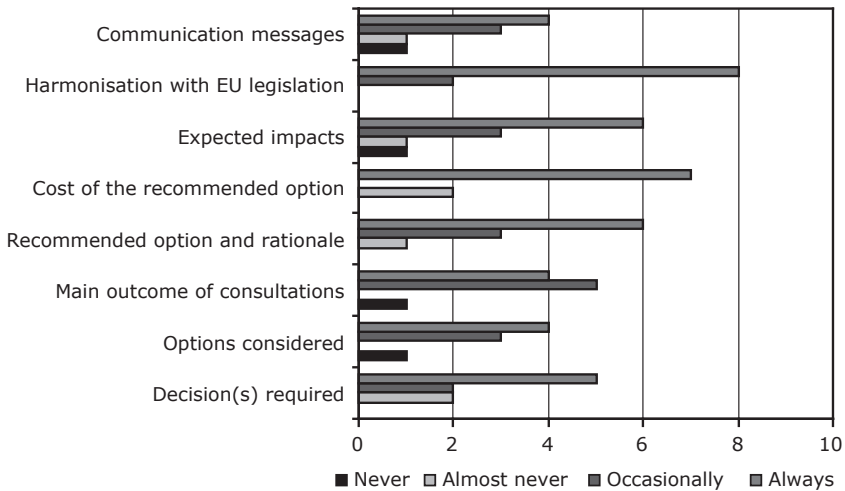
Usefulness of information – Questionnaire for State Secretaries

Out of 14 State Secretaries, 11 completed the questionnaire. The results indicate that the State Secretaries use the Memorandum as a source of information. Seventy-two (72) percent of the State Secretaries always read the Memorandum as the first paper in the package of documents and 45 percent of State Secretaries occasionally read only the Memorandum.

In terms of usefulness of information, more than half of the State Secretaries (63%) find that occasionally the information in the Memorandum is detailed enough to help them make decisions and the same percentage occasionally relies only on the information in the Memorandum when making a decision. With regard

to the usefulness of the information contained in each of the specific sections of the Memorandum (see Figure 1), 72 percent of State Secretaries stated that they always rely on the information in the section on *Harmonisation with the EU legislation* and 63 percent on the information contained in the section on *Costs of the recommended option*.

Figure 1
Usefulness of information in each of the sections in the Explanatory Memorandum



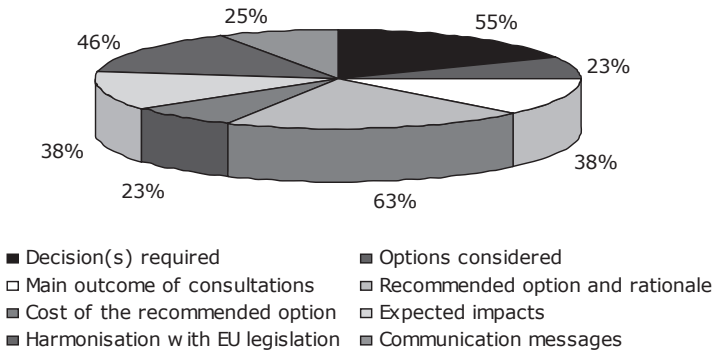
Eighty-one percent of State Secretaries occasionally use the Memorandum as a source of information sufficient to explain and understand the problem being addressed and 54 percent always need to read the supporting documents in order to make the decisions.

Usefulness of information – Questionnaire for staff in ministries and the General Secretariat

The **Questionnaire for staff in ministries** was completed by 47 staff in 8 ministries. Almost half of the staff in ministries (48 percent) find that occasionally the Memorandum is a useful tool in the process of preparation of the policies and legislation and 74 percent believe that the Memorandum is not just an add-on to their regular work.

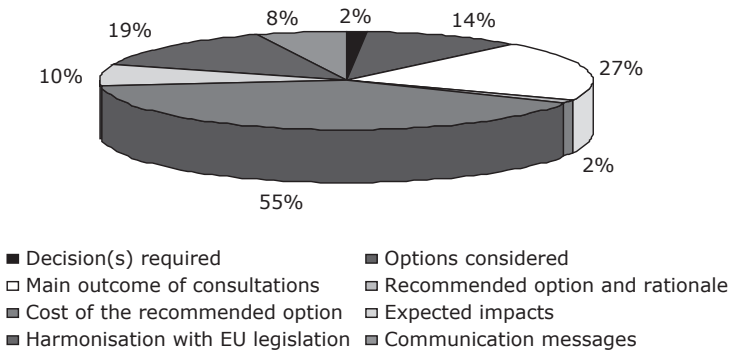
In terms of the specific sections of the Memorandum, 63 percent of the staff find the section *Recommended option and rationale* in which they have to elaborate and justify the recommended option as most helpful. Figure 2 summarises the opinion of the staff in ministries on the sections that they find most useful.

Figure 2
Sections which ministry staff find most useful



In terms of difficulties that ministry staff have in the analysis and completion of the Memorandum, 55 percent of ministry staff find that the *Costs of the recommended option* is the most difficult section to complete in the Memorandum and only 2 percent find the section *Decision(s) required* in which they have to explain the purpose of the proposal as most difficult to explain. Figure 3 gives an overview of the sections which ministry staff find most difficult to prepare.

Figure 3
Sections which ministry staff find most difficult to prepare

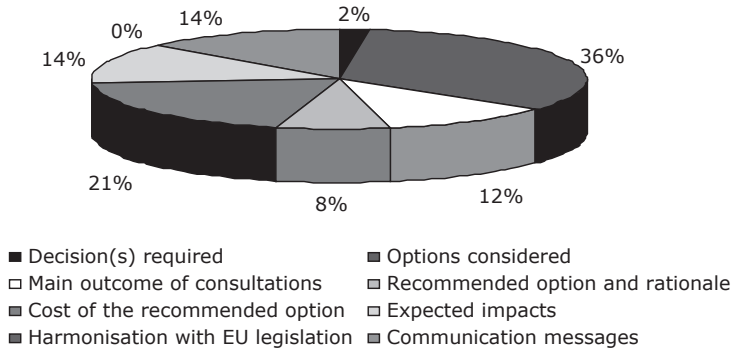


Most of the staff in ministries prepare the Memorandum in co-operation with other departments in their ministry and the number of departments and units involved in the preparation process on average is 2 – 4 departments/units. Almost all staff responded that they have never had any training to complete the Memorandum, however only 55 percent stated that they needed training.

In terms of changes that the ministry staff would introduce in the Memorandum, 36 percent think that the section in which they have to summarise the options considered and to give a brief commentary on the pros and cons of each

of the options should not be part of the Memorandum. Figure 4 summarises the opinion of the staff in ministries in terms of which section of the Memorandum they would take out.

Figure 4
Sections which ministry staff would take out of the Memorandum



Unfortunately, the number of completed **Questionnaires for staff in the General Secretariat** was rather low. Only 4 out of about 15 employees, responsible for checking the Memorandum and giving advice on the proposals, returned a completed Questionnaire. However, the author believes that even this low number of respondents gives a relatively good overview of the general picture. The opinions offered by the respondents in the General Secretariat generally match the findings of the content analysis of the Memoranda summarised in the next section of this paper.

Staff in the General Secretariat always read the Memorandum; however they never rely on the Memorandum itself and always read the supporting documents in order to develop the advice (or opinion) on the proposal. The overall quality of the Memoranda was assessed as average to good but the staff in the General Secretariat never, or occasionally, returns the Memorandum to the sponsoring ministry if the quality of information is low or if information is incomplete. Most of the information contained in the different sections in the Memorandum was assessed as average.

Content Analysis

Thirty-two completed Memoranda were reviewed in total in the three selected groups of documents (laws or amendments to laws, reports that is so called Information, and strategies or programs) submitted by 7 ministries.

Compliance in the first six months after the requirement for the Memorandum was introduced could be assessed as poor. The sampling procedure had to be repeated several times and eventually 4 documents were not reviewed as no Memoranda could be found with the randomly selected proposals. The compliance in the last 6 months

was evidently much higher. However, in this group of documents, 6 Memoranda from different ministries were not reviewed because these ministries had no law or a strategy/program submitted to the Government for review and decision in the last 6 months.

The findings of the analysis of each of the sections in the Memorandum against the selected criteria generally match the attitudes expressed in the Questionnaire for the staff in ministries. The following paragraphs summarise the findings related to the quality of information in each of the sections of the Memorandum.

1. *Decision(s) required:* In all of the reviewed Memoranda ministries give a description of the proposal. However, the description is sometimes too long and exceeding one page and is not focused.
2. *Options considered:* In almost all Memoranda, options are not presented. In most cases this section includes a description and commentary of the recommended option. Some ministries even commented that no options have been reviewed as the proposal was an obligation according to the law.
3. *Main outcome of the consultations:* Most ministries identify only other relevant ministries and the Secretariat of Legislation as the key stakeholders. Only few ministries indicated that they have consulted other organisations, NGOs or interested groups. In all cases commentaries of the stakeholders have not been indicated but rather it was stated that the comments have been incorporated in the proposal.
4. *Recommended option:* Most of the ministries state briefly the recommended option but rarely do they elaborate on why the recommended option was chosen over the other options. None of the ministries included any considerations on the cost effectiveness of the recommended option or on public attitude. Often, ministries justify the recommended option by an obligation stipulated by law.
5. *Cost of recommended option:* Most of the ministries do not indicate any fiscal impacts for the recommended option. With some proposals that inevitably will produce fiscal impacts (the Law on Fiscal Decentralisation is the most evident case) ministries state that the proposal will not produce any fiscal impacts. In the best case, ministries give only a total amount.
6. *Expected impact:* Only few of the ministries give impacts in general terms. No specific impact in areas such as the economy, employment and the environment has been stated.
7. *Harmonisation with EU legislation:* Wherever applicable, ministries usually give a list of the Directives that have been transposed into the relevant legislation. However, there are no specific aspects of the national legislation that are being harmonised with the EU legislation.
8. *Communication messages:* In most cases, ministries do not give any communication messages. If they do, in only few cases, these are more a description of the proposal than a communication message. In such cases, ministries do not justify the communication messages, nor do they identify target groups.

Only 3 – 4 Memoranda could be assessed as documents that give clear and sufficient information for the decision-makers. The majority of reviewed Memoranda have a formal and legalistic approach justifying the recommended option by a legal requirement. Ministries do not include any substantive information (qualitative or quantitative) in those sections in the Memorandum which should reflect the impact assessment that ministries have made in the course of preparation of the proposal or in the policy development process.

Conclusions

Extensive reform processes in Macedonia have induced massive legislative activity and over-regulation which, in turn, led to serious problems with the implementation of policies and legislation. The policy formulation process does not take account of the impacts on the institutional capacities or budgetary funds leading to poor design of policies and legislation that cannot be implemented.

The challenges for better implementation of policies will become even more pronounced as Macedonia moves into the next stage of the EU accession process. The European Commission will look for evidence that EU regulation incorporated in the Macedonian laws are properly implemented and that there is institutional capacity developed to support implementation.

The main objective of introducing impact assessment in Macedonia is to bring institutional change and to improve the policy process that would eventually lead to better implementation of policies. The policy impact assessment in the Republic of Macedonia is at its start-up stage. Some initial steps have been taken as the introduction of the Memorandum and the establishment of the institutional arrangements necessary for quality control of impact assessment. However, much remains to be done in order to develop an impact assessment system that will reflect the specificities of the country and to eventually make it sustainable.

Comparative experiences suggest that setting up a system for impact assessment, building it and integrating it into the bureaucratic and political structure requires will, imagination and persistence.

The next steps should include:

- Adoption of a legal act by which ministries should be required to do impact assessment for major reform policies. In the first stage, ministries should not be expected to do sophisticated quantitative techniques but rather to examine only the most important impacts and focus on the outcomes of the proposed policies/legislation;
- Development of “technical” knowledge and training for staff in the ministries who will be doing the impact assessments and who are most knowledgeable about the substance of the proposals;
- Development of capacities and technical knowledge at the General Secretariat to act as “quality control” and have a broader and more objective perspective

about the limited resources and trade-offs that have to be made among different demands;

- Development of manuals or handbooks describing the key impact assessment tools and instruments;
- Promotion of decentralised learning about the new approach for developing policies / legislation for all the staff who participate in policy development process;
- Promotion of the importance and usefulness of impact assessment among decision-makers to create awareness and demand for impact assessment.

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Annex 1

Questionnaire for Decision Makers

		Never	Almost never	Occasionally	Always
1.	Is the Memorandum the first paper you read in the package?				
2.	Is the Memorandum the only paper you read in the package?				
3.	Do you read the Memorandum?				
4.	Is information in the Memorandum detailed enough to help you make decisions?				
5.	Or too detailed when it should have been general?				
6.	Is information in the Memorandum sufficient to enable you to engage in discussions and make decisions?				
7.	Would you assess the Memorandum as a useful source of information?				
8.	Do you rely only on the information contained in the Memorandum?				
9.	Do you get a clear picture of what the proposer is trying to achieve?				
10.	Do you only rely on the information contained in the:				
	- Decision(s) required				
	- Options considered				
	- Main outcome of consultations				
	- Recommended option and rationale				
	- Cost of the recommended option				
	- Expected impacts				
	- Harmonisation with EU legislation				
	- Communication messages				
12.	Would you assess the Memorandum as a source of information useful in gaining political support?				
13.	Would you assess the Memorandum as a source of information sufficient to make sound budgetary decisions?				
14.	Would you assess the Memorandum as a source of information sufficient to explain and understand the problem being addressed?				
15.	In addition to the Memorandum, do you need to read the detailed information in the appendices to make decisions?				

Annex 2

Questionnaire for Staff in the General Secretariat and in Ministries

Please answer the following questions if you are an employee in the General Secretariat

1. Do you check the Memorandum with all proposals that you submit to the Government?

Yes	No

2. Is the Memorandum the first paper you read in the package?

Never	Almost never	Occasionally	Always

3. Is the Memorandum the only paper you read in the package?

Never	Almost never	Occasionally	Always

4. Do you check the contents of the Memorandum?

Never	Almost never	Occasionally	Always

5. Do you return the Memorandum to the proposer if the information is not complete?

Never	Almost never	Occasionally	Always

6. How would you assess the quality of the majority of Memoranda?

Poor	Average	Good	Very good

7. Do you get a clear picture of what the proposer is trying to achieve?

Never	Almost never	Occasionally	Always

8. Do you prepare your advice for the General Secretary only on the basis of the Memorandum?

Never	Almost never	Occasionally	Always

9. Do you often have to read the other supporting documents in order to draft your advice?

Never	Almost never	Occasionally	Always

IMPLEMENTATION – THE MISSING LINK IN PUBLIC ...

10. On average, how would you assess the quality of information provided by Ministries in the following sections in the Memorandum?

Decision(s) required

Poor	Average	Good	Very good

Options considered

Poor	Average	Good	Very good

Main outcome of consultations

Poor	Average	Good	Very good

Recommended option and rationale

Poor	Average	Good	Very good

Cost of the recommended option

Poor	Average	Good	Very good

Expected impacts

Poor	Average	Good	Very good

Harmonisation with EU legislation

Poor	Average	Good	Very good

Communication messages

Poor	Average	Good	Very good

Please answer the following questions if you are an employee in a Ministry

1. Do you prepare the Memorandum with all proposals that you submit to the Government?

Yes	No

2. Which section in the Memorandum do you find most helpful:

Decision(s) required	
Options considered	
Main outcome of consultations	
Recommended option and rationale	
Cost of the recommended option	
Expected impacts	
Harmonisation with EU legislation	
Communication messages	

3. Which section in the Memorandum do you find most difficult to prepare:

Decision(s) required	
Options considered	
Main outcome of consultations	
Recommended option and rationale	
Cost of the recommended option	
Expected impacts	
Harmonisation with EU legislation	
Communication messages	

4. Which section would you take out of the Memorandum:

Decision(s) required	
Options considered	
Main outcome of consultations	
Recommended option and rationale	
Cost of the recommended option	
Expected impacts	
Harmonisation with EU legislation	
Communication messages	

5. How many Sectors/Units in your ministry are involved in the preparation of the Memorandum?

Sectors	Units

6. Do you generally find that the Memorandum is a useful tool to check whether all stages in the policy making have been completed?

Never	Almost never	Occasionally	Always

7. Do you think that the Memorandum is not useful at all and only adds to your other work?

Yes	No

8. Did you have any training for preparation of the Memorandum?

Yes	No

Chapter 8

Reforms of Health Care Delivery in Slovakia and their Impact on Hospitals' Performance: Quality of Services and Quality of Financial Management

*Juraj Nemec**

Abstract

The chapter analyses changes in Slovak health care since 1989, with special emphasis on the performance of hospitals from the policy analysis perspective. It provides evidence that some of the changes that were realised did not improve health care performance indicators as positively as was expected and argues that although policy formulation is not without its problems in CEE, and Slovakia in particular, it is policy implementation that is the central failure.

There are more major factors impeding health policy implementation in Slovakia, connected both to the ideological and structural background conditions associated with the previous socialist system and with the conditions existing after 1989, which include political instability, the improperly regulated self-interests of the main players and some other factors.

Introduction

Our contribution consists of introductory and main sections, plus conclusions, drawn on macro and microanalysis of selected aspects of the given problem. The first two parts create a basis for further explanation, describing the general trends of the Slovak health policy and the ways in which these policies were incorporated into reform documents and implemented.

Three core sections focus on important public policy and public management issues. The first attempts to assess the outcomes of health reforms in Slovakia in two selected fields (quality of hospital services and quality of hospital financial management), searching for appropriate methods and techniques for monitoring the outcomes of reform implementation, including indicators that are, or could be, used. The second core chapter tries to find the answer to the question on why the outcomes are not very positive, at least from a short-term point of view. It seems that both policy formulation and policy implementation failed. Our findings support evidence from the practice of policy making, showing that the implementation stage is extremely weak in central and eastern European countries, but it must be said that policy formulation is not always of adequate quality either. The final core section attempts to identify some major factors which delay the successful implementation of reform policies.

Policy formulation: the main health reforms goals

The aim of the old system was to provide a comprehensive system of health care for all members of society. All decisions on medical provision were made by the

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Federal Government and the national Slovak Ministry of Health. They were generally made on political or administrative grounds and the only accountability was to the communist party. The main reason for the relatively low priority of health was a legacy from the Marxist-Leninist political economy. Drawing on Marx's distinction between productive and unproductive labour, the official ideology placed health in the second and less prestigious ideological category. This reinforced its position as a non-key sector and made its problems less urgent for policymakers. It also accounted for its relatively low wages and its overwhelmingly female labour force.

A second aspect of the planned economy that was to shape the structural aspects of post-revolutionary Czechoslovakian health care was the supply-constrained nature of the system. This had a damaging effect on quality, raising the importance of quantity above quality in plans, and led to producers being insensitive to consumers' wishes. Neither demand nor supply influences necessarily affected the output plans of institutions and, where exchange occurred, it was the suppliers who dominated.

Concerning health, the services were free at the point of use, but it was only after 1987 that patients had the right to choose their primary care providers, opticians and dentists. There were no economic incentives to improve systemic performance and, in general, excess demand prevailed. There were no attempts to reduce excess supplies or demands through either coordinated treatment scheduling, or pooling the resources of the different sectors of the health care system. Resources for health continued to grow, though at very modest rates, and in 1989 stood at roughly 5% of GDP, against an OECD average of about 8%.

From this starting point, which in many aspects was better than in other post-soviet countries, the Slovak government began massive reforms, focusing on maintaining access, increasing quality, improving outcomes (especially life expectancy) and controlling the costs of health care systems. The 1992 Slovak government statement could be used as a representative expression of the main goals (see Programme Declaration of the Government of the Slovak Republic, 1992):

“Government activities in the field of health care shall be based on the urgent requirements to stop the impairment of the state of health of the population. Based on the “health for all” principle, the essential element in our policy of public health is to afford health care for every citizen of our republic as required by his state of health, financially based on the principle of mandatory health insurance, with the state providing this obligation in the case of economically inactive citizens. The insurance system shall result in radical changes not only in the health care financing field, but will positively influence the physician – patient relationship.”

Trends to slightly redirect the Slovak health policies after 2002, (for example towards higher participation by the patient), were envisaged by Prime Minister Dzurinda's coalition government proclamation as follows (*Sme*, 5. 11. 2002, p. 2):

“The government focuses to stop increasing the debt of the system and balance its economy, on the basis of equal financial contribution (in real terms) from the state budget as in 2002. The access and flexibility of services delivered shall increase; the priority for the state will be expensive treatments that cannot be paid individually by the patient. The preventive aspects of the system, a shift to ambulatory care, home care, and same-day surgery shall be priorities. The law on health care shall define the scope of services financed via compulsory insurance; all other services shall be paid from voluntary insurance system”.

Policy implementation: the processes

The general trends of the health policy in Slovakia were defined by a Programme Declaration of Government and main reform documents (the first of which were published in 1990). The most important goals of the reform were health care for everyone, a guarantee of a “needed” scope of health care to everyone, the abolition of the state monopoly in health care, plurality of provision of health care, privatisation, an increased participation of self-government in the health care system, introduction of comprehensive compulsory (social) health insurance, multi-resource financing of health care and to stop an impairment of the health status of citizens. These goals did not change during the entire period, but in the later phase after 1995, health finance, combined with a necessity to balance costs and resources became an increasing priority and from 2004, additional new elements were incorporated.

Two of the most important reform dimensions were the development of an insurance system and privatisation. Slovakia introduced a system of social health insurance to replace the old general taxation system of finance. The main laws regulating health insurance were passed in 1994, laying the foundation for establishing thirteen health insurance companies. Most of these had disappeared from the “market” by 2002, leaving only five.

The privatisation of the Slovak health care system began in the middle of the 1990’s, mainly in out-patient care and pharmacies. The objective of privatising in-patient care was proclaimed several times, but by 2001 there were only three non-state hospitals in the country. In 2002, the management of hospitals was decentralised and some hospitals were given self-governing status. Only during 2003–2004 did some hospitals become non-profit semi-independent bodies.

In primary care, in 1995, the state system accounted for 58 % of expenditures; in 1996 for only 8 % and by 2001, 5 %. For pharmacies, the development was similar – the proportion in the state sector decreased from 97 % in 1995, to 5 % in 1996 and 3 % in 2001. The privatisation of specialised ambulatory care was slower, but already by 2001, the state sector accounted for only 26% of facilities (see Zajac, Pažitný, 2002).

The semi-radical shift after 2002 to limited marketisation of the system was concluded in June 2004, when the Health Minister, Mr. Zajac, prepared and sub-

mitted to Parliament a set of new health laws, expected significantly to change the system, by increasing the level of co-payments, the introduction of a commercial voluntary health insurance and changing health insurance companies into joint-stock companies. Each of the six draft laws were approved and became valid from January, 1st, 2005. Their impact on the health system in Slovakia will not be immediate and is difficult to predict. In the following we highlight their main principles (and do not discuss the pros and cons of the new legislation, because of the focus of our text).

The Law on the emergency service

This law is a less complicated new legal norm. It stipulates that every citizen has the right to rapid emergency service, available in 15 minutes at the most. The emergency service will be supplied by any legal person with a licence (respecting the public-private-civil sector mix principle).

The Law on health care and other health-related services and the Law on the scope and scale of health care financed by compulsory social health insurance and on the financing of health-related services

These two laws must be evaluated together. The first is the basic law and the second sets out the implementation rules. This new legislation incorporates into the health care system the principle of rationing: distinguishing between what will and will not be available free to everyone, by setting out the following structure of health services:

- A: Emergency health care – delivered to all those concerned, independent of an individual's ability to pay.
- B: Health care services, divided into two groups, as follows:
 - B1: Basic package of health services, fully covered from compulsory social health Insurance;
 - B2: Other health services, subject to co-payment by the patient;
- C: Health related services (accommodation and catering in hospitals, etc.), delivered for a fee.

The second law sets out the rules for reimbursement of the respective health services in a more detailed fashion.

The Law on health insurance

This law sets out the new rules for the health insurance system. For the first time, two layers of health insurance have been created:

- A: Compulsory social health insurance, providing insurance services according to specific health care legislation (the above mentioned laws).
- B: Individual (private) health insurance, providing insurance services according to the general business law (Business Code).

The social health insurance system is still defined in broad terms to maintain a guaranteed access of citizens to the basic package of health services. It is based on fixed rate contributions from employers, employees and from the state for economically inactive citizens (new, see below), and includes redistribution mechanisms according to risk (to prevent skimming).

The Law on health insurance companies

According to this law, all health insurance companies shall be transformed to shareholder companies, with 100% share of the state in two of them (General Health Insurance Company and Joint Health Insurance Company). The set of rights and responsibilities of insurance companies significantly increases, to allow them to function as real regulators of the health care system: most important, insurance companies are responsible for securing the minimum network of health facilities in their region and for contracting health providers.

The Law on health providers, health professionals and their professional bodies

This law enlarges the list of types of health providers (for example by including home care, one-day care) and sets the principles of a minimum network and provides for transformation of all health providers to non-profit or shareholder companies (no state health care providers are expected to exist after 2006).

Health reform outcomes and problems in their measurement

One of the most difficult public policy and public finance issues is the assessment of the level of success of any reform measure, to be able to discuss how the policy formulation and policy implementation processes worked. The NISPAce Working group II (www.nispa.sk) indicated in its call for papers, several crucial questions concerning this aspect, such as:

“What methods and techniques are available for monitoring the process and outcomes of implementation? Are there viable systems of indicators that are, or could be useful, in monitoring and evaluating implementation?”

In our contribution, we try to provide partial answers to this challenge, using two dimensions as the base: the quality of hospital services and the quality of hospital financial management in Slovakia and their trends, as two potential dimensions to evaluate what was achieved during the reform of the Slovak health care system 1990 – 2002 (real impacts of “marketisation” are not visible as of today).

We have to stress immediately that our view is only a short-term view. Respective reform measures were in force for a relatively short period and their long-term consequences may differ from the short-time perspective. However, relatively radical changes from 2005 represent discontinuity, preventing long term outcomes to occur.

Experts, but more importantly, politicians, constantly wish to show reform outcomes from their political (professional) point of view. Frequently, their opinions on the same problem differ dramatically. There is no chance of finding the same voice, as values differ, but some objective indicators might provide some room for comparisons. We will rely on such indicators in our following analysis.

Quality of hospital services

It is very difficult to assess the developments in the quality of care in Slovakia after 1989, as there are no available effective indicators. Even the term “quality” has many dimensions, preventing its unified use. In the following text we focus on two dimensions – the clinical quality of care and organisation of the patient’s quality of care.

Concerning the clinical quality of care, there have been significant and measurable quality improvements on the supply side. These have been mainly in the structure and quality of equipment available in health establishments and in the range of medicines available and used for treatment. After 1989, several barriers limiting the possibility of importing top “Western” technologies were dismantled and the regulations concerning what can be purchased and prescribed were weakened. Such trends delivered contradictory outcomes – on the one hand, there were improvements in the technical aspects of the quality of services but on the other, there was a relative “oversupply” of technologies and expensive drugs, which was one of the causes of the financial problems in the system.

Compared to positive technical developments, the trends in other aspects of clinical quality are more controversial but are, however, difficult to prove. In spite of its many promises, the Slovak government was not able to introduce a systematic medical and organisational audit of health providers, which would tell us more about how care is delivered. Only in October 2002, with the appointment of a new Health Minister, has the government been willing to accept that problems with the clinical quality of care exist and probably increase year by year, as a consequence of the persistence of many unsolved internal problems in the system (for example not only the low, de-motivating wages of the personnel, but also the non-existence of the required technical clinical standards). The case of the mistreatment of the Slovak President in 2000 (see Zajac, Pažitný, 2000) clearly showed basic weaknesses in the daily delivery of health care, but it was not used as an impetus for changes.

Trying to limit some health care quality problems, the Slovak Ministry of Health initiated from 2002, several actions to improve the situation, such as the creation of special units for patients’ complaints in the ministry and a promise to introduce medical standards for all levels of health care; in addition, known cases of mistreatment are immediately inspected by the Ministry. In most such cases, the responsible doctors were suspended and hospital departments were even temporarily closed.

To document existing problems in the clinical quality of care, two sets of indicators are used in our text. One of them is the increased frequency of reporting (by the media) on the misconduct of medical personnel when treating patients and the related increase in court cases suing medical professionals for mistreatment. In 2004, the media reported on 4 cases where the death of a patient was clearly caused by the hospital – the highest number ever. At the beginning of 2005, for the first time in Slovak history, a patient won his case against the doctor for mistreatment. However, these indicators do not directly prove that clinical quality is decreasing; they simply indicate an increased awareness of the problem (moreover, official longer sets of data are not available to define trends).

The second suggested indicator: the frequency and structure of patient's complaints, is common for the clinical and organisation aspects of quality – existing data prove that the level of dissatisfaction increases (for more detailed info on structure of complaints, see later text). The weakness of this indicator is connected to the problem of expectations in two ways:

- if there are no expectations, no claims occur,
- if there is an expectation that complaining will do no good, the number of complaints decreases.

There is some evidence to suggest that the organisational patient's quality of care is improving, but very slowly. Compared to the old system, there is a choice of provider, but the patient is still very far from becoming the central character in the system. In Slovakia, the document "Patient Rights" was prepared and published in 2000 and some establishments have not yet adapted this fully to local conditions. Queuing for treatment without the option of a precise appointment is typical with most providers, including private.

As mentioned, an important indicator of both clinical (see above) and organisational quality is the reactions from patients. As part of developing governance and an e-governance system in Slovakia, all patients now have the possibility of complaining about health care-related problems to the special unit in the Ministry of Health Care – the Unit for the Protection of Patients' Rights. The number and structure of such appeals is a warning, and shows that there are major quality problems that need to be solved. We have selected a few of the negative messages related to hospital care:

- complaints concerning the quality of care delivered
- lack of communication between medical personnel and patient
- non-professional behaviour of medical personnel
- lack of information provided to the patient
- "de-motivation" to complain by medical personnel
- illegal payments – to doctors and for certain services (labs, transport ...)
- doctors ask directly for sponsorships
- foreign patients were not allowed to check the price list and to consult the methods of treatment, etc.

Quality of financial management in hospitals: case of public procurement

Taken together, the governmental statements identify, as one of the main aims of transition, to improve the efficiency and the financial balance of the health finance system. Following this, two dimensions will be investigated:

- a) Is the health sector properly funded or under-funded?
- b) Do the providers (hospitals) perform in an effective and efficient manner?

Concerning the first question, there is no doubt that the system is underfinanced, at least from the point of view of the expected level of performance and the amount of resources allocated. The under-financing of the system at the beginning of the reforms after 1989 and the decrease in GDP as a result of transition, represent underlying factors lying of the financial problems. However there are also significant subjective factors, in particular mistaken reform design and implementation issues, that brought the system close to collapse and are worth discussing.

The health system in Slovakia depends heavily on public finance-based resources, part of them coming via the health insurance system and part directly from the state budget. The participation of patients in the form of direct payments or co-payment is still rather limited and much lower than in most developed countries. The total amount of resources is more or less directly limited by the performance of the national economy, which is far below the EU average (whether in nominal exchange rate or purchasing power parity terms) and in terms of total output it required about ten years to reach the level of the pre-transition period. The insurance premium was set at 13.7 per cent from an income related base (14% from 2002), but the state is expected to pay into the health insurance scheme for large groups of people with no regular income (for example, children and pensioners), representing some 3.5 million out of a total of 5.5 million inhabitants. However, the state contributed for this group of citizens at a very low level, setting the annual amount to be paid in Parliament, when voting on the state budget (up until 2004). In this procedure, the rules of the game seem to apply differently to the main actors. For example, the private sector has to pay at a fixed rate, but the state did not make its full contribution (at least 13.7% of the minimum wage) during any year from 1995 to 2001 and, as a consequence, the system was not provided with the stipulated and required resources.

With a limited amount of resources, the system promised until recently a “European level of quality of care, accessible equally to everyone” – see government proclamations at the beginning of the text. As reality is more important than wisdom, a deficit must occur.

Concerning the second question, we must emphasise that the efficiency and effectiveness of the providers’ aim has also not been consistently realised. By 2002, the hospital and insurance sectors in Slovakia were heavily indebted and several crucial and chronic weaknesses remained. Specifically: a low economic efficiency; a lack of evidence-based decisions; low relative pay and the linked labour retention problems; large drugs’ bills and insufficiently effectively managed

capital programmes, and a general under-development of preventive medicine. A shortage of funds led hospitals to proliferate the range of services (to earn more as performance reimbursement scheme was used) and to pay low wages. The drug bills exploded and the lack of overall control of the system led to inefficient capital investment programmes and insufficient resources were devoted to preventive medicine.

Table 1 provides basic data characterising the financial situation of health care systems in Slovakia. Data from this Table, especially the development trends of hospital expenditures, might be an important indicator of quality of financial management at both micro and macro levels.

Table 1
The Economic Performance of the Health Care System in Slovakia
(in billions of SKK)

	1996	1997	1998	1999	2000	2001	2002	2003
Health insurance system resources	35.4	38.4	41.4	43.0	45.3	49.6	57.0	58,6
Resources from the Ministry of Health	4.6	4.9	4.7	4.4	4.5	4.9	4.8	3,5
Resources from Social Insurance Company	1.0	1.2	1.3	1.3	1.0	1.1	1.2	1.1
Direct payments from inhabitants	2.6	3.8	4.1	5.4	5.9	6.3	7.0	9,5
Total resources	43.6	48.3	51.5	54.1	56.7	61.9	70.0	72.8
Primary care costs	4.3	4.5	4.2	4.4	4.7	4.9	5.1	X
Secondary ambulatory care costs	0.2	1.3	1.5	1.8	1.9	2.1	2.2	X
In-patient care costs	21.4	24.0	25.6	25.0	26.0	28.1	29.5	X
Medicaments and health aids costs	12.2	14.5	16.1	18.8	20.6	22.8	24.1	X
Other costs	1.1	3.4	5.0	4.1	6.9	7.7	8.0	X
Ministry of Health costs	4.6	4.9	4.7	4.4	4.5	4.9	4.8	X
Total costs	43.8	52.5	57.1	58.5	64.6	70.5	79.2	77,8
<i>Balance</i>	-0.2	-4.2	-5.6	-4.4	-7.9	-8.6	-9.2	-4,8
Deficit coverage	0.2	4.2	5.6	4.4	7.9	8.6	9.2	X
External debt	0.2	4.2	5.6	4.4	4.4	5.2	5.6	X
Privatization grants	0.0	0.0	0.0	0.0	3.5	3.4	3.6	X

Source: Nemeč, 2004.

The data show that in spite of the economic performance of the system and that the necessity to improve is on the Slovak Government's agenda, the real results are unsatisfactory. In Slovakia from 1997, the system systematically consumed 10-15% more than the available resources and this trend did not change in spite of many attempts to rectify it. Minor improvements in 2003 and especially 2004, such as the decrease in the total amount of drugs expenditures may represent positive signs, but it is too early to assess real trends resulting from the new reforms.

The reform team expected that new legislation and regulations issued after 2000 would have major positive impacts on hospitals' incentives to function effectively and efficiently, also by means of improved quality in the financial management

in hospitals (Table 2 describes the main indicators of the financial performance of hospitals). However, changes are very slow and not always visible.

Table 2
Performance of hospitals (nominal prices)

	1996	1997	1998	1999	2000	2001
Number of patients	1.055.757	1.090.672	1.109.210	1.059.533	1.063.611	n/a
Change %	2,6	3,3	1,7	-4,5	0,4	n/a
Costs, mld. Sk:						
Fixed costs	15,4	17,7	19,3	19,3	19,7	21,6
Variable costs	6,1	6,4	6,3	5,7	6,3	6,5
Total costs	21,5	24,1	25,6	25,0	26,0	28,1
Total costs – change %	x	12,1	6,2	-2,3	4,0	8,1
Revenues, mld. Sk	19,8	22,9	22,3	20,2	22,5	24,9
Balance, mld. Sk	-1,7	-1,2	-3,3	-4,8	-3,5	-3,2

Source: *Zajac and Pazitny, 2002*

To check a specific aspect of the reality in the current hospitals, our team, in 2004, supported by Transparency International Slovakia, undertook field research focusing on one dimension of financial management – public procurement. The results this research are a significant indicator of the real situation.

To analyse the situation, 15 medium-sized hospitals (Malacky, Galanta, Dunajská Streda, Levice, Komárno, Myjava, Považská Bystrica, Čadca, Dolný Kubín, Lučenec, Rimavská Sobota, Humenné, Levoča, Michalovce, and Trebišov) were selected. We focused on the organisation of public procurement, the structure of public procurement and an in-depth analysis of procurement in specified areas and on price benchmarking.

Concerning the organisation of public procurement, one hospital did not have qualified – certified – staff responsible for public procurement (a rule prescribed by the law). No hospital prepared or used the public procurement plan and an audit of public procurement outcomes was not undertaken. Public procurement processes in hospitals are not supported by effective software and the data is of a very low quality. The majority of hospitals have their own web pages, but procurement data and information are usually not displayed. Joint procurement and frame contracts are not regularly used. On the basis of these indirect indicators, we can conclude that the quality of the organisational system for public procurement in Slovak hospitals is very low. Concerning methods, the dominant method was direct purchase; only in a very few cases did a competitive selection of supplier take place.

The very important set of indicators for evaluating the quality of financial management in hospitals via public procurement processes are the outcomes. To evaluate them, we used simple benchmarking of final prices of goods and services procured, compared to standard market prices. This was the first time such an approach to evaluate public procurement was used in Slovakia.

Data obtained by benchmarking clearly indicate major differences between unit prices under which hospitals procure medicines, medical equipment, daily goods and services, and also show that the prices paid by hospitals to suppliers are many times significantly over the market level. The differences between hospitals cannot be, to a larger extent, assigned to different regional labour market and transportation costs, as there is no correlation between the level of unit prices and concrete local conditions (hospitals in similar environments perform differently). Table 3 indicates the scale of differences.

Table 3
Benchmarking – the scale of differences between hospitals

Hospital	Number of extreme differences	Average difference in %	Sum of rankings for all selected items procured
Čadca	2	3	7
Dolný Kubín	7	2	14
Levoča	5	4	14
Považská Bystrica	12	1	21
Michalovce	6	6	22
Rimavská Sobota	3	9	24
Dunajská Streda	1	7	28
Humenné	10	5	29
Lučenec	4	8	29
Levice	9	11	40
Myjava	11	10	40
Trebišov	8	12	44

All data concerning price levels were obtained from accounting books from hospitals and because of this, are somewhat reliable. Results clearly show that the quality of public procurement in hospitals, measured by outcomes, is very low. One concrete example might be used to document the current situation – the prices of pork meat for catering services (not out-sourced in any of the cases) were in some hospitals as follows (price paid by hospital versus price in nearby supermarket): 170,32 versus 151,00 Sk, 163,31 versus 130,00 Sk, 173,85 versus 159,00 Sk, 162,80 versus 139,90 Sk, 173,44 versus 149,00 Sk, 180,54 versus 145,00 Sk.

All information obtained by our team clearly indicates that hospitals procure in a non-transparent (also frequently do not use competitive methods for large scale procurements) and ineffective (hospitals pay suppliers more than necessary) way. This is not just because of a lack of skills, but is very much a more general problem, as is clearly visible from the statement of the director of the last performing hospital (according to our evidence) in Trebisov:

“The life of the patient is much more important than the Public Procurement Law. Our only concern is to provide the patient with maximum care”. The patient does not care about the procurement of medicine; he just wants his/her drug” (Správy STV, 3. 11. 2004).

However, without efficiency, the available resources cannot provide enough of the appropriate drugs to all. And hospital directors shall no longer only be medical doctors, as they are appointed to top managerial positions (a typical system, where a director delegates economic management of the hospital to another responsible person, is not a reality in Slovakia).

Wrong policy or wrong implementation?

Without much doubt, we may conclude on the basis of the indicators used, that the first decade of health reforms in Slovakia did not bring about sufficient positive outcomes. The quality increased only in certain aspects, mainly because of more resources and the financial management is perhaps even worse than in the old regime. It is too early to predict the future after the major changes that have taken place at the beginning of this century.

Taking this situation into account, we may ask the question in the title of this section. If the policy is already improperly formulated (or not effectively formulated at all) it is very difficult to achieve positive outcomes. When implementation fails, policy-making loses its purpose, mission, credibility and effectiveness. Evidence on the practice of policy making shows that both stages: policy formulation and policy implementation are extremely weak in central and eastern European countries.

Concerning our case of the Slovak health care reform, we are able to provide some evidence showing that the problem is connected to the policy formulation phase and that the implementation was unable to cope with the original failures it started out with. This merely increased the scale and the scope of the problems.

Example of questionable policy and wrong policy implementation: introducing health insurance in an inappropriate regulatory environment

One of crucial issues of the reform was the idea of replacing the former general taxation-based model of financing of health care by a new social health insurance model. This change was supported by typical arguments about plurality, independence and competition as the main factors stimulating positive changes in the system. Such an idea could be the subject of many objections by the general economic and health economics theory, especially during the transitional period, which we will not discuss now (for details, see for example Nemeč and Lawson, 2003). The crucial issue is that the basic preconditions for an insurance market to work were not created, either by the reform contents, or especially by policy implementation. As we show in the following text, the regulatory environment for the new system did not develop properly and thus limited the chance for effective, but managed competition and therefore one of the potential solutions for how to deliver public services, was undermined.

Plurality and competition

In Slovakia, Parliament lays down the level of insurance payments in relation to wages. The influence of the state on insurance companies does not stop at parlia-

mentary finance votes. The Ministries of Finance and of Health determine most aspects of companies' payments, from the structure of the reimbursement system to the point values of all medical services and set the maximum level of administrative costs. Furthermore, the Slovak Parliament also decides on the level of the state's contribution for economically inactive citizens, representing an important part of insurance funds.

The level of equalisation between insurance companies was the subject of a permanent fight between the different actors in both republics, involving frequent changes in the system, but ending with 100 % equalisation in Slovakia from 1999. The financial, especially reimbursement rules, changed almost every year (Table 4).

Table 4
Reimbursement Systems for Providers in Slovakia

Date	Primary ambulatory care	Secondary ambulatory care	Hospitals
1.1.1993	Per capita	Fee for service	Differentiated price per treatment day
1.4.1993	Point system	Point system	Point system
1.5.1994			Lump sum
1.7.1994			Differentiated price per treatment day
1.9.1994	Per capita		
1.4.1995	Combined system		
1.4.1997			Differentiated price per treatment day, change of basis
	Per capita		Budget
1.1.1999		Fee for service with upper limit	
1.5.1999			Prospective budget
1.6.2000	Per capita based on age		Maximum price
1.1.2002	Per capita combined with fee for service		Service contracts

Source: Zajac, Pažitný, 2002.

The impacts of such tight regulation of freedom of the insurance system are straightforward. The change saw a proliferation of companies, followed by rapid consolidation and final domination by a single player – the Slovak General Health Insurance Fund (SVZP). By late 1995, twelve insurance companies were operational in Slovakia, including the SVZP and separate companies covering the Ministry of Internal Affairs, the railways and the armed services, corresponding to their previous separate health care systems. However, the situation changed rapidly. In Slovakia, both government and economic pressures led to a fall in the number of competing companies. Basically, the eleven non-general companies were cherry-picking, that is, segmenting the market. The SVZP ended up with 75 % of patients, but with the least attractive from a medical and hence, profitability viewpoint. After several bailouts, by early 2002, the system had been reduced to only five companies. To remove the impact of cherry-picking, once the companies have collected their contributions,

all of the funds are pooled and redistributed according to the company's clients' age and sex profile. In effect, competition has been removed.

Independence

Depending on the legislation covering the regulation of the companies, the insurance-based system multiplied politicians' possibilities for intervention. Such a path was frequently chosen by the Slovak Parliament, which has repeatedly used its powers of intervention in an unwise manner. For example, under the Act No. 374/94, Parliament determines the annual payments to the insurance system for two-thirds of the population, who are either civil servants or are inactive. From 1995, Parliament withheld significant amounts of those payments for no discernable reason, forcing the health care system to delay payments and waste resources in lobbying politicians for their release. By subsequent legislation, the private sector lost any real legal chance to be repaid for "compulsory crediting" of health establishments, in the form of non-paid invoices for delivery of goods and services to the health sector.

Selected main factors of the limited success of policy formulation and implementation in reforming the health sector in Slovakia

More factors might be found in Slovakia, limiting the chance for successful policy formulation and successful policy implementation in the area of health care reform. We mention some of them in the following.

Limited skills of policy designing and self-protective behaviour

Concerning effective policy formulation, there is no doubt that there was a real lack of general and specific expertise to set effective health reform policy. Those responsible for the reform were mainly medical doctors, with limited economic backgrounds, and in some cases were protecting the interests of the medical profession.

Political instability

Concerning policy formulation, but also policy implementation, another factor is worth mentioning. From 1989 to 1998, Slovak governments have been mainly unstable and have been generally short-lived coalitions of different political groups. With real time constraints and non-continuity, the chance for successful reform is more than limited.

Voter's opinion

An important factor, influencing both policy formulation and policy implementation, is voter's preferences. And in a world of drastic economic and political change, it is not surprising that only a minority of the Slovak electorate has shown any taste for significant social changes. In late 1994, the Focus polling agency recorded that at the point of independence in late 1992, whilst 41 per cent of respondents thought that "radical changes of society" were necessary, 46% thought that only

“small changes” would suffice (see SPACE, 1995). Radičová and Potůček (1997) go as far as arguing that health care professionals have, in effect, “captured” the Health Ministry to promote their interests.

Economic development and economic interests of the main players

Lack of resources might be predominantly connected to the policy implementation phase, but has some origin already in policy formulation. From an economic point of view, as has been mentioned several times in our text, because of a relatively low level of GDP per capita and large expectations, Slovakia has to cope with an important problem – the problem of the discrepancy between “needs” and resources. The Slovak health care system heavily depends on public finance-based resources, when the participation of patients in the form of direct payments/co-payment is still rather limited and much lower than in most developed countries, but its structure prior to 2004 was not designed to cope with this limitation. On the contrary, it created the following system of main players, contradictory to the main financial goals of the health care sector:

- A: Hospitals (health establishments) – not constrained by hard fiscal discipline, their management has enough space to channel part of their finance to private pockets.
- B: Medical doctors – not constrained by hard financial discipline, can do what they want, produce suppliers-induced demand in all dimensions (extra treatments, extra equipment, extra drugs, etc.). Have enough space for shadow incomes.
- C: Politicians – by allowing extra resources “satisfy” the needs of their voters.
- D: Bureaucrats – with extra resources they have more power.
- E: Patients – who may receive and appreciate better (more expensive) drugs or treatments.
- F: Insurance companies – unable to control the system and its finance, because of the improper regulative environment.

Conclusion

The Slovak health care after 1989 was affected by a set of reforms of a different character, with the goal to transform it into a modern European, solidarity-based and economically good performing system. However, the changes undertaken did not improve the important health care performance indicators as positively as was expected – we have highlighted some of the aspects of this problem in our text.

Looking at the main reasons behind the limited success of reforms, we may argue that although policy formulation is not without its problems in CEE and Slovakia in particular, it is policy implementation that is the central failure. In Slovakia, we show this by examining quality assurance and financial management in the health care delivery system. There are other major factors impeding implementation in Slovakia, connected both to ideological and structural background conditions associated with the previous socialist system, and with the conditions

after 1998, including political instability, improperly regulated self-interests of the main players and other factors.

It should be emphasised that some problems, especially those related to need, versus demand for health care, are mainly problems of policy formulation and design, not implementation. However, if it is politics rather than policy that are the main determinant of the reform contents, inefficiencies are inevitable.

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Chapter 9

Comparing Experiences of Introducing an Impact Assessment Requirement to Draft Legislation in CEE: The Case of Slovakia, Hungary and Estonia

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Abstract

The study in this chapter is the first evaluation of the quality of draft legislation proposals to the Slovak, Hungarian and Estonian governments in terms of the analysis of occurrence and quality of referrals to impact assessment-related information. The starting point is determined by observations showing several malfunctions in central regulatory roles. The study is based on a normative content analysis of a sample of government-initiated draft laws and their explanatory memoranda that are submitted for Government consideration during the period after EU accession (1 May – 31 December, 2004). The report evaluates the quality of information on impact assessment against a benchmark identified by best practice of OECD countries and most importantly, against a recent Draft Paper of the European Commission – *Impact Assessment: Next Steps*.

The results indicate that the normative frameworks in Slovakia, Hungary and Estonia have introduced the requirements of assessing possible effects of draft legislation in four main categories: social, fiscal, economic and environmental. However, the system of knowledge based draft legislation is not yet fully developed and mostly the ministries do not include any substantive or analytical information in those sections of the memoranda which would reflect the preparation and real reasons of the draft proposal. Most of the draft laws reviewed have only a formal approach towards the assessment of impacts with the aim to formally comply with the requirements.

Introduction

The diversity of legal cultures, the need for knowledge-based policy and for standardisation of draft legislation and impact assessment (IA) practices is a widely discussed issue in the European administrative space. Since the 90's both OECD and EU institutions are developing *good governance* standards, which are less dependent on national legal culture and socio-economic differences. The recommendations for the implementation of IA methods have been documented in many reports and agreed by the EU institutions and Member States, to increase the effectiveness of common regulatory policy and harmonise conditions for the knowledge-based democratic public policy. From an academic point of view, those initiatives are faced with many empirical and interpretative research questions, e.g. which kind of liberal, egalitarian or utilitarian criteria should be used and how to measure the implementation of highly interdisciplinary IA methods at both national and supranational levels.

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In most European countries, the analytical information on social, budgetary, economic, environmental and administrative objectives and impacts of proposed legislation has to be given in an explanatory memorandum (note, letter) accompanying a draft law. The explanatory memoranda of the draft law is (has to be) a normatively structured legal document, which includes the results of IA and public consultations. Analysing the ideas and results of former national studies on the use of IA and consultation methods in draft legislation, the authors decided to develop a methodology for an international comparative study and this draft paper is the first description of its theoretical framework, methodology and preliminary results of pilot studies in two new EU member states. The samples of national pilot studies include the draft laws proposed by ministries to the Cabinet meetings from May 1 2004 to December 31 2004 (Slovakia – 93 draft laws, Hungary – 58 draft laws and Estonia – 86 draft laws).

On May 1, 2004, the eight candidate countries of Central and Eastern Europe obtained full membership of the European Union (EU). In the course of the accession process, these countries were preparing themselves for EU entry, particularly by harmonising domestic legislation with the *acquis communautaire*, meeting the criteria for EU entry and the related reforms in the public and private sector. All these countries, including Slovakia, Hungary and Estonia, seem to have met most of the formal criteria for EU accession and now they are facing regulatory management capacity problems in terms of the institutionalisation and implementation of impact assessment and public participation methods in the everyday work of all ministries.

EU member states are not only subject to formal binding legal norms of the EU, but also adhere to some ‘soft laws’ and standards concerning professional and efficient governance of public policy. In practice, this means that recent and new candidate countries should not only focus on the content of the harmonised legislation, but, above all, on the quality manner of policy making, which would comply with the principles of democratic and efficient governance. Most past studies assume that the availability and use of information from the assessments of the impact of proposed legislation leads to changes in the outcome of policy-making and should improve the efficiency and legitimacy of any policy- and law-making system due to the factual efficiency provided by adequate information. According to both OECD and EU intergovernmental agreements, a system of *ex ante* IA – the projection of the likely effects of a range of proposed programs or regulations (e.g. draft laws) – is an integral part of good government practice. Social, economic and environmental IA is now becoming an obligation for policymakers in all EU countries¹. It is, as such, an integral part of the policy designing process and allows politicians to take their decisions in the light of the best available evidence.

1 European Commission introduced so called ‘better regulation package’ in early 2002, see more on Impact Assessment Website: http://europa.eu.int/comm/secretariat_general/impact/pol_en.htm; OECD (1995) Recommendation on Improving the Quality of Government Regulation; and (1997) Policy Recommendations on Regulatory Reform; and (2005) OECD Guiding Principles for Regulatory Quality and Performance – see: http://www.oecd.org/document/38/0,2340,en_2649_37421_2753254_1_1_1_37421,00.html

The quality of social, economic, fiscal, environmental and administrative information offered in the explanatory memoranda of the draft laws (by way of public service) is an important precondition for knowledge-based policy debate, participatory democracy and administrative capacity. However, on the contrary, the lack of systematic impact assessment [IA], transparency and surveillance, have, in their turn, created favourable conditions for the initiation of draft laws which may involve high social, economic and environmental risks during the implementation phase.

The present paper proceeds from a simple thesis that the problems of administrative capacity and legitimacy of public policy often arise from the shortcomings of IA and law-drafting. Considering the experience of OECD and EU Member States in the 90's, there is no reason to think that good governance practices will start to function without political and administrative commitment in the implementation of IA methods, methodological guidelines, systematic training and basic surveillance mechanisms.

The tools for rationalisation and democratisation of policy making, provided by IA methods, are quite new and variously interpreted in most ministries and governmental agencies in Europe. We can also see a "wide gap" between the constitutional principles (democracy, equal treatment etc) based on modern social theory and the practical decision-making of ministries and the political parties behind them.

The comparative empirical study of explanatory memoranda (and information on IA contained in them) of the draft laws presented in this paper has the following objectives. First, to look at and compare the national legislative frameworks introducing IA into individual country jurisdictions; second, to measure to what extent the initiators of draft laws follow the normative requirements for draft legislation to include impact assessments, reflecting the use of IA methods and consultations with NGOs; third, to assess the availability and transparency of socio-economic, fiscal, environmental and organisational information for parliament and for the public and finally, to create an empirical overview as a platform for different qualitative socio-legal analyses and in this way promote the public debate on better regulatory policy and good governance. This may foster public debates and the improvement of legislative processes and also parliamentary surveillance.

However, the quality of social, economic, environmental, fiscal and administrative information required in the draft acts explanatory memoranda is only one component of wider problems linked to democratic knowledge-based public policy, law-drafting and administration. The first part of the draft paper will review some theoretical frameworks, terms, EU/OECD political concepts on IA and the role of explanatory memoranda of draft laws in policy processes. The second part of the draft paper will look at the methodology of the cross-national pilot study and provide the comparison of legal frameworks in Hungary, Estonia and Slovakia, as well as preliminary results of content analysis of draft laws explanatory memoranda.

PART I: THEORETICAL CONSIDERATIONS

1. The Role and Function of Explanatory Memoranda of the Draft Act vis a vis Implementation

The former studies show that in most European countries, the IA of draft acts (laws) is required according to the normative regulations, based on some constitutional law and this has to be made available to parliament and the public as a part of the explanatory memoranda, motivation reports, letter etc. Also, in most countries, the results of IA are partly or fully accessible to the public via Internet and/or public libraries. It means that the interested parties have the possibility to assess the adequacy of IA-related information provided by the responsible ministry in the explanatory memoranda of concrete draft acts (Kasemets, 2001).

The content and structure of explanatory memoranda accompanying a draft act is important for many reasons. The text of an act/law can rarely be read and understood in isolation from the socio-economic and political context in which it was created. In order to fully understand the politically grounded legal text, the reader will need to know its background, purpose and expected measurable social, economic, environmental and budgetary consequences. Explanatory memoranda can provide the necessary knowledge and can be a useful source of information during the three phases of the legislative circle:

A. The preparatory phase. In this phase, explanatory memoranda serve as a basis for discussions on both the political and public level. All politicians and NGO-s must have access to all relevant information concerning the draft act before the readings in parliament. Such information about the purpose and possible consequences (results of IA) of the draft act, if adopted, can be made available in explanatory memoranda.

B. The implementation phase. Following the act's adoption and entry into force, explanatory memoranda can contribute to public understanding of the law and, to a certain extent, they can serve as interpretative guidelines also for administrative authorities, firms, NGO-s, courts, etc, who apply the act/law.

C. Monitoring and parliamentary and civic oversight of the implementation of acts/laws. The oversight of government and other authorities is one of the main functions of modern parliament (it is especially the task of the opposition parties) and this function is closely related to the capacity to monitor, regulate and make legitimate processes in the public sphere. After parliamentary debates and adoption of an act, an important task for both ministries, parliament and local authorities remains, namely, to ensure that the law functions as intended. This includes an *ex post* IA of the consequences of the act and whether the chosen instruments continue to be relevant, despite possible changes in society. These deliberations should lead to a discussion on possible changes to the act, if the socio-economic, environmental, budgetary and/or organisational indicators are measurable and the

ex post IA is showing clear evidence of political and/or analytical failure². [In the framework of deliberative democracy, the improvement of the realisation of the *civic surveillance* (e.g. NGO-s, universities etc) over the executive and legislative power with the help of substantial IA information, is one of the crucial future tasks to be carried out in the implementation of national and international acts].

Most past studies assume that the availability and use of IA information leads to changes in the outcome of policy-making and should improve the efficiency and legitimacy of any policy- and law-making system due to the factual efficiency provided by adequate information. Based on earlier studies, the main assumption is that the majority of draft laws (e.g. explanatory memoranda) in CEE countries are not in accordance with the legal requirements for draft laws that structure information on the use of social science information, consultations and the comparative analysis of both national and EU legislation. This assumption included the following meanings: a) the principles of legal state and good governance (legality, equality, transparency, accountability etc) are not followed in required level; b) CEE countries observed may have quite a good and well-structured normative basis for draft legislation, but these good law drafting principles are not yet fully internalised in organisational norms; c) access to the information on impacts of draft Acts is not guaranteed to MPs and interest groups of draft Acts; d) lack of information on IA decreases the effectiveness of parliamentary work and public debates and may create different administrative, budgetary, social and even legal or political problems in the implementation stage of adopted laws (Kasemets 2001, Staronova 2003; Zubek 2004).

2. Study Design and Methodology

Both academics and institutions such as the European Commission and the OECD are currently debating what the dimensions of IA quality are, and how to measure them. Radaelli (2005) distinguishes between two approaches to the measurement of quality: indicators and tests³. In both approaches, the main aim is to introduce quality assurance mechanisms that would increase the validity, reliability and other properties of quality. Hahn et al (2000) on the other hand, has developed a scorecard where he questions key assumptions and assesses the appropriateness and application of models used in particular analyses. In this chapter, the research will take yet a different approach and will focus on the quality of information on IA from the perspective of a key stakeholder – the decision-maker (politician) who should decide on the appropriateness of a certain policy upon the information contained in the explanatory memoranda attached to draft laws. The IAs are not judged by their validity, truthfulness or appropriateness of assumptions and methods used,

2 The quality of IA is in great extent dependent on the data collecting strategies and data available – see also Deighton-Smith (1997)

3 The construction of indicators follow the IA dimensions of ‘process’, ‘activities and output’ and ‘real world outcome’, whereas the tests look at ‘contents’, ‘outcome’ and ‘function’. These approaches are not necessarily mutually exclusive (Radaelli, 2005).

but simply by a) the existence of certain information contained in the explanatory memoranda and b) by indicators of quality of the information.

The research focused on in this paper considers only the explanatory memoranda of draft laws and legal amendments that became laws. It omits all other material that goes for discussion to the government sessions, such as law intention, concept papers, information, action plans, bilateral agreements and loans. The reason for this focus is twofold. First, most of the policies in CEE countries take the form of a legal document which is binding to all subjects in the country. Thus, draft laws and amendments usually have significant impact on the lives of citizens. Second, it is the legislative process that is formally regulated rather than policy process, which again allows the author to evaluate the degree of compliance with national and international standards⁴. The initiators of the draft laws and amendments are mostly ministries (approximately 80% of the cases in all three countries) so the authors indirectly assess the capacity of the administration by evaluating the outputs. Thus, draft laws and amendments initiated by members of parliament or other state agencies, are not taken into account. Draft laws debated more than once within the Government are calculated as one, simultaneously taking the characteristics of all materials into account.

The research is organised in three stages. Stage one focuses on the description and analysis of normative frameworks and requirements in terms of impact assessment (i.e. the institutional preconditions for IA and public participation in public policy- and law-making processes). The second stage introduces the normative content analysis of explanatory memoranda of all ministerial draft laws that were passed by the Cabinet in the given period (1 May – 31 December, 2004). The main focus of this stage is to determine the type and quality of information on impact assessment present in the explanatory memoranda of draft laws. In the third stage (beyond the consideration of this chapter), in-depth interviews will be conducted with civil servants at the ministries to reveal the factors that led to any drawbacks or successes in the findings during the second stage. The results of the second stage of the study – normative content analysis – are grouped according to certain groups and categories and presented in a table format (see Box 1 for more details). The interpretation of the results follows.

Box 1

The organisation of the study⁵

1.1. – 1.3. Existence and extent of IA

The first grouping looks at the existence of impact assessment within explanatory memoranda and the extent of its elaboration.

4 Staronova, K. (2004) offers in her study a discussion on the institutionalization and practice of the policy process stages, arguing that only the stage of policy adoption is formalized in the form of the legislative process.

5 This part heavily relies on the Mandelkern Report (2001).

1.1. No IA attached

IA cannot be found in the explanatory memoranda of draft laws. This classification indicates that there are no statements and/or other information available in the explanatory memoranda on impacts/changes in given five categories (1.1. – 1.5.)

1.2. Formal IA

IA information is found in the explanatory memoranda. However, this takes the form of statements either in verbal or quantitative form without related facts or evidence. The main criterion in this category was the provision of any logic or evidence on how the originating ministry arrived at the statement / quantified figure. If this information or evidence could not be found, then the IA was codified as formal, since information such as: “there is probably no impact”, “there is some/enormous/little impact”, “there is positive/negative impact”, or “there is no direct impact” has a rhetoric value, regardless of whether the statement is true or false. Similarly, if some basic figures or data are provided, however, without showing how this figure has been achieved, it fell under this category.

1.3. Real or Substantial IA

IA is found in the explanatory memoranda and evidence is provided. The information on the logic and evidence can either be traced, or there may be signs of the utilisation of IA scientific methods (even if these are only primary indications and in one segment of IA only). The most important selection criteria for this category are the real existence of evidence on one or more impacts/changes in the fields/relations to be regulated, and also whether the text of explanatory memoranda contain anything beyond the explanation of the juridical text of draft law and predictions based on intuitions.

a) Partial IA exists

Less than 2 categories from 2.1 – 2.5 types of IA are provided (fiscal, social, economic, environmental and administrative)

b) Complex IA exists

More than 2 categories from 2.1 – 2.5 are provided.

2.1. – 2.5. Types of IA

The European Commission is currently looking into a systematic application of IA, regardless of the originating DG (or ministry at national level), by integrating social, economic and environmental IA⁶. As fiscal and administrative burdens of regulations are a standard approach to IA, these categories are also included

2.1. Social impact /changes

Identification of target groups and their socio-economic situation, influence on labour market, health and gender issues or social services provision (ranging from education to health and so on) for certain vulnerable groups in society. It also

⁶ The terms Economic IA and Administrative IA are in some extent comparable with OECD (1997) terms economic regulation and administrative regulation, but in this study the context of target groups and –fields is prevailing.

<p>includes impacts on human capital, fundamental/human rights, compatibility with the Charter of Fundamental Rights of the European Union, changes in employment levels or job quality, changes affecting gender equality, social exclusion and poverty, impact on health, safety, consumer rights, social capital, security (including crime and terrorism), education, training and culture etc.</p>
<p>2.2. Fiscal, budgetary impact/changes</p> <p>It looks not only at the impacts on budgets of the state, municipalities or other self-governments or agencies in the country, but also at overall financial risks and consequences, taking into account financial sustainability and affordability. Even in cases where the financial implications are minor, a minimum amount of information should be supplied. Ideally, fiscal IA includes estimates of costs for each option on a multi-year basis, implications for the institution's budget, revenue impacts and possible off-setting savings, and an analysis of risks, and impacts on the fiscal plan.</p>
<p>2.3. Economic, businesses impact /changes</p> <p>It looks at the effects on markets, trade and investment flows, direct and indirect costs for businesses, impacts on competition and innovation, effects on the labour market and on the functioning of the Internal Market, consequences for households, impacts on public authorities and budget expenditure, impacts on specific regions or sectors, effects on third countries and international relations, macro-economic impacts etc.</p>
<p>2.4. Environmental, sustainability impact/changes</p> <p>It judges the likely hazards and consequences that may affect the general ecological environment (water, waste, air, soil pollution, land use change, bio-diversity loss, and so on) and climate change. It also considers the effects on specific groups. Indicators of sustainable development, energy saving etc. are also observed.</p>
<p>2.5. Organizational/ administrative impact/changes</p> <p>It considers the various administrative changes and activities that need to be brought about when adopting the policy (for example, training). Also, questions on implementation of the draft law and design of public services are considered.</p>
<p>3. References</p> <p>References for the conduction of IA and used/ordered studies, analyses, databases, reports etc.</p>
<p>4. Consultations</p> <p>Consultations with interested and affected parties, internal and external of the government. This category will specifically consider who has been involved in policy planning and the draft legislation processes, as well as how they have been involved (in addition, groups of civil servants within the originating ministry). Concrete names of organisations and their representatives are noted and focus is</p>

also on the proceedings of proposals made by external bodies (both private/business and third sector).

- a) Representing the public sector (governmental, subordinated agencies, self-governments, etc.)
- b) Representing the private sector (e.g. businesses and their associations)
- c) Representing the non-profit / third sector organisations, associations and networks
- d) Representing independent experts (scientists from universities, local or foreign experts, etc.)

Most past studies assume that the availability and use of IA information leads to changes in the outcome of policy making and should improve the efficiency and legitimacy of any policy and law-making system due to the factual efficiency provided by adequate information (Kasemets 2001, Staronova 2004; Zubek 2004). Based on earlier studies, the main assumption is that the majority of draft laws (e.g. explanatory memoranda) in CEE countries are not in accordance with the legal requirements for draft laws that structure information on the use of social science information, consultations and the comparative analysis of both national and EU legislation. This assumption included the following meanings: a) the principles of legal state and good governance (legality, equality, transparency, accountability etc) are not followed at the required level; b) CEE countries observed may have quite a good and well-structured normative basis for draft legislation, but these good law drafting principles are not yet fully internalised in organisational norms; c) access to the information on impacts of the draft Acts is not guaranteed to MPs and interest groups of draft Acts; d) lack of information on IA decreases the effectiveness of parliamentary work and public debates and may create different administrative, budgetary, social and even legal or political problems in the implementation stage of adopted laws.

PART II: RESEARCH RESULTS

1. Comparison of legal frameworks for IA in Slovakia, Estonia and Hungary

Impact assessment is prescribed and has to be performed in an *ex ante* way before making any proposals for a draft law in each observed country. Each legislative system sets some requirements for the details of the compulsory content of explanatory memoranda attached to draft laws. The legal and administrative practices associated with the use of IA methods, however, vary considerably between the two countries as the content and socio-economic purposes of legislation remain closely related to problems to be solved through policy planning and legislation in the particular context of each country. In the broader context, there is also a significant variation in definitions and IA methods used in different ministries of the same country. Therefore, it is important to note that the first comparison of

pilot studies can be rather general in its nature and authors are attempting to offset it with a stronger interpretative approach.

The general legal framework of law drafting and use of IA in the pilot countries includes the IA and consultations' related requirements, but we can also say that those requirements are mostly quite general and formal and consider mostly nomo-technical preparation of material (laws). In Hungary, Estonia and Slovakia, the preparation of material for government sessions is guided by documents, setting the general requirements for presenting the assessment of possible impacts of draft laws in a legislative process. However, only in Estonia one of the driving forces for including impact assessment in the legislative processes was Parliament, where the Board of the Estonian Parliament, *Riigikogu*, adopted "The Rules for Draft Legislation in the Legislative Proceedings of *Riigikogu*" in 1993, and updated in March 2001 (see box 2).

Box 2
Legal framework for IA in Slovakia, Estonia and Hungary

	Slovakia	Estonia	Hungary
1. Law, statute etc adopted by the Government and/or Parliament, which is regulating the principles and procedures of impact assessment [IA] and consultations.	<p>Government Decisions</p> <ul style="list-style-type: none"> - Legislative Rules of Slovakia 241/1997 (amended as of November 2001) - Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic (No. 512/2001) <p>Laws</p> <ul style="list-style-type: none"> - 1994 (2006 new law) Environmental Impact Assessment Act - 2000 Free Access To Information Act 	<p>Government Decision</p> <ul style="list-style-type: none"> - Rules of the nomo-technique of drafts of legislative acts from 1996, (amended as of September 1999) <p>Parliament</p> <ul style="list-style-type: none"> - Rules for Draft Legislation in the Legislative Proceedings of <i>Riigikogu</i>' from 1993 (amended as of March 2001) <p>Laws</p> <ul style="list-style-type: none"> - 1995 (2005) Strategic Environmental Impact Assessment - 2000 Public Information Act - 2004 Administrative Proceedings Act 	<p>Government Decision</p> <ul style="list-style-type: none"> - Governmental Resolution No. 1088 of 1994 on the Governmental Procedures <p>Laws</p> <ul style="list-style-type: none"> - Act XI of 1987 on Legislation - Act LIII of 1995 on the General Rules of Environmental Protection (concerning environmental legislation)
2. Legal/normative requirements to present the information on IA and consultations in the explanatory memoranda of draft law (see Table 1 for more detailed explanation of individual categories)	<p>2 Government decisions:</p> <ul style="list-style-type: none"> - Legislative Rules of Slovakia 241/1997 (amended as of November 2001) - Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic (No. 512/2001) 	<p>Government Decision</p> <ul style="list-style-type: none"> - Rules of the normative-technique of drafts of legislative acts from 1996, (amended as of September 1999) 	<p>Law</p> <ul style="list-style-type: none"> - The Act XI of 1987 on Legislation - Governmental Decision No. 1088 of 1994 on the Governmental Procedures

Comparing Experiences of Introducing an Impact Assessment Requirement ...

<p>3. Explanatory Memorandum Components</p>	<p>1) Cover; 2) Report of Submission (rationale, summary of goals, summary of IA, summary of opinions gathered, rationale for classification if any; 3) Draft Law; 4) Impact Assessment (fiscal, economic, environmental, employment) 5) list of consulted bodies and opinions gathered 6) statement of conformity with EU legislation 7) Opinion of Ministry of Finance and Economic and Social Council of Government; 8) Communiqué</p>	<p>1) introduction; 2) purpose of the draft; 3) content and comparative analysis of the draft; 4) terminology of the draft law; 5) statement of conformity with EU legislation; 6) effects and impacts of the regulation; 7) expenses necessary for the implementation of the regulation; 8) opinions gathered; 9) implementation acts of the regulation; 10) enforcement of the draft.</p>	<p>I. List of consulted bodies, indication of agreement – remarks – disagreement in each case. II. Executive summary: 1) summary; 2) relation to the program of the government; 3) historical considerations; 4) expected professional impacts; 5) expected economic impacts; 6) expected social impacts; 7) relations to other proposals; 8) existing points of debate; 9) press release; 10) other remarks. III. Proposal for the acceptance of the draft (IV. The draft itself) V. Background material – if relevant.</p>
<p>4. Coordination and quality control unit (at Government office or ministry)</p>	<p>In general, Legislative Council of the Government (at Ministry of Justice), however, not specifically for IA</p>	<p>In general, Ministry of Justice, however, not specifically for IA. Existence of self-assessment quality control check.</p>	<p>Ministry of Justice, RIA unit</p>
<p>5. The initiator of draft law is responsible to guarantee the IA information in the explanatory memoranda or other documents accompanied to the draft law</p>	<p>Originating ministry or agency</p>	<p>Originating ministry or agency</p>	<p>Originating ministry or agency</p>
<p>6. Existence of manuals and guidelines for IA and public consultations</p>	<p>Environmental IA information leaflets and video since 2002 (mostly on project EIA rather than draft legislation EIA)</p>	<ul style="list-style-type: none"> - Since 1992 the civil servants in different ministries have been taken into use different translated guidelines. - two handbooks on law-drafting in Estonian (e.g. quite general part on IA) published by Estonian Law Centre (1999) and by Ministry of Justice (2004); - two translated methodological overviews (e.g. Sigma paper No 31 (1998), and, K.Staronova 'Policy analysis methods'- NISPACEE & Praxis, 2003) 	<p>IA methodology in 2003 and trainings for civil servants since 2004. The methodology was known by a rather limited club of civil servants at the time of the survey period.</p>

Source: compilation by the authors

The introduction of IA requirement varies across countries, beginning with Hungary in 1994, followed by Estonia in 1999 and Slovakia in 2001. Hungary, however,

had some early forms of impact assessments as early as 1987 with the Act XI on Legislation that introduced the requirement of conducting impact assessment by explicitly stating “*Before making the law, the socio-economical relations to be analysed, the realisation of citizens’ rights and duties, the opportunities of conflict elimination have to be analysed and the likely impacts of the regulation and the pre-conditions of realisation have to be inspected. The law-maker has to be informed on all that*” (Act XI on Legislation 18, § (1)). Only the Resolution of the Government No. 1088 of 1994 on the Governmental Procedures has prescribed the compulsory presentation of possible effects of any proposals to the Government of Hungary: “*The information required for a well established decision – especially the coherence with the governmental program, the necessity, substance, main features, cost consequences and foreseeable social, economic, administrative, state budgetary, international and other impacts or consequences, and additionally the pre-conditions of application in case of a legal norm – has to be introduced within the proposal briefly, with the exclusion of professional details*”.

In Slovakia, on the other hand, the first requirements for IA was introduced only in November 2001⁷ by amending the “Legislative Rules of Slovakia 241/1997” when the most significant changes occurred in relation to the introduction of the requirement for impact assessment and consultation with the public, prior to government sessions and by introducing “Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic (No. 512/2001)”. In reality, two documents do not provide adequate explanation and standards for conducting impact assessment. Moreover, they contradict each other in certain requirements (Staroňova, forthcoming)⁸. Nevertheless, the information about IA is relatively short in both documents and left open for interpretation by individual ministries.

As far as coordination and quality control is concerned, there are different practices in the observed countries⁹. Andrea Renda stresses the importance of

7 The only exception is environmental impact assessment that has been conducted prior to 2001 in Slovakia. The Environmental Impact Assessment Act was adopted in 1994 and reviewed in 2000 to meet EU requirements such as the SEA. In order to comply with also additional requirements such as securing effective public participation a new law on EIA has been submitted to the Parliament in 2005.

8 The most striking contradiction is the use of terminology for impact assessment which is not harmonized in the documents. Legislative Rules use term ‘dopad’, whereas Guidelines use term ‘vplyv’. Impact assessment as a concept and process is a relatively new phenomenon and there is still discussion going on about proper Slovak terminology.

9 The Office of Management and Budget in USA has been assigned the task of reviewing draft RIAs produced by agencies and checking the agencies compliance with its guidelines (Hahn, 2000). Similar task is assigned to the National Audit Office (NAO) in UK that prepares reports on RIAs (Renda, 2006). European Commission also provides oversight to IA, in Mandelkern Group Report (2001), European Commission Impact Assessment Guidelines (2005) and in a number of handbooks and step-by-step manuals. Moreover, as the impact assessment is considered to be an open process, the stakeholders involved in the process ensure that the relevant standards are observed, whereas the overall quality is observed by SG (European Commission, 2002a). OECD has prepared a checklist of questions that should be addressed by IA.

an independent agency in charge of overseeing the implementation of the IA procedure, with a mandate for issuing guidance and checking that the quality of the analysis is satisfactory (2006) and to ensure transparency and coordination. According to the rules of the Government in each country, the ministry which is responsible for the preparation of the draft, is also held liable for analysing the impacts thereof. Each Minister is responsible for the quality of legislation emanating from his ministry. However, only in Hungary, the Ministry of Justice has a general responsibility in the field of high quality lawmaking. The Department of Impact Analysis, Deregulation and Registration of Law was established in 2002, in order to fulfil this role in an interdisciplinary way. The civil servants of the Department elaborated and published the Hungarian IA methodology in 2003-2004 and began several training courses in the field of IA and other aspects of Better Regulation. The methodology, elaborated by the Ministry of Justice, is available on the website of the ministry and was distributed by the Ministry of Interior among central and municipal administrative bodies but its application is not mandatory¹⁰. There are several other ministries with important responsibilities concerning better lawmaking, e.g. the Ministry of Finance (budgetary analyses, general monetisation), Ministry of Economic Affairs and Transport (competitiveness analyses), Ministry of Interior (municipal law making and public administration), the Prime Minister's Office (inter-ministerial co-ordination and governmental reform) and the Ministry of Foreign Affairs (EU connections). All in all, activities related to IA have remained mostly isolated and the integrating role of the Ministry of Justice has not been supported enough by the central administration.

In Slovakia and Estonia, on the other hand, no central body exists (either in the central government office or in the designated ministry) to encourage, monitor, co-ordinate or check the quality of the IA's conducted by the individual ministries (with the exemption of fiscal impact assessment as discussed later) or at least to provide guidelines and standards for conducting IA's. The Ministry of Justice in Estonia includes the co-ordination of legislative drafting, the systematisation of legislation, and the insurance of the harmonisation of Estonian legislation to European Community law which corresponds to the role of the Legislative Council in Slovakia (also situated under the auspices of the Ministry of Justice). In practice, this means that conformity to the constitution and the legislation, as well as to the generally recognised principles and norms of the international law and the ratified international agreements of Parliament are being checked. However, neither the Ministry of Justice in Estonia nor the Legislative Council in Slovakia has the coordinating or guiding function in terms of IA practice. As a consequence, in Slovakia, no additional handbooks or manuals exist for more in-depth explanations of the terms used or about the process of preparing IA's. In Estonia, although some methodological guidelines¹¹, exist, there is only low coherence between them, since from 1993, civil servants in the different ministries have

10 <http://www.im.hu/adat/letoltes/hatvizsgutmutato.pdf>

11 Translated methodological overviews (e.g. OECD, Sigma paper No 31 (1998/2001) on Impact Assessment, and, K.Staronova (2003) 'Policy analysis methods' – NISPAcee & The Centre for Policy Studies PRAXIS publication). A methodological manual is in the process of translation.

been using quite different guidelines and check-lists translated from British, Dutch, Swedish and Finnish ministerial materials. This absence of both a coordinating body and standardised inter-ministerial IA guidelines, which could assist civil servants in conducting the assessments, might have a decisive influence on the interpretation of the categories where impact assessment is required. It could also influence the quality of the analyses conducted, particularly when we take into consideration that no prior experience with impact assessments existed.

Nevertheless, almost all of the draft laws (and amendments) analysed within this study also encompassed the “Statement of Impact Assessment”, which is a separate document attached within explanatory notes. All main types of categories (social, fiscal, economic, environmental and administrative IA) analysed in the pilot studies are represented in the legal requirements of the countries, however, with completely different interpretations and practice (see box 3 for an overview). These categories broadly correspond to the EU guidelines on impact assessment, to ensure economic, environmental and social impacts of a proposal (European Commission, 2002a).

Fiscal impact assessment in all three countries is equated with the expenses and costs endured by the state budget and/or budget on local municipalities and higher territorial units. Any fiscal assessment that states impacts on the state budget must be referred to the Ministry of Finance, which provides both a qualitative check on the analysis provided and most importantly, formal approval to such an impact. Without such formal approval, the draft legislation will not have the chance to be approved by the Government in any of the three countries. Thus, the Ministry of Finance plays a key role in ensuring the consciousness concerning budgetary effects but the quality assurance in other aspects remains accidental.

The remaining categories of impact assessment (economic, social, environmental and administrative) are not further elaborated upon in any of the guiding documents of the three countries and thus are entirely open to the individual interpretation of the ministries. The supervision is relatively stronger in the approaches that can be bound to a specific ministry. For example, the Ministry of Social Affairs in Estonia, in co-operation with the Bureau of the Minister of Population, has worked out guidelines for a socio-demographic impact assessment of draft acts in 2005. The same category of social IA is interpreted in Slovakia as impacts on Employment defined by Legislative Rules within the context of the ministry’s needs for labour and organisation. Similarly, the economic impact assessment in Slovakia, is to focus on the impacts on citizens, the business sector and legal entities without further explanation as to what exactly is meant and how to measure that. In Estonia, the economic IA is frequently related to the assessment of Administrative Burdens for enterprises, based on the Dutch Standard Cost Model. None of the documents elaborate upon environmental impact assessment, mainly due to the existence of a specific Law on Environmental Impact Assessment.

Box 3
**Components of IA in Explanatory Memoranda in Slovakia,
 Estonia and Hungary**

Components of IA	Slovakia	Estonia	Hungary
1. Social	Impact on 'labour market' and creation of jobs (Article 12, Legislative Rules) Impact on 'labour market' and 'citizens' (Article 9, Guidelines)	Impact on the 'socio-economic situation, everyday life and opportunities of target groups (e.g. which socio-economic groups are going to profit or lose in legal, economic or social terms? (Parliament § 49; Government § 34)	Impact on 'social relations, realization of citizens' rights, opportunities of conflict elimination' [Act XI of 1987, 18. § (1)]; 'social impacts / consequences' (Res. of the Govt. No. 1088 of 1994, 10.)
2. Fiscal /Budgetary	Impact on state budget, budgets of municipalities and budget of public institutions (Article 12, Legislative Rules) Impact on public finances (Article 9, Guidelines)	Impact on state budget and/or local government budgets (Parliament §11, §50; Government § 34, § 35)	Impact on 'state budget ' (Res. of the Govt. No. 1088 of 1994, 10.)
3. Economic /Business	Impact on citizens, business sector and other legal entities (Article 9, Guidelines)	Impact on 'economy and situation of businesses', e.g. inflation, competition (Parliament, § 49; Government § 34)	Impact on 'economic relations' [Act XI of 1987, 18. § (1)]; "economic impacts" (Res. of the Govt. No. 1088 of 1994, 10.)
4. Environment	EIA 1994 Law (2006 new law)	for draft laws Government § 34; Parliament § 49; for draft strategy documents EIA Law 1995, 2005	'Other impacts' when general legislation (Res. of the Govt. No. 1088 of 1994, 10.); Impact on environment in the case of environmental legislation [Act LIII of 1995, 43. § (1)].
5. Organizational/ administrative changes	Impact on 'organizational and human resources support in implementation' (Article 8 Guidelines)	Impact on 'organisation of the work of state and local government institutions' (e.g. changes in structure and functions, in public services, in the number of employees, delegation of tasks etc Parliament § 49,1/4, Government § 34)	Pre-conditions of application (Res. of the Govt. No. 1088 of 1994, 10.)
6. References for the conduction of IA	No direct requirement in the Legislative rules or Guidelines but appears in the form – point 7 "Participation of experts in the preparation of material"	References to research data, official statistics and special literature used; also authors that have discussed the problem to be regulated (Parliament § 49, 2); and references to a comparative analysis with the EU Law (Parliament § 43; Government § 34)	No
7. Consultations	- List of consulted bodies (set by law, mostly public agencies) and summary of opinions from the opinion gathering period open for public comments based on Free Access to Information Act (2000)	- Informing and involvement of parties influenced/concern by implementation and impact of a draft Act (Parliament, § 53; Government § 37-38) - open for public comments based on Public Information Act (2000) and Administrative Procedure Act (2004)	- Citizens are – directly or indirectly (through their organisations) –parties of legislative preparation" (Act XI of 1987, 19. §) - Preparatory materials are public as of 2006 (Act XC of 2005 on the Freedom of Electronic Information, 9-10. §)

Source: *Compilation by the authors*

Contrary to the OECD terminology and practice, in Slovakia, Estonia and Hungary there is no specific requirement for *consultations* outside of public administration. Consultation within the public agencies refers to so-called 'intra- and inter-governmental discussions' or 'opinion gathering period'. This period is reserved for opinions on draft legislation from all ministries and relevant subordinated agencies, as well as stakeholder involvement, such as the employment consent mechanism with the involvement of

employers' and employees' representation (depending on the relevant legislation in each country). In Hungary, a law requires NGO' sector discussions and proposals in 30 days. In Slovakia and Estonia the period of civic engagement is not legally fixed, usually ranging between 10-14 days. In the case of disagreement, various reconciliation mechanisms are in place since the most important aim is to have a consensus within the government. Nevertheless, such a consultative mechanism appears very late in the process of policy making, usually to gather opinions for a ready made draft law and thus, the opinions address mostly nomo-technical solutions of the legal language or other issues of legal, rather than of a substantive, nature (Staronova, 2004; Lepa *et al* 2004).

Consultations outside the public agencies are becoming more accessible, thanks to the adoption of Free Access to Information Laws in all three countries. For example, in both Slovakia and Estonia since January 2001, all draft legislation open for the inter-governmental opinion-gathering process has to be put on the internet so that the public also has the opportunity to provide comments. In Slovakia, if more than 500 signatures are gathered, the originating ministry is required to substantiate its potential refusal for incorporating opinions. Despite this immense progress made in opening up the policy making process to the public, the question of access is still not resolved (Staronova, 2004). Consultations with the public (and NGOs) are understood as a passive way of gathering opinions rather than active involvement of specific groups that will be most affected by the draft proposal. The EU approach to impact assessment is more pluralistic than the one presented above, because it draws explicitly on notions of participatory governance and on the idea of democratising expertise (Mandelkern, 2001; Radaelli 2003).

All in all, there exists regulatory framework in the countries of examination, so we cannot talk about any legal inhibition or negligence towards IA activities. However, only one country – Hungary – has created a centre for IA activities and substantial complex methodological guidance without any direct effects on the IA system performance so far. In Estonia, different ministries have different kinds of IA related questionnaires and translated materials, but the lack of coordination and other institutional preconditions is dominant. Slovakia is lacking completely any elaborated guidance, either from the side of ministries or government, on the preparation of explanatory memoranda. Without coordination between ministries and additional guidelines, training and surveillance mechanisms, those normative law-making requirements are seriously inhibited by not providing civil servants with clear guidance and motivation for changing their culture in policy preparation.

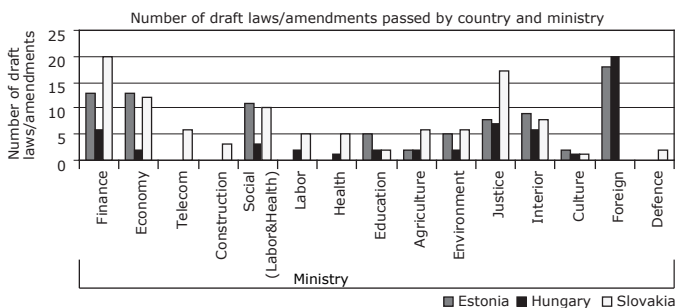
2. Workload in individual ministries

When discussing workload comparisons (and also compliance in impact assessment practice) according to the ministries and across countries, it has to be pointed out that the number and consequently the functions and tasks of the ministries, differ between Estonia, Hungary and Slovakia. The largest number of ministries is in Slo-

vakia (15)¹², followed by Hungary (14) and Estonia (11). Accordingly, in Estonia the Ministry of Social Affairs is responsible for both healthcare and employment policies, but in Hungary and in Slovakia these are two separate ministries: the Ministry of Labour (the full title in Slovakia is Ministry of Labour, Social Affairs and Family) and the Ministry of Health. Similarly, Slovakia has two ministries – the Ministry of Post, Telecommunications and Transport and the Ministry of Construction and Regional development – which do not exist in Estonia and Hungary. Estonia has, for similar functions, the Ministry of Economic Affairs and Communication (since 2001), which also governs construction and transport policies. However, the regional development issues are under the responsibility of the Ministry of Interior.

The number of draft acts and amendments proposed by the individual ministries to the Government meetings (these calculations show only draft laws and legal amendments that were passed by the government) in the given period of pilot study range considerably among the three pilot countries: from 58 draft laws in Hungary to 86 draft laws in Estonia and 93 in Slovakia. The most productive proponent (meaning a ministry which originates the largest number of draft acts) also varies from country to country. In any given time, the main draft laws' producers amongst the ministries were in Hungary – the Ministry of Foreign Affairs (20), Ministry of Justice (7), Ministry of Finance (6) and Ministry of Interior (6); in Estonia the Ministry of Foreign Affairs (18), Ministry of Economic Affairs and Communication (13), Ministry of Finance (13) and Ministry of Social Affairs (11); and in Slovakia: Ministry of Finance (20), Ministry of Justice (17), Ministry of Economy (12) and Ministry of Interior (8). The biggest difference can be observed with the Ministry of Foreign Affairs: while in both Estonia and Hungary this ministry initiated 18 and 20 draft laws respectively, the same Ministry in Slovakia produced none. This phenomenon may be explained by the fact that the Ministry of Foreign Affairs is active in the preparation of EU related laws under the direct responsibility of other ministries, e.g. Agriculture.

Figure 1
Workload distribution among ministries in Estonia, Hungary and Slovakia.



Source: Calculations of authors

12 For discussion on relation between the number of ministries and coalition type see Staroňová, K. and M. Malíková (2003).

In short, we found many significant institutional and functional differences between the ministries of the three countries and it will be a topic for further discussions on methodology of qualitative comparative study, if the research team is interested in in-depth analysis of IA and draft-legislation processes inside of some ministries (e.g. institutional preconditions for IA, work of research units and advisers, use of specific IA guidelines etc).

3. Contents Analysis

The presentation of the results of IA, despite the overall framework, is quite puzzling in all three countries. Some information that is related to IA, such as the rationale, purpose and need for the draft laws, results of the consultation process, references to other studies and organisational support for the implementation, is to be found in different sections of the explanatory memoranda. Some of the same information is requested by the guiding documents themselves in different parts of the explanatory memoranda, which contributes to the relative disorganisation in presenting the necessary information. Information on IA can be invariably found in general explanatory memorandum or in specialised sections on IA or in both. Sometimes, we find a summary in the explanatory memorandum with a referral to a detailed calculation in the Statement of Impacts and at other times, it is the opposite. In some of the explanatory memoranda, a referral is mentioned for a detailed calculation to be found in a third place (analysis, modelling, etc.) which, however, is not attached to the explanatory memorandum and thus it is impossible to check the methodology or results of the analysis. In general, comprehensive executive summaries are mostly missing, the same way as methodologies utilised for IA and options are considered. Such a non-systemic way of information presentation in the explanatory memoranda makes it difficult for both decision-makers, or any interested party, to check the information contained in the explanatory memoranda.

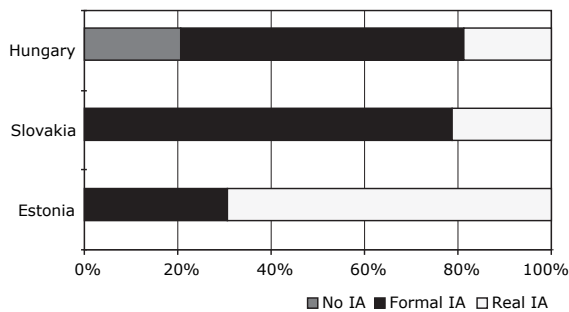
3.1. Existence and Extent of IA Information

All three pilot countries (Slovakia, Hungary and Estonia) have the normative formal requirement of submitting the assessment of possible impacts of the draft laws for the Cabinet sessions. Figure 2 shows that both Slovakia and Estonia formally fulfil this requirement, as all draft laws do contain some information on impact assessments. The case of Estonia shows a relatively effective realisation of prescriptions, while the practice of Slovakia and Hungary remains quite similarly poor – 78% and 81% respectively of all IA's are of a formal nature. The reasons for this difference can be in relatively well-structured/detailed normative requirements for the draft laws explanatory memoranda in Estonia (e.g. objectives and IA) at both governmental and parliamentary level and following a 3-4 steps quality control based on required structure of information (see Box 3, also Kasemets and Liiv 2005). But, on the other hand, analysing the concrete sample of Estonian draft laws, in most cases the assessment 'substantial/real IA' means 'partial IA' (50 drafts from 86) and only 14 draft laws memoranda from 86 contain some complexity and integrated approach in the IA information. As a most general observation, the results of the

analysis show that there is a lack of real impact assessment activities concerning the high majority of legislative proposals at the highest levels of state regulations in the Estonian case as well.

In Hungary, however, there exists a relatively large number of cases where the draft law submitted to the Cabinet meetings does not contain any note on impact assessment (21% of draft laws in the studies time period). This figure shows the weak power of influence from the side of the quality assurance mechanism. The so-called ‘fast track procedure’ does not allow the application of an elaborated preparatory practice and high level politicians are in favour of ‘everyday referral to exceptional procedures’. Ironically, the acts declaring the legal binding force of international treaties (see data for ‘foreign affairs’), which are popular objects of IA by international practice, seem to formulate a special area of regulation which does not need any justification at all within the practice of Hungary (probably because of the prior agreement – which has not undergone an impact assessment, either).

Figure 2
Distribution of draft laws by existence and extent of IA information



Source: compilation by authors. Note: Real IA includes the cases of partial and complex IA

In sum, the formal impact assessments are rather popular in all three countries’ preparatory practice. The most frequent forms of such intuitive statements are “the changes will be positive for society”, “their realisation will not need any substantial additional resources”, “there are no impacts on citizens, state budget and the environment” or even “non-regulation will bring sanctions from the EU which are costly” without providing any further explanations. These statements are placed in the materials without referral to any sources on which they were based and although they may be correct, there is no way of validating them.

3.2. Types of IA information

The data of Estonia, Slovakia and Hungary are showing a remarkable diversity and heterogeneity in the quality in most IA categories (social, fiscal/budgetary, economic, environmental and administrative) across individual ministries and countries (see table 1). This is probably due to the non-systemic way of adoption of

IA legislation in individual countries, which is not harmonised with the European Commission’s Guidelines and recommendations and also due to the absence of a coordinating and guiding unit at the centre. Also, the legislative requirements of individual countries already have a narrower meaning than the recommendations of the European Commission and OECD countries in all three pilots (see discussion on types of impact assessment in the methodology section and legislative background earlier in this paper). Further narrowing of the individual types of IA happens when conducting the impact assessments, since individual ministries are left to interpret IA according to their own needs and thus, enormous diversity can be observed in IA’s conducted even within one ministry of one country. Data from Hungary and Estonia show that the ministries are usually better in conducting real IA in categories which are closely related to their main responsibilities.

Table 1
Information on social, budgetary, economic, environmental and administrative IA (Real)

	Social			Fiscal/budget			Economic			Environment			Administrative		
	ET	SK	HU	ET	SK	HU	ET	SK	HU	ET	SK	HU	ET	SK	HU
1. Finance	13/2	20/0	6/2	/10	20/1	/3	/6	20/0	/2	/3	20/0	/0	/3	20/0	/0
2. Economy	13/4	12/0	2/1	/8	12/2	/1	/6	12/0	/0	/3	12/0	/0	/9	12/0	/0
2.1. Telecom	-	6/0	-	-	6/0	-	-	6/0	-	-	6/0	-	-	6/0	-
2.2. Construction	-	3/0	-	-	3/1	-	-	3/0	-	-	3/0	-	-	3/0	-
3. Social	11/10	5/0	-	/7	5/2	-	/2	5/0	-	/1	5/0	-	/5	5/0	-
3.1. Labour	-	-	2/1	-	-	/0	-	-	/0	-	-	/0	-	-	/0
3.2. Health	-	5/0	1/1	-	5/1	/1	-	5/0	/1	-	5/0	/0	-	5/0	/1
4. Education	5/2	2/0	2/0	/3	2/1	/0	/1	2/0	/0	/0	2/0	/0	/2	2/0	/0
5. Agriculture	2/0	6/0	2/0	/1	6/0	/0	/0	6/0	/0	/0	6/0	/0	/2	6/0	/0
6. Environment	5/2	6/0	2/2	/4	6/1	/2	/4	6/0	/2	/3	6/0	/2	/3	6/1	/1
7. Justice	8/5	17/0	7/1	/5	17/7	/2	/3	17/0	/1	/	17/0	/0	/6	17/0	/1
8. Interior	9/8	8/1	6/1	/5	8/4	/1	/0	8/0	/0	/	8/0	/0	/5	8/0	/0
9. Culture	2/2	1/0	1/1	/2	1/0	/1	/0	1/0	-	/	1/0	/0	/0	1/0	/0
10. Foreign	18/7	0	20/0	/11	0	/0	/2	0	/0	/2	0	/0	/12	0	/0
11. Defence	X	2/0	-	x	2/0	-	X	2/0	-	X	2/0	-	X	2/1	-
12. Others	-	-	7/1	-		/1	-		/1	-		/0	-	-	/1
Sum	86/42	93/1	58/37	86/56	93/20	58/12	86/24	93/0	58/7	86/10	93/0	58/2	86/47	93/2	58/4
Sum %	49%	1%	17%	65%	21%	21%	28%	0%	12%	12%	0%	3%	55%	2%	7%

Source: calculations by authors of relevant pilot case studies. The number in the table shows ‘total number of draft laws’/‘real IA’. Total number of draft laws in Estonia –86, Slovakia –93 and Hungary 56.

Note: ‘x’ means ‘the draft laws were not included into sample due to non-accessibility of IA information (e.g. Ministry of Defence treats draft laws as state secrets); ‘-’ means non-existent ministry or unapplied category.

The information about possible fiscal and budgetary impacts is the only exception and a clear pattern across the three countries can be observed. Most of the fiscal

impact assessments are the only category that is conducted relatively frequently and of a high quality in all three countries. In Slovakia, for example, with the exception of one case, all of the real impact assessments have been conducted in this category of fiscal/budgetary assessment. Similarly, all of the monetised formal assessments (i.e. without providing evidence or logic of how that monetisation has been arrived at, have been conducted in the fiscal area). It seems that IA in all three countries concentrates exclusively on assessing the financial budgetary impacts of regulations, however, solely on the state budget. Non-financial effects on the administrative practice are usually being ignored, as well as the social consequences a new rule might have, although this aspect is of great importance e.g. for the citizens' compliance with the rules. Two possible explanations of this imbalance can be seen (Staronova, forthcoming). First, fiscal assessment, or in other words, implications on the state budget were traditionally part of the explanatory memoranda and thus, civil servants are accustomed to the preparation of this part and know how to tackle it. Second, there exists the requirement of having the opinion of the Ministry of Finance in all three countries that then checks the quality of assessments on state budgets (compliance costs etc). This naturally increases the motivation of civil servants to have a proper IA conducted. Without having a body at the governmental level that would check the quality of assessments conducted, there is only a minimal motivation from the side of the ministries to conduct proper substantial impact assessments in other categories.

Estonia and Hungary show rather good results in the social impact assessment. However, the main problem in this category is the lack of a holistic approach, even in the cases where real IA activity can be detected. Usually, some segments of social impacts are picked up and analysed, mostly to show the benefits of the draft legislation. In Slovakia, for example, all of the ministries limit the discussion of employment strictly to employment within the state and the public service and not the labour market in general. Consequently, such an interpretation is considered to increase/decrease the burden of the state budget on the staff recruitment or dismissals and become a political tool in decision-making (besides, such an interpretation belongs more in the category of administrative/organisational impacts). Those ministries that follow the Guidelines and thus look at the economic impact assessment defined as the impact on 'citizens, businesses and legal entities' interpret these as living standards of the citizens and 'fitting into the goals of the economic policy', although none of the studied draft laws and explanatory memoranda elaborate on this (all of the statements are on a formal level, such as 'very positive impact on living standards', etc.). This finding is particularly of concern when we take into consideration that in the studied period, five most important laws in the reform of the health system and services have been passed in Slovakia and none of these indicate any impact on citizens or the economy, although the reforms have been prepared with experts from the World bank and thus, there is a high probability that some kind of analyses have been conducted, but are not made available to the decision-makers (Staronova, forthcoming). The scope of social impact assessment in Hungary is strongly determined by the topic and initiating

ministry and it remains usually within the boundary of primary consequences. An objective, holistic or long-term approach can be observed accidentally only.

Information on the administrative and organisational assessment of the implementation of the draft law is, in general, very weak or absent, reflecting the problems with administrative capacity. Only 2% of all draft laws have some indication of their implementation in Slovakia and 6.9% in Hungary. In Slovakia, this may be related to the fact that the Legislative rules do not ask for this type of assessment, although Guidelines do ask in a very imprecise and unclear way and are difficult to find in the text about other requirements. In Estonia, the average result was higher (55%), but in most of the explanatory memoranda it was a case of partial administrative IA (e.g. organisational problems to solve, changes in functions and/or structures of ministry and a need for a specific training program)¹³.

Surprisingly, the environmental impact assessment in all three countries remained at a very low level (the highest being in Estonia with 12%, followed by Hungary 3% and Slovakia with a formal assessment only) despite the volume and tradition of environmental impact assessments that exists in the developed world. This result is striking because EIA has already been adopted in all three countries in 1994. Moreover, the Ministries of Environment in the countries have created a specific unit dedicated to EIA. In Slovakia, a specific EIA Documentation Centre has been established at the subordinated agency for the environment, within the framework of a twinning project with a German partner. Despite the fact that all these environmental impact assessments are not present in the explanatory memoranda it has to be investigated in a subsequent qualitative study with the civil servants, whether this is due to the non-existence of EIA's or that EIA's are conducted, but are not part of the explanatory memoranda.

3.3. References

One of the guiding principles set by the European Commission (and 'quality regulation' literature) for the Impact Assessment process is that of transparency. It states that it must "*be clear to all stakeholders and the general public how the Commission [and national governments] assesses the expected impacts of its legislation...what are the data and methodology that are used*" (European Commission 2004, p.7). Similarly, other OECD countries emphasise the need for validity and quality control of IA's. The explanatory notes of the three countries hardly ever give the results of any research or analysis, whether performed internally by civil servants, or by independent consultants or entities. The best results were found in Estonia where the references to studies were found in 20% of the explanatory

¹³ According to Estonian legal requirement for draft legislation the draft law and its explanatory memoranda are two parts of the same document – differently from Slovak and Hungarian pilot studies, Estonian research group analysed in many cases the administrative/organisational IA information also in the main text of the draft law, particularly in the part of Implementation and Enforcement of the Law, where the changes of administrative responsibilities and tasks are fixed. Also, in many cases the draft acts of secondary legislation (implementation of the law) were added to the explanatory memoranda as annexes. A.K.

memoranda of draft laws proposed to the Cabinet meetings¹⁴. In Hungary, this number was 10% and in Slovakia only 6% of all draft laws. Some explanatory memoranda in Slovakia discuss the practice in other countries and quote data or statistics (or practice) from those. However, the information taken over from such data sources does not follow the citing principles and therefore, it is difficult to verify the data provided. This practice may be the result of a poor education in quoting and paraphrasing which is widespread in transition countries. However, the violation of the European Commission's transparency principle occurs frequently in this way. This is particularly important if we consider that the decision-makers and politicians in both government and parliament should be making decisions on the basis of evidence provided.

A small number of draft acts with information showing the reference and other studies in Slovakia, only mention some analyses that have been conducted, without any provision of the analysis itself (or name of the analysis, main conclusions and data from it) or a note where it could be found. These analyses, however, provided the basis for the rationale of preparing the draft act, rather than a source for conducting impact assessments. No mention on the methods of the analysis utilised is provided. Similarly, there is no mention of external experts employed in the process of draft law development, despite the fact that explanatory memoranda specifically ask for this information. In Hungary, such information is provided, usually concerning the legislative preparations themselves (including the preparation of other laws as well as the one in question) only and not for broader programs or international co-operation. In some cases, a given part of the workload necessary for these preparations is shifted to contracted experts. In these cases this fact is indicated, but this is all. This is quite surprising, when we consider that in a transition country there are many external advisors, experts and institutions who participate in the reforms (ranging from the World Bank involved, for example, in health reform, to twinning programs of the European Union, to local advisors and experts, subordinated research institutes, etc.). The reference to external consultants utilised during the preparation of the draft law is minimal, although it is common practice to employ working groups and external experts for the works on draft legislation.

The explanatory memoranda in all three countries are characteristic in terms of general statements and assumptions, such as "this type of 'Impact Assessment' does not allow the utilisation of data". As "findings" are not based on evidence, statistical and other scientific resources are extremely rarely utilised. Even within the small number of cases where data with sources are shown, the risk of one-sided presentation ('advertisement of proposal') is high.

¹⁴ References – the average result of five former studies (1998-2003, 561 draft laws) was 19% – see Kasemets, Liiv 2005, p. 154. The content of IA information (e.g use of referencies) shows sometimes the academic background of civil servants responsible for the quality of draft laws explanatory memoranda. Usually the civil servants with better academic training are providing the interdisciplinary mix of different sources related to preparatory work of draft law. AK

3.4. Consultations

The European Commission places much importance on consultation mechanisms throughout the entire legislative process, from policy-shaping, prior to the proposal, to final adoption of a measure by the legislature and implementation. Depending on the issues at stake, consultation is intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts and interested parties. This is fully in line with the European Union's legal framework, which states that "*the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents*" (Protocol (N° 7) on the application of the principles of subsidiarity and proportionality, annexed to the Amsterdam Treaty, quoted in European Commission 2002c, p 4). To this end, the European Commission established a new Consultation Framework outlined in the document *Towards a Reinforced Culture of Consultation and Dialogue* (European Commission, 2002c).

Consultations and the involvement of interested parties, are important parts of the IA process. The results from Hungary, Estonia and Slovakia show that there is a big difference between intra-, inter-governmental consultation and outside consultation. The intra- and inter-governmental consultation mechanism (or opinion-gathering period) is well elaborated in all three countries and a systemic presentation of the results in the tables of agreement – remarks – disagreement of each ministry and other governmental institutions is one of the 'most' compulsory elements of the draft legislation. The results of the inter-governmental consultation process (gathering of opinions from relevant public bodies on the draft law, their analyses and responses of the originating ministry) are presented in a separate document within explanatory memoranda in a very organised manner – a table. This table lists the name of the institution, its comments and the response of the originating ministry (acceptance / non-acceptance of the comments and reasons for that). 97% of all draft laws in Slovakia, Hungary and 93% in Estonia within the monitored period, presented the results of the consultation process in a very organised way: a summary of the parties consulted, summary of opinions and an indication of accepted and non-accepted opinions with the reasons. These opinions come mostly from other ministries, subordinated agencies and other public institutions to which the originating ministry is obliged to send (in electronic form) the draft proposal for opinions. In addition, the opinion-gathering process is well organised and methodological guidelines exist for the types of opinions and the processes for what to do when opinions are rejected, etc. Also, based on this documented information, the interested parties can analyse the co-responsibility and specific contributions of different ministries in the field of IA (e.g. *ad hoc* risk assessment). In summary, there seem to be no problems with this process.

Nevertheless, the identification of external actors outside the government and their active consultation is still lagging behind in all three countries, although there are some differences. The highest rate (56%) of outside consultations conducted

could be found in Estonia¹⁵, the lowest in Hungary (45%). In Slovakia, 17% of all draft laws had comments from the non-governmental sector, 8% from municipalities and 3% from independent experts. There are several possibilities for such low numbers and differences in practice. Practically, external consultation is only a passive way of consulting and not a user friendly for those who would like to step into the process¹⁶. The introduction of Free Access to Information Laws in the region and all three countries (revolutionary in a central and eastern European context) enabled the external actors to step into the process, because the opinion-gathering process is public and accessible via internet once the draft law is ready. However, in Hungary, the publicity of preparatory materials was restricted at the time of the survey: all these papers fell under the “state secret” category. It is only from 1st January, 2006 that a new law (Act XC of 2005 on the Freedom of Electronic Information) will come into force, prescribing the compulsory publication of materials for preparing administrative decisions. In Slovakia and Estonia, the provision of information is still relatively passive and difficult to understand for people with no legal knowledge or orientation in the documents¹⁷, and comes at too late a stage in the whole process, as most of such materials are already prepared to be approved by the government and civil servants are therefore reluctant to deal with comments from the public. The biggest problem is that a formal procedure must be observed by the public participating in the process of opinion-gathering. In practice, this means that the formulation of comments, including those from the public, is extremely important.

Nevertheless, the rate of consultations with stakeholder groups in Estonia in the composition of draft acts explanatory memoranda has increase by 25% since 1998 (Kasemets, Liiv 2005). This phenomenon can be explained by the fact that Estonian society is smaller (1.4 mil) compared to Slovakia and Hungary, and the involvement of interest groups is relatively easier due to smaller hierarchies. Estonian government and parliament have undertaken several attempts to enhance the regulatory management, by increasing consultations with stakeholders¹⁸. In Slovakia, on the other hand, the interested groups who wish to increase opinions on the draft legislation have to fulfil formal criteria. If a comment is to be regarded as *substantial*,

15 From 1998 to 2003 the average result of civic consultations/engagements was 24%. The ‘jump’ of consultations, roundtables etc started after 2002, when the Estonian Parliament adopted the Estonian Concept for Civil Society Development and the Cabinet established the joint commission of ministries and NGO umbrellas – see Lepa, Illing, Kasemets et al 2004

16 For a more detailed discussion on problems in the policy making process (rather than outcomes) in Slovakia, see Public Policy Making in Slovakia, Policy Brief 2/2004, SGI: Bratislava by Katarina Staronova.

17 The draft proposals that are publicly available on the internet are in the form of a legal text in articles, many times only providing those articles that amend the previous law. In this way, anybody who is interested in providing comments has to find also the original law, compare the contents of the legal text and answer (provide opinion) in a correct nomo-technical way (legal). Also, the draft laws available for public commenting are systematized chronologically rather than thematically which also requires that anyone who would like to step into the process must follow closely what is happening on governmental sessions.

18 See <http://www.emy.ee/eng/alusdokumendid/concept.html>; <http://www.ngo.ee/> and Lepa et al 2004

it must be signed by at least 500 (or 300 for non-legislative materials) citizens. Such a substantial comment must then be dealt with by civil servants, who must also explain why it was or was not accepted. If the comment is not substantial, it does not have to be taken into consideration (Staronova, 2004).

However, public and active consultation is still not conducted in a way that corresponds to the standards of the European Union. Prior to any consultations, it is important to identify the most affected parties for which the issues of equity should be considered (as well as the costs and benefits for those particular groups). This may enable governments to prepare the consultation process adequately and actively seek input from the relevant parties on the basis of sound criteria. Absence of the precise identity of the affected parties may prevent any reliable discussion of costs and benefits (European Commission 2002c, Mandelkern 2002).

3.5. Quality of Information in Real Impact Assessments

Draft laws that fulfilled the criterion of real impact assessment in all three countries were further analysed for the quality of information they contained. The largest number of real impact assessments was conducted in Slovakia at the Ministry of Justice and Interior, followed by the Ministry of Labour. It is interesting to note that the Ministry of Finance only once conducted real impact assessment. In Hungary, the Ministry of Finance and the Ministry of Environment produced real IA more than once. Estonian results show that the Ministry of Economic Affairs and Communication, the Ministry of Social Affairs, the Ministry of Environment, the Ministry of Finance, the Ministry of Justice and the Ministry of Interior produced one or more good draft laws with complex IA, but there is no documented evidence on the qualitative stability in the law-making performance of ministries.

The findings of the evaluation of the quality of substantial impact assessment against the selected indicators match the preliminary findings on the low quality of analysis. The following paragraphs summarise the findings related to the quality of information on impact assessment.

- *Identification of parties affected, both internally and externally*

Real analysis of consultation does not really exist in any of the countries. The descriptions of the consultation phase concentrate mainly on the content of intra-governmental official debates. All the real impact assessments identify the state as the prime bearer of any costs or benefits. In Slovakia, only 10% identify in addition to the state, other parties, such as municipalities and state-owned undertakings (airports and railways are still in the hands of the state). However, no further thinking is given on the impact on these parties. Private actors or civil society (or citizens) are not part of the impact assessment. In Estonia, the minimum is the list of involved NGOs and interest groups with a summary of consultations (in some ministries such as the Ministry of Social Affairs and in the Ministry of Agriculture, there was a special annex to the memoranda with a table of proposals).

- *Analysis and comparison of costs and benefits of the regulation (quantification, etc.)*

Cost-benefit-like analyses are performed (at least in a basic way) within substantial (real) IA's, but mostly concentrating on costs, although the assessments are of poor quality and any comparisons remain absent. The assessments performed depend on the ministries. In Slovakia, 70% of them deal with the costs of institutionalising a new post (e.g. judicial clerk, public defender, etc.) or increasing/decreasing the salary of a public official. This number also explains the higher occurrence of substantial impact assessments in the draft laws of the Ministry of Justice, which, in its draft laws, focused on new institutions. In Estonia, relatively good cost-benefit analyses could have been found in 5-6 cases, however, mostly there are budgetary analyses (e.g. compliance costs) and social impact analyses (socio-economic situation with partial ex ante IA) etc.

- *Weighing costs/benefits in a time framework (short-, medium- and long-term effects) or in variants (assessment of lifetime, risks, etc.)*

In Slovakia, only one impact assessment tries to identify long-term effects. However, this has been done with no quantification. Three impact assessments do consider minimum and maximum variants. None of the impact assessments deals with the lifetime of the draft law, the risks associated with its implementation, etc. In Hungary and Estonia, the effects of several terms are sometimes mentioned in the substantial IA's. This can usually be observed when the nature of legislation directly refers to the necessity of impact assessment for several temporal scopes.

- *IA analysis and comparison of positive and negative impacts of the regulation*

A number of impact assessments justified the introduction of a new law due to the fact that if it had not happened, sanctions from the European Union (EU) would be much higher than the costs that are linked to the introduction of this measure. However, none of these 'threats' are quantified. Even in the case of real IA's, the objective and transparent comparison often remains absent. Usually the draft law and its explanatory memoranda is a reflection of the socio-economic needs or problems to be regulated. In the case of harmonisation of national and EU laws, the legal aspects dominate and due to the risk of losing political capital (votes) or due to a lack of relevant data, the real social and economic consequences and possible risks are "partially transparent". According to Jürgen Habermas' theory on communicative action and ethics (1984, 1987 and 1996) we can describe this kind of situation as a *distorted communication* where the equal treatment of citizens and democratic discourse are problematic or impossible, due to a lack of relevant IA information and the transparency of analytical decision-making process.

- *Interlinkage among the impact assessments*

In Slovakia, this part is not applicable, as only fiscal impact assessments have been conducted. The only impact assessment in the social area was linked to fiscal impact assessment (and could be considered as such). In Estonia, quite frequently

the budgetary IA was related to administrative IA, social IA with consultations with NGOs, and references to social studies, publications and statistical trends were the signs of a relatively complex IA. 7-10 draft laws in the Estonian sample (86) were prepared more or less in co-operation with scientists from universities and/or policy think tanks – usually the academic contribution was the analysis of problems, alternatives and the *ex ante* IA in this kind of academic-ministerial co-operation and the ministerial contribution was the legal/regulatory framework, administrative IA and summary of consultations.

In summary, the analytical part of the information in the substantial impact assessment attached to the explanatory memoranda is very low – limited to quantifications to the state budget, mostly linked to the costs of additional human resources. The practice of considering impact assessment primarily for the public sector seems widespread. Even where there exists a clue that a more in-depth analysis has been conducted, civil servants found it unnecessary to attach it (or refer to it) in the explanatory memoranda. The nature of information contained in the explanatory memoranda (and impact assessments) leaves us to believe that they are frequently made *ex post* in a bureaucratic manner, to fulfil obligations rather than during the process of policy making, which would assist the decision-maker to make an evidence-based decision.

In general, the cases of pilot studies show that without additional qualitative study, (analysis of other documents, interviews, focus groups) it is quite difficult to assess the quality of IA information and methods used, because the presentation of full IA made is not normatively required and many pieces of analytical information can be in other documents not presented in the explanatory memoranda. So, the explanatory memoranda of draft laws can be mainly the subject for normative content analysis (based on the structure of legal requirements, see box 3) and for IA quality assessment (e.g. logic of IA, data, methods used, organisation of IA) we need an additional qualitative study to test the hypothesis in the follow-up interviews with those civil servants who prepare impact assessments and compile explanatory memoranda of draft laws.

Conclusions

We should ask some general questions of our central governments and ministries responsible for the preparation of draft acts: *What* are these national values and resource-based strategies for action with a view to implement IA in the everyday work of ministries? How are ministries and their services preparing themselves for their role as players in an enlarged EU, which is declaring the purpose of establishing a knowledge-based society, focused on sustainable development? And what institutional preconditions and guarantees are in place to ensure citizens' rights to information and consultation?

If we attempt to draw general conclusions about the present situation concerning the above mentioned questions, related to the results of three pilot studies regarding IA, there is bound to be a confrontation regarding many methodological

limits. First of all, such a comparative study must take into account a large number of specifics, which characterise and differentiate countries. The countries also differ from each other in terms of the institutional preconditions, such as political commitment, legal requirements and oversight mechanisms of draft legislation, coordination of work between ministries and traditions of co-operation/interaction between political, academic and non-governmental organisations. Although the central governments and ministries of our countries – Hungary, Slovakia and Estonia – have been dealing with IA for only a few years and due to the number of parallel reforms, accession to the EU and NATO and quite frequent changes in the compositions of cabinet, the institutional preconditions for systematic IA are not yet very well developed.

Nevertheless, there exist many similar patterns in the ways IA's are being utilised. The findings of pilot studies lead us to argue that many ministries responsible for the quality of draft acts are usually not interested in explaining policy problems and solutions in an analytical and transparent way, or they have no relevant social, economic, budgetary, environmental and managerial information on the impacts. The selective fulfilment of law-drafting requirements reflects, to some extent, the informal understanding of the 'rules of the game' in the context of ongoing reforms and everyday politics in piloting countries. On the other hand, the lack of impact analysis, accountability and transparency in the draft legislation has, in its turn, created favourable conditions for *inadequate implementation* of laws which may create social, environmental or technological risks. Consequently, we can also presuppose what kind of budgetary, economic and administrative problems it creates for public managers during the implementation stage of the laws.

Implementation and the use of IA in legislation needs systematic multilevel work, but frequently, for political reasons, lack of time and low skills and knowledge on how to conduct IA, the process of IA is made as an ad hoc or formal 'check the box' task. Michal Ben-Gera (1999, p.30) noted '*All democratic countries, both new and old, are concerned to improve the quality of policy-development and decision-making by public authorities. This is a long, perhaps a never-ending process. It is also multi-dimensional and often politically sensitive. Since policy development occurs at the interface between experts and politicians, good work by experts can, and often does, point to weaknesses in specific policy preferences. In the end, however, all good policy is the result of interaction between values, preferences, and empirical reality. The task of impact assessment is to clarify the empirical reality, and to ensure that the knowledge it generates is of good quality, and that it is brought to the attention of decision-makers.*'

Hungary, Slovakia and Estonia, like other new EU Member States, seem to have mostly met the formal criteria for EU accession and now they are facing some regulatory management capacity problems in terms of institutionalisation and implementation of IA methods in the daily work of ministries. We are convinced that in the coming years, based on the *Mandelkern Group Report* (2001) and the European Commission *Impact Assessment Guidelines* (2005) etc, the governments

in the EU will strengthen their support for the systematic use of IA methods. Also, the structure and quality of IA information in the explanatory memoranda of draft laws should be considered a public service with fixed standards, because the quality of social, economic and environmental information offered in the memoranda is an important precondition for knowledge-based policy deliberation, civic engagement and administrative capacity. Moreover, an integrated IA enables the assessment of the existence of constitutional principles and rights such as *necessity*, *freedom*, *proportionality* and *justice*.

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Chapter 10

Conclusions: Strengthening Linkages Between Administrative Reforms, Implementation, and Performance

Katarína Staroňová, Sergei Pushkarev and William N. Dunn

The state's legitimacy and effectiveness depend on its ability to develop and provide a set of directions and structures that help to organise basic political, economic, and social life – its capacity to govern and make and implement public policies. No institution is more central to providing this structure than the civil service within public administration at the central (and lower) levels. As Yehezkel Dror (2001) observes, if the government does not have adequate capacity in creating and delivering the essential public goods (or ordinary tasks), such as collecting and allocating resources, regulating the commons, delivering basic services, assuring security, justice, economic, social, and political goods to the citizenry, it is quite impossible to think that this government would be able to provide 'higher order tasks' or cope with the new challenges of the modern era. In this case government unreliability (Evans and Manning, 2003) occurs.

When reforming public administration systems which – for several decades – were built on party loyalty, conformism and command style as operating principles, many scholars have referred to the fact that governments confront multiple internal and external challenges such as distrust of bureaucracy, low government performance and efficiency, and fiscal stress (Peters and Savoie, 1995). Many governments have addressed and tackled these challenges in multiple ways including the introduction of New Public Management or adoption of principles and practices of governance suggested by directives of the OECD or EU. There are considerable differences in the pace, content and results of these reforms, as is evident from the cases of Kyrgyzstan, Poland, and Estonia, which are covered in this volume. However, there are some striking similarities. Problems with public policy and program implementation – as described in the introductory and subsequent chapters – are indeed a common challenge for governments in this part of the world. Anyone familiar with the classic implementation literature remembers the 1984 book by Pressman and Wildavsky titled "Implementation: how great expectations in Washington are dashed in Oakland: or, why it's amazing that federal programs work at all, this being a saga of the Economic Development Administration as told by two sympathetic observers who seek to build morals on a foundation of ruined hopes" (Pressman and Wildavsky, 1984). This book is known – among other things – for its long and controversial subtitle. But more important, this subtitle underlines the conclusions of a tradition of implementation literature which started decades ago: bitterness and disappointment about numerous failures in implementing public programs and policies. This volume carries the tradition on.

Contributors to this book have explored different aspects and dynamics of implementation, including factors governing its success and failure. These con-

tributors offer assessments of public management reforms, along with the capacity to implement these reforms, in local governments in the region, in case studies of contracting out emergency medical services in Estonia in the analysis of local government employee training in Kyrgyzstan, and in a case study of the role of performance measures in implementing health care delivery in Slovakia. In addition, contributors have focused on the preparatory stage for implementation when asking the question of what politicians *expect* from the public bureaucracy, and what the public bureaucracy *offers* them in order to make informed decisions that prepare governments for implementing individual policies. The results from the research in Macedonia include some reflections on “evidence-based policy making” and their relevance for successful implementation in CEE. Similarly the comparative research on the use of regulatory impact assessment in Slovakia, Estonia, Hungary, and Macedonia provide reflections on this tool in relation to implementation quality. Finally, the contributors have looked at the role of advisors in the implementation process in a case study from the Polish environment.

Despite this variety of topics, methodological approaches and specific country experiences, several issues arise which are worth further exploration and debate. The questions “Why is implementation the missing link?” and “What can be done about it?” seem very appropriate.

Policy/program design

Several authors in this volume have pointed to the fact that faulty policy designs prevent effective and efficient policy implementation. As Lember concludes, the transition to contracting out in emergency medical services in Estonia was not very well planned: “there were still many political and policy related issues that remained open”, “there is no common understanding regarding what kind of EMS Estonia should concentrate on, the functions of different parties in first level medical aid are not clearly divided, the work of the alarm centers are ineffective”, “there are no output based administrative and incentive mechanisms introduced in the contracting system and the government does not measure the outputs of the service”, “monitoring and controlling of EMS providers have been extremely vague until the current date”. Examples of ill-conceived policies and poorly designed programs are scattered among chapters of the book.

As is evident from the chapters, poor policy/program designs result from a number of causes, including (but not limited to) lack of analytical/professional skills in policy/program developers, underdeveloped organizational structure, uncoordinated and decentralized organisational and legal changes, political pressures and dynamics. In other words, even if the program/policy implementation is flawless, all laws and regulation are in place and on time, there is effective communication between major actors, etc., the implemented program or policy may still be ineffective and not produce the intended impact.

If we perceive public policy processes as complex, dynamic, and nonlinear, with constant feedback and re-evaluation--as researchers in political science and

public administration have done for more than 50 years – we can see that those who seek appropriate policy designs face many challenges. There are, basically, two methodological approaches to deal with this built-in ambiguity: rational-comprehensive (Stokey and Zeckhauser 1987) and bounded rationality (Simon 1947), or incrementalism (Lindblom and Woodhouse, 1993). According to the rational-comprehensive tradition, the complex dynamics of policy making mean that we must attempt to be even more coherent, systematic, rigorous and comprehensive, often simply to determine the constraints faced by the policy designer. The bounded rationality approach means that “one behaves as rationally as one can be within certain bounds or limits, including limited time, limited information, and our limited human ability to recognise every feature and pattern of every problem; we can try to enhance these skills, but they are still inherently limited” (Birkland 2005, p. 216). Regardless of the approach, the quality of policy design affects significantly the prospects for effective policy implementation.

Public human resource capacity

As was noted earlier, poor policy/program designs may result from unskilled developers and others who influence the policy process (elected politicians and their staff, public servants, interest groups). Poorly trained civil servants fail to recognise the need for the new program or policy (or the need to design implementation process and assess the likely effects), do not have the necessary skills to implement it correctly, and are not able to evaluate the results that would feed back information on any intended or unintended effects, defects into the policy cycle: “There is a lack of understanding and skills necessary for impact assessment – the majority of civil servants have legal background and they are looking at the Memorandum – as a paper with some information that has to be produced at a specific point of time in the policy process instead of looking at IA as a process” (Chapter 7).

However, the problem of public sector human resource capacity is of more general nature for program/policy implementation in Central and Eastern Europe. The program or policy might be designed by poorly trained public servants and/or politicians, but its implementation requires skills and knowledge as well which may not be in place. It is a commonly recognised fact in the academic community in Central and Eastern Europe (see papers presented at NISPACEE annual conferences) that the quality of public servants is suboptimal as compared to the challenges of public administration in a rapidly changing social, economic, legal, cultural and political environment.

By far and large, public administrators in the region exercise a legalistic approach in discharging their duties as was documented in Chapter 9 on a concrete case of implementing the tool of impact assessment in Slovakia, Hungary and Estonia. Despite the emergence of public policy subjects in public administration schools and departments, public choice economics thinking among public servants and public employees is far from being a reality. As the data from Shaldeva’s research on memoranda as part of the impact assessment requirements suggest, 55% of

the ministry staff perceive a clear indication of required decisions in memoranda as most useful and 63% of the staff point out that the recommended option and rationale are the most useful parts of memoranda. Only 23% of the ministry staff considers it useful when a memorandum includes policy options or the cost of a recommended option. Lack of basic policy analysis and communication skills is evident when the ministry staff is asked what is most difficult to prepare: for 55% of the staff it is difficult to analyse the cost of suggested option and for 27% of the staff it is difficult to outline the results of consultation, as compared with difficulty of preparing the required decision – only 2% of the staff have difficulty with this task. When asked what parts of a memorandum they would take out, 36% of the ministry staff suggested “considered option”. Nemeč’s findings are similar in this respect: many public health care administrators disregard the fact that modern public administration operates under considerable fiscal pressure and where different service organizations and clients compete for scarce resources.

Chapter 4 (de Vries and Sobis) suggests that “if generalisation is possible, the stories tell us that communication skills were the most important requirements for these early advisors”. Communicating the content of a public program, coordinating implementation efforts, ensuring quality feedback – all these activities contribute to effective implementation. As cases from this volume demonstrate, there are too many examples of miscommunication or no communication at all. Chapter 5 (Orokov et. al) looks exactly at what prevents civil servants from acquiring new skills and knowledge. There are a number of obstacles, but in-service and out-of-service training through a variety of means could help public administrators think about their activities out of box and strategically.

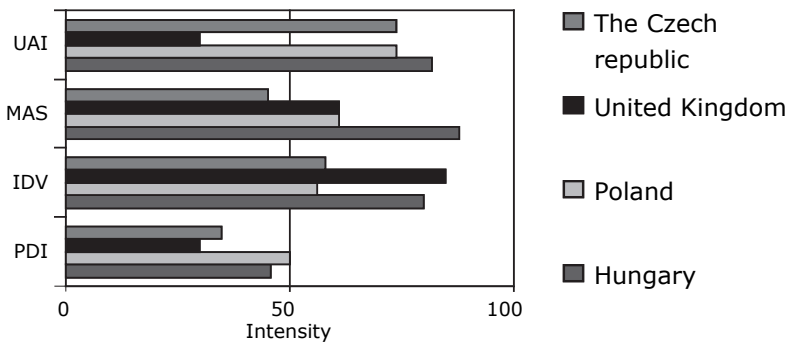
Societal and organisational culture

Societal and organisational culture is long considered as an important factor in public administration (Ott 1989). Many of the authors in this volume have pointed out that existing societal and/or organisational culture contributes to the suboptimal implementation practice (Tonnisson: “unsupportive public administration culture”, de Vries and Sobis: “assistance programs were far off the political, socio-economic and even cultural reality”, Lember: “radical change in organisational culture [from traditional bureaucratic organisation to contracting organization] is not an easy task” and Shaldeva: “in order to be effective, impact assessment should be part of a wider reform process... [including] changing of attitudes”). What is surprising (or indicative?), though, is that societal and – especially – organisational culture considered as the obstacle or, at least, as not encouraging are better implementation processes. It is surprising since modern public administration literature considers organisational culture as a resource or even managerial tool to improve performance and program implementation.

According to O’Toole (2000), “investigation suggests that the approaches [to policy implementation] developed in Western liberal contexts may have limited utility in other settings, but this subject remains primarily a frontier for further

investigation” (p.271). When dealing with societal/organisational culture and its potential effects in comparative perspective, it is useful to refer to Hofstede’s five types of cultural dimensions (power distance index, individualism, masculinity, uncertainty avoidance index, and long-term orientation) (Hofstede 2001). Hofstede argued that cultures differ on these dimensions which have a tremendous impact on how organisations function and people interact within organisations.

Chart 1
Hofstede’s values for given countries



Note: UAI – Uncertainty Avoidance Index; MAS – Masculinity Index; IDV – Individualism Index; PDI – Power Distance Index

Source: created by authors using data from the web site http://www.geert-hofstede.com/geert_hofstede_resources.shtml

This is an important aspect, especially in view of EU enlargement and administrative directives of the *Acquis Communautaire*. Problems with NPM and contracting out in Estonia or health care delivery in Slovakia may well be grounded – among other things – in specific societal and organisational cultures. For example, consider the Uncertainty Avoidance Index. A High Uncertainty Avoidance ranking (the Czech republic, Poland, and Hungary) indicates the country has a low tolerance for uncertainty and ambiguity. This is a society that institutes laws, rules, regulations, and controls in order to reduce the amount of uncertainty. A Low Uncertainty Avoidance ranking (United Kingdom) indicates the country has less concern about ambiguity and uncertainty and has more tolerance for a variety of opinions. This is reflected in a society that more readily accepts change, and takes more and greater risks. This may have direct implications for administrative reforms and their implementation (consider the problems with implementing NPM in Estonia described in Chapter 3).

Alongside societal, there is very often a distinct organisational culture. For example, one of the characteristic features of the Kyrgyz local government described in chapter 5 is the culture of crisis management. Local government employees deal with almost all issues *ad hoc*, even if they are routine. For this reason they were

reluctant to adopt clear rules (policy documents) for local government activities, as it would undermine their ability to make discretionary decisions.

Therefore, it is societal and organisational culture that should also be targeted for public administration reforms so that deep learning and cultural changes occur, rather than superficial changes in behavior due to external factors, such as EU or World Bank measures (see Chapter 2). This is the only way to develop indigenous capacity to design and implement public policies and programs.

Organisational (structural) reform

In many cases, organisational (or – more narrowly – structural) reform is an element of a new public policy program. Regulatory impact assessment requires establishing new analysis units and rearranges the internal processes and information flow. Ministerial and departmental operations are seriously altered by the introduction of new policy process and public management reforms, particularly NPM-style reforms, such as contracting out, especially – causing downsizing and changes in the way many functions are performed. Depending on a program/policy, organisational (structural) changes can be the ultimate goal or – more often – the means to other goals.

One of the important observations in modern public administration is that networks play a more and more important role (Kickert, Klijn, and Koppenjan 1997, O’Toole 2000). Modern public managers cannot afford only to manage their organisations; to be effective, they have to manage the organizational environment. It is a skill, but it is a different organisational arrangement as well. In this respect, implementation is about a complex array of (loosely) related organisations. Obviously, this does not make the task of implementation research easier.

Several chapters (e.g. Chapter 2 or Chapter 7) suggest that in order for implementation to be successful, an organisation should become a learning organisation. This is an important idea which fully corresponds to the understanding of the implementation process as a nonlinear, multilevel and variable speed process where feedback is essential, and this is one more challenge for policy designers in Central and Eastern Europe.

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