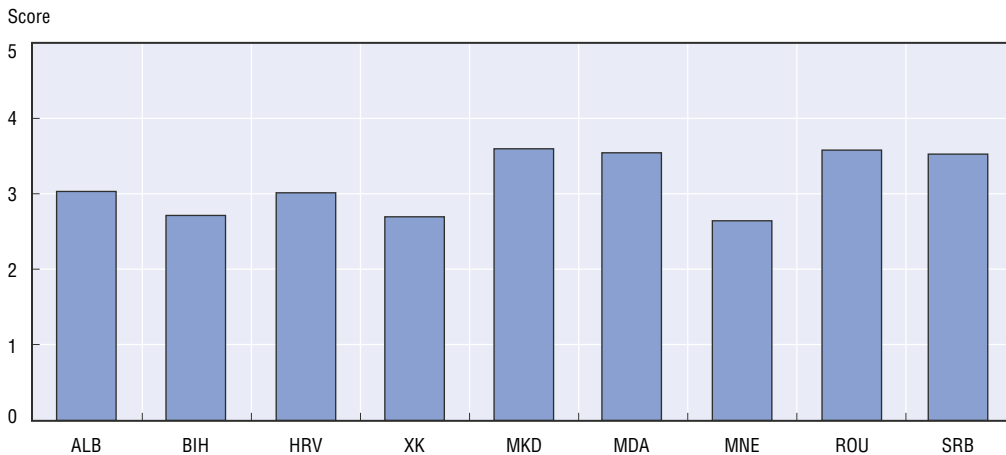


## *Chapter 5*


# **Regulatory Reform and Parliamentary Processes**

## 5.1. Key findings

Figure 5.1. **Regulatory reform and parliamentary processes:**  
Dimension average scores



Note: No scores were awarded to Bulgaria in this policy dimension, due to a lack of information provided by the Bulgarian government/parliament during the assessment process.

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- Most economies of South-East Europe (SEE) have made marked progress in establishing the necessary institutional and legal frameworks for regulatory reform, and in implementing regulatory reform programmes.
- However, significant discrepancies remain between the adoption of these programmes and their implementation, particularly for institutions with scarce human resources.
- The majority of the SEE economies have conducted comprehensive “regulatory guillotine” reviews, frequently with the support of international donors. These reviews have led to extensive elimination of redundant legislation and regulations. (The main exception is Bosnia and Herzegovina.)
- The use of regulatory impact assessment (RIA), while systematically applied to draft legislation in the Republic of Moldova, Romania and Serbia, is still in its infancy in many SEE economies. This is problematic for SEE economies that require extensive and rapid adoption of European Union (EU) laws and regulations to comply with the *acquis communautaire*, as this context enhances the importance of establishing a review system of draft legislation.
- SEE governments have developed the foundations of forward legislative planning. However, progress needs to be sustained, as many parliaments are overburdened with complex legislative proposals often submitted at short notice, and the co-ordination between parliaments and governments remains unsystematic.
- Most parliaments in SEE have made progress in streamlining their internal procedures and enhancing the dialogue with key stakeholders during the legislative adoption process.

- However, the dialogue with civil society is limited or occurs in an *ad hoc* manner. This is in part due to the lack of unified structures representing civil society. It is also due to the lack of a formal framework obliging parliaments to engage with civil society. These issues are also faced by economic commissions of parliaments.
- In SEE, only the former Yugoslav Republic of Macedonia has adopted a lobby law, an effective way to formalise lobbying during the legislative adoption process.
- Several SEE economies are envisaging the development and adoption of laws that will enhance consultations with key stakeholders on legislative proposals.
- The limited capacity of parliaments in analysing complex economic legislative proposals remains a problem in the region and hampers the process of adopting laws proposed by the government. This is particularly problematic in the context of EU accession and the global economic crisis, both of which require a swift adoption of new laws and regulations.

## 5.2. Regulatory reform and parliamentary processes assessment framework

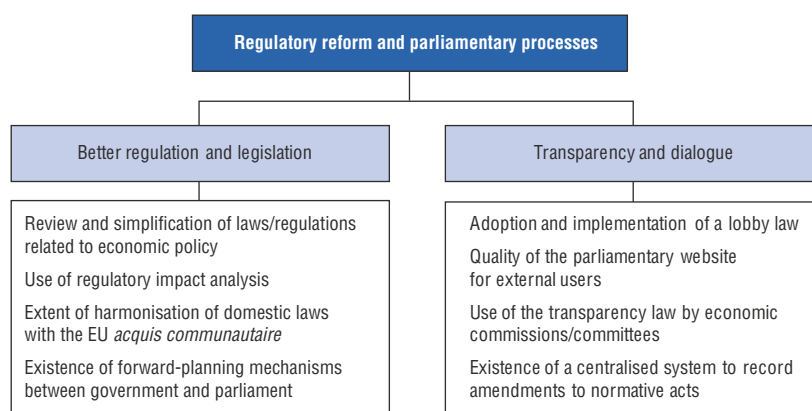
The assessment of regulatory reform and parliamentary processes<sup>1</sup> is divided into the following two subdimensions:

- better regulation and legislation; and
- transparency and dialogue.

Each subdimension contains a number of policy indicators as depicted in Figure 5.2. The subdimension on better regulation and legislation contains four indicators related to regulatory reform. While there is no single ideal model for improving legislation and regulations, there are a number of agreed-upon mechanisms which have been tested in the OECD area and emerging-market economies and which have proven to be effective. These mechanisms are captured in the following four indicators:

- review and simplification of laws/regulations related to economic policy;
- use of regulatory impact assessment;
- extent of harmonisation of domestic laws with the EU *acquis communautaire*; and
- existence of forward-planning mechanisms between government and parliament.

Figure 5.2. **Assessment framework for regulatory reform and parliamentary processes**



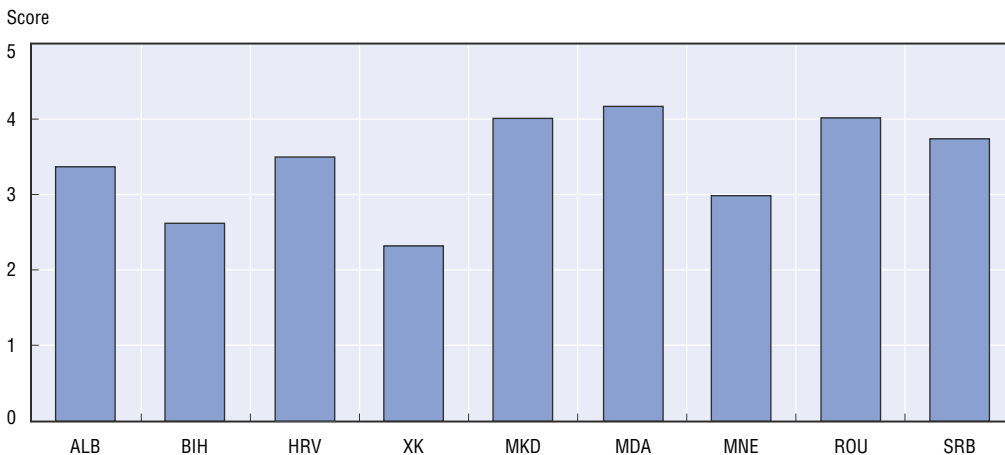
The transparency and dialogue subdimension aims at measuring the transparency of parliaments and their economic commissions vis-à-vis key stakeholders, including the private sector and civil society. It explores four indicators: the existence of a lobby law, quality of the parliamentary website for external users, use of the transparency law by economic commissions and the existence of a centralised system to record amendments to normative acts.

### 5.3. Results by subdimensions


#### **Subdimension: Better regulation and legislation**

Figure 5.3 illustrates that most South-East European economies score above level 3 in the subdimension on better regulation and legislation, which signifies that the legislative framework for the elements of regulatory reform analysed in this chapter is in place. The exceptions are Bosnia and Herzegovina, and Kosovo. Advanced levels of implementation have been achieved by Croatia, the former Yugoslav Republic of Macedonia, the Republic of Moldova, Romania and Serbia.

Figure 5.3. **Better regulation and legislation subdimension: Average scores**



Note: No scores were awarded to Bulgaria in this subdimension, due to a lack of information provided by the Bulgarian government/parliament during the assessment process.

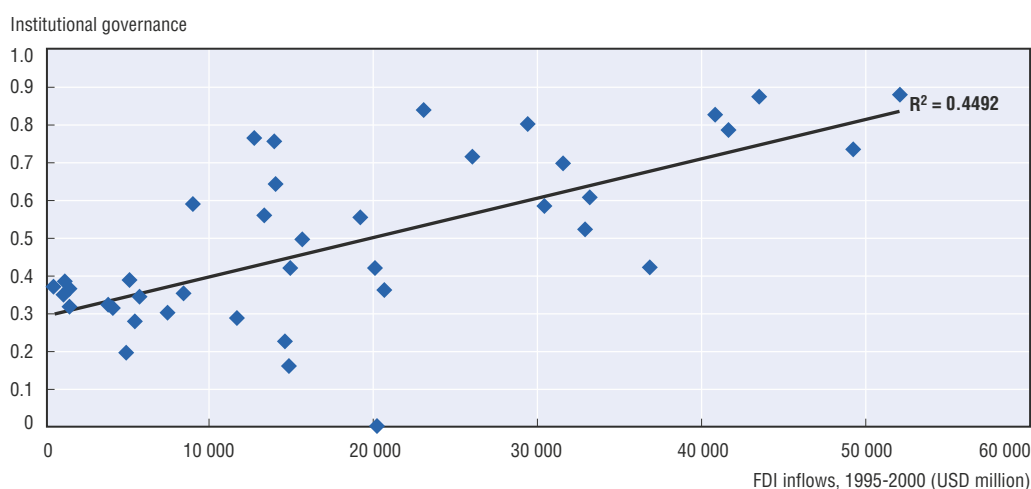
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#### **Rationale and background for subdimension on better regulation and legislation**

There is broad consensus amongst analysts that a positive correlation exists between high-quality regulation (one result of regulatory and legislative reform) and foreign and domestic investment, trade, and enterprise growth and creation (Busse and Groizard, 2008; Djankov, McLiesh and Ramalho, 2006; Batra and Stone, 2008; and OECD, 2002a).

This point has been established empirically in a major study of 55 developed and developing countries, which found that “better functioning legal systems and governance and better enforcement appear to be more important than legal origins per se in terms of their impact on development” (Chan-Lee and Ahn, 2001). Of particular relevance in the context of foreign direct investment (FDI) was the measure of institutional governance used in this work. Wide variations in inflows were seen even for countries with the same institutional governance rating. One would expect such variation, given the multiplicity of factors behind investment decisions. However, the overall the relationship between the quality of institutional governance and the level of inflows was clear and positive (see Figure 5.4).

Figure 5.4. Relationship between inward FDI and quality of governance



Note: The index is calculated as a weighted average of various estimates of the extent to which the rule of law prevails in each country, the efficiency of the judicial system, corruption, enforcement, ownership concentration (as a proxy for political obstacles to transparency), and finally shareholders' and creditors' rights. The indicator is a relative measure between 0 and 1, with the Russian Federation at the bottom and the United Kingdom at the top.

Source: OECD, 2002a, based on data provided in Chan-Lee and Ahn, 2001.

Lower legislative, regulatory and procedural burdens for businesses promote sustainable economic development by enhancing competition, boosting efficiency, bringing down prices and stimulating innovation (Busse and Groizard, 2008; Djankov, McLiesh, and Ramalho, 2006; and OECD, 2002a and 2008a, in co-operation with the European Commission and ETF). Complex procedures and heavy regulatory compliance requirements, on the other hand, hinder private sector development by stifling enterprise growth, diverting resources from the creation of value-added activities to non-productive ones.

In recent years, in both OECD and emerging market economies, policy makers, economists and management experts have studied how to improve the efficiency and quality of regulatory frameworks. Governments have understood the importance of regulatory reform, spurred in part by a relatively new stream of analytical research and benchmarking exercises, including the World Bank's *Doing Business* monitoring surveys and policy indices developed by the OECD.<sup>2</sup>

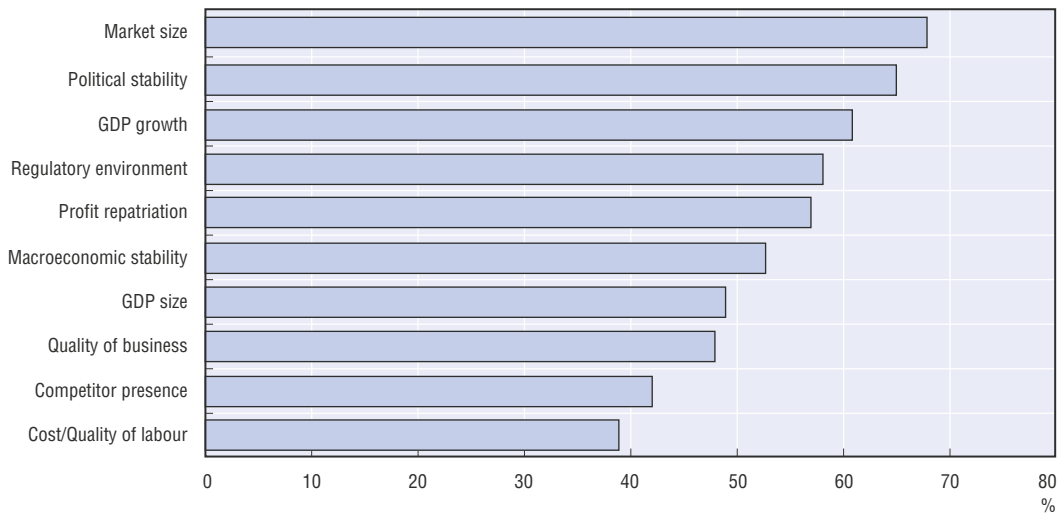
With regard to South-East Europe, a survey of foreign investors suggests that the quality of the regulatory environment is a more important determinant of FDI in the region than other criteria commonly cited, such as macroeconomic stability, GDP or cost of labour (see Figure 5.5).

### **Review and simplification of laws/regulations related to economic policy<sup>3</sup>**


The indicator on "review and simplification of laws/regulations related to economic policy" examines the extent to which governments have reviewed and simplified their legislative stock. Thorough analysis of both primary and secondary legislation will ensure that the current set of legislation and regulations is up-to-date and consistent. Simplification will ensure that legislation facilitates business and investors' operations. Elimination, often referred to as the guillotine review, aims to eliminate outdated and unnecessary laws and regulations which are not business/investor-friendly. This entire process is particularly crucial in economies that inherited now-obsolete legislation from the former Yugoslav

Federation. Box 5.1 describes Sweden's guillotine review in the 1980s and highlights the contribution of the process in streamlining the regulatory and legislative environment.

Figure 5.5. **Top determinants of FDI in SEE according to foreign investors**



Source: *FDI Confidence Index*, A.T. Kearney.

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### Box 5.1. **The guillotine mechanism to reform the regulatory framework in Sweden**

Economies in transition face an enormous task of reviewing and updating the legacy of laws, rules and other instruments dating back decades. This must be done quickly to avoid slowing economic growth and increasing regulatory risk. The goal of this reform is to establish clear and accountable legal structures by creating a comprehensive central regulatory registry with positive security. This can be done using the guillotine approach, pioneered by Sweden.

In the 1980s, Sweden enacted its guillotine rule nullifying hundreds of regulations that were not centrally registered. In 1984, the government found that it was unable to compile a list of regulations in force. The accumulation of laws and rules from a large and poorly monitored network of regulations meant that the government could not itself determine what it required of private citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. The approach proposed by the government and adopted by the Parliament of Sweden was simple. The government instructed all government agencies to establish registries of their ordinances by 1 July 1986. As these agencies prepared their lists (over the course of a year), they culled unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or outdated, effectively reversing the burden of proof for maintaining old regulations. When the guillotine rule went into effect, hundreds of regulations not registered were automatically cancelled without further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption. In the education field alone, 90% of rules were eliminated. The government had for the first time a comprehensive picture of the Swedish regulatory structure that could be used to organise and target a reform programme. Introduction of the registry may also have had the indirect effect of slowing the rate of growth of new regulations, and by 1996 the net number of regulations had indeed dropped substantially.

Source: OECD (2002b).

A well-advanced and structured review, simplification and elimination programme should include the following steps:

- a concrete plan is made to review, simplify and eliminate legislation related to enterprise policy;
- the plan is approved and institutions in charge are identified;
- the plan is implemented, beginning with a review of key primary legislation;
- the plan is extended to secondary legislation; and
- the review results in a simplification or elimination of primary and/or secondary legislation.

In the 1 to 5 scoring scale, implementation of the above steps would lead to a score of 5. Croatia's progress regarding regulatory review and simplification meets all the criteria. In 2006, Croatia launched HitroRez, a project designed to significantly cut red tape in business legislation and regulation, co-ordinated by an independent working group. The project, conducted over a period of ten months, resulted in a rapid process of regulatory reform using the guillotine review. The initiative benefited from high-level political commitment, with direct support from the prime minister and proactive private sector engagement. To achieve fast results, targets were set to reduce the number of unnecessary regulations by up to 40%. By the end of the review process, HitroRez recommended the elimination of 425 regulations and the simplification of 374 others, accounting for approximately 55% of all business regulations in Croatia. In May 2009, 501 recommendations were implemented (73% of the recommendations that were made). The remaining recommendations could not be implemented due to lack of administrative capacity and lack of training of administrative officers, or because the respective regulatory area was already being harmonised with the EU *acquis communautaire*.

Albania, the former Yugoslav Republic of Macedonia, the Republic of Moldova, Montenegro and Serbia have engaged in comprehensive processes to simplify regulation and legislation, albeit with differing levels of implementation to date. The Republic of Moldova is the most advanced of this group, having conducted two comprehensive guillotine reviews, one in 2005 focusing on government decrees and by-laws, and a second in 2008 focusing on laws and regulations related to entrepreneurial activity.

In Bosnia and Herzegovina, no regulatory simplification process has yet taken place at state level. The Council of Ministers, nevertheless, recently signed an agreement with the Foreign Investment Advisory Service to engage in a partnership to launch a regulatory guillotine review. Project details are currently being negotiated.

### **Regulatory impact assessment**

This indicator gauges the extent to which an impact assessment is applied when legal instruments are drafted. Doing so can help to optimise the efficiency and effectiveness of the instrument, and ensure that it will achieve the intended objectives at minimum cost and with the fewest unintended negative consequences.

The burden of complex regulations is disproportionately high on small companies because administrative and managerial resources in such firms are scarcer and costs cannot be spread over a large turnover. Box 5.2 presents a number of good practices from OECD economies that reduce burdens and support regulatory compliance for SMEs.

**Box 5.2. Lessons learned from OECD economies: Thinking small first**

OECD research demonstrates that small companies often incur regulatory costs five times higher than those borne by large companies. Reforms that reduce business burdens and increase the transparency of regulatory regimes support entrepreneurship and market entry, and are integral to the development of the small- and medium-sized enterprise (SME) sector.

Creating regulatory frameworks that take the needs of SMEs into consideration is often a difficult task. Good practice from a number of OECD economies involves special initiatives to reduce burdens and support regulatory compliance specifically for SMEs. Strategies to reduce administrative burdens could include the following actions:

- institutionalise SME concerns by establishing permanent or *ad hoc* government units mandated to represent the views of SMEs in the regulatory process;
- require regulatory agencies to prepare Small Business Impact Statements;
- consult small businesses on regulatory proposals;
- ensure plain language drafting and specific compliance guidance for SMEs;
- establish a central registry of administrative procedures and licences, and initiate comprehensive reviews (using RIA) to determine how to reduce regulatory burdens;
- build a system for measuring administrative burdens;
- establish a one-stop shop for regulatory information and transactions; and
- develop e-government tools to save time and resources for SMEs when dealing with public administrations.

Sources: OECD (2003) and OECD (2005).

Cost-benefit analysis of legislation and regulation, which is usually referred to as RIA, is a complex technique requiring considerable time and resources. Several OECD publications provide guidance on RIA (OECD 1997 and 2008b). Ideally, RIA should be formally introduced into the legislative system, applied to all draft legislative proposals, and its results employed to change the draft when necessary.

The assessment suggests that Serbia is the most advanced SEE country in the application of RIA. This is thanks to longstanding implementation of RIA, an institutional framework that is backed at the highest political level and the transparency of the process. RIA was introduced into the legislative system in 2005 through an amendment in the Rules of Procedure of the government, which made the application of RIA obligatory to all draft legislation. RIA is conducted by civil servants in the line ministry that drafts the legislation, and 250 government officials have been trained in RIA application to date. To assist the different bodies of the government in applying RIA, and also to ensure its implementation, the government established the Council for Regulatory Reform and Quality Control. This Council issues statements on all RIAs and has the authority to block legislative proposals and return them to the relevant line ministry if it deems the RIA to have been conducted improperly or the results of the RIA to be negative. The Council is chaired by the prime minister. Its opinions on RIAs are posted on a publicly accessible website. There is ample evidence that its opinions have prompted ministries to revise and improve legislative proposals.

Three other countries, Romania, the Republic of Moldova and the former Yugoslav Republic of Macedonia, have established the legal framework for RIA and are



systematically applying the tool to draft legislation. In a manner comparable to Serbia's Council for Regulatory Reform, the Republic of Moldova has set up a working group composed of public and private sector representatives, which reviews the RIAs conducted by the line ministries. The working group does not, however, have the power to block legislative proposals. In the former Yugoslav Republic of Macedonia, the legal framework for RIA is in place. A pilot project has been conducted, and its full application started in January 2009. Of the 60 laws passed in the former Yugoslav Republic of Macedonia between 1 July 2009 and 14 October 2009, 48 underwent an RIA.

Croatia introduced the application of RIA into the legislative system in 2005 through an amendment of the Standing Orders of the government. However, implementation has been restricted to fiscal impact assessments by line ministries, which are reviewed by the Ministry of Finance. The government Office for the Regulatory Impact Assessment System, which was set up in 2008 to co-ordinate and ensure RIA implementation, closed in August 2009 due to budgetary restrictions, bringing progress in RIA implementation to a halt (European Commission, 2009).<sup>4</sup>

In Albania, Bosnia and Herzegovina, Montenegro and Kosovo, the application of RIA remains in its infancy. Among this group, Albania has taken the most concrete steps towards establishing a RIA process by:

- applying RIA principles in the area of business registration and licensing through an order of the prime minister;
- developing a policy paper in co-operation with the World Bank (BERIS Project) to outline the processes required to establish an RIA system; and
- holding awareness-raising seminars and workshops to discuss the plans to implement RIA with the public administration.

### ***Extent of harmonisation of domestic laws with the EU *acquis communautaire****

With the exception of Romania and Bulgaria (both members of the European Union) and the Republic of Moldova (which is part of the European Neighbourhood Policy), the SEE countries have launched their accession process to the European Union.

An essential element of the accession process is the harmonisation of a candidate country's stock of laws and regulations with those of the EU *acquis communautaire*. This process should be carefully planned and sequenced to avoid capacity overload for public institutions. In addition, normative acts drafted by either the government or parliament should be verified for compatibility with the *acquis communautaire*.

All the examined economies have adopted legal frameworks aimed at ensuring that draft legislation is reviewed on its compatibility, and all have engaged in programmes to harmonise the legislative stock. However, the extent of implementation differs and corresponds approximately to each economy's accession status. Croatia and the former Yugoslav Republic of Macedonia are the most advanced economies.

### ***Existence of forward-planning mechanisms***

The indicator on forward-planning mechanisms assesses the extent to which governments in SEE are planning their legislative activity in advance. Legislative forward planning is a means of raising awareness of newly proposed laws. Such planning has the potential to allow more active public consultation by providing greater notice to stakeholders and thus allowing them more time to organise and formulate their submissions. In the

context of parliament, forward planning by the government and the communication of these plans to parliament is essential to prevent parliaments from becoming overburdened with a sudden influx of draft laws. Proper forward planning allows parliaments to thoroughly debate draft normative acts and to establish well-informed opinions. Usually, forward planning includes the publication of the overall legislative agenda proposed by the government.

SEE economies have developed the foundations of forward-planning mechanisms, although approaches vary from economy to economy.

Most governments request that a detailed programme of the draft acts that they plan to propose during the coming year be presented by ministers to government. For instance, the government of Kosovo established that a Legislative Strategy be prepared at the end of each year. In Croatia and the former Yugoslav Republic of Macedonia, an annual work programme is defined by the government. The same system is in place in Albania and Montenegro, where the plan is divided into four quarterly sections so as to be easily monitored. The plan indicates the working party and responsible ministers in charge of preparing the draft law.

The Republic of Moldova and Romania have established a system of dialogue between the government and parliament, and operate a specific structure which co-ordinates the forward-planning process. In the Republic of Moldova, for instance, the government prepares an annual plan indicating all acts that will be developed during the year. This plan is revised quarterly. There is a special parliamentary commission that aims at optimising the process of law making concerning entrepreneurial activity.

In Serbia, and in Bosnia and Herzegovina, legislative planning is directly linked to the EU transposition process. Furthermore, in Bosnia and Herzegovina, the Law on the Council of Ministers includes a section on the relationships between the Council of Ministers and other bodies. It sets clear and comprehensive guidelines on communication between the government and parliament, and encompasses the dialogue on forward planning. These guidelines appear to be followed.

### ***Comparison of results: IRI 2010 and IRI 2006***

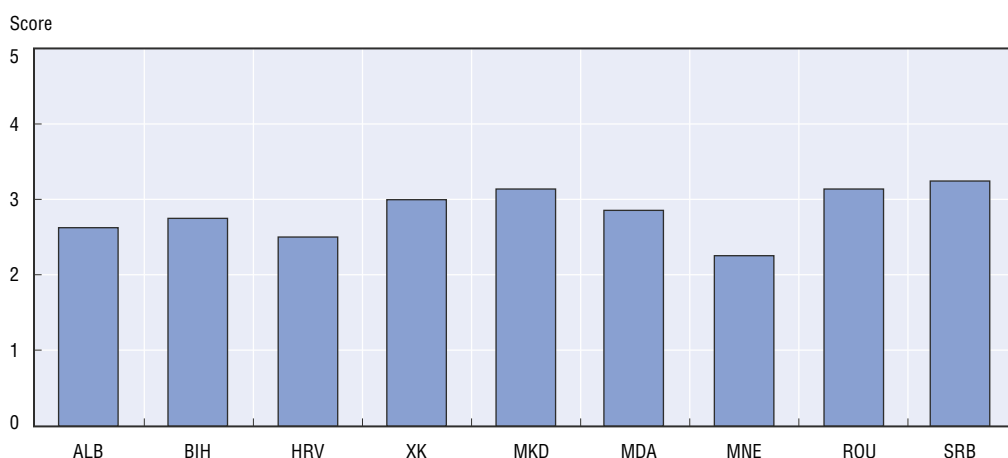
The indicator in the 2006 edition of the *Investment Reform Index* relating to RIA is directly comparable with that used in the current exercise. Comparison shows that progress has been achieved throughout the SEE region in establishing regulatory frameworks for RIA and, in some cases, systematically applying the tool. The most marked progress has been realised by:

- Serbia, which has further fine-tuned its RIA methodology, and which maintains a conducive institutional framework, supported at the highest political level;
- the Republic of Moldova, which has institutionalised RIA and established a public-private working group to review the RIAs conducted by line ministries; and
- The former Yugoslav Republic of Macedonia, which has formally introduced RIA into the legislative process and applies RIA systematically to legislative proposals since January 2009.


### ***Subdimension: Transparency and dialogue***

#### ***Rationale and background for subdimension on transparency and dialogue***

Parliaments have a key role to play in the process of economic reform: their task is to enact or amend legislation that provides the legal framework for economic activities. Their

Figure 5.6. **Transparency and dialogue subdimension: Average scores**

Note: No scores were awarded to Bulgaria in this subdimension, due to a lack of information provided by the Bulgarian government/parliament during the assessment process.

StatLink  <http://dx.doi.org/10.1787/806348280237>

challenge is to establish rules which are coherent, effective and stable. Yet, the study of the role of parliaments in the economic reform process in South-East Europe is still in its infancy.

The subdimension on transparency and dialogue aims at gauging the extent to which legislative practices of SEE parliaments (and to a lesser extent, SEE governments) are transparent and accountable, with a focus on parliaments' economic commissions. The parliamentary process of adopting legislative drafts proposed by the government provides an important quality check and window for consultation with key stakeholders concerned with economic legislation. This subdimension focuses on the communication and dialogue between the parliaments and their economic commissions and relevant stakeholders.

Transparency can address many causes of regulatory failure, such as bias towards concentrated benefits, inadequate information in the public sector, inability to understand policy risk and lack of accountability. Improving legislative transparency is therefore a key element of sound legislative policy and is one of the most important ways to reassure stakeholders in a supportive legal environment.

### **Lobby law**

This indicator measures whether SEE economies have adopted and implemented a law that formalises lobbying practices during legislative drafting and adoption. It ensures that key stakeholders have the opportunity to lobby and it can be an effective way to enhance regulatory transparency and ultimately improve the quality of legislative proposals. When adopting a law on lobbying, the necessary human and institutional capacities to implement such a law must be in place.

Drafting a lobby law is a complex task. Information that is promoted through lobby channels may be distorted and the legitimacy of lobbying structures needs to be assured. Clear principles on lobbying must be defined and registration and a code of conduct for lobbyists need to be enforced in order to assure the efficient application of these principles (EC, 2006).

The former Yugoslav Republic of Macedonia is the only SEE economy to have adopted a lobby law. The law, which was based on practices from the United Kingdom and the United States of America, was adopted in August 2008 and published in the *Official Gazette*

No. 106. At a private sector focus group meeting in Skopje in June 2009, private sector representatives expressed their satisfaction with the law and confirmed that it has enhanced their dialogue with the parliament.

**Box 5.3. Lessons learned from Poland: The adoption and implementation of the Lobby Law**

The Lobby Law was adopted by both chambers of parliament in 2005. It describes (among others) the following principles for conducting lobbying activities:

- Lobbying consists of actions conducted by legally admissible methods that seek to influence public authorities in the law-making process.
- All lobbyists need to be registered with the Register that is kept by the Polish Ministry of Interior and Administration.
- Any entity that is professionally lobbying without being registered is subject to fines that are imposed through administrative decisions.

In order to ease the communication between the entities drafting normative acts and the interested stakeholders, every six months the government posts the programme of legislative work on the website of the Public Information Bulletin. Notifications of interest can be submitted after publication of the draft normative acts. These are also posted on the website of the Public Information Bulletin. The party responsible for drafting the normative act is entitled to organise public hearings on the draft.

Although the Republic of Moldova, Romania and Serbia have considered the adoption of lobby laws, the legislative proposals were never adopted by parliament. In September 2009, a new proposal for a lobby law was issued by the Romanian Ministry for SMEs, Trade and Business Environment.

The Republic of Moldova had discussions on adopting a lobby law during the 1997-2001 legislature but without concrete results. Serbia is currently considering adopting a lobby law.

The remaining SEE economies, which include Albania, Bosnia and Herzegovina, Croatia, Kosovo and Montenegro, have not taken any steps toward adopting a lobby law.

***Website of parliaments for external users***

This indicator seeks to determine whether parliaments have set up a functional website for external users and to assess the quality of that website. A well-developed website can be an effective tool to provide information to the public on legislative procedures related to specific normative acts and on parliamentarians themselves. It is important to update the website on a regular basis, as this helps build a transparent relationship between the parliaments and their electorate. The parliamentary website also serves as a point of reference for foreign investors that are concerned about the quality of parliamentary processes in the host country. It is therefore important that parliamentary websites be translated into English. The website should also provide information on the legislative process (including information on laws passed and laws in planning stages), as well as contact information on parliamentarians. Table 5.1 summarizes the characteristics of SEE parliaments websites.

With the exception of Montenegro, all SEE economies had functioning parliamentary websites at the time of writing. Montenegro is currently designing a new website following its legislative elections of March 2009.

Table 5.1. **Characteristics of SEE parliamentary websites**

	Functional website	Website translated into English	Information on the legislative process	Contact details of members of the Parliament/Assembly
Albania	✓	✓	–	–
Bosnia and Herzegovina	✓	–	✓ <sup>1</sup>	–
Croatia	✓	✓	✓	✓
Kosovo	✓	✓	✓ <sup>1</sup>	–
The former Yugoslav Republic of Macedonia	✓	✓	–	✓
Republic of Moldova	✓	✓	✓	✓
Montenegro	–	–	–	–
Romania – Senate	✓	–	✓	✓
Romania – Chamber of Deputies	✓	✓	✓	✓
Serbia	✓	✓	✓ <sup>1</sup>	–

1. Bosnia and Herzegovina, Kosovo and Serbia are in an intermediary situation: detailed information on minutes of the economic commission is posted, together with the full list of normative acts already adopted

All SEE economies that have a functioning website have established an English version with the exception of Bosnia and Herzegovina. In most cases, the English version is consistent with the original one. Only in Albania and Serbia was the English version significantly simplified. Romania has two separate websites, one for each of the two chambers of the parliament. The website of the Romanian Senate, the higher chamber of parliament, has no English version whereas the Chamber of Deputies (the lower chamber of parliament) website provides extensive information in English.

Regarding the availability of information on parliamentary websites, Albania and the former Yugoslav Republic of Macedonia do not provide any information on normative acts that entered the parliament for discussions/adoption. The Albanian Parliament provided a specific website ([www.legjislacionishqiptar.gov.al](http://www.legjislacionishqiptar.gov.al)) which contains detailed information on the legislative process. (However, the site was experiencing a technical difficulty at the time of writing and could not be accessed by the authors.) No information on the date of decision or on the length of time spent on discussions or adoption/rejection of these acts is provided. An intermediary situation exists in Bosnia and Herzegovina, Serbia and Kosovo. None gives direct access to the legislative process, however, detailed minutes of committee meetings and lists of adopted normative acts are provided. Croatia, Romania and the Republic of Moldova offer full access to the legislative process through a clear description of the entry date and current status of normative acts, details of the commissions that have been discussing the draft and next steps. Regrettably the information is only available in the national language, restricting access for foreigners.

Romania's parliamentary website provides a complete list of parliamentarians' e-mail addresses. In the Republic of Moldova only 3 out of the 101 members of parliament have posted their email addresses. In Croatia and the former Yugoslav Republic of Macedonia only the different committee contact details are made available. The remaining websites do not contain contact details of parliamentarians.

### **Use of transparency law**

This indicator measures the extent to which governments, parliaments and economic commissions of parliaments consult with stakeholders during the legislative drafting process and whether this process is formalised by law.

Romania is the only SEE economy to have adopted a law on consultation during the legislative drafting process. In 2002, the government decided to make consultation with employers' organisations and non-governmental organisations mandatory for all proposed regulations that may have an impact on the business environment. In particular, this decision established a minimum period (30 days) for the authorities to withhold further actions, in order to give the consulted parties an opportunity to comment and provide suggestions. A year later, the government extended the consultation requirements to all aspects of government decision making by introducing the Law on Decisional Transparency in Public Administration.<sup>5</sup> The Law established a framework in which institutional dialogue and regular meetings between government officials and the private sector take place. However, at a meeting organised by the OECD in September 2009 with representatives of the key Romanian business associations chambers of commerce and the private sector stated that their comments on several draft laws were not taken into account by the government. This was the case for the Fiscal Code and the Lobby Law, which were drafted during the summer of 2009. It was also mentioned that the timeframe for comments on legislative proposals is sometimes as little as 24 hours, instead of the 30 days as stipulated in the Law.

Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia have adopted the Freedom of Information Act, which guarantees the public access to information of a public character, such as adopted and/or published normative acts. However, each country determines which domains are considered classified information and therefore not made publicly available.

Kosovo, the Republic of Moldova and Montenegro consult with stakeholders during the legislative drafting process, although this process has not been formalised. Kosovo generally publishes draft normative acts 10 days before adoption, allowing for prior consultation. The Republic of Moldova and Montenegro organise consultations *inter alia* with the members of the economic commission in an *ad hoc* way. Interestingly, Montenegro recently adopted a strategy for co-operation between the government and non-governmental organisations (EC, 2009).

The Parliament of the former Yugoslav Republic of Macedonia signed a protocol with the representatives of the Economic Chamber allowing consultations on normative acts having economic impact. The latest modifications to the government's rulebook mention that draft normative acts should be accessible on the websites of relevant ministries and that civil society representatives can take part in the working group for drafting legislation (EC, 2009).

Serbia is in the process of adopting new rules and procedures for the parliament, which clearly refer to compulsory consultations on draft normative acts. Serbian professional associations and representatives of international organisations have criticised the fact that they were not consulted when amendments to the law on public information were adopted. In general, consultations in Serbia take place on an *ad hoc* basis. For example the Serbian government thoroughly consulted with civil society while preparing the Law on the Environment in May 2009 (EC, 2009).

The Croatian government hosts regular consultations with stakeholders on draft laws. However, due to the European Union accession process, the majority of such drafts are adopted under emergency procedure, which entails a very short consultation timeframe.

It should be noted that in addition to the consultation structures and processes mentioned above, all assessed economies invite stakeholders to attend the meetings of

parliamentary commissions, including those of the economic commission. In Albania, for example, the Parliament's Rules of Procedure prescribe that committee meetings can be attended by the media, groups of interest and registered visitors. Committees can also organise public hearings.

#### Box 5.4. **Parliamentary libraries**

During the assessment process, information was also collected on the quality of parliamentary libraries. A well-functioning library containing a comprehensive collection of books and journals provides an important independent source of information for parliamentarians. Libraries have particular importance when parliamentarians examine legislative proposals outside of their scope of expertise and requiring extensive background research.

All SEE economies have functioning parliamentary libraries. But the collection of international journals and books is limited in most cases, and electronic libraries, which accelerate search and lending operations, have not been set up.

Albania boasts a particularly modern library, which is well stocked with national and international books and journals. This library has a number of additional features rare in other SEE economies' parliamentary libraries:

- a collection of the laws passed;
- an electronic library catalogue;
- a research centre, whose staff prepare summaries, studies and various publications on demand; and
- membership in a network which links international libraries. The library also recently benefited from an increase in its budget and further references are being added to its already extensive catalogue.

#### **Centralised system to record amendments to normative acts**

This indicator measures the extent to which amendments made to normative acts in parliament are recorded in a central register. It provides a proxy for the transparency and accountability of parliamentary procedures.

All SEE economies have a system of keeping the amendments to draft normative acts. Four economies have established departments within their parliaments that co-ordinate the amendments to normative acts (Bosnia and Herzegovina, Kosovo, the Republic of Moldova and Serbia). The other economies are using either the archive of the economic commission or the general archive of the parliament (Albania, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Romania).


### **5.1. Conclusions and recommendations**

A central finding of this chapter is that all economies of South-East Europe have made progress in establishing institutional and legal frameworks for regulatory reform and in implementing regulatory reform programmes. In some economies, this progress has been more pronounced than in others. The overall conclusions and recommendations are as follows:

- The majority of SEE economies have conducted comprehensive legislative reviews to identify, simplify and eliminate obsolete legislation. The exception is Bosnia and

Table 5.2. **The role of parliaments in economic reform: Weighted final scores**

Better regulation and legislation	ALB	BIH	HRV	XK	MK	MD	MNE	RO	SRB
Review of legislation and regulations	4	2	5	n.a.	4.5	4.5	3	n.a.	3.5
RIA	2.5	1.5	2	1.5	4.5	4.5	2	4	4.5
Harmonisation with EU Acquis	3.5	3	4	3	4	n.a.	3.5	n.a.	3.5
Forward planning mechanisms	3.5	4	3	2.5	3	3.5	3.5	4	3.5
<b>Better regulation and legislation</b>	<b>3.4</b>	<b>2.6</b>	<b>3.5</b>	<b>2.3</b>	<b>4.0</b>	<b>4.2</b>	<b>3</b>	<b>4.0</b>	<b>3.8</b>
Transparency and dialogue	ALB	BIH	HRV	XK	MK	MD	MNE	RO	SRB
Lobby Law	1	1	1	1	3	1	1	1	1
Website of Parliament for external users	4	3	3.5	4	4	4	2	4.5	4
Use of Transparency law by Economic Commission	2	2	3	2.5	3	2	2	3	3
Centralised system to record amendments to normative	3.5	5	2.5	4.5	2.5	4.5	4	4	5
<b>Transparency and dialogue</b>	<b>2.6</b>	<b>2.8</b>	<b>2.5</b>	<b>3</b>	<b>3.1</b>	<b>2.9</b>	<b>2.3</b>	<b>3.1</b>	<b>3.3</b>
<b>DIMENSION AVERAGE</b>	<b>2.8</b>	<b>2.7</b>	<b>3.0</b>	<b>2.7</b>	<b>3.6</b>	<b>3.5</b>	<b>2.6</b>	<b>3.6</b>	<b>3.5</b>

StatLink  <http://dx.doi.org/10.1787/807635228616>

Herzegovina, which needs to prioritise actions in this field at state level and further examine and build on international best practices.

- The application of regulatory impact assessment to draft legislation is in its infancy in most SEE economies. This constitutes a key problem because many SEE economies require extensive and rapid adoption of EU laws and regulations to comply with the *acquis communautaire*. The EU accession context underlines the importance of establishing a review system of draft legislation and should be prioritised by governments in the region. Several OECD publications provide guidance on RIA (OECD 1997 and 2008b). A sharing of the experiences of more advanced economies in this field, such as Serbia, could also be of benefit to the region.
- SEE governments have developed the foundations of forward legislative planning. However, progress needs to be sustained, as many parliaments are overburdened with complex legislative proposals often submitted at short notice and the co-ordination between parliaments and governments remains unsystematic.
- Few SEE economies have adopted a lobby or transparency law. There would be advantages in formalising consultations with stakeholders during legislative drafting and adoption. Sound consultation can address many causes of regulatory failure, such as bias towards concentrated benefits, inadequate information in the public sector, inability to understand policy risk and lack of accountability. Improving legislative transparency is therefore a key element of sound legislative policy. It is also one of the most important ways to reassure stakeholders that the legal environment is supportive. Consultations can be facilitated by using websites or web portals. Several OECD publications provide guidance on drafting a lobby or transparency law (OECD, 2009c, 2009d).
- The limited capacity of parliaments to analyse complex economic legislative proposals remains a problem in the region and hampers the adoption of laws proposed by the government. This is particularly problematic in the context of EU accession and the economic crisis, which require swift adoption of new laws and regulations. There is a need for parliaments to (further) build partnerships with universities, non-governmental organisations and think tanks in order to enhance their capacity and supplement their often modest resources.



- Most SEE economies have set up functioning parliamentary websites. However, several websites are not available in English and provide little information on legislative processes. Improving the quality of the website is a relatively straightforward technical process and an effective way to increase regulatory transparency.

## Notes

1. This dimension assesses the adoption and implementation status of regulatory reforms and policies. It does not assess the effect of these reforms and policies on their stakeholders.
2. These policy indices have been tested in several assessment exercises in a number of economies, including South-East Europe, the Middle East and North Africa. Results can be found in several OECD publications, 2006, 2007 (published in co-operation with the EC), 2008, 2009a (published in co-operation with the EC, EBRD and ETF), 2009b; also refer to OECD (2009b).
3. Please note that this indicator is not applied to Kosovo. Kosovo fully redesigned its legislative and regulatory framework in 1999. There is therefore no rationale for a regulatory simplification process and this indicator is therefore not applicable.
4. After the assessment was finalised, the OECD was informed that an RIA Department is set to be established within the Croatian Government Office for Legislation.
5. Annex 1 contains the English version of the most relevant articles of this law.

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## ANNEX 5.1

## *Romania's Law on Decisional Transparency in Public Administration*

Annex 5.1 contains an English translation of Romania's Law on Decisional Transparency in Public Administration. Since Romania is the only SEE economy that has adopted such a law, its content and structure might be of interest to other SEE economies.

### **Box 5.A.1. Romania's Law 52/2003 on Decisional Transparency in Public Administration**

#### **Article 1**

(1) This Law establishes the minimal procedural rules applicable to ensure decisional transparency within central and local public administration authorities, elected or appointed, as well as of other public institutions that use public financial resources, in the relations established between them with the citizens and their legally established associations.

(2) The purpose of the law is:

- a) to increase the responsibility degree of public administration towards the citizen, as a beneficiary of administrative decisions;
- b) to stimulate the active participation of the citizens in the administrative decision-making process and in the process of elaborating legislative acts;
- c) to increase transparency degree at the level of the whole public administration.

#### **Article 2**

The principles lying at basis of this law are the following:

- a) providing beforehand, *ex-officio* information for the people on matters of public interest to be debated by central and local public administration and the draft legislative acts;
- b) consulting the citizens and legally established associations, at the initiative of public authorities, in the process of elaborating draft legislative acts;
- c) the active participation of citizens in administrative decision making and in the elaboration process of draft legislative acts, with observance of the following rules:
  1. the meetings of the authorities and public institutions that are subject to this law are public, under the law;
  2. the debates will be recorded and made public;
  3. the minutes of these meetings will be recorded, archived and made public under the law.

**Box 5.A.1. Romania's Law 52/2003 on Decisional Transparency  
in Public Administration (cont.)**

**Article 4**

The public administration authorities obliged to observe the provisions of this law are:

- a) the central public administration authorities: ministries, other central organs of public administration under the subordination of the government or ministries, their decentralised public services, as well as the autonomous administrative authorities;
- b) local public administration authorities: county councils, local councils, mayors, public institutions and services of local or county interest.

**Article 6**

(1) Within the draft legislative acts elaboration procedures, the public administration authority has the obligation to publish an announcement on this action on its own website, to display it at its own headquarters, within a space accessible to the public and to transmit it to the central or local mass media, as the case may be. The public administration authority shall send the draft legislative acts to all persons who have filed an application to receive this information.

(2) The announcement on the elaboration of a draft legislative act shall be brought to public knowledge, as stipulated in paragraph (1), at least 30 days before submission for analysis, endorsement and adoption by public authorities.

The announcement shall include a substantiation note, recitals or, as the case may be, an approval report on the necessity of adopting the proposed legislative act, the full text of the draft of the respective act, as well as the deadline, place and manner in which those interested might send their written proposals, suggestions or opinions with the value of recommendations, regarding the draft legislative act.

(3) The announcement regarding the elaboration of a draft legislative act relevant for the business environment shall be transmitted by the initiator to business associations and other legally established associations, on specific areas of activity, within the time limit stipulated in paragraph (2).

(4) At the publication of the announcement, the public administration authority shall set a period of at least 10 days to receive written proposals, suggestions or opinions regarding the draft legislation submitted to public debate.

(5) The head of the public authority shall designate a person in the organisation, responsible for the relation with civil society, to receive proposals, suggestions and opinions of the interested persons regarding the proposed legislative act.

(6) The draft legislative act shall be transmitted for analysis and endorsement to the interested public authorities only after its finalisation, on the basis of the observations and proposals made under paragraph (4).

(7) The respective public authority shall decide the organisation of a meeting where the draft legislative act shall be publicly debated, if this was requested in writing by a legally established association or by another public authority.

(8) In all cases when public debates are organised, they shall take place no later than 10 days from the publication of the date and place. The public authority in the cause shall analyse all the recommendations on the draft legislative act in question.

(9) In case of regulating a situation which, due to its exceptional circumstances, requires the adoption of immediate solutions, in order to avoid a severe prejudice to public interest, the draft legislative acts shall be submitted to adoption under the emergency procedure stipulated by regulations in force.



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