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# Shadow RIA - Impact Assessment Report on the Law on General administrative Procedure (2015)

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# Impressum

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## **Disclaimer**

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# 1. INTRODUCTION

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Almost ten years after the introduction of the process of the Regulatory Impact Assessment (RIA) in the Republic of Macedonia – designed to help adopt better regulations, as well as greater transparency and enhanced democracy – relevant results cannot be confirmed.<sup>1</sup>

In order to improve the process, the Institute for Democracy “Societas Civilis” – Skopje (IDSCS) and the Centre for Economic Analysis (CEA) are implementing the project “Regulatory Impact Assessment in the Shadow: Promoting Evidence-Based Policy Making in Macedonia” or in short, “*Shadow RIA*”. The project is being implemented to analyse the RIA process in the Republic of Macedonia as well as to increase the possibilities to include the civil society organizations through networking and capacity building.<sup>2</sup> In this sense, the idea is to increase the awareness of the effects of the laws, as well as to initiate pressure from larger groups to take part in the law-making processes of which analyses and informed discussions should be an integral part.

This project also implements *Shadow RIA* for past legal solutions (laws adopted in the period 2015-2016) in the area of good governance. Hence, this *Shadow RIA* focuses on analysis of the processes of adopting the Law on General Administrative Procedure (LGAP)<sup>3</sup> and provides a comparable

(parallel) assessment of the RIA process undertaken. The purpose of this *Shadow RIA* is not to assess the justification of the adopted solutions, but to point to improvements in the implementation of the RIA procedure so that future processes are more transparent to the relevant stakeholders, including the business community and the civil society.

Since RIA assumes continuous learning, we hope that by identifying the weaknesses and addressing the drawbacks of the previously implemented process, such analysis will represent basis for upgrading, it will contribute to enhancing RIA application in the Republic of Macedonia, strengthening the culture of change, as well as towards greater transparency, accountability, and rule of law.

We hope that this analysis will have an impact on the RIA teams in the ministries, the policy makers in the ministries, the MPs, the civil society organizations and the media, in order to improve the quality of RIA implementation in the country. In this way, by bringing closer the importance and the implementation of the RIA to the general public, we believe that we will contribute towards improvement of the good governance in the Republic of Macedonia.

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<sup>1</sup> See Shikova, N. (2017), Quality Analysis of Regulatory Impact Assessment Forms, Institute for Democracy “Societas Civilis” Skopje (in Macedonian).

<sup>2</sup> The project is financially supported by the Delegation of the European Union.

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<sup>3</sup> The choice of the *Shadow RIA* law has been made due to the project guidelines for selecting a law in the area of good governance. The LGAP was developed in 2014 and entered into force in 2015.

## 2. METHODOLOGY

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Parallel analysis of RIA for existing legal solution in the area of good governance - *Law on General Administrative Procedure* (2015),<sup>4</sup> will be conducted in a way that will assess the RIA procedure through publicly available data (available in the Single National Process Register - ENER). That is, the RIA forms will be assessed to determine the extent to which the prescribed procedures have been followed and the seriousness with which the RIA process has been approached in relation to the particular law.

The analysis is carried out based on basic parameters related to the process and essential elements of RIA. Subject of analysis of the RIA process elements is observance of RIA deadlines, that is to say, adhering to the RIA time frame, as well as following RIA steps. Whereas, the essential elements in the RIA process of the LGAP are considered through the prism of whether the problem has been clearly identified and defined, the transparency of the process (i.e. whether the stakeholders are involved), if the data are clear, whether there are options, if there are in-depth and substantive analyses for them, if the impacts have been assessed and if the costs and benefits have been evaluated. All of this should essentially point to commitment to implementing the RIA process.

The analysis will be carried out based on the current

RIA Methodology<sup>5</sup> adopted by the Government of the Republic of Macedonia, as well as the RIA preparation guidelines,<sup>6</sup> vis a vis the principles of good governance, the frame of which we set down in this analysis.

In addition, the identified drawbacks in the process will be elaborated, as a parallel process, which will include the creation of options (other than the existing one), an assessment of the impact of the proposed options on the different stakeholders in the society, as well as cost-benefit analysis guidelines (Cost – Benefit Analysis) for each of the options, that is to say, the effects they would have on them. Although such analyses are usually carried out ex-ante (before the adoption of the law), for this Shadow RIA, they will be carried out ex-post (after the adoption of the law).

Without going into the justification of the enacted solutions,<sup>7</sup> this *shadow RIA* will not provide a recommended solution (the solutions are already in force), but will provide enough information that we believe was necessary to make an informed decision that would be most appropriate at the time of the decision making, or would most effectively address identified problems. Hence, this shadow RIA tends to teach and assist in further implementation of RIA processes.

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<sup>4</sup> The Law on General Administrative Procedure (new regulation) was adopted on 23 July 2015 (Official Gazette of the Republic of Macedonia No. 124/2015), with a delayed application of one year, except for the provisions concerning electronic communication between public authorities and public authorities and the parties.

<sup>5</sup> RIA methodology (Official Gazette of the Republic of Macedonia, 107/13) (in Macedonian).

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<sup>6</sup> Regulatory Impact Assessment Handbook, Ministry of Information Society and Administration, <sup>2013</sup> (in Macedonian).

<sup>7</sup> To evaluate the solutions adopted, an in-depth analysis is needed, which would assess the effects of their implementation. This analysis does not tend to evaluate, but serves exclusively for educational purposes.

### 3. GOOD GOVERNANCE PRINCIPLES

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Good Governance Principles are basis for analysis and form the methodological framework of this document. As a basis, we set down the following principles for good governance aimed at essential RIA process- and soundly based Law on General Administrative Procedure:<sup>8</sup>

**Rule of law, justice, and legality:** Nobody is above the law; authorities obey the laws and adhere to the court decisions. The rules and regulations are adopted in accordance with the procedures provided by law and are enforced impartially

**Strategic leadership and accountability:** Economy, efficiency, and effectiveness in achieving results in the work and in the manner in which citizens' funds are spent. Objective decisions made based on all relevant evidence.

**Effectiveness and efficiency:** Results achieve the goals set. Best use of the available resources.

**Integrity and Ethics:** Independent, professional conduct, integrity in achieving goals. Acting according to high moral and ethical principles towards the public good and the interests of the citizens.

**Openness and transparency:** Openness, responsibility and efforts to improve the dialogue with all stakeholders. Information on decisions, policy implementation, and outcomes are made available to the public in a way that enables them to be effectively monitored.

**Accountability:** All decision makers, collective and individual, take responsibility for their decisions. Decisions are announced and explained.

**Availability and participation:** Greater involvement and cooperation in decision-making processes with all relevant actors from different spheres of social life. The goals, rules, structures, and procedures are adjusted to the legitimate expectations and needs of the citizens.

**Inclusiveness:** There is broad participation built on freedom of expression. All voices, including those of the less privileged and most vulnerable are heard and taken into account when making decisions.

**Innovation, creativity, and openness for change:** Search for new and effective solutions to problems and taking advantage of the modern methods of service delivery.

**Continuous learning:** Creating a culture of learning and investing in continuous development of the administration so that it can meet the expectations of the citizens.

**Partnership and networking:** Key actors in the process of planning and implementation have been identified, partnerships are constantly being built, and there is an awareness that everyone needs to understand their role in the wider context.

**Equality and fair treatment:** Promote and practice the principles of equality, equal opportunities and fair treatment, as well as respect for individual differences.

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<sup>8</sup> The principles considered are part of different strategies for good governance. Various sources have been used in their formulation, one of which is the Council of Europe document - "Good governance principles at local level"

(fully applicable to good governance at central level as well); see more on: [http://www.coe.int/t/dgap/localdemocracy/Strategy\\_Innovation/12principles\\_en.asp](http://www.coe.int/t/dgap/localdemocracy/Strategy_Innovation/12principles_en.asp)

## 4. RIA PROCEDURE

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RIA is a public policy-making method, based on analyses, and it is designed to help the decision makers choose the most suitable solution based on the possible consequences of the proposed regulation and the actual consequences of the current one.<sup>9</sup> This process aims to provide relevant data on how the possible solutions will affect the specific problem (positively or negatively), as well as to assess the efficiency of the proposed manners of achieving a specific goal. The systematic approach provided by RIA enables the policy creators and the decision makers to assess the most suitable option taking into account the society, economic and social impacts. Particularly important for this process is that it enables greater inclusiveness and public participation in all stages of public policy making, by involving stakeholders. In this way, it contributes to better implementation of the adopted regulation and enhances transparency.

The Regulatory Impact Assessment Methodology,<sup>10</sup> based on a decision of the Government of the Republic of Macedonia of 2009, is mandatory for all legislative proposals, except for those adopted in an urgent procedure, laws on ratification of international agreements, laws by which terminological harmonisation with other laws is performed, the Budget of the Republic of Macedonia and the Law on Implementation of the Budget of the Republic of Macedonia.

The RIA process is complex and its implementation starts with the process of strategic planning, that is to say, the future regulation that is planned to be adopted should be part of the Government's strategy and part of the strategic plan of the line ministry (proposer of the law). The line ministry, based on the strategic priorities of the Government, creates a strategic plan that foresees legal intervention. The proposal becomes part of the Annual Work Programme of the Government (AWPG) and the line ministry of the Single National Electronic Registry of Regulations (ENER) publishes an Annual RIA Implementation Plan specifying the areas in which regulatory interventions will be carried out. RIA to external entities begins with reporting.

When the process begins, the situation is analysed and goals defined, and stakeholder consultations help decide whether to proceed with further intervention or - if the problem can be resolved by non-regulatory measures - the initiative to be withdrawn. If the initiative is not withdrawn, the problems are addressed through several solutions (options). One of the solutions offered is the "do nothing" option, which points to the current situation and is the status quo. This option is compared with the other (at least two) options, but all solutions (options) are compared to each other.

Stakeholder consultations are an inevitable part of RIA. They are part of all the steps in the process and they include: informing the public, exchange of opinions, views, and experiences in order to find solutions to the specific problem or implementation

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<sup>9</sup> See Kirkpatrick, C.H., and D. Parker. 2007. Regulatory Impact Assessment: Towards Better Regulation? CRC Series on Competition, Regulation and Development. Edward Elgar Publishing, p. 1.

<sup>10</sup> *Supra note 5.*

of the proposed solution, active involvement, or participation of stakeholders in drafting laws through debates, workshops, round tables and other appropriate models of involvement.

For each of the possible options the impacts they would have on the stakeholders (economic, social, administrative, political, gender...) are also considered by assessing the current and expected consequences, that is to say, the situation is evaluated if interventions are made, i.e. if they are not made.

To get an overall picture, the costs and benefits of each of the foreseen options are analysed. Based on the complete analysis, which further includes risk analysis, implementation methods, implementation monitoring methods, the most effective, i.e. optimal solution is selected. It is the solution that has the least financial implications, and it achieves the desired effect. According to the best solution, draft law and draft report are prepared for RIA, which is signed by the line minister. The draft report is published on ENER and it gives an overview of the process, the results of the analyses and the recommended solution.

The draft report is also reviewed by the Ministry of Information Society and Administration (MISA), i.e. it monitors whether the conducted procedure is in line with the RIA acts. Based on the received opinion, the line ministry prepares a report on RIA and together with the draft law submits them to the General Secretariat of the Government of the Republic of Macedonia. The RIA report and the draft law are also published on ENER, and thus, the RIA procedure is completed.<sup>11</sup>

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<sup>11</sup> For a detailed view of the RIA process, see Annex 1, attached to this document.

## 5. ANALYSIS OF THE RIA PROCEDURE FOR THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE (2015)

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The proposer of the Law on General Administrative Procedure is the Ministry of Information Society and Administration. In the documents available to ENER, the folder relating to the LGAP contains:

1. **Draft Law**, Draft proposal law on general administrative procedure (16.07.2014)
2. **Notification of initiation of the process of preparation of a Draft proposal of a law**, Draft proposal of a law on general administrative procedure (25.12.2014)
3. **Draft report on regulatory impact assessment**, Draft proposal of a law on general administrative procedure (25.12.2014)
4. **Draft proposal of a report on regulatory impact assessment (report)**, Draft proposal of a law on general administrative procedure (25.12.2014)
5. **Draft proposal of a law**, Draft proposal of a law on general administrative procedure (25.12.2014)

## 5.1. Process elements of RIA

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### Compliance with the RIA timeline

RIA process towards external entities should start with the notification on the start of the process of preparation of a draft proposal of a law, and it should be followed by all RIA steps until the RIA report and draft proposal of a law are prepared. A simple analysis shows that all documents were published at the same time. (on 25.12.2014). According to the RIA Methodology, the Annual Plan for Implementation of RIA should be published 15 days after the adoption of the Annual Work Programme of the Government (APWG).<sup>12</sup> The RIA notification is published 5 days before the start of the RIA process. This is followed by the RIA process and public scrutiny that lasts minimum 15 days, the stakeholders are invited 5 days before the consultation, and the consultation lasts during the entire process. The draft RIA report is published 10 days before the submission of the report to MISA, and after receiving the opinion, the draft proposal of a law and the draft RIA report are published after they have been established by the Government. In this case, the draft proposal of a law was published before the start of the process (16.07.2014), while all the documents were additionally added after its completion. Therefore, we conclude that the deadlines are not met, which in this case is contrary to the principles of good governance, i.e. it undermines the principles of: openness and transparency; accountability; availability and participation; equality and fair treatment.

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<sup>12</sup> Usually AWPG is adopted at the end of the current, or beginning of the new calendar year.

### Compliance with RIA steps

Not all necessary steps have been taken during the RIA procedure. Namely, the Law is part of AWPG for 2014,<sup>13</sup> but there is no publicly available Annual Plan for RIA Implementation. Therefore, we conclude that the preparation of the LGAP did not follow all the necessary steps required by the RIA process, as determined by the RIA Methodology. It violates the principles of good governance, i.e. it undermines the principles of: the rule of law, justice, and legality.

## 5.2. Essential elements of RIA (Commitment to the RIA process)

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RIA means following certain steps that are logically linked. The steps are prescribed by the RIA Methodology. Analysis of the implemented RIA points out that only certain steps have received some attention, most of them are provisionally implemented, while certain steps have been omitted entirely. Therefore it is evident that the institutions do not adhere to the adopted documents and guidelines for work, that is to say, such procedures are not in line with the principles of " the rule of law, justice and legality.

The following is an analysis of the LGAP RIA documents in relation to the requirements contained in the RIA Methodology as well as to the principles of good governance.

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<sup>13</sup> In the Annual Work Programme of the Government of the Republic of Macedonia 2014-2018, it is mentioned "Implementation of a new Law on General Administrative Procedure, aimed at increasing citizens' rights in administrative procedures and facilitating the fulfilment of obligations to state institutions (continuously)."

### **Notification on the start of the law drafting process**

The problem is appropriately described, but the notification points to a completed process i.e. it is pointed out what is regulated by the new law, and not what it would be regulated, what are the tendencies or future activities, so that the public can get involved and make their comments, it is reported about activities that are already implemented. The notification should determine the time frame for the preparation of a draft proposal of a law, the start and finish period of the RIA process and drafting the law in accordance with the Annual Plan for Implementation of the RIA, while the reviewed notification reports that the law has been drafted in the past 12 months, i.e. that the law has already been drafted. The notification shall specify how the stakeholders will be involved (in the future) and in which way, while the specific report points out who has been involved in the process and how. Therefore, this notification is only a newsletter of the completed process and instead of announcing future steps, it reports on the activities undertaken. Hence, the principles of openness and transparency, availability and participation, equality and fair treatment have been violated.

### **Draft RIA Report**

A draft report is missing in the RIA folder and the RIA report is added under the appropriate title. The draft RIA report should point to the steps taken after the public has been informed, the stakeholders are involved and the analyses are prepared, i.e. it is a proposal to the final RIA report. Between the draft and the final report, it is necessary to spend 10 days consulting with stakeholders, engaging the general public, getting to know the process and

proposed solutions, or contributing to the creation of a final RIA report in relation to the proposed law. Here, it seems that such a step has been omitted. Undoubtedly, in this segment too the principles of: openness and transparency; accountability; availability and participation; inclusiveness; innovation, creativity and openness to change; continuous learning; partnerships and networking; equality and fair treatment are violated.

### **RIA Report**

The RIA Report monitors its structure and some of its integral parts have been given due attention. The situation is well described, but the problem needs to be specifically defined in order to understand the logic of government intervention, i.e. the adoption of a new LGAP. The objectives of the draft regulation are clearly set down, but when it comes to possible solutions or options, the option, "do nothing", i.e. what would happen if no intervention was made, is not elaborated nor an alternative option is elaborated, except for the proposed one. Hence, the decision maker is not given the opportunity to choose among the options the one he considers the most appropriate, i.e. the option by which the same or different effect would be achieved, at lower or higher costs. When elaborating on the options, they need to be formulated in terms of the problems, that is to say, to be their answer. In this case, the option and the problems function as separate segments and they are insufficiently interconnected. The meaning of the RIA is the impact assessment for each of the options (in this case one), while in the RIA report, the economic, fiscal, social, environmental, administrative impacts and costs have not been assessed, that is to say, the draft report notes that there are no impacts. The report

does not include a cost-benefit analysis. When it comes to consultations, an essential part of the RIA process do determine the impacts, options and their feasibility, the report points out that they have been implemented since the previous year, whereas in a good RIA process they are part of all steps and are carried out in all phases of the RIA implementation.

The overview of the opinions received and incorporated is a list of acts of the institutions that gave their opinion, without a suitable explanation of why they were accepted. The opinions or suggestions in them are not summarized and are not clear. Therefore, this part is more accountable to the institutions, not to the citizens and is not in line with the goals of the law - bringing the administration closer to the citizens. There is no comparative overview of the positive and negative impacts of the possible solutions (options). There is a risk, and that is the administration's reluctance to comply with the requirements of the law, whereas for the recommended solution and its explanation, it is pointed out to the cost of the option and specifically to the solution, which is to conduct training for all officials acting in the administrative procedure. There are some guidelines for implementing the recommended solution, as well as monitoring and evaluation determinations that are not well and appropriately elaborated. The document is not signed by the authorized persons (the state secretary and the line minister). The RIA report violates the principles of: strategic leadership and responsibility; effectiveness and efficiency; openness and transparency; accountability; availability and participation; inclusiveness; innovation, creativity and openness to change, equality and fair treatment.

## 6. SHADOW RIA

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The aim of this document is to develop a detailed RIA for the already adopted LGAP (2015) in order to foster a culture of change and continuous learning. Therefore, without prejudging the relevance of the adopted solutions, the following is an overview, adaptation of the existing RIA Report on LGAP (2015). This shadow RIA is a simulation of what we consider a RIA report should include on the basis of which informed solutions could be enacted that would effectively and optimally address the problems addressed in the interest of public good and in the interest of the citizens, in accordance with the available resources.

### 6.1. Description of the situation and problem identifying<sup>14</sup>

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Implementation of the principles of good administration requires a well-designed and strong platform consisting of four components: a) a system of administrative procedures that fully regulates the processes of adoption of administrative acts; (b) a clearly structured organization of public administration and its organs in all administrative areas and territorial levels; c) professional, competent and independent staff; d) a system of effective judicial control over administrative action. In doing so, each component is equally necessary for good administrative practice, and an appropriate system of administrative procedure is necessary to put into practice the good governance principles.

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<sup>14</sup> Adaptation of the problems identified in the RIA Report, with a view to their clearness, comprehensiveness, and systematicity.

Such a system establishes the general rules for the process of implementation of administrative action; it ensures its quality and legality.

A good system of administrative procedure protects citizens' rights and encourages their participation. It also avoids unnecessarily complex, formalistic, and lengthy processes and improves transparency and accountability, thereby significantly contributing to greater integrity of the public administration. A good system of administrative procedure also reduces the costs of citizens as well as government spending. On the other hand, the system of complex and ineffective administrative procedures is expensive for the citizens and significantly burdens the state budget.

The Law on General Administrative Procedure (2005)<sup>15</sup> enjoys a high legal reputation and is an act that provides legal security. However, in the explanation of the Draft proposal of a law, the proposer concludes that it is "out-dated." The law is based on a long tradition dating back to the Austrian Administrative Procedure Act of 1925. The Yugoslav Act of 1930 was first adopted by the Kingdom, and subsequently by the SFRY, and was amended only twice - in 1956 and 1986.

The current LGAP (2005) was amended in 2008 and 2011. Its amendments are superficial solutions that do not meet the needs of the modern democratic state and citizen-oriented administration. The LGAP (2005) recognizes only the administrative act, that is, the one-sided and formalized administrative solution, as a legal form of administrative action, while cooperation between public authorities and citizens based on the principle of transparency and aimed at responding to the needs of citizens - suggests new, additional administrative actions.

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<sup>15</sup> Further in the text LGAP (2005).

In contrast to the LGAP (2005), there are special administrative procedures that create a heterogeneous legal framework, which often deviates or derogates from the LGAP (as a *lex generalis*). These procedures are complicated and take a long time, and their excessive formalism complicates economic activities and makes the legal protection of citizens, difficult. Long and ineffective administrative procedures incur high administrative costs on the state budget, as well as high costs for the business sector. This discourages investment and slows down economic growth.

Administrative procedure according to the LGAP (2005) and its amendments of 2008 and 2011 recognizes only the written form and does not recognize other means of communication between administrative authorities and citizens such as electronic communication. It slows down the legal transactions and affects the realization of citizens' rights.

The privatization of public service delivery (such as telecommunications, electricity, or water supply) is ongoing, and administrative and legal protection before the administrative authorities is missing. In that situation, the citizens and the business entities - users of services from private individuals and legal entities - public service providers, have legal protection before the civil courts. They are therefore exposed to higher costs in a lawsuit and significantly longer proceedings.

For these reasons, the Government of the Republic of Macedonia has decided to modernize the system of administrative procedures based on a completely

new legal framework, which seeks to preserve the traditional values and strengths of the LGAP (2005), but also to open up new opportunities for future social and technological development.

**Based on the situations described above, we find the following problem:**

*inability to respond to the needs of the citizens in the modern democratic state due to the obsolescence of the LGAP (2005) which only contains one-sided solutions that lead to complex economic activities, large administrative and business sector costs, slower economic development of the state, slower legal transactions and incomplete legal protection of citizens in the Republic of Macedonia.*

## 6.2. Stakeholders

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The general administrative procedure concerns all identified parties participating in it. This means: any holder of public authorization finding that another entity, legal or natural person, has fulfilled the legal requirements for exercising the right; any holder of public authority providing the right or service on the basis of the established legal basis for exercising the right; as well as any holder of public authority before whom (on behalf of the State or local self-government units) obligations are exercised by legal and natural persons and of course natural and legal persons who exercise rights or fulfil obligations. Due to the large number of parties affected by the content of the legal framework governing the general administrative procedure, the forms of legal protection provided for in this regulation, the types of acts and actions in respect of which legal protection is provided, the time limits for proceedings, and the entities for which protection is exercised are of paramount importance.

The general administrative procedure can be established through three (ideal) models:

- 1) a general, framework regulation that defines the principles and basics of the administrative procedure and the scope of the general administrative procedure vis-à-vis the special administrative procedures. The specifics of the administrative procedure for each public service provider shall be governed by separate material regulations;
- 2) an extensive code, which sets down in detail

the principles, scope, manner of implementation, legal protection, supervision of enforcement and other aspects of the administrative procedure, but it leaves open the possibility, by way of exception, with a separate regulation to lay down specific (separate) administrative procedures - other than the general one. The exception is provided by the general regulation;

- 3) a mixed model, which to varying degrees allows both the extension of the general regulation and the wider freedom with separate regulations to deviate from the general framework.

The LGAP (38/2005, 110/2008, 118/2008, 51/2011) is designed to be an extensive and widely applicable law. However, practice (see 6.1 problem) has shown that the *lex specialis derogat lex generalis* principle is used too often and the LGAP is derogated into a number of separate laws that complicate its application.

According to the LGAP (2005), but also based on future legal solutions, the stakeholders on whom the definition of administrative procedure and the scope of the LGAP have effect are:

- the ministries;
- other state administration bodies: independent state administration bodies (directorates, archive agencies and committees), bodies within ministries (administration, bureau, department, inspectorate and port authority);
- organizations determined by law and other state bodies, when in administrative matters,

directly applying the regulations, they decide on the rights, obligations or legal interests of natural persons, legal entities or other parties (hereinafter referred to as the parties);

- legal and other persons entrusted by law to exercise public powers when deciding on matters to be defined as "administrative matters" (hence the importance of being defined as administrative work, administrative action, administrative act, etc.) Potentially, this includes all private individuals and legal entities that perform public activity on the basis of a license, permit, concession or lease agreement;
- the bodies of the municipality, the City of Skopje and the municipalities of the City of Skopje, when in the performance of their competencies they decide in administrative matters for the rights, obligations or legal interests of the parties in the administrative procedure;
- all public authorities providing second-instance protection in administrative procedure;<sup>16</sup>
- citizens and legal entities that exercise their rights and fulfil obligations before public authorities and companies providing public services.

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<sup>16</sup> By 2007, dozens of second instance commissions established by the Government of the Republic of Macedonia and commissions established by minister; later: State Commission on Public Procurement Appeals, State Commission on Second Instance Decision Making in Administrative Procedure and Labour Disputes, State Commission on Second Instance Decision Making in Inspection and Misdemeanour Procedure, two ministerial commissions; Potentially: Independent regulatory bodies that supervise the work of companies with public authorizations when they appear as a body before which legal protection is exercised.

## 6.3. Options

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### Option 1 (do nothing)<sup>17</sup>

In the Republic of Macedonia, the system of administrative procedures is regulated by the Law on General Administrative Procedure (2005), and several separate laws regulating individual administrative areas (hereinafter: LGAP (2005)). LGAP (2005) is based on a long tradition and follows historical development deriving from the Austrian Administrative Procedure Act of 1925, which was adopted in the Kingdom of Yugoslavia in 1930, and subsequently in the SFRY. Since its adoption in the SFRY, the Law has been amended twice in 1956 and 1986. LGAP within the SFRY has been used by many generations and it has proved to have strengths. The law has long provided legal security in the process of adopting administrative acts and has a sufficient degree of legal protection for citizens against administrative acts. The existing LGAP (2005) was amended in 2008 and 2011.

However, in a modern democratic state the perceptions of public administration have changed, the tendencies for establishing a citizen-oriented administrative practice, for introducing changes in administrative culture, and for using advanced technical means of communication between citizens and administrative bodies are strong. Because of these changes and democratic expectations, the current LGAP (LGAP 2005) is unsuitable to

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<sup>17</sup> Adaptation of the assessment of the situations that should be regulated by the law and the reasons for the adoption of the law in the Draft proposal of a Law on General Administrative Procedure, 2014, document available to ENER.

respond to emerging situations. It reflects the idea of the traditional bureaucratic administration, not a democratic one that is expected to deliver complex public services.

Contrary to the domestic reality, the principles of the European law adopted in the European legal area are also changed, and the standards reflected in the administrative practice of the EU Member States are appropriately promoted. Therefore, modern standards are either not contained in the existing LGAP (LGAP 2005) or are only partially reflected. This law does not recognize modern types of administrative activities and does not provide full legal protection against them. The existing LGAP (LGAP 2005) contains unnecessarily complex, lengthy, and expensive procedures. It does not provide the general legal framework for e-administration, as well as single contact approach. It emphasizes the formality of the proceedings, without taking into account the results of the decision-making. The law is burdened with regulatory details whose efficiency and applicability can best be achieved through bylaws or internal administrative rules.

The attempts to adjust the LGAP (2005) to new emerging needs have not produced sustainable results. Many of the innovative administrative tools (e.g. information communication, single point of contact approach, administrative contract, and effective administrative remedies system) cannot be integrated into the existing legal framework (LGAP 2005, 2008, 2011). Partly because the given structure

of the Law (LGAP 2005) does not provide an appropriate systematic place for them, and partly because of the non-compliance of the modern requirements with all conceptual content - that is, the "spirit" of the LGAP *ex lege*.

The head of the legal entity that is most often politically appointed or elected person is still deciding on the administrative procedure and decision-making. Although this may provide political legitimacy for the decisions, there is a potential danger that the proceedings may be politically impacted or resolved by persons who are legally incompetent. Although the real work is carried out before the expert services, in order to fulfil the formal obligation by which the act is deemed to "adopted", it is necessary for the pre-prepared individual acts to be "signed" by the director or the minister of the institution, thus unnecessarily burdening the decision making process.

Therefore, the amendments to the Law (LGAP 2005) with amendments did not contribute to its modernization. The amendments to the Law between 2005 and 2011 represent only medium-term measures that only address the problems superficially, and further amendments to the applicable LGAP (2005) would represent an imperfect and incomprehensible patch rather than a good, consistent, and understandable law. Such solutions would undermine the legal security and the rule of law and would not reflect the principles of good governance.

## Option 2 (the existing one, adopted option)<sup>18</sup>

One of the major innovations set down in the Law on General Administrative Procedure is the intention to apply the law when an administrative body performs its administrative law duties through other unilateral administrative actions that are not covered by the concept of the administrative act but relate to the rights of the citizens, their duties and legal interests.<sup>19</sup> Therefore, the LGAP should provide flexibility with regard to the administrative actions including the legal instrument of the administrative contract. An administrative contract is an agreement in which at least one of the parties is a public authority or a person acting on behalf of the state and which is directly aimed at fulfilling a public task.

An administrative act is defined as an individual act of a public body adopted on the basis of a law that deals with the rights, obligations, and legal interests of the parties. The types of individual acts adopted as administrative acts may be titled as: conclusion, decision, order, license, permit, prohibition, approval, or other.

The new LGAP should also apply where an administrative body performs its administrative law tasks through other unilateral administrative actions that are not covered by the concept of administrative act but refer to the rights of citizens, their duties and legal interests, such as the delivery of information, warnings, notifications, publication of expert opinions, or actions related to citizen complaints. Hence, the scope of the LGAP extends to the so-called real acts or actions of public authorities,

which are not administrative acts or administrative contracts, but which may have a legal effect on a person's rights, obligations, or legal interests.

The new LGAP requires that legal entities that are authorized by law to provide public services or services of general interest be designated as service providers. The new LGAP should also apply to administrative actions designated as enacting administrative acts, concluding administrative contracts, protecting users of public services and services of general interest, as well as taking other administrative actions in the administrative matters in accordance with the law.

The new LGAP should also provide legal protection when the delivery of public services (e.g. telecommunications services, electricity, or water supply) impedes the rights of citizens or their legal interest, regardless of whether the public service provider is a public legal entity or private legal entity or natural person.

The new LGAP should provide as efficient, simpler, and faster administrative procedures as possible to reduce administrative costs for both the state budget and the business sector.

The new LGAP should allow all means of communication between the administrative authorities and the citizens.

Rules on formalities such as the written form of the administrative action should only be applied in cases clearly prescribed by law. The new LGAP should set down the legal requirements for the development

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<sup>18</sup> Adaptation and amendment of the option contained in the RIA Report, in order to make it more understandable.

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<sup>19</sup> Draft proposal of a Law on General Administrative Procedure, 2014, Electronic National Registry of the Republic of Macedonia (ENER), [www.ener.gov.mk](http://www.ener.gov.mk). This Law is part of the Strategy for Public Administration Reform 2010-2015, and its aim is "modernization," i.e. adapting the administrative procedure to the needs of the citizens, business, and public sector in the country in the 21st century.

and application of information communication between public administration and citizens (“e-administration”) and the principle of active assistance to the party.

The new LGAP should introduce the legal institute “administrative assistance” as an appropriate tool for improvement of the efficiency of the administrative procedures, which ensures non-bureaucratic cooperation and mutual assistance and support to administrative authorities.

The new LGAP for the first time establishes the administrative contract.<sup>20</sup> This is the first time in a procedural law to introduce an administrative contract concluded for the performance of a public service that is under the authority of the public authority. This administrative contract is concluded between a public authority and a “party,” if the conclusion of the contract is in the public interest (and does not impede the rights of third parties). For the cancellation of an administrative contract, the new LGAP provides for explicit jurisdiction of the administrative judiciary, and its cancellation is done by initiating an administrative dispute by the party or by the public authority with a lawsuit. The public authority may unilaterally terminate the contract if the party fails to comply with the obligations of the contract giving the public authority a stronger prerogative (which is justified given that the administrative contract is aimed at the realization or protection of the public interest).

The new LGAP introduces the complaint as a regular legal remedy, which is a novelty in the

administrative procedural legislation. Against the actual acts and actions of service providers of general interest or acts of their omission, the party may file a complaint with the supervisory public authority established by law for the duration of the action or failure to perform an action by the service provider. For the form, content and deadline for filing an administrative complaint apply the same rules, which apply for filing a complaint as a regular legal remedy. The complaint procedure in this case is led by a separate organizational unit or collegial body of the public authority issuing the actual act and the public authority decides upon the complaint with an administrative act against which an administrative dispute may be initiated.

In order to ensure the depoliticisation of the administrative procedure and increase the principle of expertise and professionalism, the new LGAP sets the legal obligation for every public authority to have an organizational unit (or officer, within an existing organizational unit), a division or department for conducting and decision-making in administrative procedure, including appeals proceedings and other actions related to the handling of complaints by dissatisfied parties. Decision-making in administrative procedure does not derive from the “authorization” that the official has, but from the act of systematizing the jobs in the public authority/ public service provider where the job description must include the conduct and decision-making in the administrative procedure.

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<sup>20</sup> The administrative contract is for the first time envisaged by the Law on Institutions of 2005, such as: an contract that the public authority concludes with the party for the performance of public authorizations under the jurisdiction of the public authority, when stipulated by a separate law.

### Option 3

It is necessary to maintain the momentum of the reform, but also to leave room for the derogation of the new LGAP by separate laws. Derogation by separate laws should be a rare exception, only where necessary. The general (inclusive) deadlines should be imposed as the "shortest" deadlines, so that, if there is an exception, it cannot be shorter than the deadline prescribed by the LGAP. Therefore, the intervention should be based on existing separate regulations that derogate the existing or future LGAP. In any case, a multitude of regulations will have to be harmonized with any new solution. In this case, the new LGAP should represent a smaller change to the current LGAP (LGAP, 2005), thereby reducing the heterogeneity in the regulation of the separate administrative procedures. The major change in the LGAP does not guarantee that the separate laws will be harmonized.

The scope of the LGAP is to expand and encompass more types of administrative actions and to "legitimize" or recognize more actors in the administrative procedure. This should be done in a way that will not prejudice the nature of the administrative procedure as an action by which rights are exercised and obligations fulfilled.

Real acts should differentiate between administrative actions as an act of physical activity and material acts as issuing certificates, documenting events, occurrences, and the like. For administrative actions and unissued public documents (not issued within the prescribed period), public documents issued with incorrect data as well as material acts, it is necessary to provide for legal protection (complaint to supervisory authority) by example of legal

protection against an individual act but that "per-se" should not be considered administrative procedure. This is because - although it is undisputed that by this kind of acts and actions the parties receive service - they de facto do not exercise a right, nor do they fulfil an obligation. Another reason for the reserved approach to determining the form of protection is the assumption that service providers who, for this type of acts must act appropriately and provide legal protection in administrative procedure, "perhaps" lack the real human resources to enforce extensive legal obligations. On the other hand, for non-fulfilment of obligations for issuing public documents there is inspection control in the form of control over the legality of the operation. Protection upon complaint can also be foreseen in a procedure outside the administration procedure.

The new LGAP should adopt the existing solution from the current LGAP (LGAP adopted in 2005) for issuing individual acts in the form of a "solution" regardless of the content of the enacting clause. In addition, it is necessary to list the types of rights and obligations acquired by the adoption of the individual administrative act (for example, permit, license, order, etc.).

The new LGAP should recognize more forms of interaction between holders of public authority and other parties when other parties are expected to perform public authority. Administrative contract, as a specific type of administrative act, should be governed by separate regulations and/or by the Law on Contracts. It is necessary to recognize this type of contract as a specific form of contractual relationship, which regulates rights and obligations between a public legal entity and a third party that is expected to perform public works or to provide

public services on behalf of the public legal entity (public body). This contract regulates the specifics of the manner of conducting the work, that is, the service and the manner of compensation for it. The contract is not concluded and implemented as a unilateral act of will (characteristic of individual acts). It is therefore debatable whether the administrative contract should be subject to general administrative procedure.

In the new LGAP, it is necessary to recognize different forms of electronic communication and to treat them as "official" communication by which involved parties can communicate with the public authorities and public authorities can communicate to each other. However, it is also advisable to ensure a transitional period in the application of ICT in communication between public authorities, as it is unlikely that adequate human, material, and financial resources are available for its application. The explicit use of electronic communication should not be imposed (for example, in context of the duty of any public authority to seek legal assistance electronically when it needs facts, documents or other evidence) as it cannot fully substitute for official written communication as such. In this regard, it is necessary to take into account the digital divide in the Republic of Macedonia, which applies not only to the citizens who have limited access (and knowledge) to ICT, but also to the majority of public bodies with few employees, or employees with a lower level of ICT skills, and insufficient material and financial resources to modernize ICT equipment.

In an administrative procedure, it is the secretary (in the institutions where a secretary is elected) who should decide, regardless of which employee conducts the procedure, and where

no secretary is elected, the job systematization act should provide for one or more officers with professional qualifications who will conduct and decide in context of administrative procedure. This kind of "more conservative" intervention should lead to simplification of the process of technical decentralization in decision-making in administrative procedure, its depoliticisation, and professionalization, in a way that is simpler to apply to the "larger" institutions where secretaries are elected or appointed. In institutions where no secretary is elected/appointed, it is necessary to amend the job systematization act. Based on such act, it is necessary to further qualify the existing employees or to hire persons (officers) who will conduct and decide in context of administrative procedures.

In the preparation of the new LGAP, it is recommended to follow the nomotechnics of positive law in the Republic of Macedonia and the region and to use terminology specific to this region. In this way, the new LGAP will remain in harmony with other positive regulations. This will facilitate its implementation and possible legal adjustments.

## 7. PARTIES INVOLVED AND CONSULTATIONS

Representatives of the Ministry of Information Society and Administration, SIGMA representatives and experts in the field of administrative law were involved in the preparation of the text of the new draft Law on General Administrative Procedure in the Republic of Macedonia. Acting in line with European requirements and standards, the group was expected to introduce new legislation to precisely identify the competent authorities that would apply the LGAP, to define administrative work, to redefine basic principles, to comply with European requirements and standards, to reduce the number of remedies, to further regulate the institute of 'the silence of the administration', and to emphasize electronic communication between authorities, on one side, and individuals and legal entities, on the other, during the proceedings.<sup>21</sup>

## 8. IMPACTS

### 8.1 Direct and indirect impacts

**Extensive interventions in system law have both direct and indirect impacts.**

Scope of the Law *directly* will affect the number of institutions, private legal entities, and individuals that appear as public authorities or providers of public services as such. Obligations will be created for them to comply with the provisions of the Law concerning the conduct of the administrative procedure, the acts they adopt, the provision of adequate legal protection, adherence to the principles of the administrative procedure, etc.

Procedural provisions of the Law *directly* will be reflected in a number of material regulations that will have to be harmonized with the new LGAP, and further with the related bylaws.

*Indirect impacts* depend on the successful incorporation of the envisaged measures into other related laws and bylaws, as well as on the ability of public authorities/public service providers to successfully deliver these services, i.e., act efficiently and effectively. If all involved public institutions successfully incorporate the changes, greater efficiency and predictability of the procedures is expected, and thus a higher level of legal certainty for the parties in administrative procedure. Successively, increased legal certainty is expected to have also a positive impact on promoting the overall

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<sup>21</sup> Adaptation and supplementation, taken from the RIA Report available on ENER website.

level of satisfaction with the work of the institutions and confidence in them, and thus embracing the full potential of the state and society as a whole.

Regarding Option 1 (*does nothing*), its long-term application will indirectly affect, i.e., will cause indirect impact on trust in institutions. Difficult application of the procedure and its heterogeneity will increase the confusion of the parties in the procedures.

As for the impacts of the other two options (Option 2 and Option 3), a link between the scope of the new LGAP and its immediate impact can be expected - i.e., wider coverage results in a greater direct impact on many actors.

Only in ideal conditions, the benefits of Option 2 (the solution adopted) are immediately apparent and significant. Consistent application of Option 2 standards, by all, or at least by most public authorities/public service providers, can result in tangible benefits. On the other hand, the delay in adopting new standards can be counterproductive and create uncertainty.

Certainly, misunderstandings and ambiguities about the content of the new legal text are likely, and this can create difficulties in its incorporation into other material regulations. This is because extensive regulations create challenges of a technical nature since a large number of regulations (laws and bylaws) have to comply with such extensive regulations. Therefore, one can expect that not only the new high(er) standards of performance will have difficult application, but also certain challenges in the legislative process regarding alignment of material regulations with the extensive LGAP.

Option 3 is a less invasive option and it is expected to be simpler to incorporate into the country's legal system. However, that option carries the risk of porosity (just as the existing, valid solution - Option 1 - does nothing), that is, excluding certain acts and actions by public authorities from appropriate legal review procedure for the parties.

## 8.2 Long-term and short-term impacts

**Option 1.** In the short term since nothing changes, there are no expected impacts. In the end, existing trends are expected to continue, which are undesirable and limiting legal certainty, trust in institutions, and have a detrimental impact on the investment potential of the state and municipalities.

**Option 2.** In the short term, the expected negative impacts can be anticipated: challenges to aligning with new legal solutions, building the human, material and ICT capacities of public authorities/service providers to be able to consistently implement the provisions of the Law. In the end, it is expected to increase the efficiency, effectiveness, and cost-effectiveness of the administrative procedure, remove (or reduce) the porosity of the system of administrative-legal protection, strengthen confidence in institutions, increase the investment potential of the state and municipalities.

**Option 3.** In the short and long term, similar but moderate challenges are expected as in Option 2. Short-term implementation challenges are expected

in the short run, while increased confidence in institutions, reduced porosity of the administrative-legal protection system and increased investment potential of the state and municipalities can be expected in the end.

## 8.3 Concentrated and widespread impacts

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A system law amendment covering more than 1300 public institutions, 45 companies and a large number of natural persons authorized to perform public works, whose services are used by all natural and legal persons in the country, has widespread impact in all three options.

Option 1 - lowest (of the offered ones);  
Option 2 - largest;  
Option 3 - large.

## 8.4. Administrative costs

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As regards the costs incurred by the parties in the administrative proceedings, no additional costs are

foreseen in any scenario. Administrative taxes are regulated by the Law on Administrative Taxes.<sup>22</sup>

With regard to the costs incurred by public authorities and all legal entities that, as the scope of the LGAP can be extended to service providers, they are expected to incur costs in adapting to the new rules, changes in the systematization to introduce a separate officer in charge of conducting and deciding in administrative procedure.

## 8.5. Social impacts

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Persons using welfare financial assistance are exempt from administrative taxes.

The granting of legal protection for all unilateral actions conducted by a public authority or public service provider (which under Option 2 is regarded as an administrative procedure and under Option 3 as a "complaint" remedy) will have a positive impact on the parties involved in the procedure.

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<sup>22</sup> Official Gazette of the Republic of Macedonia No. 17/93, 20/96, 7/98, 13/01, 24/03, 19/04, 61/04, 95/05, 7/06, 70/06, 92/07, 88/08, 130/08, 6/10, 145/10, and 17/11.

## 8.6 Political impacts

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The LGAP is an extremely important but above all "technical" law. Its effects are visible at the operational level, in the way one handles requests and in the types of legal protection. Therefore, it cannot be said that there are certain political impacts *per-se*, but of course, the choice of a particular option does have an impact, will have an impact - and is part of public policies in the country. Option 1 is the most conservative solution; Option 2 is the most progressive but at the same time the most extensive solution. Option 2 expands the state's penetration into the public as well as the private sphere, as it also imposes a uniform framework of action on the private sector entities that appear to be service providers. Option 3 is a moderate solution and gives private entities that provide public services greater flexibility in providing legal protection.

## 9. RISKS AND IMPLEMENTATION OF THE RECOMMENDED SOLUTION (OPTION ADOPTED)

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- Harmonization of a number of regulations governing procedural issues with the new LGAP (for example, application of the LGAP in customs, tax procedures, misdemeanour procedures, inspection control, application of safeguards against real acts (especially in the private sector));
- Application of the provisions of the administrative contract;
- Capacities of the public sector and public service providers should apply consistently established standards of performance;
- Digital divide in part of the public sector (insufficiently competent staff);
- Insufficient material and financial resources for consistent compliance with the obligations of electronic communication application;
- Changes in the legal framework alone do not guarantee corruption reduction, increased efficiency of institutions and inter-institutional cooperation.

## 10. COST-BENEFIT ANALYSIS

The simulation of the cost-benefit analysis of the introduction of a new LGAP is designed to identify:

- Impact makers according to each of the options;
- The main impacts of each of the options distributed per impact maker;
- Required quantification information, that is, monetization of impacts;
- Activities to be undertaken to measure impacts or to obtain the necessary quantification information.

Given the complexity of the impacts, the length of the measurements to be made, and the unavailability of data prior to the adoption of the Law on the one hand, and on the other, the limited resources and duration of the project, this analysis does not offer quantification of impacts in monetary values. Therefore, the costs and usefulness (benefits) are not finally calculated.

However, the analysis provides a good basis and opportunity in the future to conduct research, collect data based on surveys and other tools, as well as conduct evaluations to calculate the net present value of the cost-benefit analysis.

The changes offered in the analysis as options are considered in relation to specific reference policy or situation, which is the LGAP (as adopted in 2005). Option 1 is the existing situation; Option 2 provides for the application of the measures under the new Law to take effect immediately, i.e., within one year; and Option 3 provides for a gradual application whereby the Law becomes fully effective after 7 years. In this respect, the benefits and costs of Option 2 and Option 3 would remain the same, but would occur over time in different years and with varying intensity. The calculations should show which of these two solutions would have a higher net present value for all stakeholders.

To this end, the table below presents an analysis of the costs and benefits of introducing the new LGAP and lists all the impacts and impact makers per options, and further specifies the calculation model and assumptions to be taken into consideration.

Option 1 (do nothing)

Impact maker	Description of impact	Required quantification information (monetization)	Source and measurement
Citizens / Companies	<p><i>Initial condition:</i></p> <ul style="list-style-type: none"> <li>Citizens are exposed to the costs of initiating and conducting a procedure - they must personally provide evidence, even public documents held by other public institutions</li> <li>There are multitudes of different procedures that derogate the LGAP. Because (legally) ignorant persons or persons with insufficient knowledge of administrative procedures (ordinary citizens) appear as parties as well, this system generates additional costs for them, related to wasting time and wandering through institutional labyrinths. Although there is a requirement for a "single point of contact" and "assistance to the uninformed party," the practice indicates that these principles are not applied evenly.</li> <li>Electronic communication is possible only if the public institution has the means of electronic communication; in other cases, the citizens cannot use its benefits and are exposed to costs due to the need for immediate, direct contact with the competent officers and formal paper communication only.</li> <li>The LGAP has been around for a long time. Therefore, for a certain group of citizens that do not belong to the group of citizens described above, i.e., those who have experience with administrative procedures, the applicable LGAP provides predictability. This group is significantly smaller than the group described above.</li> </ul>	<ul style="list-style-type: none"> <li>Time needed to initiate and conduct the procedure (how much time the client will spend in hours, in minutes to initiate the procedure)</li> <li>Number of procedures per year in all institutions.</li> <li>Cost of public documents (taxes and other payments)</li> <li>Number of procedures conducted by electronic communication</li> <li>Monetization (expression in monetary value) of the value of one hour spent by citizens/companies to initiate procedure.</li> <li>Number of procedure complaints</li> <li>Average time a party will spend on a complaint and completing a complaint procedure.</li> <li>Number of positively or negatively resolved procedures</li> </ul>	<ul style="list-style-type: none"> <li>Observation, experience with natural and legal persons who have experience in proceedings.</li> <li>Data from state institutions conducting procedures of this type to assess the duration and number of procedures per year.</li> <li>Trend of increase or decrease, i.e., estimation of number of procedures for 5 years.</li> <li>Analysis and calculation of average time spent by citizens/companies to initiate proceedings. Time involves all the activities the citizen needs to take to complete the procedure</li> <li>Checking the tariffs of the law and/or rulebook</li> <li>The calculation of the value of time spent will be made as labour cost per minute based on the average wage in the Republic of Macedonia.</li> </ul>
State - Institutions	<p><i>Costs:</i></p> <p>Regular training for employees based on the Law on Administrative Officers (2014) and the Law on Public Sector Employees (2014).</p>	<ul style="list-style-type: none"> <li>Total costs for one training</li> <li>Number of trainings required per year</li> <li>Number of trained employees per year</li> </ul>	

### Option 2 (Option accepted)

Impact maker	Description of impact	Required quantification information (monetization)	Source and measurement
Citizens	<p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>• Reduced costs due to simplification of procedures and introduction of electronic communication</li> <li>• Facilitated communication with public authorities by introducing e-communication</li> <li>• The authorities collect the data and documents from each other ex officio</li> <li>• The procedure is conducted only before one institution</li> <li>• Greater legal protection</li> <li>• Professionalism of the procedure and reduction of political/party impact on the outcome of the procedure</li> </ul>	<ul style="list-style-type: none"> <li>• How much required time is reduced/prolonged to initiate and conduct the procedure (how much time the client will spend in hours, in minutes to initiate the procedure) under Option 2 and how much it differs from Option 1.</li> <li>• Number of procedures per year in all institutions and what is the increase/decrease in the number.</li> <li>• Cost of public documents (taxes and other payments) under Option 2.</li> <li>• Number of procedures conducted by electronic communication and how much the number has increased/decreased.</li> <li>• Monetization (expression in monetary value) of the value of one hour spent by citizens/companies to initiate procedure.</li> <li>• Reduction of administration employees number as a result of the law (if any)</li> <li>• Reduce dependent costs per job (if any)</li> </ul>	<ul style="list-style-type: none"> <li>• Observation, experience with natural and legal persons who have experience in proceedings.</li> <li>• Data from state institutions conducting procedures of this type to assess the duration and number of procedures per year.</li> <li>• Trend of increase or decrease, i.e., estimation of number of procedures for 5 years.</li> <li>• Analysis and calculation of average time spent by citizens/companies to initiate proceedings. Time involves all the activities the citizen needs to take to complete the procedure</li> <li>• Checking the tariffs of the law and/or rulebook</li> <li>• The calculation of the value of time spent will be made as labour cost per minute based on the average wage in the Republic of Macedonia.</li> </ul>
Companies	<p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>• If companies under the new LGAP are service providers (for example: pharmacies, primary health care doctor's offices, hospitals, kindergartens, secondary schools, companies with public authority, etc.), they are required to adjust their internal regulations accordingly (statutes, rulebooks...) in accordance with the obligations arising from the new LGAP.</li> <li>• training of staff for the application of the LGAP (<i>if they are service providers</i>)</li> <li>• adapting to the new workload (<i>if they are service providers</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Costs of adjusting companies' internal acts under the new LGAP</li> <li>• Staff training costs</li> <li>• Increased number of employees as a result of providing services</li> <li>• Increasing dependent costs because of increased number of employees.</li> </ul>	<ul style="list-style-type: none"> <li>• Research/survey of companies that provide services on the cost of the acts they need to adjust according to the new LGAP</li> <li>• Research/survey of companies that provide services on new employee costs that are needed for adjusting to the new LGAP</li> <li>• Research/survey of companies that provide services on the dependent costs they need to adjust according to the new LGAP</li> <li>• Research/survey of companies that provide services on the cost of the training for employees they need to adjust according to the new LGAP</li> </ul>

Impact maker	Description of impact	Required quantification information (monetization)	Source and measurement
State - Institutions	<p><i>Costs:</i></p> <ul style="list-style-type: none"> <li>• Change of internal acts of institutions</li> <li>• Creating new organizational units and officers who will act and make decisions in administrative procedures</li> <li>• Increased workload due to the right of complaint and its eventual abuse</li> <li>• Trainings for employees</li> <li>• Harmonization of material regulations with the new LGAP (more than 125 regulations)</li> <li>• ICT equipment for those institutions that do not have it and its upgrading</li> <li>• Digitization of all archives and service records</li> <li>• Introduction and maintenance of a document management system</li> </ul> <p><i>Benefit:</i></p> <ul style="list-style-type: none"> <li>• A less porous, uniform and comprehensive system of administrative and legal protection in first and second instance in administrative procedure.</li> <li>• Simplified solutions</li> <li>• Easier application of the LGAP due to its uniformity and simplicity</li> <li>• Easier exchange of information among institutions and speeding up all procedures (saving time and money)</li> <li>• Fewer appeals for proceedings</li> <li>• Legal certainty for citizens and companies in the country but also for potential investors from abroad</li> <li>• Greater attractiveness for foreign investment</li> <li>• Improved economy</li> </ul>	<p><i>Costs:</i></p> <ul style="list-style-type: none"> <li>• Costs of adjusting companies' internal acts under the new LGAP</li> <li>• Staff training costs</li> <li>• Cost of purchasing IT equipment or software</li> <li>• Costs of digitization of all archives and service records</li> <li>• Cost of setting up and maintaining a document management system</li> <li>• Cost of maintaining new IT equipment</li> <li>• Depreciation of new equipment</li> </ul> <p><i>(If there is abuse of right of complaint)</i></p> <ul style="list-style-type: none"> <li>• Increased number of employees in the institutions</li> <li>• Increasing dependent costs because of increased number of employees.</li> </ul> <p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>• Reduced number of appeals for conducting procedures, hence reduced workload as well</li> <li>• Number of staff reductions due to reduced workload as result of fewer complaints and electronic procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Institution research/survey on the costs of the acts they need to adapt to the new LGAP</li> <li>• Institution research/survey on costs of new/less employees as a result of the new LGAP</li> <li>• Institution research/survey on lower/higher dependent costs as a result of the new LGAP</li> <li>• Institution research/survey on the costs of training employees that are needed to adjust to the new LGAP</li> <li>• Institution research/survey on the appeals under the new and the old LGAP</li> <li>• Software companies offer for the price of IT system and equipment and their maintenance</li> <li>• Offer from companies for the cost of introducing and maintaining a document management system</li> <li>• Offer from companies for the cost of digitizing all archives and service records</li> </ul>
Other parties	<p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>• Sale of IT equipment and software</li> <li>• Income from maintenance of IT equipment and software</li> </ul>		<ul style="list-style-type: none"> <li>• Software companies offer for the price of IT system and equipment and their maintenance</li> </ul>

Option 3 (Gradual application option where the law becomes fully effective after 7 years)

Impact maker	Description of impact	Required quantification information (monetization)	Source and measurement
Citizens	<p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>Reduced costs due to simplification of procedures and introduction of electronic communication</li> <li>Facilitated communication with public authorities by introducing e-communication</li> <li>The authorities collect the data and documents from each other ex officio</li> <li>The procedure is conducted only before one institution</li> <li>Greater legal protection</li> <li>Professionalism of the procedure and reduction of political/party impact on the outcome of the procedure</li> </ul>	<ul style="list-style-type: none"> <li>How much required time is reduced/prolonged to initiate and conduct the procedure (how much time the client will spend in hours, in minutes to initiate the procedure) under Option 2 and how much it differs from Option 1.</li> <li>Number of procedures per year in all institutions and what is the increase/decrease in the number.</li> <li>Cost of public documents (taxes and other payments) under Option 2.</li> <li>Number of procedures conducted by electronic communication and how much the number has increased/decreased.</li> <li>Monetization (expression in monetary value) of the value of one hour spent by citizens/companies to initiate procedure.</li> <li>Reduction of administration employees number as a result of the law (if any)</li> <li>Reduction of dependent costs per job (if any)</li> </ul>	<ul style="list-style-type: none"> <li>Data from state institutions conducting procedures of this type to assess the duration and number of procedures per year.</li> <li>Trend of increase or decrease, i.e., estimation of number of procedures for 7 years.</li> <li>Analysis and calculation of average time spent by citizens/companies to initiate proceedings. Time involves all the activities the citizen needs to take to complete the procedure</li> <li>Checking the tariffs of the law and/or rulebook</li> <li>The calculation of the value of time spent will be made as labour cost per minute based on the average salary in the Republic of Macedonia.</li> </ul>
Companies	<p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>If companies under the new LGAP are service providers (for example: pharmacies, primary health care doctor's offices, hospitals, kindergartens, secondary schools, companies with public authority, etc.), they are required to adjust their internal regulations accordingly (statutes, rulebooks...) in accordance with the obligations arising from the new LGAP.</li> <li>training of staff for the application of the LGAP (if they are service providers)</li> <li>adapting to the new workload (if they are service providers)</li> </ul>	<ul style="list-style-type: none"> <li>Costs of adjusting companies' internal acts under the new LGAP</li> <li>Staff training costs</li> <li>Increased number of employees as a result of providing services</li> <li>Increasing dependent costs because of increased number of employees.</li> </ul>	<ul style="list-style-type: none"> <li>Research/survey of companies that provide services on the cost of the acts they need to adjust according to the new LGAP</li> <li>Research/survey of companies that provide services on new employee costs that are needed for adjusting to the new LGAP</li> <li>Research/survey of companies that provide services on the dependent costs they need to adjust according to the new LGAP</li> <li>Research/survey of companies that provide services on the cost of the training for employees they need to adjust according to the new LGAP</li> </ul>

Impact maker	Description of impact	Required quantification information (monetization)	Source and measurement
State - Institutions	<p><i>Costs:</i></p> <ul style="list-style-type: none"> <li>• Change of internal acts of institutions</li> <li>• Creating new organizational units and officers who will act and make decisions in administrative procedures</li> <li>• Increased workload due to the right of complaint and its eventual abuse</li> <li>• Trainings for employees</li> <li>• Harmonization of material regulations with the new LGAP (more than 125 regulations)</li> <li>• ICT equipment for those institutions that do not have it and its upgrading</li> <li>• Digitization of all archives and service records</li> <li>• Introduction and maintenance of a document management system</li> </ul> <p><i>Benefit:</i></p> <ul style="list-style-type: none"> <li>• A less porous, uniform and comprehensive system of administrative and legal protection in first and second instance in administrative procedure.</li> <li>• Simplified solutions</li> <li>• Easier application of the LGAP due to its uniformity and simplicity</li> <li>• Easier exchange of information among institutions and speeding up all procedures (saving time and money)</li> <li>• Fewer appeals for proceedings</li> <li>• Legal certainty for citizens and companies in the country but also for potential investors from abroad</li> <li>• Greater attractiveness for foreign investment</li> <li>• Improved economy</li> </ul>	<p><i>Costs:</i></p> <ul style="list-style-type: none"> <li>• Costs of adjusting companies' internal acts under the new LGAP</li> <li>• Staff training costs</li> <li>• Cost of purchasing IT equipment or software</li> <li>• Costs of digitization of all archives and service records</li> <li>• Cost of setting up and maintaining a document management system</li> <li>• Cost of maintaining new IT equipment</li> <li>• Depreciation of new equipment</li> </ul> <p><i>(If there is abuse of right of complaint)</i></p> <ul style="list-style-type: none"> <li>• Increased number of employees in the institutions</li> <li>• Increasing dependent costs because of increased number of employees.</li> </ul> <p><i>Benefits:</i></p> <ul style="list-style-type: none"> <li>• Reduced number of appeals for conducting procedures, hence reduced workload as well</li> <li>• Number of staff reductions due to reduced workload as result of fewer complaints and electronic procedures</li> </ul>	<ul style="list-style-type: none"> <li>• Institution research/survey on the costs of the acts they need to adapt to the new LGAP</li> <li>• Institution research/survey on costs of new/less employees as a result of the new LGAP</li> <li>• Institution research/survey on lower/higher dependent costs as a result of the new LGAP</li> <li>• Institution research/survey on the costs of training employees that are needed to adjust to the new LGAP</li> <li>• Institution research/survey on the appeals under the new and the old LGAP</li> <li>• Offer from software companies for the price of IT system and equipment</li> <li>• Offer from companies for the cost of introducing and maintaining a document management system</li> <li>• Offer from companies for the cost of digitizing all archives and service records</li> </ul>
Other parties	<p><i>Benefit:</i></p> <ul style="list-style-type: none"> <li>• Sale of IT equipment and software</li> <li>• Income from maintenance of IT equipment and software</li> </ul>		<ul style="list-style-type: none"> <li>• Software companies offer for the price of IT system and equipment and their maintenance</li> </ul>

The presented cost-benefit model of the introduction of the new LGAP takes into account several aspects:

- Cost as a time in this model is considered any exposure of the party or institution to take action, expose itself financially, hire persons (employees, agents, etc.) and devote its own time to initiating and conducting the procedure as well as fulfilling the conditions of the procedure in order to meet the legal requirements for exercising the right, i.e., fulfilling the obligation. Quantification is done if we multiply the time required for the price by one-hour working time with average monthly salary in the Republic of Macedonia.
- Duration, i.e., the cost-benefit analysis lifecycle, if the third option would not be an "Option with gradual application where the law takes full effect after 7 years," would be set to 5 years. However, given the delay in applying by some institutions even after the seventh year when the benefits are expected to have full effect, as well as the statutory requirements for 5 years of depreciation of computer systems, then the analysis of costs and benefits should be made at 12 years, i.e., 7 years for full benefits plus 5 years for system depreciation.
- The discount rate for calculating the net present value for this project would be calculated according to the latest NBRM auction (20 November 2018) of government bonds, the 15-year maturity rate of the bond being 2.9%. In addition, according to an analysis by New York University's Stern Business School, the country's premium risk is 5.40%. Therefore, the discount rate should be used with  $5.40 + 2.90 = 8.30\%$

Cost and benefit analysis is largely based on assumptions and predictions. Therefore, its development should be a transparent process that will involve many stakeholders, especially in terms of quantification of impacts or their monetization. In addition, since it is an analysis, which will largely be based on assumptions, it would be advisable to use sensitivity analysis and alternative assumption scenarios when doing so.

# 11. Conclusion

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This shadow RIA seeks to create a link between civil society actors and state institutions, as well as foster a culture of change and continuous learning to advance the RIA process. Therefore, based on the assessment of the effects of the measures and actions taken, in the broader context of good governance, and based on pre-established principles regarding the implementation of the specific RIA for LGAP (2015), we can conclude that there is an evident discrepancy between theory and practice.

RIA for LGAP (adopted in 2015) was done late in the regulatory process, i.e., after decisions have already been made. The RIA process, in this case (as in most cases), is evidently perceived at the level of formal fulfilment of written procedures, while there is no key evidence of acceptance or rejection of the particular policy. The options and impacts are not well founded, the economic indicators are completely neglected, and therefore, ungrounded (without providing public evidence) legitimacy has been given to a pre-set step, as opposed to a realistic evaluation of the proposed and later adopted regulation (LGAP, 2015).

Therefore, no matter how good the solutions offered in the LGAP (2015) are, they do not follow the RIA methodology, there is no transparency in their design, and hence they are contrary to the principles of good governance. Given the procedural side of law making - they are also contrary to the principles of legality, legal certainty, and the rule of law.

Whether or not the decisions adopted in the LGAP (2015) are justified or unjustified, and without prejudice to their effectiveness, because the principles of good governance reflected in the RIA procedure were not followed up in the process of drafting the LGAP (2015), it remains to be seen whether this law can really meet the goals set in context of bringing the administration closer to its citizens and its service orientation - necessary for the functioning of a modern democratic state.

Therefore, as a general conclusion, it is necessary to move RIA - from the formal to the substantive process of law making. Increased awareness of RIA processes and the benefits of their implementation are needed. There is a need to improve the culture of conduct in relation to the application of RIA, as well as to increase cooperation among regulators, politicians, interest groups, and the general public.<sup>23</sup>

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<sup>22</sup> This is in line with the general challenges in implementing RIA in the Republic of Macedonia, see Shikova, N. (2017), Model for analysing the effectiveness of regulatory impact assessment (in Macedonian).

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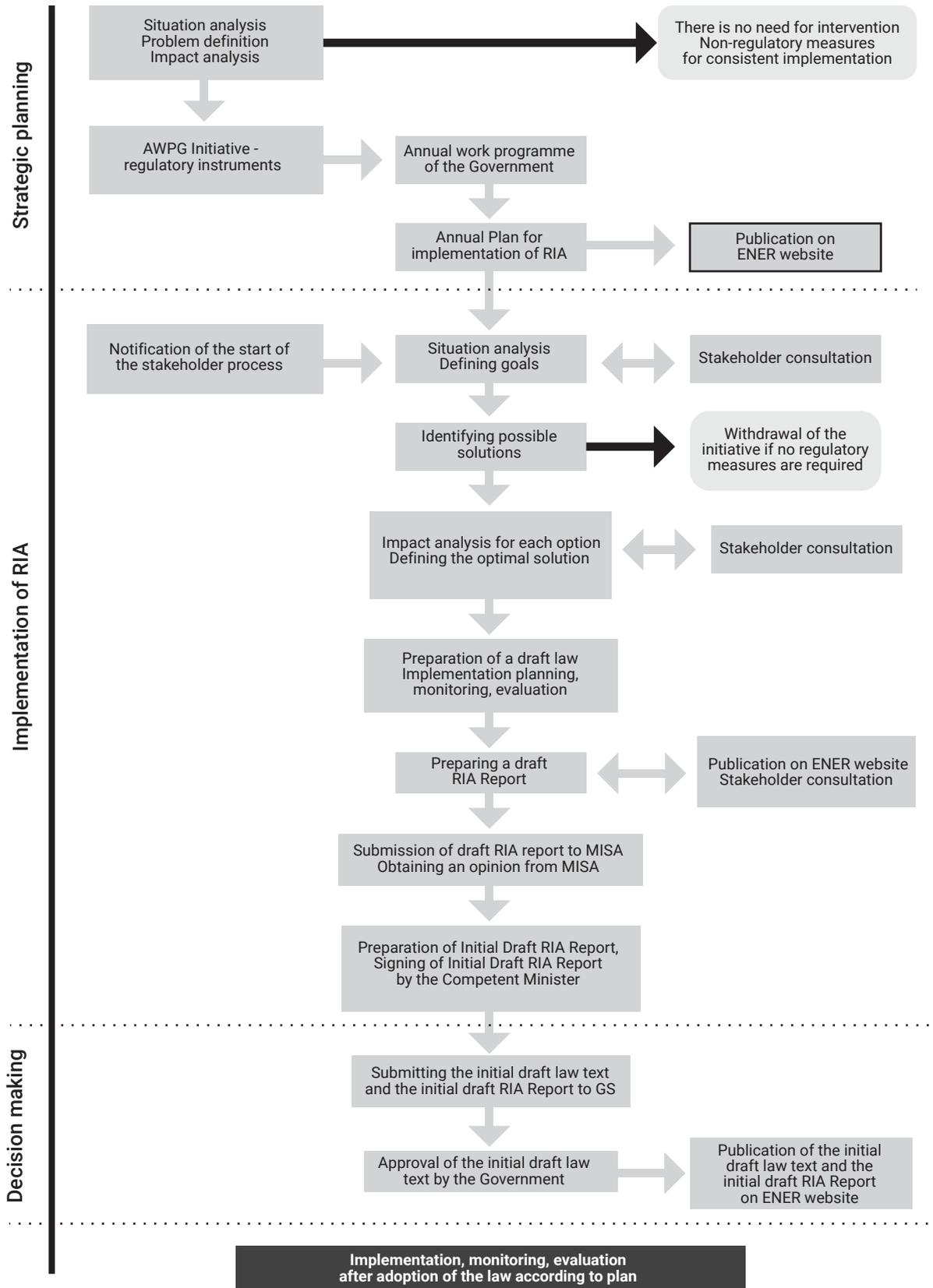
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# ANNEX 1

**Table 1:** Schematic representation of the RIA process



## Information about IDSCS

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IDSCS is a civil think-tank organisation researching the development of good governance, rule of law and Macedonia's European integration. IDSCS has the mission to support citizens' involvement in the decision-making process and strengthen the participatory political culture. By strengthening liberal values, IDSCS contributes towards coexistence of diversities.

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## Information about CEA

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The Center for Economic Analysis (CEA) is a research center comprised of economists who share a common vision for the Republic of Macedonia as a new European emerging economy integrated with the regional and world markets. The main mission of CEA is to continuously research economic developments and public policy in the Republic of Macedonia and to offer recommendations, proposals and measures to governmental and non-governmental institutions.

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## Project information

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Institute for Democracy Societas Civilis (IDSCS) in cooperation with the Center for Economic Analysis (CEA) starting from January 2017 - December 2019, analyze how the Regulatory Impact Assessment (RIA) process is implemented in the creation of laws and what is the possibility for CSOs to get involved in public policy making in the country through the project "Regulatory Impact Assessment in the Shadow: Fostering evidence-based policy making".

The Shadow RIA project contributes to the promotion of good governance through networking and capacity building of CSOs to monitor and analyze RIA implementation. The aim of the project is to increase the opportunity for the active involvement of CSOs in the RIA process and in public policy reforms through networking, inclusive consultations and training.

## Link

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### This report is available electronically on:

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<https://idscs.org.mk/en/portfolio/shadow-ria-impact-assessment-report-on-the-law-on-general-administrative-procedure-2015/>

## Information about the authors

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