



Policy Making and EU Accession Negotiations

Getting Results for Serbia

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About the Study

If Serbia is to approach European Union accession as a process of becoming a capable and credible member state and not simply as a project of achieving membership status, it will need to thoroughly reform its policy making system. In order to “speak with a single voice” in the complex EU policy arena, as well as reap the benefits of EU membership to the maximum (and not lose out instead) Serbia will need to ensure that the positions it presents in Brussels are based on sound, well-analysed, well-evidenced and well-coordinated policies. In its endeavour to achieve this end, Serbia can learn much from the policy making and coordination practices of the UK, France, Poland and Latvia – all successful member states in different ways and for different reasons, but all similar in that they approach the design and coordination of their policies towards Brussels with much care. The objective of this study is to shed light on the relevance of policy making and coordination for EU membership negotiations as well as negotiations within the Council of the EU after accession, in hope of creating a stronger incentive for domestic policy makers to address the deficiencies of these systems as early as possible in the accession process.

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Foreword



Dear readers,

We are delighted to share with you this Study, commissioned by the GIZ Project “Support to the EU Integration Process in Serbia” and produced by the independent, non-governmental Serbian think-tank European Policy Centre (CEP). The idea to launch this study was born at the very beginning of the Project out of a realisation that for Serbia to successfully negotiate its EU membership it would not be sufficient to simply create the necessary negotiation structures and build capacities of the line ministries. As the EU accession process is a joint endeavour of the entire public administration, it would necessitate the support of horizontal government processes, which can ensure that Serbia argues its positions well and is able to calculate the costs and benefits of the application of various EU rules.

The purpose of this Study is to instigate further discussion and debate about the best ways to improve the policy making system in Serbia so as to ensure the best possible outcomes for Serbia in the EU accession negotiations. But its ambition does not stop at the gates of the EU. It also seeks to extend the view of Serbia’s policy makers towards future membership and entice them to think about the kind of EU member state they want Serbia to be – a powerful and credible one or a weak and side-lined one, a mere observer in EU negotiations. We do hope that the debate will be a lively and productive one.

Results of the research for the Study were presented at a conference held on 22 November 2013, which gathered numerous stakeholders and yielded excellent discussions and conclusions, which were subsequently built into the text. Enjoy reading!

Sincerely yours,

Two handwritten signatures in black ink. The first signature is on the left and the second is on the right.

Nebojša Lazarević, CEP & Andrej Horvat, GIZ

About the GIZ Project “Support to the EU Integration Process in Serbia”

Government-to-government consultations between the Government of the Republic of Serbia and the Government of the Federal Republic of Germany took place in Belgrade on 29 March 2011. In these consultations, both parties agreed to develop a new technical assistance project focusing on “Support to the EU Integration Process in Serbia.” This agreement was then reconfirmed during the government-to-government negotiations in June 2011. The project's main objective is to develop the capacities of the administration of the Republic of Serbia in EU negotiations. On 29 May 2013 an Implementation Agreement was finally signed between the Serbian European Integration Office and the German Development Cooperation (GIZ).

In its first phase the project supports SEIO, the Negotiating Team and other project partners through technical expertise, organizational and process-oriented advisory services. Regional exchange of experience and regional experts are a key mode of delivery for these services. The support entails policy, process, organizational and technical assistance for the selected stakeholders of the project.

Additional assistance is being provided to the Ministry of Agriculture, Forestry and Water Management, the Ministry of Finance, the Ministry of Economy, the Public Procurement Office, the National Bank of Serbia and SEIO. These are key actors for the most comprehensive chapters of the EU acquis.

However, the project is not limited only to these actors but also includes other stakeholders. Institutions, such as the Ministry of Foreign Affairs, the General Secretariat of the Government, the Secretariat for Legislation and the National Assembly together with civil society and the general public are involved in the project as stakeholders to the negotiation process.

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In Brief

Why Focus on Policy Making?

One of the substantial questions of the EU accession process, which has so far been fairly neglected in Serbia, concerns the correlation between the national policy making and coordination practices and the EU accession negotiations (as well as negotiations in the EU institutions after membership is achieved). The rationale behind the focus on this topic lies in the fact that the timing of the opening of negotiations with Serbia coincides with an evident growing interest on the part of the European Commission in the policy making aspects of horizontal governance reforms in candidate countries.

The European Commission has set increasingly rigorous requirements for the countries of the Western Balkans regarding the reforms of their administrative systems and, increasingly so, their policy making and policy implementation systems. In the accession process the candidate countries are expected to create policy planning, development, co-ordination and implementation arrangements that, inter alia, enable consistent policy planning and co-ordination of government activities, including priority setting; create meaningful and consistent, economically efficient and financially sustainable policies, which also already lay down the foundations for operating effectively as an EU member country.

The Study aims to address the following questions:

- How important is sound and evidence-based policy making for EU accession negotiations?
- To what extent is such evidence necessary when negotiating with the EU (as a candidate country) and within the EU (as a member state)?
- How should the coordination of (sometimes conflicting) positions and interests of different line ministries be ensured in order for the country to defend a single position in the context of accession negotiations and at the EU level?

To respond to these questions, in-depth research was conducted focused on the analysis of the existing Serbian policy making and EU coordination system as well as the systems of several EU member states (the UK, France, Poland and Latvia). Based on over 50 interviews conducted with relevant stakeholders, first-hand experience was obtained, which ensured that the analysis was thorough and credible and that solid recommendations were

drawn for the improvement of the Serbian policy making system in light of accession negotiations.

Given that several aspects of the policy cycle have been intensely studied and addressed by both bilateral and IPA technical assistance projects, the Study has focused on the **policy formulation** phase of policy cycle, as it has remained largely out of the focus of other reform efforts thus far. At the same time, it is a segment of the policy cycle of great importance for Serbia's performance in EU accession negotiations (as well as for negotiations in the Council of the EU after accession). Although the policy process cannot be strictly sliced into separate steps and many of them overlap, this phase should necessarily include definition of priorities, problem analysis, formulation of policy options (where regulation is but one option), their assessment and comparisons, decision on the preferred option. It should also necessarily include inter-ministerial consultations as well as consultations with the public.

The policy formulation stage is the least developed of all stages of the policy cycle in Serbia, with negative implications for the other stages as well. At the same time, there is an over-emphasis on the legal drafting phase, with insufficient preceding analysis and assessment. Various supporting documents (justification, impact assessment, etc.) are tied to legal drafts submitted for Government's consideration, but policy analysis is not otherwise regulated. Policy proposals in fact reach the Government at a stage when no intervention into policy direction is possible, as the public administration authority proposing a legal draft has already enshrined a policy approach into the submitted text. Whereas multiple elements necessary in a sound and evidence based policy process are scattered around the relevant documents which provide for the legal framework in this area, they do not comprise a coherent system and they lack additional elements which would support proper policy formulation.

Policy Making and Coordination for EU Negotiations – the Link

Even though the content, the procedures and the dynamics of the accession negotiations significantly differ from the negotiations among the member states in the Council of EU, the parallels are striking between the National Positions in the EU context and the Negotiating Positions in the accession context. In fact, the quality of evidence base outlined in the Negotiating Position can substantially determine the success of the candidate country in negotiating transitional provisions in its own favour. The quality and functionality of the national policy coordination system, including the EU

accession negotiations coordination system, can be evaluated based on the manner in which the Negotiating Position is argued for and defended in Brussels. The same can be said of the National Position in the Council negotiations. The national policy analysis capacities of a candidate country negotiating EU membership need to be developed from the earliest stages of negotiations, not only for the sake of successfully negotiating the transitional provisions, but also because of the need to effectively transpose the growing body of EU law into national legislation. The Serbian national coordination system for accession negotiations, mainly relying on the Core Negotiating Team, Negotiating Groups and SEIO, with support of appropriate domestic capacities for policy making and coordination, needs to assure that Serbia speaks with a single voice while arguing for the National Positions and fulfils agreed tasks in a consistent manner.

What can Serbia learn from examined countries?

In the context of EU membership negotiations, Serbia can draw a wide range of lessons observing the practices within the negotiations and policy making among the member states.

Policy formulation. The UK can be a role model for Serbia in numerous aspects, as its policy formulation practices are focused on creating evidence-based policies, elaborated consultations with internal and external stakeholders and opting for regulation only after other options are thoroughly analysed, while the centre of government steers the process from the earliest stages of the policy process and requires policy clearance prior to legal drafting. Latvia's case shows that evidence-based policies have helped the country run more efficiently, consequently making the major policy making reforms from 2000s durable and sustainable.

Policy coordination. The cases of UK and France demonstrate that clear chains of command and an entrenched consultation culture among the national stakeholders, combined with the proactive Permanent Representation in Brussels which gathers intelligence on the ground and invests in building contacts, crucially determine the level of success of a country's performance in Council negotiations. Poland has become a respected and influential member state thanks to, inter alia, timely and thorough preparations for negotiations. For the sake of being 'heard', Latvia as a small member state makes its case with evidence-based arguments and consistency.

Recommendations

Based on the analysis of the Serbian policy formulation arrangements and the analysed comparative practices, key recommendations for Serbia are:

- To enshrine the policy analysis and policy formulation element into the on-going reforms of the legal drafting and policy planning processes, in order to ensure consistency and synergies among the different reform efforts, inter alia, by improving and widening the application of RIA.
- To introduce a policy paper type of document into the existing legislative framework regulating public administration tasks and Government decision-making, thus creating a formal mechanism for proposing policy options and solutions to both the individual decision-makers and to the Government, before any decision to regulate is made.
- To supplement the efforts related to the improvement of skills for legal drafting, civil servants should be trained in policy analysis, collection of evidence, problem analysis and other relevant skills and techniques of major importance for the capacities of the civil service to produce sound and evidence based policies.

The analysis of the policy making and coordination systems of the UK, France, Poland and Latvia reveal three key recommendations with regards to the linkages of policy making and negotiations:

- Reforms of the policy making system and process should be implemented as early as possible in the accession/EU membership negotiations process. Gaining experience and developing skills for evidence based policy making takes time and the state needs to join the EU policy making system and negotiations as ready as possible.
- Ensuring well analysed, well-coordinated, widely consulted and well-argued negotiating positions should be made a priority in the negotiating process, as they substantially increase the country's performance both in the EU accession negotiations and in post-accession negotiations in the Council.
- The Serbian administration should maximise its presence in Brussels through direct meetings with EU and member state officials. Frequent meetings and preparations for them increase the awareness of the need to participate with evidenced and well-coordinated arguments and positions as well as increase the knowledge and professionalism of the civil service, which increases Serbia's credibility with European interlocutors and, indirectly, its chances of negotiating more favourable conditions of EU accession.

I. Introduction

I.1 Context

In the context of its relations with the EU in the last decade, Serbian authorities and even the wider public have familiarised themselves with the foundations and dynamics of the EU accession process: the EU institutions and their correlation; what the EU *acquis communautaire* is; criteria for becoming an EU member state and the principle of conditionality; etc. However, it seems that throughout this learning process, the focus of the politicians and the public has been placed more on the formal aspects of accession (what are the formal requirements, who is involved in the process, etc.), than on its substance (how to ensure the best possible results for Serbia using EU accession as a tool). This study aims to address one of the substantial questions of the EU accession process, which has so far been fairly neglected in Serbia. It concerns the correlation between the national policy making and coordination practices and the EU accession negotiations (as well as negotiations in the EU institutions after membership is achieved). The rationale behind the focus on this topic lies in the fact that the timing of the opening of negotiations with Serbia coincides with an evident growing interest on the part of the European Commission in the policy making aspects of horizontal governance reforms in candidate countries.

It is no news anymore that the European Commission has set increasingly rigorous requirements for the countries of the Western Balkans regarding the reforms of their administrative systems and, increasingly so, their policy making and policy implementation systems. The rationale has been that the *acquis communautaire*, adopted through proper legislation, also needs to be fully and properly implemented, thus requiring a capable and well organised administration and administrative processes and procedures. In fact, the European Commission has struggled to embed into its conditionality the requirements related to horizontal governance structures, as the basis for sectoral reforms in candidate countries from the onset of the first Eastern enlargement, which was realised in 2004. As administrative aspects of governance do not comprise part of the EU *acquis* – due to which the Commission also does not have internal capacities to substantially address such reform issues – the competence of the Commission to address those issues has not been sufficient to create a model or a standard which the candidates should emulate. The Commission has, thus, turned to the lengthy

process of shaping and extracting basic principles, thus constructing the so-called “soft *acquis*” to be addressed by the candidates in that area. In this process, the Commission has turned for assistance to the Organisation for Economic Cooperation and Development (OECD), creating jointly the Support to Improvement in Governance and Management – SIGMA – programme. SIGMA has led and shaped EU’s work on improving the horizontal governance structures in the candidate countries for over 20 years now.¹

In this period, SIGMA has continuously evolved the framework for assessing the progress of the candidate countries, primarily through the so-called “baselines” which de facto define the criteria of EU membership in what are presently five areas crucial to horizontal governance.² The new policy making and coordination baseline of SIGMA/OECD states that “[t]he preparations for the EU accession and membership need to be underpinned by policy planning, development, co-ordination and implementation arrangements that, inter alia:

- enable consistent policy planning and co-ordination of government activities, including priority setting;
- create policies that are not deficient in substance, are consistent with one another, are economically efficient and financially sustainable;
- lay down the foundations for operating effectively as an EU member country.”³

This added focus by SIGMA on policy planning and policy development arrangements has developed rather recently, as in the past the main emphasis was placed on policy coordination at the centre of government. Another positive development is mirrored in the last point above, which explicitly links the policy making system of candidate countries to their

¹ SIGMA now works also with countries of the EU Neighbourhood Policy, which has effectively extended its scope of action beyond the mere enlargement context. For more details, visit: <<http://www.oecd.org/site/sigma>>.

² SIGMA works in the areas of: civil service and public administration organisation and functioning; policy making; public finance and audit; public procurement; and strategy and reform.

³ (Added emphasis) Policy Making and Co-ordination Baseline, 2013 Extended Version, Support for Improvement in Governance and Management – SIGMA, A joint initiative of the OECD and the EU, principally financed by the EU.

preparation to operate well after membership. It can be said with little hesitation that this increase in the significance given to policy making is a direct result of the failures of governance reforms in many of the countries of the 2004 and 2007 enlargements. The EU accession process is, thus, due to place much more attention on policy making improvements, in order to ensure that overall governance as well as sectoral reforms are well thought, planned as well as made sustainable in the period leading up to accession. The fear of the Commission of such reform not being properly embedded is a grounded one – studies of sustainability of governance reforms in the ten countries which acceded in 2004 and 2007 have shown low levels of sustainability of these reforms after accession, with complete overthrows in some cases.⁴

1.2 Purpose of the Study

The starting hypothesis of this research is that the better performing the national policy making and coordination system is, the more successful the EU accession negotiation process will be. The starting assumption is that policy making and coordination mechanisms represent the backbone of the entire EU accession process and of the future membership.

Bearing in mind the fact that Serbia is about to formally start the accession negotiations with the EU, the purpose of this study is to examine the features of the policy making and coordination system in Serbia, raise awareness on the relevance of this question in the framework of accession negotiations, as well as to draw attention to the good practices of certain EU member states in this respect, which can serve as a guideline for Serbia in its upcoming thorough and complex negotiations for EU membership. The study will particularly seek to answer to the following questions:

- How important is sound and evidence-based policy making for EU accession negotiations?
- To what extent is such evidence necessary when negotiating with the EU (as a candidate country) and within the EU (as a member state)?
- How should the coordination of (sometimes conflicting) positions and interests of different line ministries be ensured in order for the country

⁴ Meyer-Sahling, Jan-Hinrik. "Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession", Sigma Papers, No. 44, OECD Publishing. 2009. Available at: <<http://dx.doi.org/10.1787/5kml60pvjmbq-en>>

to defend a single position in the context of accession negotiations and at the EU level?

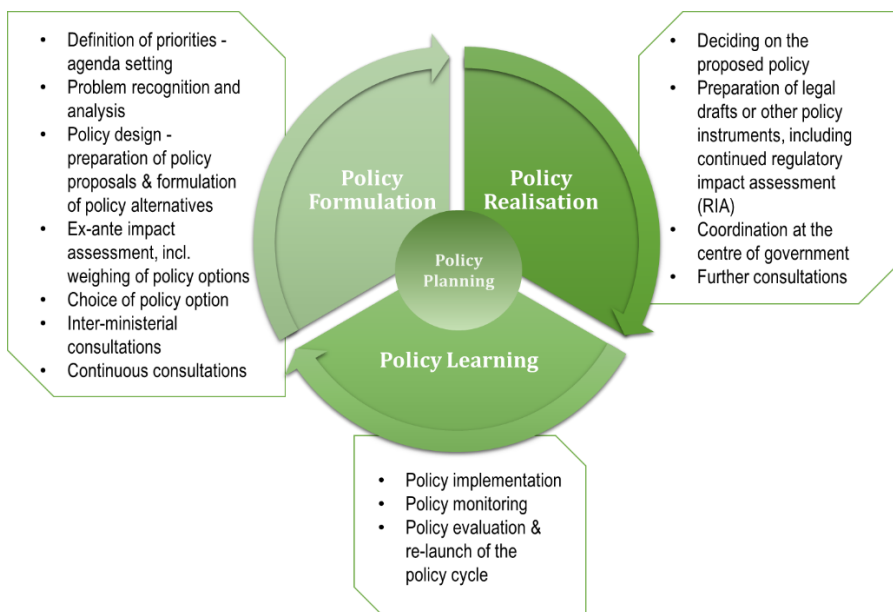
I.3 Methodology of the Study

The methodology of the Study is based upon a qualitative approach as it was deemed to provide with the most tangible results which are in service to attaining the goal of the research i.e. context specific conclusions on the correlation between the policy making and coordination systems and the negotiations on the EU level as a candidate country and later on as a member state. In this sense data was collected through desk and field research in relation to Serbia and the four selected country case studies, United Kingdom, France, Poland and Latvia, so as to be able to ensure a triangulation of data. In other words, field research was conducted through interviews with relevant civil servants, experts, academics and scholars, representatives of the Permanent Representations to the European Union, officials from the DGs etc. and the information was cross-referenced and supplemented with the data gathered through desk research. For a more detailed account of the methodology including the approach of the study, the sampling techniques for the selection of interlocutors, and the reasoning behind the choice of country case studies, please see Annex 2.

I.4 Scope of the Study

Having in mind the thematic focus of the Study, the **policy cycle** approach, as the most widely accepted and applied framework, has been selected for efficient structuring and organisation of the collected material. The policy cycle is, thus, broken down into stages, which vary slightly across a variety of relevant literature on the topic. Combining the different approaches encountered in the literature, the following model of the policy cycle can be constructed for the purpose of providing a framework for the analysis of the Serbian policy making system and the systems of the selected EU member states:

Illustration 1. Stages of the Policy Cycle



The need for such a systematisation is twofold. Firstly, there is a need to distinguish and clarify the policy making stages, which in an underdeveloped policy making system such as the one in Serbia are not adequately differentiated, but instead the demarcations are blurred or non-existent. Moreover, some of the aspects of the policy cycle are unknown or unregulated in the policy making system in Serbia at this point in time. Consequently, it is deemed important to point out and explain in a comprehensive manner a proper execution of the policy making process, bearing in mind the actual state of play and potentials of the Serbian system.

Secondly, the aforementioned systematisation was seen as being useful in the process of prioritisation of policy making aspects where research was most needed. Namely, the initial observation of the policy making system in Serbia has resulted in a conclusion that the first policy making stage –policy formulation (also referred to as policy development or policy design), is both the least developed and the least addressed through existing research and reform efforts. At the same time, a common argument present in the literature is that the preliminary stages of policy making during the stage of policy formulation strongly influence the final policy outcome and therefore

have a greater impact in shaping the policy than the final stages.⁵ Hence, it was deemed that this stage of the policy process merits particular attention at the present time, in view of the start of Serbia's EU accession negotiations.

In the context of this study, policy formulation is identified as the phase of the policy cycle which deserves the greatest attention, both due to the observed state of play, and the importance of this aspect in regards to the successful realisation of EU accession negotiations. Additionally, unlike policy development, the two subsequent phases – policy realisation and policy learning – have drawn more attention on the part of academics, researchers, advisers and reform projects and are, thus, better addressed in reality. To mention a few major recent or on-going reform initiatives focusing predominantly on these aspects of the policy cycle:

- Stages 1 and 2 of Support to Improving Policy Coordination in Serbia (SIDA and DfID)
- Reforming Policy Coordination and the Centre of the Government (IPA – currently in inception period)
- Legal Reform Project (GIZ) – project which encompasses activities aimed at reforming the legislative process in Serbia
- Monitoring and Evaluation Capacity Development for the Western Balkans and Turkey, implemented by the World Bank, EU financed

Therefore, this study does not strive to pay equal attention to the policy realisation and policy learning stages, as it would to an extent be a duplication of efforts. Instead, it will consult the existing findings and recommendations of the aforementioned projects, in order to build on those that are of relevance for the policy formulation process.

In addition, taking into account the structure and tools that the Serbian government is about to develop for the purpose of the upcoming EU accession negotiations, this study will address in greater detail the aspects of policy coordination for EU accession negotiations (as well as EU policy coordination upon accession). This particular policy sub-system, developed

⁵ Kenis, Patrick, and Volker Schneider. "Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox." pp. 25-62. In: *Policy Networks. Empirical Evidence and Theoretical Considerations*, Bernd Marin, Renate Mayntz (eds.). Frankfurt/Boulder, CL: Campus/Westview Press, 1991. Available at: <<http://arno.uvt.nl/show.cgi?fid=68822>>

by states to ensure successful performance in the process of negotiating EU entry as well as successful performance as EU member states, represents a kind of a bridge between the policy formulation and policy realisation phases specific to the EU membership context. It represents an entry point for various sectoral policies which needs to ensure that a country “speaks with one voice” in Brussels and a testing ground for how developed and coordinated the country’s entire policy making system is.

The choice of the two policy making aspects addressed in this study is, thus, based on the combination of two main considerations:

1. The relative lack of focus on the issue in previous research and projects in the Serbian context, which thus creates a higher level of urgency in tackling it;
2. The significance of the issue in ensuring successful negotiations for EU membership and, later on, successful performance as EU member state.

The policy formulation stage satisfies both of these criteria, as will be argued in the following chapters, *inter alia*, based on comparative experiences. The coordination of EU accession/policy mainly satisfies the second criterion, but its role in complementing sound policy formulation to bring about success in EU negotiations necessitates its treatment in order to better understand the significance of reforming policy formulation in the pre-accession period.

1.5 Roadmap of the Study

This Study is divided into six separate chapters. Following the Executive Summary and the Introduction, in Chapter II the reader is introduced to the growing significance of the administrative capacities as a criterion for EU membership, based on which arises the necessity to improve the candidate country’s policy making system. The third chapter addresses in detail the policy formulation phase of the policy cycle in Serbia, whereas the state of affairs in the selected case studies is addressed in Chapter IV. Chapter V tackles national coordination of EU policies and the strong linkage between this issue and evidence-based policy making. Additionally, both Chapter IV and Chapter V present a number of options for developing and organising the relevant aspects of the policy cycle, based on the examined comparative practices. Conclusions and recommendations are drawn in the last chapter, Chapter VI.

II. EU Conditionality & Policy Making

II.1 Administrative Capacities as a Criterion for EU Membership

For a candidate country to become a fully-fledged member of the EU, it must, *inter alia*, “take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.”⁶ This means that the country must be able to participate effectively in the EU policy-making processes; to transpose and implement EU directives and regulations effectively; to manage and shape the Union’s budget, structural funds and other financial responsibilities; etc.

The founding treaties have evolved with regards to the expectations placed on member states related to their administrative capacities, thus creating higher demands on new aspiring members. New rules introduced by the Lisbon Treaty further stress the importance of the administrative capacities criterion, not least implicitly. Under the new provisions, the EU member state is not only required to abide by the values of the EU, but is also obliged to promote them.⁷ Among the core values of the EU are, among others rule of law, democracy and anti-discrimination.

In the process of becoming an EU member state, the challenge of undertaking the obligations under the Treaty may represent a major hurdle for a candidate country with poor national administrative capacities. In other words, becoming a member of the EU obliges the candidate not only to close all of the negotiating chapters, but also to demonstrate the preparedness to “assimilate” in the “decisional maze” and “overcrowded policy arena” of the EU’s system of functioning.⁸ Moreover, as the Union does not have an administration at the level of member states, in regards to implementation

⁶ Consolidated version of the Treaty of the EU (TEU), Article 4(3) [ex article 10 TEC].

⁷ Article 13 TEU, paragraph 1: “The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.”

⁸ Wright, Vincent. “The National Co-ordination of European Policy-Making: Negotiating the Quagmire,” in: European Union. Policy and Policy-Making, Jeremy Richardson (ed.). London: Routledge. 1996.

it relies upon the member states' administrations.⁹ Similarly, in relation to policy development within the EU, it is dependent upon the effective participation of every single member state and thereof, the organization and operation of their public administrations.¹⁰ Thus, the interaction and "fusion" between national administrations significantly influence the administrative capacity of the Union and its ability to implement common policies.¹¹

The need for effective administrative capacities, as well as for robust and structured coordination of national positions in the EU negotiations has so far driven the candidate countries to considerably alter their national administrations' organisational and institutional structures. As noted by Verheijen, "the importance of having a well-functioning institutional framework for the management of EU affairs during the pre-accession period should not be underestimated," as its quality will have a significant influence on the timing and characteristics of membership.¹² Still, it is important not to get wooed into looking at membership as the final goal and to focus on accelerating the process without paying due attention to a capacity building strategy and investments in human resources and organisational development within the line ministries that have EU-related responsibilities.¹³ The correlation between the performance of the national bureaucracies and the EU negotiations functions both ways. On the one side, the negotiations for membership have a transformative effect upon the administration of a candidate country. The requirements of the accession process induce a candidate country to upgrade its administrative capacities and align it with the highest standards of the EU member states. This leads to a europeanisation of the functioning and organisation of the public

⁹ OECD. "Preparing Public Administrations for the European Administrative Space", Sigma Papers, No. 23, OECD Publishing, 1998. Available at: <http://dx.doi.org/10.1787/5kml6143zd8p-en>

¹⁰ Fournier, Jacques. "Chapter 7: Administrative Reform in the Commission Opinions Concerning the Accession of the Central and Eastern European Countries to the European Union," in: Sigma Papers, No. 23.

¹¹ Metcalfe, Les. International Policy Co-ordination and Public Management Reform. *International Review of Administrative Sciences*. Vol. 60, pp. 271–90. 1994.

¹² Verheijen, Tony. "The Management of EU Affairs in Candidate Member States: Inventory of the Current State of Affairs," in: Sigma Papers No. 23.

¹³ Metcalfe, Les. "Chapter 2: Meeting the Challenges of Accession," in: Sigma Papers No. 23.

administration of a candidate country,¹⁴ which does not cease at the moment of accession to the EU.¹⁵

By the same token, with EU membership, the demands for a coherent policy making and coordination system only become greater as the domains of action and responsibility extend, while the complexity of decision making increases on a multilevel plane.¹⁶ But on the other side, the candidate country, once a fully-fledged member, implicitly brings its own input into the development of the so-called “European Administrative Space,” i.e. the tendency of natural convergence of the member states’ administrative practices while interacting together in the various forums of the intricate EU governance system. As a consequence, the European Administrative Space is seen as a set of minimum common principles and standards pertaining to the organization, operation and functioning of the administration which in return embody the process of harmonization of administrations across member states.¹⁷ Namely, taking into account the increasing number of EU policies which require horizontal cooperation among the member states, the gradual administrative convergence facilitates and enables such cooperation and functioning of the EU. As cases in point, the implementation of the European Arrest Warrant, Schengen Information System, banking services etc., all involve intensive cooperation among national bureaucracies.

II.2 Evolution of Importance of Administrative Capacities for EU Membership

The linkage between EU membership and the administrative capacities of a candidate country appeared as an issue with the process of the ‘Big-Bang’ enlargement. Namely, unlike with the previous enlargements, the ten Central and Eastern European countries that joined the EU in 2004 and 2007

¹⁴ Featherstone, Kevin and Claudio M. Radaelli (eds.). *The Politics of Europeanization*. Oxford University Press Inc. New York, 2003, p. 5.

¹⁵ Peters, B. Guy and Vincent Wright, “The National Co-ordination of European Policy-Making,” in *European Union: Power and Policy-Making*, ed. Jeremy Richardson, 2nd ed. (London: Routledge, 2001), 156.

¹⁶ Kassim, Hussein and B. Guy Peters, Vincent Wright. Introduction in: *The National Co-Ordination of EU Policy: The Domestic Level*, Hussein Kassim, B. Guy Peters, and Vincent Wright (eds.).

¹⁷ Nizzo, Carlo. National Public Administrations and European Integration. Sigma Paper, 2000. Available at: <<http://www.oecd.org/site/sigma/1850561.pdf>>

faced the challenges of state-building from the bottom-up, i.e. they had to substantially transform their state institutions, structures and processes. Moreover, communism as a monolithic regime took its toll upon the countries of the Eastern bloc which resulted in significant discrepancies in regards to their administrative capacities in comparison to those established in the EU-15.

In such a context, the first reference to the “administrative capacities” as a prerequisite for the EU membership was mentioned implicitly in 1993 during the Copenhagen European Council, namely under the institutional criteria as administrative capacity to transpose the *acquis* into national law, to implement it and effectively enforce it through appropriate administrative and judicial structures. Furthermore, administrative capacity as a major issue in accession negotiations pertaining to the eligibility criteria was explicitly brought up at the European Council Summit in Madrid in 1995, however, without any concrete elaboration on this criterion.¹⁸ With the issuance of the Commission’s annual Progress Reports starting from 1997, it became clearer where these countries stood in administrative reforms and what needed to be done. Namely, the progress reports contained the overview of the administrative capacities in each of the *acquis* chapters, as well as the outlines of what the Commission considered to be good practice in this field.¹⁹ Yet, unlike the Copenhagen criteria, whose fulfilment could be monitored and evaluated during the process of negotiating the chapters of the *acquis*, the problem with the administrative capacity criterion was that there was no EU *acquis* in this area, and consequently no mechanisms to measure the level of administrative capacities of a country and conclude whether they are satisfactory.

Such a drawback in terms of clarity and evaluation began to be addressed in 1999 with the introduction of the *SIGMA Control and Management System Baselines for the EU Membership* method. The Baselines were developed in

¹⁸ The conclusions stated that “[...] The European Council also confirms the need to make sound preparation for enlargement on the basis of the criteria established in Copenhagen and in the context of the pre-accession strategy defined in Essen for the CCEE; that strategy will have to be intensified in order to create the conditions for the gradual, harmonious integration of those States, particularly through the development of the market economy, *the adjustment of their administrative structures*[emphasis added] and the creation of a stable economic and monetary environment.”

¹⁹ See, for example, European Commission, Czech Republic Progress Report, part 4 “Administrative capacity to apply the *acquis*”, pp. 35-41.
<http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/czech_en.pdf>

six areas of public management, namely the Civil Service, External Audit, Financial Control, Public Expenditure Management Systems, Policy-Making and Co-ordination Machinery and Public Procurement Management Systems.²⁰ These Baselines reflect the minimal standards of good practice applied in the EU countries which a candidate is required to fulfil. They were created in consultation with the EU and in certain aspects with the involvement of the then candidate countries.²¹

Since 1999, SIGMA (Support for Improvement in Governance and Management) Programme, run by the OECD and financed mainly by the EU, has represented the Commission's main source of information on capacity development in public management in the countries of CEE (from 1999-2006) and the Western Balkans (which became part of SIGMA scrutiny in 2007). What is more, SIGMA established standards for the assessment of the development of public administration which are being used on a continuous basis in the Annual Reports of the Commission.

At the same time, for the candidate countries SIGMA represents an important provider of technical assistance in the area of public administration and public management. SIGMA papers and country assessment reports can be considered as the unofficial *acquis* with regards to setting standards in various aspects of public administration management, rule of law and state building.

II.3 New Approach to Accession Negotiations re. Administrative Capacities

The experience from the previous enlargements demonstrates that the candidate countries invested more efforts and time for resolving internal clash of competences and getting to know the discussed matter within their governments and administrations, than at the negotiating table with the EU representatives.²² Bearing in mind the underprepared administrative

²⁰ Sigma Baselines, SIGMA/OECD, October 1999.

²¹ Verheijen, Tony. "Administrative capacity development – a race against time?" Working documents. WRR Scientific Council of Government Policy. Hague, June 2000. p. 18.

²² Rabrenović, Aleksandra. "Reforma državne uprave i integracija u Evropsku uniju." Ministry of Public Administration and Local Government in cooperation with UNDP, with the financial support of the SIDA. Belgrade, 2009. Available at: <http://www.petrovacnamlavi.rs/publikacije/reforma_drzavne_uprave_i_integracija_u_eu.pdf>

capacities of the countries that joined the EU in 2004 and 2007, particularly in terms of policy-making and coordination, the dynamics of negotiations and the overall EU's approach for the ongoing wave of enlargement is under heavy influence of the lessons learned from the 'Big Bang' enlargement.

It is noteworthy that in regards to the accession of the Western Balkan countries, a greater focus has been placed on the sustainability of reforms and efficiency and effectiveness of implementation of the *acquis* rather than their mere adoption and transposition. In this regard, progressively more attention is being given to the institutional and administrative capacities of the EU-aspiring countries so as to assure an adequate level of effectiveness and efficiency, compatible to that in the member states. Cases in point are the documents under the Enlargement Strategy and the annual Progress Reports which refer to the relevance of advancing administrative capacities in the aspiring candidates and candidate countries. In this regard, in its *avis* the Commission has increasingly emphasised the correlation between European integration and public administration reform as the accession verges on.²³

These documents clearly indicate the EU's persistence on gradual development of more sophisticated methods of monitoring the reforms. While assessing the situation of the public administration reform, *Enlargement Strategy and the Main Challenges 2012-2013* states: "Recognising the challenges faced by the enlargement countries, *the Commission will strengthen its assessment and monitoring capability* [emphasis added], identifying key gaps and providing help in planning, priority setting and implementation of reforms."²⁴

As a result of this increasing emphasis on the implementation and enforcement of EU law, accession negotiations have become more time-consuming and more demanding. Some of the most important costs stem from the obligation to implement a widening range of European policies and to participate in the formulation of new ones, as well as the revision of existing ones as needs and circumstances change. Reliable and effective administrations are essential means to these ends. The limited capacities of EU institutions mean that a great deal of the work of managing European

²³ OECD. "Preparing Public Administrations for the European Administrative Space", Sigma Papers, No. 23.

²⁴ Communication of the European Commission to the European Parliament and the Council, *Enlargement Strategy and the Main Challenges 2012-2013*. 10 October 2012, p.5.

policies is the responsibility of other levels of government. The integration process, thus, makes increasingly heavy demands on the administrations of the Member States.²⁵

Therefore, it is both a necessity and in the candidate country's utmost interest to build strong administrative capacities prior to joining the EU. Accession process should be seen as a chance to durably establish a well-functioning national bureaucracy. The experiences of the most recent EU members and the good practices of the older ones can be of major value when reflecting on the EU's ongoing approach and tools towards enlargement in general and the recommendations for Serbia in particular.

For the countries of the Western Balkans, the EU has introduced new mechanisms to stimulate and monitor the reforms they perform, mainly through the screening and benchmarking mechanisms. These tools, which have become integral part of accession negotiations, are seemingly evolving and becoming more complex and thorough, if one compares the accession negotiations dynamics of Croatia and the ongoing ones with Serbia or Montenegro. For example, in the cases of Serbia and Montenegro, the screening process has commenced prior to the official opening of accession negotiations at the Inter-Governmental Conference. Moreover, the use of "interim benchmarks," first time seen at the very end of accession negotiations with Croatia, is expected to be more frequent in the negotiations with Serbia. Hence, in such a complex process, in which every single step is strongly scrutinised, the candidate country is placed under additional pressure to develop effective administrative capacities.

In fact, the Commission's goal is to deeply embed a successful PAR in the systems of the candidate countries.²⁶ The lengthiness of the accession process should be taken as an advantage, in a sense that both the Commission and the candidate countries can prepare for this endeavour. On the Commission's side, it will strengthen its capacities to closely monitor PAR by engaging in parallel on two fronts. First, the Commission will continue organising bi-annual PAR special group meetings with the candidate countries, where the progress and challenges in this matter will be discussed. In the framework of these meetings, the Commission is

²⁵ Metcalfe, Les. Meeting the Challenges of Accession, in: SIGMA Papers no.23.

²⁶ Official of the DG Enlargement, European Commission; interview in Brussels, 11 September 2013.

represented by an official from the relevant geographical unit in DG Enlargement; policy officer from DG Human Resources, which has the lead on horizontal issues, representative from DG Budget and DG Internal Market, if necessary, and finally with the participation of a SIGMA expert. Second, the assessment of the candidate countries' performance in PAR would be tailored-made according to the priorities of each country.²⁷ The Commission will in general improve its capacities to provide the candidate countries guidance on PAR and strengthen its cooperation with SIGMA.

II.4 Policy Making and Coordination: Administrative Capacities Backbone

According to the methodology proposed by SIGMA, policy making and coordination mechanisms of a candidate country represents one of the six aspects of its evaluation on the country's administrative capacities. More specifically, the countries are evaluated on the basis of the coherence of the policy-making framework; quality of inter-ministerial consultations of policy proposals; agenda-planning; the existence of dispute resolution mechanisms; central coordination and strategic capacities; coordination of the European affairs; the involvement of the Council of Ministers in budget decisions; and impact assessment.²⁸

"Coherence of the policy making framework" implies the necessity for a country to develop and regulate all the aspects of the policy cycle. According to SIGMA, policy cycle should clearly comprise twelve different steps:

1. Defining the Government's Priorities;
2. Annual Policy and Legislative Planning;
3. Preparation of Policy Proposals, including Impact Assessment;
4. Preparation of Legal Drafts;
5. Inter-Ministerial Consultations;
6. Submission of Items into the Government Office;
7. Review by the Government Office;
8. Review by Ministerial Committees;
9. Decision by the Government;
10. Parliamentary Process and Passage;
11. Implementation;

²⁷ Ibid.

²⁸ SIGMA Baselines, pp. 27-29.

12. Monitoring and Evaluation.²⁹

The first two steps can be defined as government-level (or “macro-level”) policy planning, as they involve a top-down approach in setting the priorities and plans based on the political priorities of the government of the day. It is desirable for policy planning to also be evidence-based, i.e. to take into account the analysis of socio-economic needs of the country, availability and distribution of resources, etc. Going back to the policy cycle illustration presented in Chapter 1, it can be inferred that policy planning belongs to the wider policy formulation stage, as it creates the basic preconditions for the fourth step in which (mainly) ministries develop and assess policy proposals, which are subsequently sent to the government for deliberation.

By “Quality of Inter-ministerial Consultations of Policy Proposals”, SIGMA assesses the capacities of a candidate country to coordinate the work of its ministries before the proposal reaches the government for final decision taking. Furthermore, the candidate country should ensure that each proposal takes into consideration financial, EU-acquis and legal implications, and that all the interested ministries are properly consulted.³⁰ A detailed overview of the coordination at the centre of the government in the OECD countries, CEE countries and the countries of the Western Balkans is given in the SIGMA Paper no. 35.³¹

It should be emphasised, though, that the above mentioned 12 steps can also contain various “sub-steps.” In particular, steps 1 through 3 can (and indeed should) involve inter-ministerial consultations, consultations with the public as well as some form of decision-taking by the government about the proposed policy proposal, *before* the stage of legal drafting (or design of another policy instrument) is initiated. The 12 steps defined by SIGMA do not explicitly identify a separate step of public consultations, as they are rather a “horizontal” part of the policy cycle. Consultations with civil society are assessed as part of Step 3 – Preparation of Policy Proposals. This means

²⁹ OECD. “The Role of Ministries in the Policy System: Policy Development, Monitoring and Evaluation”, SIGMA Papers, No. 39, OECD Publishing. 2007. Available at: <<http://dx.doi.org/10.1787/5kml60qkg9g7-en>>

³⁰ SIGMA Baselines, p. 25.

³¹ Ben Gera, Michel. “Co-ordination at the Centre of Government: The Functions and Organisation of the Government Office Comparative Analysis of OECD Countries, CEECs and Western Balkan Countries,” in: OECD Sigma Papers, No. 35, OECD Publishing. 2004. Available at: <<http://dx.doi.org/10.1787/5kml60v4x2f6-en>>

that from a normative perspective consultations with external actors should be initiated in a very early phase of the policy process. Through the achievement of satisfactory level of performance, the policy-making arrangements are supposed to prepare the countries for accession and membership. However, in the context of 2004/2007 enlargement, the ten CEE countries have shown various levels of performance in terms of policy making and coordination, with the three Baltic states considered to be the most advanced. The greatest challenge for the ten countries in the area of policy making and coordination was to create effective structures for the management of EU affairs. Despite the considerable investments in the improvement of the administrative capacities of the eight CEE countries that joined the EU in 2004, the World Bank study from 2006 showed rather disappointing results.

The findings suggested that the countries lacked mechanisms to manage the structural funds and budgetary obligations. While the transposition of directives into the national legislation was at a satisfactory level, the strategic planning and policy coordination was “of major concern” in all the countries except Latvia and Lithuania.³² A strong and reformed centre of government was identified as the core institution capable of triggering successful changes in the policy formulation and coordination processes, which, however, remained weak in most countries. Moreover, except for the three Baltic countries, the sustainability and continuity of administrative reforms was not observed in any CEE country. With the inexistence of driving factors for continuing reforms in the post-accession period, the study suggested that conducting further reforms in such a context would be somewhat difficult.³³

It therefore comes as no surprise that the EU’s insistence on sustainable administrative capacities is dominating in its approach towards the enlargement to the Western Balkans. The technical and financial efforts being invested by the EU in the improvement of the administrative capacities in case of Serbia (and consequently in the region) suggest that throughout the negotiating process, new tools and mechanisms for monitoring and

³² World Bank. Study “EU-8: Administrative Capacity in the New Member States: The Limits of Innovation?” December 2006, p.vi. Available at: http://siteresources.worldbank.org/INTECA/Resources/EU8_AdminCapacity_Dec06.pdf

³³ Ibid, p. xiv.

evaluating this area, or even a separate negotiating chapter regarding the administrative capacities, should be introduced.

Since the decisions taken at the EU level can have far-reaching consequences on the citizens' lives, due to the growing number of policies falling under the EU competence, the tendency noticed in the past several years is that EU member states are becoming more motivated to present and defend their national positions in a consistent way. For this reason, evidence-based policy making and coordination play a vital role in the overall articulation of the national positions.

Above all, policy decisions should be based on evidence stemming from a wide spectrum of sources so as to assure that the views of parties concerned are taken into account and are reflected in the policy formulation. Moreover, ex post policy evaluation, stakeholder consultations and expert research on the local, national and at times even international level are not sufficient, but the citizens at whom the policy is targeted need to be a part of the collection of data through interviews, surveys or focus groups in order to make the policy in stake more responsive. Considering a plethora of available definitions, policy analysis in this view can be understood as “client-oriented advice relevant to public decisions and informed by social values.”³⁴ In other words, it is a multidisciplinary means which through the sublimation of policy-relevant information and research results provides with a systematic comparison and evaluation of alternatives available to public actors for solving social problems with the goal of predicting the impact and consequences of alternatives. Finally, the goal of policy analysis is to stimulate a policy decision well-grounded in evidence.³⁵

Within the EU as part of the evidence based policy making, impact assessment (IA) is thought to be an important process at all levels of policy development as it provides a structural framework for analysis. IA represents an “information-based analytical approach to assess probable costs, consequences, and side effects of planned policy instruments.”³⁶ It brings forth useful information at the stage of policy formulation and

³⁴ Weimer and Vining, p. 23

³⁵ Wimer, David L. and Aidan R. Vining. *Policy Analysis*, in: *Policy Analysis: Concepts and Practice*. Pearson; fifth edition. March, 2010.

³⁶ OECD. “Improving Policy Instruments through Impact Assessment”, *Sigma Papers*, No. 31, OECD Publishing. 2001. Available at: <http://dx.doi.org/10.1787/5kml60vnhc6h-en>

contributes to the policy design in the *ex ante* form so as to develop effective and efficient policy options, to reduce unnecessary excessive proliferation of legislation and assure that the chosen instruments are best suited to meeting the set objectives. IA is also useful in the final, policy learning stage during monitoring and evaluation as an *ex post* appraisal of the extent to which the objectives set were met and the need for corrective measures. However, this (ex-post) stage is beyond the scope of this Study and will not be covered more in-depth.

OECD has led the way in developing regulatory impact analysis (RIA) as a tool encompassing a range of methods that aim at systematically assessing the negative and positive impacts of proposed and existing regulations.³⁷ If performed from the very beginning of the policy cycle, i.e. already in the policy formulation phase, RIA should in fact serve the purpose of ex-ante impact assessment as defined above, given that it inter alia examines the accuracy of the problem definition and justification of government action, as well as need for regulation as the best form of action through a cost-benefit analysis of the regulatory action and its effect in relation to a number of factors.³⁸ As an added value, RIA also serves to identify, define and evaluate possible alternative non-regulatory approaches which promise to lead to the stated policy objective. According to the comparative research in OECD countries RIA among other regulatory policy tools has contributed to the development and improvement of evidence based policy making.³⁹ In this respect, adequate capacity of civil servants to conduct analytical work is of paramount importance.

II.5 Sound Policy Formulation: Precondition for Successful EU Membership Negotiations

Policy formulation, as the first stage of a policy cycle, can largely predetermine the overall outcome of policy making at the national level. If the decision to take certain action is brought based on evidence, in a structured and systemic way, with the involvement and consultation of the interested and affected parties, the quality and relevance of a decision taken

³⁷ OECD, "Regulatory Impact Analysis: Best Practices in OECD Countries", 1997. Available at: <<http://www.oecd.org/gov/regulatory-policy/35258828.pdf>>

³⁸ Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers. OECD Publishing. Version 1.1, 2008. p. 24.

³⁹ Ibid.

– whether in the form of law, non-legislative act or other – will be higher. If the policy design phase is of good quality, it will feed the subsequent stages in the policy cycle and result in the effective and rational policy decisions. With well-coordinated policy making at the centre of the government, defending national positions at EU level becomes easier and, to an extent, more successful. Following the same logic, functional policy making and coordination systems of a candidate country create prerequisites for a more successful outcome of accession negotiation process. The candidate country that speaks with a single voice, argues clearly and coherently for its case and justifies the arguments based on evidence, understanding of national and EU policies, cost-benefit analysis and impact assessment, creates solid grounds for turning the accession negotiations in its favour. The benefits from such a policy system can be reaped on two fronts: first, to negotiate favourable transitional provisions on the sensitive negotiating chapters; and second, to build a positive image of the country as being a constructive and reliable partner and a legitimate future member.

In the course of EU accession negotiations, it is expected that the candidate country gradually improves its national coordination and policy making in general. During the accession process, sound national bureaucracies in place will largely determine the outcome of negotiations on transitional measures. Upon accession, sound national bureaucracies will prepare the country to make better use of the rights as well as respect the obligations emanating from the Treaty. Finally, a country which does not respect the values of the Union (including democracy and rule of law) can be reprimanded until it remedies the situation.⁴⁰

⁴⁰ Article 7 TEU sets out the procedure if a member state clearly breaches the values referred to in Article 2 TEU.

III. Policy Making in Serbia

The analysis in this section focuses on two main aspects of the policy making system in Serbia:

1. the system and procedures for overall Government policy planning;
2. the system and procedures for policy development within the line ministries.

As explained and justified in the introduction of the Study, details of the legislative process as well as the “policy learning” phase (monitoring and evaluation in particular) have been left outside of the scope of this Study, which should not be understood as underestimating the importance of these elements for the overall policy process.

Moreover, the system and procedures for overall Government policy planning are only covered to an extent and not in full detail. In fact, they are treated from two aspects:

1. their linkage to policy development by the ministries
2. with regards to the linkages to the coordination of policies in the EU negotiations.

The rationale for such a limited treatment of this aspect of the policy making system lies mainly in the fact that the overall Government policy planning system has been (and still is at present) in the focus of reform efforts and technical assistance projects, as a result of which certain important improvements have already been made to the system, while a number of well written proposals already exist, based on sound analysis.⁴¹ At the same time, the policy analysis and policy development processes have largely remained outside of the scope of such reform efforts. Given that these aspects become particularly important from the viewpoint of the requirements of the EU accession negotiations, it has been decided to place a particular emphasis on them.

⁴¹ See, for example: Martins Krievins, Concept Document on the Improvement of the Planning Framework in the Republic of Serbia, Super Final Version for Consultations with Political Decision Makers and Ministries, Riga-Belgrade, June-July 2010, developed under the DfID (UK) funded project “Supporting the Development of the Policy Planning System within the Government of Serbia,” Riga-Belgrade, June-July 2010.

III.1 Legal Framework: Strengths and Deficiencies

III.1.1 Policy Formulation/Development

When analysing the Serbian policy making system, one needs to start from a brief analysis of the legal framework which, broadly speaking, regulates the elements and processes within that system. The Constitution broadly defines that the Government,⁴² *inter alia*, *determines and runs (implements) the policy*, proposes laws and other general acts to the National Assembly, as well as provides guidance, harmonises and supervises the work of public administration authorities.⁴³ The Law on Government (the basis for which is clearly provided by the Constitution in Article 135) does not contain any specific provisions on how the Government determines and runs the policy, except for a broad provision in Article 2 that the Government runs the policy of the Republic of Serbia within the framework of the Constitution and the laws passed by the National Assembly.⁴⁴ It should be mentioned that the Law on Government also provides for the Ministers to submit to the Government proposals for regulating issues within the competence of the Government and the National Assembly as well as to request that the Government takes a position on an issue within that Minister's competence.⁴⁵

As provided by the Constitution, public administration (whose work is guided and supervised by the Government, as mentioned above) is independent, bound by Constitution and the law, as well as accountable for its work to the Government.⁴⁶ From these provisions, it can be inferred that Ministers and, indeed, the Government must rely on the work of the public administration to support the task of "determining and running the policy"

⁴² The term "Government" in the Serbian language is used to connote the collegiate body elected by the National Assembly, i.e. the Council of Ministers or the Cabinet, as it is referred to in other systems and languages.

⁴³ Article 123 of the Constitution of the Republic of Serbia. It should be noted that the Serbian word "*politika*" in this article is clearly used to connote the English term policy and not politics. The dilemma between the two meanings of this word often arises given that the Serbian language does not differentiate between the term "politics" and "policy" and the conclusion on the intended meaning usually has to be made based on the analysis of the contents and intent of the writer/author, unless the adjective "*javna*" ("public") is added before the noun "*politika*", when the meaning becomes clearer.

⁴⁴ Law on Government, "Official Gazette of the Republic of Serbia" no. 55/05, 71/05 – correction, 101/07, 65/08, 16/11, 68/12 and 72/12.

⁴⁵ Article 14 of the Law on Government.

⁴⁶ Article 136 of the Constitution of the Republic of Serbia.

of the country, although this specific relationship is nowhere explicitly stated in the Constitution. As further stipulated by the Constitution, the tasks of the public administration are determined by the law.

Based on this constitutional provision, the Law on Public Administration defines such tasks in its Chapter III.⁴⁷ These provisions offer a clearer understanding of the desired relationship between the Government as a collegiate body and public administration. The first article in this chapter (Article 12) states that public administration authorities prepare drafts of laws, other regulations and general acts for the Government and propose to the Government development strategies *and other measures which shape the Government's policy*. In addition, Article 13 stipulates that public administration authorities *monitor and determine the state of affairs in the areas within their portfolio*, analyse consequences of the determined state of affairs and, depending on their competences, they either take measures themselves or they propose to the Government passing of regulations and enactment of measures within its authority. Public administration authorities are also charged (Article 20) with *stimulating and guiding the development in the areas within their portfolio*, in accordance with the Government policy. Finally, as “other expertise related tasks” (Article 21) they *collect and analyse/study the data within their areas of portfolio, produce analyses, reports, information pieces and other materials and they perform other expertise-related (technical) tasks* which contribute to the development in the areas of their portfolio. The Law, however, stops short of providing several important preconditions for placing these tasks in the policy making context:

- It does not clearly articulate the role of these various tasks in the policy making process;
- It remains rather vague in relation to “other measures” for shaping the Government’s policy;
- It does not provide a legal basis for the Government to further regulate the procedures and processes for these tasks;⁴⁸

⁴⁷ Law on Public Administration, “Official Gazette of the RS” no. 79/2005, 101/2007, 95/2010.

⁴⁸ In the Serbian legal system, the Government cannot self-regulate, i.e. it can only enact bylaws with the clear purpose of implementing laws passed by the Parliament.

- It does not provide for clear provisions related to the process of “shaping” or “determining” the Government policy, i.e. the roles of ministries and other public administration authorities in the policy process.

Several elements relevant to the policy cycle are provided in other chapters of the Law on Public Administration, such as “Guidance by the Government”, Article 61, which states that “by means of Conclusions, the Government guides public administration authorities in policy implementation and execution of laws and other general acts, harmonises their work and determines deadlines for ministries and special organisations for enactment of regulations, if those are not determined by the law or a general act of the Government.” The same article provides for the possibility for the Government to use a Conclusion in order to request from a public administration authority to study/examine an issue or perform a task and prepare a special report about that. However, the specific types of documents and processes for developing such documents are nowhere specified. Equally, it remains unclear whether such analyses and studies are meant to be provided only at explicit request of the Government or whether public administration authorities can act on their own initiative or on the initiative of their respective ministers.

Article 63 of the Law on Public Administration requires the ministries and special organisations to develop annual work plans, for the purpose of preparing the annual work plan of the Government, as well as to submit reports on their work to the Government at least once a year.

A basic element of inter-ministerial consultation is provided by Article 65 of the Law on Public Administration in terms of the necessity for the ministries and special organisations to obtain (written) opinions of relevant ministries and special organisations for the issue which is being regulated. This article refers to the preparation of laws and other general acts.⁴⁹ Finally, this article of the Law stipulates that the procedure for the development of laws and

⁴⁹ Other general acts include Government decrees (bylaws) and Government decisions (in the sense of general legal acts). Other acts of the Government defined by the Government Rules of Procedure which produce general effects, but are not legal in nature, are resolutions, development strategies, the Fiscal Strategy as well as conclusions, unless they are addressed only to specific legal/natural persons.

other general acts is determined in more detail by the Government Rules of Procedure, which are analysed below.

Consultations with the public are regulated in a rudimentary manner in Article 77 of the Law on Public Administration. A duty to conduct a “public debate”⁵⁰ is provided for in the preparation of laws which *significantly change the legal regime* in an area or which regulate issues of particular interest to the public. Similarly to the procedure for developing a law, the implementation of public debate in the process of law development is to be regulated in more detail by the Government Rules of Procedure. It should be noted, however, that most of these specific provisions focus on the preparation of laws and not on the other phases of the policy process.

From the analysis conducted above, it can be concluded that Government Rules of Procedure are a document regulating the details of the policy process in Serbia. This document has been amended several times over the last few years, each time introducing certain improvements to the processes of decision making by the Government.⁵¹

An important background document which must accompany most materials sent to Government for deliberation is called “Annotation” (or “Rationale”). The Rules of Procedure require its submission with all draft laws, proposals for decrees (bylaws) and proposals for Government decisions (Article 39). The Annotation needs to contain, inter alia, the reasons for passing a legal act. This provision requires the legal initiator to explain, inter alia, the *problems to be addressed by the act, objectives to be achieved by the act, considered possibilities to solve the problem without regulation and why the passing of the act is the best way to solve the problem*. The Annotation also needs to contain an estimate of financial resources necessary for the implementation of the act. It can, thus, be concluded that the Annotation document is clearly intended to contain some important elements which would require policy analysis before the draft law or other regulation by the Government is produced. Indeed, its contents indirectly indicate that it should start to be developed before the actual drafting of the legal act or at a

⁵⁰ The term used in Serbian is “javna rasprava” (*rasprava* can be translated as “debate” or “discussion”), which can be taken to connote a single event rather than a continuous consultative process.

⁵¹ Government Rules of Procedure, “Official Gazette of the RS,” no. 61/06 – consolidated text, 69/08, 88/09, 33/10, 69/10, 20/11, 37/11 and 30/13.

very early stage.⁵² They also imply that there should be solid analytical work done before the drafting of the legal act is commenced, in order for the legal initiator to be able to respond to all of these questions. Yet, there are no further qualitative requirements for producing an Annotation, either in terms of the timing of its drafting (or at least the beginning of its drafting) or in terms of other analytical/policy documents which should underlie its drafting.

It should be also be noted that Annotation as defined by Article 39 is only produced for legal acts of the Government and not the policy and/or political acts, such as development strategies, the Fiscal Strategy, resolutions and conclusions. Article 38 requires proposals for Government conclusions to be accompanied by different annotations which “contain reasons for their passing and *explanation of all relevant issues*” (as well as deadlines for their execution).⁵³ The same article requires “explanations of all relevant issues” to be *contained* in the proposals for development strategies and the Fiscal Strategy (as well as declarations), though this does not create a requirement for any accompanying documents (it is rather a specification of one necessary element that these documents need to contain). Article 38 also mentions “analyses and reports” that need to be accompanied by a proposal for a Government conclusion, although analyses as a type of document are nowhere explicitly regulated by the Rules of Procedure.

Regulatory impact assessment, or as it is defined in the Rules of Procedure – *Impact Assessment of Laws* – is regulated by Article 40. The term which is used clearly indicates that RIA has been limited only to the draft laws and has not been extended to other documents submitted for Government decision-making. In addition to being limited only to draft laws, the scope of this “RIA” is rather limited. Indeed, although the formal guidelines for RIA provided by the Government Office for Regulatory Reform and RIA are much more comprehensive (see below), the Rules of Procedure only require RIA to respond to six questions:

1. Who and how is likely to be impacted by the provisions of the law?

⁵² It can logically be inferred that a document that needs to explain the problems that will be solved by a legal act and the considered possibilities for solving it without regulation should be developed either before or at least at a very early stage of the drafting of that legal act.

⁵³ Author’s own emphasis.

2. What kinds of costs will the implementation of the law create for citizens and businesses (SMEs in particular)?
3. Are the positive implications of the passing of the law such that they justify the costs which will be created?
4. Does the law support creation of new businesses in the market as well as competition in the market?
5. Have all stakeholders had the chance to state their opinions about the law?
6. What measures will be taken in the implementation of the law to deliver what is intended by the law?

At the same time, the mentioned “reasoning” part of the Annotation actually contains elements of the standard methodology for ex-ante assessments in general as well as for RIA (*problems to be addressed, objectives to be achieved, considered possibilities to solve the problem without regulation, why the passing of the act is the best way to solve the problem*). It is questionable why these requirements for the Annotation have been separated from the requirements of the impact assessment of laws regulated by a separate article of the Rules of Procedure, which was in turn left with only a few selected aspects of a standard RIA. A possible answer is related to the difficult process of formal introduction of RIA, which finally resulted in RIA being limited only to draft laws, while certain other analytical aspects contained in the Annotation have been accepted for other types of acts passed by the Government as well.⁵⁴ Additional erosion of the position of RIA in the system is created by the fact that the Rules of Procedure also leave the possibility to the legal initiator to choose not to conduct RIA, although this needs to be justified and an opinion of the Office for RIA needs to be obtained on such a decision.

Additional documents to be submitted with a draft law, proposal for a regulation (bylaw) and a Government decision which transposes EU law are the Statement of Compliance with EU law, the Table of Concordance (Article 39a), a statement of the strategic acts of the Government with which the draft is aligned as well as a statement on whether the act was planned in the Annual Working Plan of the Government (the latter two documents apply to

⁵⁴ Based on an interview with an unnamed government representative.

all draft Government decisions, too – not only those aimed at EU law transposition).

Finally, all draft laws, decrees and decisions, proposals for development strategies and proposal for Fiscal Strategy must be accompanied also by a “Statement on Established Cooperation,” which shows which institutions’ opinions have been acquired as well as whether their comments have been accepted. If they have not been accepted, then the Statement must include reasons for not accepting them. This provision of Article 39a, thus, creates a requirement for basic inter-ministerial consultations to be conducted for all types of acts passed by the Government, including strategies as essentially policy documents, but excluding conclusions.

Consultations with the public are procedurally defined in substantial detail by Article 41, which has been introduced into the Rules of Procedure through strong advocacy of the civil society and support by the Government Office for Cooperation with the Civil Society. It should be noted that consultations are defined as “public debate” (*Sr. “javna rasprava”*) and although the minimum length of the process is defined (not to be shorter than 20 days), it still does not connote a continued process of exchange, but rather an event.⁵⁵ Moreover, public debate is required only for “laws which significantly change the way in which a certain issue is regulated or regulate an issue of particular interest to the public.” For development strategies, as well as decrees and decisions, it is stated that public debate *can be conducted*, but no such requirement is made.

Clearly, the Rules of Procedure of the Government regulate in substantial detail the documents which need to accompany draft regulation submitted to the Government, including several elements which should ideally be based on proper problem and policy analysis. However, the regulated processes remain predominantly focused on legal drafting and decision making regarding legal acts, without incorporating the procedures and documents necessary in the policy formulation/development phase. The only type of document used for policy planning which is more explicitly included in some of the mentioned provisions (consultations chiefly) are the development strategies. The policy making system, thus, relies predominantly on the procedures for drafting and deciding on draft legislation, whereas the policy analysis and formulation process is not

⁵⁵ Based on an interview with an unnamed Government representative.

explicitly treated. Provisions on RIA are limited to the preparation of *draft laws* and although they do specify several areas/issues that proper RIA should focus on (although not all!), the phase of the policy development in which RIA should be developed is not specified. It is, thus, left to the individual legal initiators to decide on how and when they will apply RIA in the policy process. The absence of such specific provisions create numerous consequences for the implementation, which are elaborated in Section III.3 below.

It can finally also be noted that numerous amendments to the Government Rules of Procedure have resulted in the existence of a high number of documents that need to accompany draft legislation on its way to decision-making by the Government. A review of the consistency, possibilities for integration/merging of some of these documents as well as simplification of the system (e.g. by creating the same requirements for all acts passed by the Government) might need to be performed in order to ensure that these various documents do not overlap or even contradict each other and therefore do not represent a burden to the legal initiators. Such supporting documents should rather be designed as helping tools for analytical thinking about policy options, possible impacts of legislation (including the impacts on the EU accession process) and reader-friendly argumentation and explanation of the chosen options and their main elements/characteristics. Such review of the system becomes even more important in light of the currently on-going reforms of the legislative process discussed below.

III.1.2 Policy Planning at Macro-Level

As the overall policy (and strategic) planning process has already been tackled to an extent by several major technical assistance project and is still at present subject of EU technical assistance, this element of the policy system is not treated in the same amount of detail as the policy formulation aspect. Nevertheless, it is deemed necessary to briefly present the main elements of policy and strategic planning at Government level, as it represents a necessary ingredient of any good policy making system and a precondition for policy formulation to actually serve its purpose in the policy cycle.

The General Secretariat of the Government has built up a basis for performing the work of planning as well as coordinating policy at the centre, with the Department of Planning, Monitoring and Policy Coordination and Activities related to EU Integration Process in place. However, several years

after it has been established, this Sector is still severely understaffed, with only four full members of staff, which is insufficient for effective performance of its tasks.⁵⁶

The macro-level Government policy planning system has been gradually evolving over the past several years, with the introduction of several important elements:

- The Government Annual Working Plan (and Annual Report)

The Government Annual Working Plan (AWP) is composed of the contributions of all the line ministries and other relevant public administration authorities. Based on instructions issued by the General Secretariat of the Government initial proposals/contributions are submitted, after which the GSG performs a quality check to an extent at which point proposals are sometimes returned to the ministries for improvements. A web application has been developed to facilitate coordination.⁵⁷

According to the interlocutor at the GSG, one of the main problems with the current system lies in the fact that, while the ministries are already required to justify why a proposal which is not contained in the Government AWP is being presented to the Government, they are not obliged to justify why proposals which are foreseen by the AWP have not been presented.

- Development Strategies

Development Strategies are foreseen by the Law on Government and the Government Rules of Procedure as one of the types of documents passed by the Government. Article 45 of the Law on Government, thus, states that a Development Strategy serves for the Government to determine the conditions in a certain area as well as the measures to be taken for its development. The Rules of Procedure, although they specify certain procedural aspects of proposing a Development Strategy, do not set any quality standards for such documents.

The resulting condition is that line ministries draft and propose Development Strategies without any central priority setting, resulting in a

⁵⁶ Until mid-2013 the Sector was staffed also with experts working on the projects which supported it. These experts were de facto employees of the General Secretariat of the Government. Based on the interview with a representative of GSG.

⁵⁷ Based on an interview with a representative of the GSG.

situation where everything is a priority as each sector pushes for its own interests through various strategic documents. Furthermore, the contents, quality and timeframes of different Development Strategies vary across the system. Finally, coherence of policy directions of various strategies is not ensured from a central point.

- Mid-Term Operational Plans of the Ministries

Mid-term operational planning has been introduced in five pilot ministries which are already implementing programme budgeting. It has been developed based on the initial experiences with Annual Operational Plans (“GOP”) and it represents the currently only planning process linked to the budget process. MOPs contain detailed work plans, projects and activities of the ministries for the succeeding year, with indicative plans for additional two years. Starting from 2014, all ministries are planned to introduce MOPs, together with programme budgets.⁵⁸

MOPs represent an important element for the creation of a comprehensive and integrated system of policy planning at Government level. However, to achieve their intended effects, they would need to be supported by additional elements of macro-level policy planning.

Another relevant element of the policy planning system is the Memorandum on the Budget (three year budgetary plan of the Government with detailed plans for the first year and estimates for the second and third year). The MoB is developed bottom-up by the Ministry of Finance, based on contributions received from line ministries and other direct budget beneficiaries, as there is no top-down priority setting by the Government.

The overall policy planning system of the Government is still far from finalised and consolidated. The hierarchy of Government planning documents has not been clearly established and their functional links have not been determined. Among the missing elements are an umbrella Government planning document (which is a desirable, though not necessarily an indispensable element for the system),⁵⁹ clear regulation or

⁵⁸ Based on an interview with a representative of the Ministry of Trade and Telecommunications, one of the five pilot ministries.

⁵⁹ One viewpoint is that the Expose of the Prime Minister can be considered as a sufficient precondition for top-down priority setting (based on one of the interviews performed in the research). Nevertheless, it is questionable whether the Expose is sufficiently analytical and evidence-based as a document to ensure a sound basis for overall sound and evidence-based policy making across the Government. Arguably, at

at least a methodological document setting up the hierarchical system of policy planning, guidelines or methodology for central and sectoral strategic planning, as well as substantial policy coordination and quality control of the system. The linkage between Government (and indeed sectoral, i.e. line Ministries') planning and the budget process is still rather weak and most planning documents remain unbudgeted, which often leads to serious lack of implementation and monitoring of such documents. As observed in one of the recent analyses of the policy planning system in Serbia:

"There is no coherent and unified planning framework that leads to a situation where ministries tend to develop their policy planning documents according to their own set of quality standards and interests, without thinking about how their policies match with long or medium term objectives of development of the whole state."⁶⁰

An additional element of the planning system is related to the relationship between the mentioned documents and actors and the planning documents with the European integration focus and the role of SEIO as the policy coordinator for EU integration. In fact, the system works through collaboration and exchanges between SEIO and the GSG and the incorporation of the relevant parts of the EU planning documents (at present the National Plan for the Adoption of the Acquis, 2013-2016) into the Government AWP. The issues related to the coordination aspects in this relationship are dealt with in chapter V.

III.2 Reform Efforts: Proposals, Accomplishments and Limitations

III.2.1 On-going Reforms pertaining to Policy Formulation/Development

The on-going reforms related to the policy cycle mainly address the identified problems of the legal drafting process, which has been in the focus

present, an additional problem is that in the work of the Government over one mandate, individual ministers do not base their policy (legal) proposals on the Expose, while at the same time the centre of government does not perform the checks on such consistency.

⁶⁰ Martins Krievins, Concept Document on the Improvement of the Planning Framework in the Republic of Serbia.

of a major bilateral project of German cooperation, implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, entitled “Legal Reform in Serbia.” That project has worked intensely with all the main stakeholders through a formalised Working Group to identify problems and solutions of the legislative process (starting from the procedures in the line ministries and ending in the parliamentary procedures). The Study on Improvement of the Legislative Process in the Republic of Serbia which the Project published in 2012 treats all the relevant aspects of the process, including public consultations and inter-ministerial consultations. It also briefly discusses the challenges of the regulatory policy related to the “pre-legislative phase,” making a reference to a background document entitled “*polazne osnove*” in Serbian (literal translation to English would be “baseline document” or “starting assumptions,” although the Study translates it as “White Paper”).⁶¹ The Study refers to this document as a policy document, i.e. a policy concept which needs to precede the development of laws and other regulations, although the general context of the discussion remains focused on the legislative process, without making any reference to the wider policy cycle/process.⁶²

The proposals resulting from that Study, which are of relevance to the policy formulation phase, aim at (re)introducing the mentioned background document as a necessary precondition to the drafting of legislation. This type of document used to exist in the legal drafting procedure in the old Yugoslavia and its approval by the Government was a precondition for a line ministry to start drafting a legal act.⁶³ The same obligation is foreseen in the proposed amendments to the Government Rules of Procedure.⁶⁴ The background document needs to undergo an on-line public consultation process, a report on which the authority proposing the draft law has to submit to the Government together with the background document. According to the draft amendments, this document should contain a description of the state of affairs in the given area, objectives which are to be achieved by the law, brief overview of planned provisions for regulating the legal relations – particularly the rights, duties and responsibilities to be

⁶¹ Survey on the Improvement of the Legislative Process in the Republic of Serbia, p.44.

⁶² Survey on the Improvement of the Legislative Process in the Republic of Serbia, p.46.

⁶³ Based on an interview with an unnamed government representative.

⁶⁴ Draft amendments to the Government Rules of Procedure, obtained from the Legislative Secretariat of the Republic.

established by the law – as well as the principles on which these provisions are based.⁶⁵

Introduction of a background document which would have to be approved by the Government before legal drafting would indeed represent a significant step forward in the reform of the policy making system. Nevertheless, from the perspective of policy formulation needs there are several deficiencies of the specific provision proposed to be included in the Rules of Procedure. First of all, although one crucial requirement is satisfied – the document is to be produced and approved by the Government *prior* to any regulatory action by a given legal initiator – it is foreseen to be produced only for the laws which “systemically regulate relations in a certain area.” More importantly, this document is not functionally linked to the other necessary supplementary documents which should, according to their methodologies, be developed *ex-ante* (especially RIA, but also the Annotation – discussed above). Furthermore, the formulations of questions to be answered in the background document do not really pertain to policy analysis (for comparison, the questions asked for the Annotation seem more relevant from the policy formulation perspective). As a result, it is questionable if this new document would in fact at all serve the purpose of analysing the problems and policy options in the policy development phase of the policy process.

As mentioned in the previous section, regulatory impact assessment has been introduced in the form of *impact assessment of laws*, through the Government Rules of Procedure (Article 40). The formal guidelines on the website of the Office for Regulatory Reform and Regulatory Impact Assessment, however, provide for much more detail assessments, which include proper problem analysis, definition of options, evaluation of options, etc. The guidelines are very much in line with best EU practice, e.g. with the OECD guidelines for RIA and the Guidelines of the European Commission for impact assessment.⁶⁶ Before paving its way into the Rules of Procedure,

⁶⁵ Draft amendments to the Government Rules of Procedure, obtained from the Legislative Secretariat of the Republic.

⁶⁶ Commission Impact Assessment Guidelines, European Commission, <http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm> Accessed on: (2 November 2013).

regulatory policy reform was supported by a technical assistance project,⁶⁷ which also included the regulatory guillotine exercise. The project resulted, inter alia, in the institutionalisation of RIA and the formal creation of the Government Office which is in charge of quality assurance of RIA and which issues formal opinions on these documents in the legislative drafting process. The capacities of the Office are still far from sufficient for full implementation of its tasks.

In addition to the limited scope of RIA which has been formalised through the Rules of Procedure, several other problems exist with regards to RIA and its potential to contribute to more evidence based and overall better policy making in Serbia. Firstly, the provision which quite broadly allows the initiator of the law to exonerate itself from developing RIA has resulted in quite a high number of laws for which RIA has not been developed.⁶⁸ Furthermore, the lack of precision on the timing of development of RIA in the policy process has created a widespread practice to develop this document in the late stages of the legal drafting process instead of it being initiated before the legal drafting starts (as required by the Methodology).⁶⁹ Finally, the level of overall analytical capacities and propensity of the Serbian administration to engage in research and analysis is quite low,⁷⁰ while formalised procedures for developing and submitting policy proposals are largely missing. As a result, RIA rarely fulfils the role of ex-ante impact assessment and analysis of proposed policy proposals and it does not ensure that policy options are defined and analysed (which should include consideration of alternatives to regulation). In fact, from 14 examples of RIAs that can be downloaded from the Office's website, only 6 have any options considered and those that do mainly consider 3 basic options: status quo, limited amendments to the existing law and production of the new law,⁷¹ which is not satisfactory according to the RIA Methodology. Overall, legal

⁶⁷ The Regulatory Reform and RIA Project was supported by the Swedish International Development Agency (Sida) and the World Bank Group.

⁶⁸ For example, out of 16 draft laws available on the website of the Office for Regulatory Reform and RIA (drafts submitted between April and November 2013), 6 do not have RIA developed. Four out of these six are accompanied by an explanation that RIA is not necessary. See: <<http://www.ria.gov.rs/pristigli-nacrti-zakona>>

⁶⁹ Interview with an unnamed government representative.

⁷⁰ Based on the opinion on several interviewees from the Serbian public administration as well as on the personal experience of one of the authors working in the PA.

⁷¹ Analysed on the basis of 14 RIAs available for download on the website of the Office for Regulatory Reform and RIA: <<http://www.ria.gov.rs/primeri-aep>>

drafts remain in the centre of the policy cycle, with little consideration of the policy formulation steps that need to precede the legal drafting process in order to ensure that policies tackle real and evidenced problems, that laws are developed only when necessary, that they are embedded in evidence and properly justified.

III.2.1 On-going Reforms pertaining to Policy Planning at Macro-level

The recent reforms, mainly initiated by the General Secretariat of the Government, have largely been focused on the introduction and improvement of quality of the Government Annual Working Plan and Annual Report, which has been described above. In addition, there has been a growing awareness at the centre of government with regards to two additional crucial issues:

1. Need to ensure consistency in the quality and structure of the strategic documents across the Government;
2. Need to create a link between policy and strategic planning and budget planning.

In relation to these issues, a Methodology for Integrated Policy Planning has been put forward for Government adoption,⁷² although it has not been adopted by the time this Study went into printing. The officials in the GSG could not say when the document would be placed on the Government agenda for adoption. The rationale behind the design of the Methodology was to make maximum use of the existing elements of policy planning (mentioned in the previous section) and supplementing them with new elements which are currently missing. It defines a seven-step process:

⁷² Within the document, the terms strategy and policy are used practically interchangeably, which connotes either that there is not a clear understanding of the difference between the two, or that the intention is to limit the document only to strategic planning without considering other forms of policy development. *"Strategy is not policy, but is the means of effecting it."* See:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpubadm/435/43505.htm>; *"Definitions of strategies and policies vary, but [...] the key difference is that a strategy aims to achieve specific objectives and sets out the approach that will be used to do so. Strategies are about actions. Policies should set out how we will respond to given situations as they arise, essentially reactive."* See:

<http://www.portsmouth.gov.uk/yourcouncil/our-policies-and-strategies.html>

1. Establishing of the Government strategic priorities and objectives as a new, top-down element of the system
2. Developing the mid-term strategic plans by the line ministries - existing
3. Developing and submitting list of initiatives to be included in the Government AWP, as an existing step which needs to be improved using the top-down element
4. Development of the Government AWP by the GSG (revised, with the top-down approach)
5. Monitoring of progress on the strategic priorities and objectives – to be done by the GSG in cooperation with line ministries
6. Monitoring of the implementation of the Government Annual Work Plan – GSG in cooperation with line ministries
7. Publishing the mid-term strategic plans by the line ministries⁷³

Important proposals made in the Methodology include: introduction of proper prioritisation (top-down) into the Government's work, which would help resolve the current situation of constantly competing and often conflicting individual ministries' priorities; the development of a "quality control" role of the GSG in the policy planning system, which would ensure increased consistency in the sectoral planning processes and documents as well as overall coherence of the strategic framework across sectors; improvement of the central coordination function of the GSG at all levels of the policy planning system, especially in the development of the Government AWP; introduction of a two-layered monitoring system by the GSG, which would include an "early warning system" in case initiatives planned by ministries for submission to the Government might be delayed and an obligation for the ministries to justify such delays.⁷⁴

But although the adoption of this Methodology would certainly improve the strategic planning system of the Government, it is a rather brief document, which does not address several issues of importance for the Government's policy planning. For example, the document does not elaborate on the functional relations and hierarchy of various strategic documents. In fact, it only refers to the line ministries' "(strategic) planning documents," but it does not address the relationship between their policy strategic documents and operational plans (previously annual and now mid-term documents).

⁷³ Ben Gera, Michal. "Methodology for Integrated Policy Planning System – Serbia," Draft 1, January 2012, pp.3.

⁷⁴ "Methodology for Integrated Policy Planning System – Serbia," pp. 3-8.

Moreover, it does not address the relationship between the line ministries' operational plans and the budget. Finally, it does not contain any consideration of the relationship between the strategic planning at Government level, ministries' operational level planning and policy development/formulation at the level of individual ministries. In order to develop a coherent and comprehensive policy and strategic planning system at macro (Government) level and ensure it connects well with policy analysis and development at micro (ministerial) level, all of these issues would need to be addressed. As a result, the adoption of the Methodology would not ensure the creation of a fully integrated policy making system and it would not impact on the policy analysis and policy formulation processes in the line ministries.

One more important on-going reform process pertains to the introduction of programme budgeting across the Serbian Government, under the leadership of the Ministry of Finance, which is in charge of developing the relevant methodology. The introduction of programme budgets is planned to be gradual, while the deadline to implement it for all budgetary recipients is the 2015 annual budget, as foreseen by the Organic Budget Law.⁷⁵ Once it is fully set in place, the programme budget will be an important and indispensable element of a sound and coherent policy planning framework, enabling functional linkages between operational plans of the Ministries and government finances.

III.3 Policy Formulation in Serbia: Practice and Challenges Ahead⁷⁶

The reality of policy making in Serbia shows quite uneven practices across different ministries. In the absence of a proper legal framework enabling and in fact requiring policy formulation to precede legal drafting, ministries approach the policy analysis function in different ways, often depending on the external actors involved in the running of a policy area, such as international organisations, technical assistance projects, etc. Indeed, some

⁷⁵ Article 112, Organic Budget Law, (Official Gazette of the RS, no. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013 and 63/2013 - correction.)

⁷⁶ This section has been developed based on interviews with representatives of the Ministry of Economy, Social Inclusion and Poverty Reduction Unit as well as the personal experience of one of the authors working as consultant for an IPA project targeting Ministry of Regional Development and Local Self-Government.

laws have in the recent years been accompanied with quite substantial analysis and even research and RIAs have been conducted quite extensively.⁷⁷

In some cases, such instances of policy analysis preceding or at least accompanying the process of legal drafting are a result of technical support (EU or bilateral) and the learning process in the beneficiary institution. One such positive example is the development of the domestic regional policy in Serbia by the Ministry of Regional Development and Local Self Government. The regional development planning process at national level was supported by a major IPA project “Assistance to Regional Policy Development at National Level – Serbia” (RegPol Project) between the spring of 2011 and autumn of 2013. The team of experts engaged in this project worked with the Ministry on developing the National Plan for Regional Development, as a major national planning document for this policy area for the period 2014-2020. In this work the team of consultants focused strongly on background research and analyses (production of socio-economic profile and problem analyses for regional development in Serbia) and insisted on introducing the “policy-strategy-plan” sequencing into the planning process. The sector of the Ministry engaged in this project gradually developed a thorough understanding of the necessary steps in the development of regional policy and supported the idea that a new Law on Regional Development would need to be developed based on the research and analyses which had been produced in the NPRD development process.⁷⁸

Nevertheless, as the legal framework for policy making does not provide for policy clearance by the Government, the policy paper which was produced as a basis for the strategic and subsequently planning part of the NPRD, was not presented to the Government for endorsement, so it remained an informal background document to the Plan. The Draft NPRD is currently being finalised and prepared for endorsement by the relevant consultative

⁷⁷ For example, see RIA for the Draft Law on Cooperatives, available for download from the website of the Office for Regulatory Reform and RIA: <http://www.ria.gov.rs/podaci/Analiza%20efekata%20Nacrta%20zakona%20o%20zadrugama.pdf>

⁷⁸ Based mainly on personal experience of one of the authors (Milena Lazarevic) working as a consultant for the RegPol Project.

bodies for regional policy, after which it is planned to enter extensive public consultation process.⁷⁹

Some positive practices have also been observed in the Ministry of Economy in the Sector for Quality Infrastructure, where a technical support project has been strongly involved in supporting the development of the system and capacities in this area. However, from the information obtained and due to the highly technical nature of this policy area, which requires intensive regulation (related also to the requirements of the EU accession process), it seems that the positive examples extend more to analysis as a basis for development of regulation than to overall policy analysis.

It must be said, however, that the extent to which technical support can improve policy formulation in a beneficiary ministry depends highly on the knowledge and experience of the project expert team with regards to policy making. It also depends strongly on the relationship between the project and the beneficiary and the extent to which the beneficiary is willing (or capable) of actually absorbing the knowledge and skill transfer from the project. There are cases in which major projects which have lasted for two years have not resulted in sustainable policy design in the given area.⁸⁰

The personality factor is also at play in some cases, meaning that certain policy areas have progressed significantly in terms of policy analysis and observance of principles of sound policy making. Such is, for instance, the case of poverty reduction and social inclusion policies, which have been driven by the work of the Government Social Inclusion and Poverty Reduction Unit (SIPRU), which runs under the auspices of the member of Government in charge of European integration (in the past Deputy Prime Minister in charge of EI; at present the Minister without Portfolio in charge of EI). There is a high level of understanding of the importance of policy research and analysis in SIPRU.⁸¹ The Unit also outsources much of the policy research work to institutes, think tanks and civil society organisations, as it enjoys support from external donors through which it can afford such commissions.

⁷⁹ A special Bylaw, enacted on the basis of the Law on Regional Development, regulates the structure and procedure for developing the National Plan for Regional Development, as well as the requirements for public consultations.

⁸⁰ Based on an interview with an unnamed government representative.

⁸¹ Based on the interview with a representative of the centre of government institution.

Despite the existence of some positive practices, which could be examined in much more detail and depth in future research, the overall capacity of the Serbian civil service to engage in policy analysis and ensure proper policy formulation is rather limited. This observation is not surprising, given that there is no coherent and clear legal framework requiring such activities to be performed. The policy analysis activities are sometimes referred to as “study-analytical tasks” of public administration authorities and there is a clear understanding that development of these capacities in the civil service would be a very demanding task.⁸² Some indications exist that the recently initiated IPA project “Reforming Policy Coordination and the Centre of the Government” intends to address the issue of framework and capacities for policy formulation in the line ministries, although this will clearly not be the focus of the Project’s work.⁸³

The main deficiency which remains inbuilt in the system is the prevailing lack of policy analysis and consideration of policy options through development of policy documents and proper ex-ante impact assessments. Although the RIA methodology promoted by the Government Office for Regulatory Reform and RIA was developed in accordance with OECD guidelines and good practices in the EU, its coverage in the Government Rules of Procedure is limited. Moreover, it is still usually performed pro forma and very late in the policy process – even very late in the legal drafting process. Several interviewees have confirmed that it is frequent practice that laws are drafted without taking into account the RIA methodology, while the actual RIA report is drafted only at the very end of the drafting process, just before submission into the Government adoption procedure. When developed in such a way, RIA remains just a formality and even a burden to the legal drafters, as it does not add value to the policy making process due to which its benefits cannot be noticed. At the same time, if applied correctly, RIA logic and methodology could potentially be very helpful in the development of a coherent policy analysis and development system. Nevertheless, even in such a case, it would need to be further supported by the formal introduction of documents which serve for problem analysis and definition and comparison of policy (not regulatory!) options in the period preceding the commencement of the legal drafting procedure.

⁸² Based on an interview with the representative of the GSG.

⁸³ Based on an interview with the representative of the Project.

III.4 Policy Planning in Serbia: Practice and Challenges Ahead

This section discusses very briefly several issues in the macro-level policy planning, which have been encountered in the research, without attempting to be exhaustive. Such ambition has not been adopted by the present research for the reasons mentioned above, mainly related to the fact that the policy planning system has been and still is strongly supported by technical assistance projects. Moreover, there seems to be considerable awareness and understanding of the need to improve policy planning (and policy coordination at the central level) among the interviewed representatives of the government, although this awareness probably does not translate to the highest political level, which would be necessary for the actual implementation of the reforms proposed by the technical assistance projects. For the latter reason, a brief consideration of the main issues and challenges pertaining to policy planning have been included here.

To start with, although the department responsible for policy planning and coordination has been created, the General Secretariat of the Government remains mainly focused on the formal and administrative aspects of the Government's work (preparation of documents and sessions, checking the formal compliance of submitted documents with the requirements, etc.). The centre of government is still not recognised as a key actor in ensuring policy coherence across the government and the highest political level is not aware of the need to develop this function.⁸⁴ The GSG unit in charge of policy coordination is severely understaffed and it struggles with the workload on the preparation and execution of the Government AWP. This problem is partly related to the fact that the AWP is a very large document, for which ministries and other relevant public administration authorities develop very detailed contributions. The sheer size of the document might also be the reason for the difficulties in following up its implementation and for focusing on the formalities of preparation rather than on the substance and coherence. Nevertheless, the responsible unit of the GSG invests considerable efforts in advising the ministries in the preparation of their

⁸⁴ Based on interviews with several public officials.

contributions and often sends their original proposals back with requests for corrections.⁸⁵

In order for the GSG to start fully performing its “quality control” and coordination functions, at least three conditions would have to be met. Firstly, it would need to enjoy strong political support for developing its control functions, so as to be able to impose itself as a controller of the policy planning and policy formulation by ministries. Secondly, it would need to considerably increase its staff levels and employ a number of sectoral policy specialists, who would then be able to enter the substance of sectoral contributions and provide comments. Thirdly, as described above, there is a serious lack of top-down priority setting at the level of Government. The absence of an “umbrella” planning document (be it a comprehensive “National Development Plan” type of a document or a simpler document proposed by the Draft Methodology for Integrated Policy Planning discussed above) signifies that the GSG does not have a basic tool to perform its control function, even if the need for this function were recognised by the policy makers.

Furthermore, in the absence of top-down policy prioritisation and quality control, line ministries develop sectoral strategies according to their own agendas and quality standards and “without thinking about how their policies match with long or medium term objectives of development of the whole state.”⁸⁶ The resulting situation is that in which around a hundred sectoral strategies compete for their place among the Government priorities. As the time frames of these strategies vary greatly, it would be difficult to create a coherent prioritised implementation plan even through cross-sectoral analysis of all these documents in accordance with a central top-down prioritisation plan, which could be developed by the GSG (as foreseen by the Policy Planning Methodology discussed above). Finally, most of these strategies are not linked with the budgetary framework (especially the Memorandum on the Budget, as a mid-term financial plan of the Government) and do not even contain a broad financial framework for implementation or a clear set of performance indicators, as a result of which they are often not closely monitored or even implemented.

⁸⁵ Based on an interview with a representative of the GSG.

⁸⁶ Martins Krievins, Concept Document on the Improvement of the Planning Framework in the Republic of Serbia, p. 2.

Lastly, operational planning at the level of ministries is at present functional in only a few ministries which have implemented the methodology at pilot level. These same ministries have already shifted from the “line budget” to the programme budget methodology, which is linked to their operational planning. Although these ministries have had very positive experiences with operational planning, the methodology is still not used government-wide.

In conclusion, the policy planning system has not been fully developed and reforms at the centre of government have so far remained limited in scope and impact, requesting continued support and attention. Moreover, the policy formulation processes are inadequately and insufficiently coherently regulated and capacities in the line ministries are weak and uneven. The overall policy cycle is dominated by the legislative phase, whereas the stages of problem identification and analysis and policy formulation/ development are unregulated and under-developed.

IV. Policy Making: Comparative Practices

IV.1 Policy Making in the United Kingdom⁸⁷ and France⁸⁸

Already at the first glance, an informed reader would notice that the political systems of the United Kingdom and Serbia barely have any point in common. The UK is a constitutional (or parliamentary) monarchy, while Serbia is a proclaimed parliamentary republic. The UK is based on common law, while Serbia applies the continental legal system. The contemporary democratic culture and principles originate from the UK and have been naturally developed through the centuries; Serbia, on the other side, is still an insufficiently experienced, unconsolidated democracy.

However, despite the major discrepancies between the political systems and political cultures in the UK and Serbia and having in mind the state of development of the British policy making and coordination system, accepting and/or adapting some of its principles and even practices could be feasible in Serbia in the long term. In that sense, the UK system can be observed as a role model to learn from and gradually emulate. In fact, some of the new member states, including the examined Poland and Latvia, were trained by British experts and have consulted the UK's policy-making arrangements for some of their present-day systems.

On the other side, unlike the British policy making system, which puts the main focus on policy formulation, France is very prone to regulation and has a strong legalistic tradition. In that respect, the French and Serbian policy making systems have major similarities. Therefore, the positive aspects of French policy making system can be instructive for Serbia.

⇒ UK: Policy-making based on evidence

Policy making system of the UK reveals highly developed practices pertaining to the policy formulation phase. Namely, the UK policy making

⁸⁷ The insights on the UK's policy making system were kindly provided by Simon James, independent governance expert, Keir Hopley, Head of Criminal and Civil Law Policy Department at the Ministry of Justice; Head of the Economic and Domestic Secretariat at the Cabinet Office, and Anthony Miller, Better Regulation Executive of the UK government.

⁸⁸ Insights in this chapter were kindly provided by: Francois Lafarge, Fellow at Ecole Nationale d'Administration; Jacques Fournier, former high level French civil servant; official, Cabinet of the Government General Secretariat.

system assures that each policy pursued is substantiated with a strong analytical basis and evidence. The initiation of policies can come from various sources, both internal (for example, based on evaluation of the previous policy; the realisation of the measures stipulated by Coalition Government Programme, etc.) and external (associations, expert research, interest groups, etc.). In both cases, the policy paper will be put together and initiated by the most competent Ministry/Department for the given topic.

The evidence-based policy making in the UK is equally reflected in the importance given to the development of policy options. Namely, the policy paper, developed by the relevant line ministry, is a complex document which culminates in a series of policy options offered to the minister. The minister would usually be involved from an early stage, giving agreement to the overall objectives of the exercise and setting some broad political parameters but leaving civil servants ample space to identify and explore different options and their implications. As the work progresses, the minister would discuss the options with the civil servants and point out his/her preferred one, but often at the same time encourage the civil servants to carry on with further studies and investigations on other policy options. Therefore, the ministers get involved in this very early stage of discussing the policy, in order to steer the direction. They would base their preferences taking into account the Coalition Government Programme, a document presented by the Government at the beginning of its current term, which presents in a concise and relatively broad manner the Government's planned actions for the 5-year term.⁸⁹ Through the process of interaction with the civil servants, the minister would decide after several months which policy option she/he has chosen.

The policy cycle thus begins with the development of a discussion/consultation paper, often referred to as the "Green Paper", written by the civil servants from the lead ministry. Very rarely, the composition of a paper is commissioned to the external actors – academia,

⁸⁹ In 2011 the Parliament of the UK passed the Fixed-term Parliaments Act, which for the first time introduced fixed-term elections into the British political system. The first such elections are to be held on 7 May 2015. Before the passage of this Act, the accepted convention was that the Prime Minister could dissolve the parliament and call the elections according to his/her judgment; however the maximum term of the Parliament was already set at five years by the Parliament Act of 1911. For more information, see: <<http://services.parliament.uk/bills/2010-12/fixedtermparliaments.html>>

independent institutes, etc. Green paper is a very broad consultation document that invites the public to give their comments on the proposed policy, especially on the questions for which the Government seeks feedback from the stakeholders. It includes the description of the proposed policy and the justification of why it is being launched. Upon the end of the consultation phase, the lead ministry collects the inputs and prepares the White Paper, which is a more detailed document that explains the policy options, the Government's preferred option and how the Government will pursue a certain policy. The interested parties are normally also invited to give their inputs on the White Paper. Depending on the complexity and sensitivity of the topic, and how urgently the government wants to take action, it is also possible to skip the Green paper stage, and move directly to the production of a White Paper. The principle involved is that the more complex a policy, the more elaborated the policy making process will be. Whatever the case may be, the differentiation between the Green Paper and the White Paper phase is becoming redundant, while the accent is put on the quality of the consultation process and of the evidence base. Moreover, the entire processes of green and white paper composition are closely monitored by the Cabinet Office Secretariat, who would, if needed, inform the lead ministry of the bad quality of evidence or lack of analytical thinking through informal communication at this stage.

Impact assessment is given a substantial role during the entire policy making process. According to the Impact Assessment toolkit, a methodology designed to assist the ministries in undertaking this process properly, the impact assessment should be a continuous process, carried out from the very beginning of the policy cycle. Namely, during the policy formulation phase, the focus should be placed on the "definition and assessment of the policy challenge, the rationale for government intervention, the identification of policy objectives and the gathering of evidence."⁹⁰ Subsequently, throughout the development of policy options, the initial qualitative discussion on costs and benefits should be estimated. During the public consultations, the impact assessment must be attached to the consultation document (policy paper). Finally, another – more elaborate written impact assessment is

⁹⁰ Better Regulation Executive, United Kingdom. Impact Assessment Toolkit. A guide to undertaking an Impact Assessment (IA) and completing the IA Template. Version 2.0. February 2011. pp. 10. Available at: < <http://www.bis.gov.uk/ia-toolkit> >

obligatory once the government decides its position on a single policy option.⁹¹

Ultimately, after the inputs from the white paper stage have been collected, the lead ministry submits the final policy paper, together with the explanation, an initial impact assessment, including the cost-benefit analysis to the Regulatory Policy Committee (RPC), a body that provides external, independent scrutiny of the evidence and analysis used to justify governmental policies. This body has the authority to give the “red” light evaluation to the impact assessment,⁹² if it is considered to be done against poor quality of evidence;⁹³ to ask for additional evidence to be submitted; or it gives the green light and sends the policy proposal to the final ministerial clearance. It must be noted that the civil servants that produce policy papers possess analytical and writing skills in their respective field – they put together the so-called “policy instructions” which are sent to the department’s in-house legal service, which then performs additional analyses of how the new policy would fit into the overall policy and legal framework in the given policy area. The in-house lawyers finally transform the policy instructions into “legislative instructions” which are sent to a central governmental legal service (the so-called Office of the Parliamentary Council) which produces legal drafts for the entire government.⁹⁴ The UK

⁹¹ Ibid.

⁹² According to the RPC methodology, the impact assessment can be rated as ‘green’, ‘amber’ and ‘red’, depending on its fitness for purpose. A red rating means that the IA lacks considerable evidence and analysis which need to be addressed prior to the finalisation of IA; amber rank means that certain should be reconsidered and addressed, while the green rank means that the IA is fit for purpose. See “Regulatory Policy Committee. “Regulatory Policy Committee: Departmental Impact Assessment – Ratings.” July 2013. Available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252677/departimentimpactassessmentresults2012.pdf>

⁹³ In case RPC assesses the IA as “not fit for purpose”, normally the subsequent instance, the Reducing Regulation Committee under the Cabinet Office, will not consider the given regulatory proposal. RPC Report “Improving Regulation - An independent report on the analysis supporting regulatory proposals, January-December 2011”, March 2012, p.7.

⁹⁴ Primary legislation (Acts of Parliament that apply to the general law of the land) is drafted by the central Office of the Parliamentary Council; whilst secondary legislation (for example, subordinate legislation that implements specific elements of an Act of Parliament) is drafted by lawyers in individual ministries. For further details, see: Cabinet Office, United Kingdom. Guide to Making Legislation. July 2013. Available at:

policy making system thus demarks a clear line between the policy analysis and development on the one side and the legal drafting function on the other side, as distinct phases of the policy cycle.

Overall, in such a system, the chances are rare that the policy paper and supporting documentation that reaches the centre of the government are of poor quality. The evidence-based policy making is assured by several stages of policy paper development (Green Paper, White Paper, initial impact assessment, RPC clearance, informal Cabinet Office Secretariat overview), which function as safeguards against poor quality of analysis, as well as by an early involvement of stakeholders and the inherent transparency of the process. The policy proposal is thus scrutinised by several actors and as such reaches the Cabinet Office Secretariat, which gives the final word whether the policy proposal should turn into the government bill (legal proposal), or whether it should be regulated by other means. Through an early involvement in the policy making – during the policy formulation phase – the Cabinet Office Secretariat can substantially contribute to and influence further development of a policy.

⇒ France: Research and analysis underpinning policy making

General Commission for Strategy and Foresight (*Commissariat général à la stratégie et à la prospective*, former *Commissariat Général du Plan*) provides the French decision makers with substantive analysis in planning and implementing public policies. This body acts under the direction of the Prime Minister and cooperates closely with the line ministries and external research organisations. Its papers, reports and proposals are produced both by the in-house experts, grouped in five thematic fields (institutions and society; social questions; economic and financial affairs; labour, employment, and training; and technologies) and by external think tank and policy research organisations, to whom the research is commissioned. The research documents produced by this body are not binding on the Government, however they do feed the governmental decisions on pursuing a certain policy. The mission of the Centre is in fact to instigate the strategic way of thinking across the government on the French perspectives and development options in socio-economic affairs as well as to strengthen the

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210917/Guide_to_Making_Legislation_July_2013.pdf

consultations and dialogue between the governmental and non-governmental actors (CSOs, social partners, etc.).⁹⁵

Conseil d'Etat (State Council) is an institution specific to the French political system which acts both as the legal adviser of the executive and as the supreme court for administrative disputes. Although formally presided by the Prime Minister, its actual head is its Vice-President who is equally the most senior civil servant in France and in parallel the president of the *Institut Français des Sciences Administratives*, the academic institute with the mission to improve the quality of public services in France.

One of the important activities of the *Conseil* is to produce studies and publications. Bearing in mind the reputation of this institution and its work, the publications by *Conseil d'Etat* can sometimes initiate a general debate in a certain direction. For example, in 2011, *Conseil d'Etat* issued a report entitled “*Consulter autrement, participer effectivement*,” in which it encourages the institutionalisation of a consultation procedure in the French policy making system and policy implementation.

Even though *Conseil d'Etat* has no prerogatives in the policy formulation phase, the interdependence between the three phases of the policy cycle indirectly demands a thorough and proper realisation of this phase. In other words, the evidence base and quality of the policy formulation phase will determine subsequent phases, which in turn will be scrutinised by the authoritative and renowned *Conseil d'Etat*.

⇒ UK: Regulation as merely one of the policy options

There is a long tradition in the UK of using alternatives to direct regulation, such as better enforcement of existing laws, use of voluntary codes (e.g. adoption of standard nutritional food labelling by manufacturers), self-regulation (e.g. by the legal and medical professions, who discipline misconduct by their members), economic instruments (don't outlaw cigarettes, just tax them heavily) and so on.

Nowadays, in light of the economic crisis and necessity to alleviate the burdens on business, the UK government is engaged in “One in, two out policy”. The rationale of this policy is to reduce the net burden of regulation

⁹⁵ For more information, see the official webpage of *Commissariat général à la stratégie et à la prospective* at: <<http://www.strategie.gouv.fr/blog/le-cgsp/presentation-du-cgsp/>>

that is imposed on business and civil society organisations. In practice, a ministry proposing a new regulation must find £2 in regulatory savings for every £1 in regulatory costs imposed. The increased scrutiny of ministries' legislative programmes and emphasis on the use of evidence and cost-benefit analysis increases the incentive to find alternative options to legislation, as well as regulatory savings. In fact, the Government's idea is "to strike the right balance between protecting people's rights, health and safety and freeing them from unnecessary bureaucracy."⁹⁶ The creation of the Regulatory Policy Committee (RPC) which assesses the quality of impact assessments and also checks the veracity of "One in, two out" savings, as well as the Reducing Regulation sub-Committee under the Cabinet Economic Affairs Committee can be perceived in that vein.

According to the interviewed British civil servants, Government's efforts to perform rigorous impact assessments play a crucial role in achieving more evidence-based policy making and cutting unnecessary regulatory proposals. While producing impact assessments, policymakers are advised to consult various methodological guidelines produced by the Government.⁹⁷ The analyses and results published by RPC suggest that its involvement in reviewing the content of IAs, i.e. the creation of one more safeguard mechanism, contributes to a greater quality of IAs.⁹⁸

In fact, the following advice given by the RPC to the governmental departments mirrors the principles of the UK's sound regulation policy: "1. Don't presume regulation is the answer; 2. Take time and effort to consider all the options; 3. Make sure you have substantive evidence; 4. Produce reliable estimates of costs and benefits; 5. Assess non-monetary impacts thoroughly; 6. Explain and present results clearly; 7. Understand the real

⁹⁶ UK Government, Policies, "Reducing the Impact of Regulation on Business"; retrieved 20 September 2013. <<https://www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business>>

⁹⁷ See, for example, HM Treasury's Green Book, <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf>; the Better Regulation Executive's (BRE's) IA guidance and toolkit, <legislationline.org/.../UK_Impact%20Assessment%20Toolkit_2011.pdf> or BRE's methodology for 'One-in, One-out' (OIOO), <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31616/11-671-one-in-one-out-methodology.pdf>

⁹⁸ Whereas in 2010, 58% of the IAs have received the green light, in 2011 their number rose to 72%. "Improving Regulation" report, *ibid*, p.3.

cost to business and civil society of regulation.”⁹⁹ These postulates could apply in any country that aspires to improve the quality of its regulatory policy and the policy making system in general.

⇒ Embedded culture of consultations

Internal government consultations in the UK

Decision-making process within the government is effectuated through a complex network of both formalised ad-hoc Cabinet committees and sub-committees as well as informal intra-governmental contacts. The role of the Cabinet committees in the policy making phase is mainly twofold: to ensure participation of all interested governmental parties in the process; and to underpin collective responsibility for decisions made. Participation of all relevant governmental actors is ensured both through informal communication between the civil servants and through the deliberation of the issue in the committees. There are currently four permanent committees (for EU affairs, defence and security, economic and social affairs and the management of annual legislative programme) and a number of ad hoc committees established by the Prime Minister to consider a particular policy issue. These ‘policy’ committees, composed of ministers (junior ministers and sometimes Cabinet ministers) for the relevant policy areas are assisted where necessary by sub-committees, normally composed of junior ministers and civil servants from the relevant departments, who deliberate on more detailed issues. The established committee composed of the relevant departments and ministries would run the whole policy cycle from its earliest stage, and their collective decisions would be binding across the Government. It would thus first approve a call for public consultations, it would work jointly in producing a consultation paper (green paper) and would continue working together until the final “policy clearance” by the Cabinet. The civil servants from different Departments communicate both through the committee meetings and through informal communication.

External consultations

In **the UK**, the involvement of the public and relevant external stakeholders in the policy making normally starts at the very early stages of the policy cycle. Call for Consultations (or Call for Evidence) announcements are

⁹⁹ RPC Report “Improving Regulation - An independent report on the analysis supporting regulatory proposals, January-December 2011.” March 2012, pp.5.

published on the Government's website and are sent electronically to the relevant stakeholders, associations, etc. This phase can last up to 12 weeks. The Government's website provides a very clear, easily readable and user-friendly overview of a given policy (the introduction to the issue, the stakeholders and the actions undertaken), related analyses and timeframes. The feedback on the Call for Evidence – the summary of stakeholders' responses, together with the overview of the consultations and activities held (workshops, meetings, etc.) is equally published on the website and written in a structured and analytical manner. The consultations with the public are done solely during the "policy clearance" stage – prior to the legal drafting and legislative decision-making. In the legislative phase, however, stakeholders can give briefings to the MPs to lobby and file amendments for their case. That way the stakeholders are given a second chance to influence the proposed legislation.

In such a sophisticated system of internal and external consultations, the inter-ministerial coordination becomes easier, as the majority of issues are resolved and agreed at the committee level. The items that arrive at the Cabinet agenda are typically complex political issues that require high-level coordination, such as annual legislative programmes, inter-ministerial disputes or major reform initiatives.

Although not formally institutionalised, the consultations with the wider public and concerned stakeholders, organised by the executive, can become very influential **in France**. The most famous form of consultations are the so-called "Grenelles," which gather representatives of national and local government, representatives of industry, labour, professional associations and civil society organisations, with the aim of unifying a position on a specific theme. Since the stakeholders are numerous and come from different areas, discussions are rich and of good quality. Eventually, the Government has a discretionary right to choose whether to incorporate the findings and propositions made at the Grenelle. In the case of Grenelle on the environment in 2007, the law was passed which envisaged the subsequent laws to address the agreed measures. The Grenelle were organised in 40 working groups each consisting of the representatives from the government, the civil society organisations, local authorities, the employers and the employees. The synthesis of their work was released in a report – a framework document which paved the way for the Government regarding the subsequent activities in the sustainable development policy.

⇒ Authoritative centre of government

UK: Committee system and the principle of collective responsibility

The coherence of governmental policies and their smooth running is assured by a strong Cabinet Office Secretariat. The main task of this body under the Prime Minister's Office is to be an honest broker in negotiations between the ministries and departments that have diverging views on one policy and to provide support to their respective Cabinet committees. Moreover, the Secretariat can also serve as a main steering body in case the Prime Minister has strong views on certain policy developments – and in this case the guidance of the Secretariat becomes even more pertinent.

The Secretariat will formally get involved in the policy design phase only after the lead departments and ministries have agreed on a certain policy through the committees and after the clearance of the RPC. In case the paper does not reach the demanded standard, the Cabinet Secretariat may refuse it and substitute it with their own note, which however happens very rarely. Otherwise, it can produce a cover sheet to the paper explaining the key issues for consideration of the ministers.¹⁰⁰

Cabinet secretariat staff shadows the Departments and Ministries; each of its civil servants has a background in a certain policy, as they are mainly seconded by their home ministries and departments for a period between two and five years. The Cabinet Secretary is practically the only permanent member. The present-day Cabinet Secretariat dates back from the 1960s, and has not changed significantly its purview with time; it has survived different periods and become part of the administrative culture in the UK. Its importance is even greater in the current context of the coalition government.

Ultimately, the described features of the policy making process are strongly supported by the principle of collective responsibility of the government. It is in fact in the interest of the members of the government to frankly discuss the issues with each other from the very early stages of committee deliberation, so as to assure and uphold the sense of unity for their decisions. Moreover, the collective responsibility principle is valuable when decisions need to be made in concert of numerous governmental actors, as it

¹⁰⁰ UK Cabinet Manual. October 2011, p. 35.

encourages the involvement of all the parties concerned. This framework is also the norm for governments composed of more than one party.

France: Conjunction between the Secretariat General and the Prime Minister's Office at the Centre of the Government

The originality of the French policy making and coordination system lies in the fact that the centre of the government is “shared” between the two institutions – the Prime Minister's Cabinet, on the one side, and the Government's General Secretariat. Each of them has its own responsibilities and scope of work, but they collaborate closely with each other. Namely, while the PM's Cabinet represents the political ‘leg’ of the centre of government, whose staff changes with each new government, the staff of the General Secretariat (*S cretariat G n ral du Gouvernement*, SGG) is permanent and reflects the continuity and sustainability of the Fifth Republic. The two institutions are even placed under the same building (Hotel Matignon).

All Government's issues and policies are treated simultaneously by one member of the Cabinet and one member of the Secretariat. More specifically, the agenda of the Cabinet of Ministers is prepared jointly by the two institutions, where SGG is in charge of legal and logistical, whereas the PM Office deals with the political aspect of the issue. After the meetings of the Cabinet, SGG writes the summary of the meeting, which is signed by the Prime Minister.

The conjunction between the two institutions is also reflected in the manner of organisation of the inter-ministerial meetings. Since most of contemporary policy issues are cross-sectoral and concern more than one ministry, the inter-ministerial meetings on the lower level are in fact very frequent – between 1000 and 1500 meetings organised per year. The eventual and frequent disputes and diverging interests among the ministries are also resolved in the framework of these meetings, according to the following formula: the meetings are chaired by the member of the Cabinet, whereas the SGG member is in charge of convening the meeting and assessing the legal aspects of the issue. The goal of these meetings is to resolve most of the questions at a lower level and leave only the contested ones to the Council of Ministers (the Cabinet). The final decision on the contested issue is taken by the Prime Minister, whose decision is substantiated by neutral legal analysis conducted by the SGG.

UK System: Strong points to be emulated

1. Conceiving the policy making system on policy analysis and policy development (and NOT on regulation);
2. Getting the government's approval of the policy BEFORE the law is drafted;
3. Ensuring inter-ministerial cooperation and public consultations from an early stage of policy development;
4. Proving the necessity to regulate with continuous, robust and argumentative evidence base.

IV.2 Latvia's Success Story¹⁰¹

IV.2.1 State of Play and Challenges prior to the Reform

In the short period between its post-Soviet naissance and the intensive reforms initiated in 2000, Latvia had coped with a very weak centre of government which was contrasted by very strong and independent Ministries. The Government lacked capacities to coordinate the work of line ministries, while the practice of consultations with external actors was inexistent. Even in exceptional cases where NGOs were engaged in elaboration of legislation (on an ad hoc basis), the overall quality of analysis of new legislative initiatives was rather low. In general, neither the administration nor the external stakeholders were familiar with the concepts of policy analysis and impact assessments, but the government was instead focused solely on the tasks related to the legislation drafting.

¹⁰¹ Insights on Latvia's policy making system were kindly provided by Gunta Veismane, former Director of State Chancellery of Latvia (2000-2011); Martins Krievins, former Director of Cross-Sectoral Coordination Centre; Peteris Vilks, Director, Cross-Sectoral Coordination Centre; Rudite Osvalde, Vice-Director, Cross-Sectoral Coordination Centre; Alise Vitola, Consultant, Cross-Sectoral Coordination Centre; Valerijs Sturis, Coordinator of the Strategic Development Commission, Chancery of the President of Latvia; Aivars Lapins, Deputy State Secretary, Ministry of Agriculture, Republic of Latvia; Deputy Director, Ministry of Economics of Republic of Latvia; Official, Ministry of Finance; Baiba Petersone, former Deputy Director of the State Chancellery of Latvia in public administration and policy coordination affairs; and Rasma Pipike and Inta Šimanska, NGO „Civic Alliance – Latvia“, during the interviews in Riga on 4 and 5 September 2013.

At that time, Latvia had very strong incentives to consider reforming its overall public administration – in the first place, the goal of EU membership and the then requirements of the accession negotiations, as well the achievement of the programmes such as the World Bank’s Structural Adjustment Loans. In such a context, the Prime Minister of Latvia at the time, Andris Šķēle, sought assistance from the experienced high-level British civil servant, Sir Robin Mountfield, who had just retired from the position of Permanent Secretary at the Cabinet Office – the most senior position in the British civil service.

The British expert met fifty-six times with the Prime Minister and his team in the first two months of 2000 and subsequently made his proposal on the public administration reform in Latvia.¹⁰² This report highlighted the need to reform the centre of government, by establishing a new mechanism that would coordinate the work of the ministries. As he observed, “[i]n Latvia the ‘vertical’ elements of the administrative system are relatively strong, and the ‘horizontal’ linkages and strategic co-ordination and direction are too weak. And the Cabinet of Ministers spends too much time in discussion of issues that should either be dealt with between Ministries at a lower level, or should be prepared properly for collective discussion on a common basis of facts, analysis and options. Ministers are trying to do too much of the work themselves.”¹⁰³

For the decision to undertake a comprehensive reform of the public administration, a broad political consensus was needed among the key actors. Determination and strong political leadership of the Prime Minister was the main precondition that opened the doors for such a wide-ranging reform.¹⁰⁴ The Prime Minister issued an open call for the post of Director of State Chancellery, which was won by Ms Gunta Veismane, a Harvard Business School graduate with the teaching experience at the Latvian University and the first director of the Latvian School of Public Administration. With the strong endorsement of the Prime Minister, she obtained the approval of the Cabinet of Ministers in August 2000 to reform the existing State Chancellery and establish a new Policy Coordination Department within the State Chancellery, in accordance with the

¹⁰² Sir Mountfield, Robin. Report "Public Administration Reform in Latvia." March 2000, p.1.

¹⁰³ Ibid, p.2.

¹⁰⁴ Gunta Veismane, Interview in Riga, 4 September 2013.

recommendations given in Sir Mountfield's report. The reinforced role of the State Chancellery consisted mainly of its newly introduced responsibilities to both manage and implement public administration reform and to steer the improvement of the policy development processes and procedures.

IV.2.2 First Steps

The State Chancellery Director created a team of highly skilled civil servants, with relevant managerial expertise or experience in public administration, strong analytical skills and good knowledge of English. Given the upcoming challenges and the profiles of the new State Chancellery staff, they were receiving higher salaries than the civil servants in the ministries. With regards to the incumbent staff, the Director analysed thoroughly their skills and competences, assessed whether their works and contributions would duplicate and where needed, she had to dismiss the worst performing civil servants within the Chancellery. At the same time, the ministries perceived the planned State Chancellery reforms with great reservation and disbelief. To some extent, the reformed State Chancellery was even perceived as an "enemy" institution.

Working in such an environment proved to be extremely difficult for the State Chancellery from the very beginnings. In the first year, the team focused on learning the good policy planning practices worldwide and identifying and adapting those features which could be translated into the Latvian context. As noted by Ms Veismane, the State Chancellery Director, her success factor was that she knew who to ask for help. A Canadian expert engaged to assist public administration reform in Lithuania was invited to come to Latvia and hold a seminar on policy coordination. He brought with him many experts from the World Bank, UNDP and other EU technical assistance projects, who gave trainings and lectures on policy coordination to Latvian civil servants.

The system was being built step-by step: one year after the establishment of the Policy Coordination Department, during which the Chancellery was studying comparative practices and the civil servants were given lectures and trainings, the State Chancellery introduced the Policy Planning Guidelines, adopted by the Government in October 2001, a policy planning document aimed at improving the policy planning process in Latvia by helping the ministries arrive at evidence-based policies. More specifically, the Policy Planning Guidelines introduced four types of policy planning

documents: Guidelines, Programmes, Plans and Concept Papers, including their aims and structure, hierarchy and linkages among each other in the policy planning process. Whenever a ministry wanted to submit a concrete proposal to the Cabinet, it had to be presented in the format of one of the four documents. The Policy Making Guidelines were designed and structured in a way to be the role model for the ministries in terms of form and analytical base which they were expected to apply when writing their own Guidelines.

In the hierarchy of the four types of documents, the Guidelines represented the most long-term type, prepared for the period of seven to ten and more years. They became a standard format for various types of documents – from visionary documents that do not clearly list the implementation measures, to the government mid-term (7 years) strategies in certain policy areas.¹⁰⁵

The implementation of the Guidelines was made possible through the mid-term (5 years) policy planning documents called the Programmes. Programmes are normally cross-cutting documents that concern the work of several ministries and which list concrete objectives, tasks and the expected results of a certain policy. A Programme has to equally include the information on its relation to the government priorities, the indicators and the timeframe for the achievement of the specific results, information on financial implications, as well as the envisaged reporting and evaluation procedures. In case the draft Programme includes different options for pursuing the policy, the lead ministry should outline its preferred option prior to submitting the draft Programme to the Cabinet of Ministers for approval.

A Plan is a short-term document prepared by the relevant ministry for a period of one to three years. They are approved by the responsible Ministry and by the Cabinet of Ministers, provided that the issue is of cross-sectoral nature or upon the request by the Cabinet.

Finally, concept papers are the most basic documents which serve the function of a green paper or a white paper in the British system. A concept paper is developed when there are several approaches to addressing the

¹⁰⁵ For example, in 2001 the following documents corresponded to the Guidelines in terms of their substance: the National Development Plan's Strategic Memorandum, Guidelines for Macroeconomic Development and Fiscal Policy, Long Term Economic Development Strategy, Concept on Electronic Commerce. Extracted from: "Policy Planning Guidelines," Government of Latvia, 2001, unofficial translation.

policy, but none of them is approved or specified by the policy Guidelines. Each policy proposal submitted by the ministry needs to be elaborated following the standards of a concept paper, including the assessment of possible impacts of different solutions on various social groups; the context; business environment; and the cost-benefit analysis.

Content of the Concept Paper “Necessary Action for Elimination of Shortcomings in Implementation of State Pension Policy,” 2004

1. Purpose of reviewing the state pension policy
2. Description of existing situation: Most important reasons for the low pensions
3. State of play in the intended reform of the pension system
4. Legal acts and policy planning documents related to the pension policy
5. Options for solutions to identified problems
 - a. Solution A: Alternatives I, II, III and IV, with advantages and disadvantages
 - b. Solution B: Alternatives V, VI, VII, with advantages and disadvantages
6. Sources of financing
7. Medium and long-term proposals for reform in the existing pension system
8. Compensatory measures for low-income social groups (not only pensioners)
9. Additional proposals
10. Legal acts required for the implementation of the Concept Paper

The first task of the State Chancellery was to start revising the policy proposals and notes submitted by the ministries and to teach them how to develop the newly introduced policy documents. In this endeavour, proper communication with the ministries was crucial: the State Chancellery had to present itself as helpful to the ministries, as a team player, while the ministries would eventually realise the importance of having high quality documents revised by the State Chancellery. For the State Chancellery to be

authoritative towards the ministries, they needed and, indeed, received continuous support and endorsement by the Prime Minister at the time.

The Policy Planning Guidelines also envisaged the improvement of policy planning coordination and hierarchy by strengthening the link between the Government's priority setting and the ministries' work plans. Moreover, they foresaw a gradual shift towards performance-oriented public administration, by introducing the mechanisms for ex-ante policy assessment (policy impact assessment) and ex post evaluation, as well as by strengthening the managerial capacities of the civil service through constant trainings by the Latvian School of Public Administration. Finally, participation, consultation and communication were defined as the basic principles to be applied in all stages of the policy cycle.

Following the introduction of the Policy Planning Guidelines, new Rules of Procedure of the Government were adopted in March 2002. They were elaborated in close cooperation between all the ministries in the framework of the Public Administration Reform Council and with external stakeholders – NGOs, think tanks and with the social partners through the regular Tripartite Councils, comprising the Government, Trade Union Associations and the Latvian Association of Employers. The Rules of Procedure established the system of policy planning documents, introduced the impact assessment template as well as the consultation procedures involving the external stakeholders relevant for the given policy.

The Rules of Procedure equally addressed the aspect of intra-governmental consultations. Namely, according to the new procedures, the ministries were required to openly share their drafts for both policy planning documents and normative acts with the other ministries, who would in turn have two weeks to submit their comments. Ministry of Justice and Ministry of Finance were required to comment all drafts, while the Policy Department of the State Chancellery would comment all policy documents and other drafts. After the consultations, the lead ministry was required to incorporate the comments received from other ministries and external stakeholders and circulate the updated proposal again to all stakeholders. In case of diverging views, a "harmonisation meeting" gathering junior level civil servants from the ministries would be convened. If the issue is not settled, it would be put on discussion in the framework of the weekly meetings of the Cabinet of Ministers, which would also include external stakeholders, in order to arrive at a compromised position.

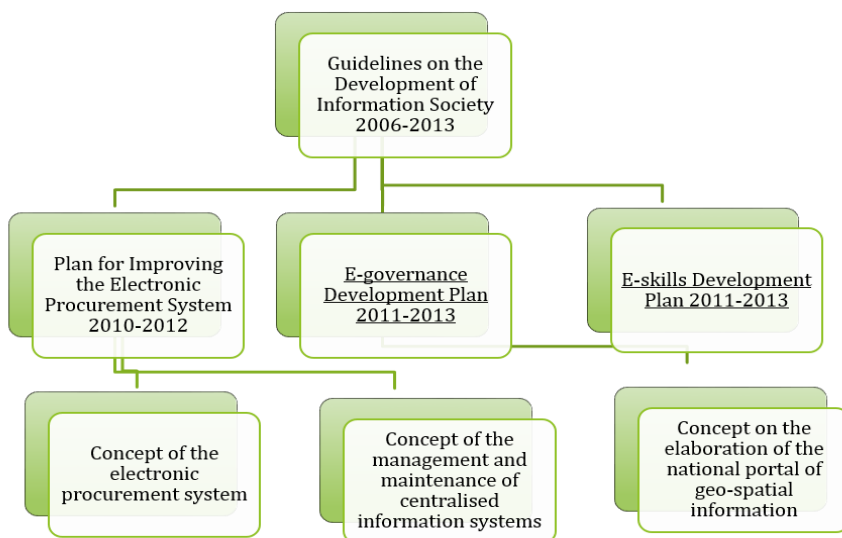
The idea of the State Chancellery was to ensure that the majority of issues are addressed and resolved at the lowest level possible, so that high-level decision makers could focus on those particularly contested. One way to arrive at a compromised position in the policy making process is through the consultation procedures with external stakeholders. For this reason, the Chancellery was insistent that the ministries make their research and concept papers open to the public. The created public scrutiny gradually forced the ministries to come up with more evidence-based proposals, thus making them more accountable to the other stakeholders and the citizens. At the same time, through having the increasing number of issues resolved at lower levels, open and consultative policy making gradually alleviated the work of the Cabinet of Ministers.

In the same year, the Government approved the Instruction on Annotation document. “Annotation” is an ex-ante assessment template document inherent to the Latvian system which is supposed to ensure that the drafts submitted to the meetings of the State Chancellery are supported by sound evidence and analysis. In case legislative drafts are submitted without the required degree of annotation, the State Chancellery can return them to the ministries for revision. The annotation establishes a unified impact assessment template for all draft legal acts, including the mandatory consultation process with CSOs and professional associations.

Moreover, the Methodology on the Operational Strategies of Institutions, adopted the same year, was intended to establish the linkage between policy programmes and budget planning. In this system, the ministries would produce three-year plans structured around the budget programmes, supported by the measures to identify the desired outcomes of Programmes, results, outputs, activities, inputs, costs, and a set of indicators to measure the progress made.¹⁰⁶

¹⁰⁶ Friedman, Jonathan. “Moving Beyond Central Planning: Crafting a Modern Policy Management System, Latvia 2000-2006.” Princeton University, May 2012. p. 9.

Illustration 2. Document hierarchy in e-governance policy, Latvia



IV.2.3 Evaluation of the First Five Years

In 2006, the World Bank published a study that assessed public administration performance of the eight Central and Eastern European countries that joined the EU in 2004, and underlined Latvia as one of the greatest champions in terms of quality of policy coordination and analysis.¹⁰⁷ In the same year, a general ex post evaluation of the system established in 2001 was performed by independent external assessors. Despite the initial belief of the State Chancellery that the system would function more easily, the evaluation demonstrated that many shortcomings were yet to be overcome.

Namely, the evaluation observed two main shortcomings: the first one was linked to the poor quality of policy planning documents – mainly the quality of impact assessments and scarce use of studies while preparing the concept papers, while the second one related to the incomplete consultations procedure and lack of public discussions. The two main reasons identified for these problems were high staff turnover, which hampered the creation

¹⁰⁷ See: Poverty Reduction and Economic Management unit, Europe and Central Asia, the World Bank, Public Sector Capacity in: Study EU 8: Report on Strategic Planning and Policy Management in Lithuania and Latvia, October 2006, p. 28.

of institutional memory, and insufficient trainings for civil servants.¹⁰⁸ Another remaining challenge was to establish a clearer hierarchy among the existing policy planning documents, as well as to further link the budgetary with the policy planning.

Based on the evaluation findings, the State Chancellery revised the Policy Planning Guidelines in 2006. Novelties included the creation of an umbrella strategic document – Latvia 2030, which would replace the then six long-term planning documents. Below this visionary document determining the country's overall development path would be a seven-year projected National Development Plan. The four policy document types established in 2001 (Guidelines, Programmes, Plan and Concept paper) remained in place.

The revised system and the described shortcomings were addressed in the 2008 Law on Development Planning System, which is still in force, and which brings together all the policy planning-related legislation and creates a strict hierarchy and inter-linkages among the planning documents.¹⁰⁹ The first National Development Plan and Sustainable Development Strategy for Latvia 2030 were elaborated by the Ministry of Regional Development and Local Government. The ministry was also responsible for the operation of the National Development Council – a high-level policy coordination forum that was composed of ministers, social partners, NGO's and representatives from regions and municipalities.

It should be noted that in the course of the first six years of the policy making and coordination reform in Latvia, five governments changed. Despite this fact, the State Chancellery machinery and its mission remained untouched and the institution enjoyed political endorsement by all the Prime Ministers. In the situation of frequent shifts of the governments, the head of the Chancellery needed to be a strong personality, capable of striking the right balance between political influence and leadership, on the one side, and managerial skills and technical expertise, on the other side.¹¹⁰

¹⁰⁸ Republic of Latvia, Guidelines on policy planning system development, "Description of the existing situation," 2006. Unofficial translation.

¹⁰⁹ Krievins, Martins. "Participative Policy Planning: The Case of the Latvian National Development Plan 2014-2020", p. 32. In: *Effective Policy Making: How to Ensure Desired Changes through Successful Implementation of Policies*, ReSPA. July 2013.

¹¹⁰ Gunta Veismane, former Director of the State Chancellery, interview in Riga, 5 September 2013.

IV.2.4 Latvia's Policy Making System Nowadays

In 2011, the policy planning and coordination tasks were moved from the State Chancellery to the newly created Cross-Sectoral Coordination Centre, a separate office under direct supervision of the Prime Minister. It inherited the duties performed by the Policy Planning Department and the Strategic Planning Department of the Ministry of Regional Development and Local Government: ensuring policy coordination, assuring consistency and compliance between all national planning documents, implementation of policy monitoring and the preparation and coordination of long-term and mid-term national development planning documents – National Development Plan and Sustainable Development Strategy for Latvia. While the focus of the State Chancellery was to establish the policy planning system and review the policy planning documents, the purview of the newly established Centre was initially focused on the development of strategic planning documents (see below).

Nowadays, Cross-Sectoral Coordination Centre (CSCC) is composed of fifteen experts. Most of the staff had worked previously in the line ministries, due to which they are well connected with the civil servants from the line ministries and are familiar with their internal procedures and practices. CSCC is headed by the Director, which is a non-partisan position (alike the State Secretaries in the line ministries).

The main task for the newly created Centre in 2011-2012 was to prepare the National Development Plan (NDP) 2014-2020, the highest medium-term development planning document. According to the aforementioned Law on Development Planning System (2008) NDP is supposed to set out the priorities and activities in accordance with both the development part of the national budget and the EU structural and investment funds. The importance of the newly created NDP is reflected in the following facts:

- First, the NDP was foreseen to take into account the EU 2020 Strategy objectives as well as to create a connection to the EU's Multi-Annual Framework budget 2014-2020, in particular the development funds of the budget (EU financial instruments).
- Second, the NDP was expected to take into account the lessons learned from the 10-year-long experience of writing planning documents – for example, the objectives set by the previous national development plan were too general and not linked with the

financing, due to which the new NDP had to prioritise policies in a more consistent manner. Eventually, the preparation process and the adoption of the NDP was considered by the Latvian stakeholders a great success. The methodology and activities undertaken during its creation represent a remarkable example of evidence-based and well-coordinated policy formulation.

Creation of the NDP: Key factors for successful policy planning

1. **Thorough methodology** developed, including: main steps of the process, detailed structure of the document, evaluation criteria for inclusion/exclusion of measures and activities and division of roles between the involved parties.
2. **Constant involvement of civil society organisations:** supervision of the drafting process via the Supervisory Body. One half of its participants came from the CSOs; the other half was from the government.
3. **Application of already tested and evaluated methods**, plus two independent ex-ante evaluations performed.
4. **Creation of mixed working parties**, consisting of internal and external stakeholders.
5. **Numerous rounds of public consultations**, three revisions of the document. Cross-Sectoral Coordination Centre received 3000 inputs from the CSOs, and managed to integrate them into the final version of the NDP.

Policy Design Stages in the Ministry of Economy

1. Concept paper (normally some 10 pages long) is published on the Ministry's website, describing what the policy is about, its vision and the intended actions; the conducted desk research as well as the assessment of different aspects of the matter.
2. Cross-Sectoral Coordination Centre reviews the content and the quality of the concept paper.
3. Social partners (associations, Chamber of Commerce, Employers' Federation, etc.) and CSOs can give initial comments. The policy is discussed with the stakeholders, including the CSCC. If necessary, interviews and field visits are conducted. Consultations are conducted with the concerned line ministries. Joint meetings between the relevant governmental and nongovernmental stakeholders are organised; they all have two weeks to submit their comments on the proposal.
4. The results of the consultation procedure are published on the Ministry's website.
5. Based on the results, the Ministry develops possible outcomes and actions for the industry – the policy impact assessment.
6. The revised document and the impact assessment are publicly announced. Normally, at this stage social partners do not have anything more to add. The concept paper and the supporting documentation is approved by the Cabinet of Ministers.

Depending on the issue, the pre-legislative phase can last between 6 and 12 months. The legislative phase is much shorter – in average it lasts around three months.

Latvian example demonstrates that the evidence based policy-making system, which was established in late 2000 and which has subsequently been revised and improved, has been made sustainable and embedded in the system. The system has survived frequent shifts of governments and a major financial and economic crisis in Latvia in 2009-2010. Thanks to the requirements for more evidence-based policies, the overall quality of political debates has improved. The Ministries and the entire society not only became aware of the benefits of inclusive, transparent policy making based

on evidence, but they also demand that it be sustained for the benefit of the citizens.¹¹¹ In addition, external evaluations, such as the *World Bank Worldwide Governance Indicators 1996-2012*, demonstrate that in the given period, government effectiveness and the rule of law indicators significantly improved in Latvia.¹¹²

IV.3 Policy Making System in Poland¹¹³

Policy making system in Poland is a great example how the state actors have gradually and progressively acknowledged the importance of evidence base for successful policy making. Until the 1990s, the country's policy making system was based solely on drafting and passing laws – there was no research or analysis performed prior to legal drafting and adoption. The first changes which were introduced were the “explanatory memoranda” of laws in 1997, followed by the impact assessment in 1999. Nowadays, the system is based on a coherent hierarchy between the national and EU strategic documents, the centre of government that is actively involved in monitoring and steering of the policy making process, as well as elaborated distinct stages within the policy design phase. Throughout the gradual creation of the current policy making system, Poles sought assistance from the British and Dutch experts and emulated their policy making systems where appropriate. The EU membership and “socialisation” in Brussels facilitated this process, since many meetings in this matter took place precisely in Brussels. Although the overall system is still undergoing intensive changes and improvements, it already demonstrates important features which can profile it as an example of good practice, not least due to the very fact that it has been evolving gradually in line with the improvement of the awareness of the political elites. The major challenges that remain are to instigate a “horizontal way of thinking” as well as to increase the analytical capacities of the civil servants.

¹¹¹ Peteris Vilks, Director, Cross-Sectoral Coordination Centre, Interview in Riga, 4 September 2013.

¹¹² World Bank. Worldwide Governance Indicators Project, Country Data Report for Latvia 1996-2012. World Bank Institute. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports>

¹¹³ The insights in this part were provided by Dorota Poznanska, Director, Strategic Analyses Department, The Chancellery of the Prime Minister of Republic of Poland; as well as the three Officials from the Strategy and Analysis Department, Ministry of Economy of the Republic of Poland.

IV.3.1 Hierarchy and Linkage between the National and EU Policy Planning Documents

In 2009, a major reform of strategic documents took place in Poland, when 100 strategies in force were replaced by nine cross-sectoral strategies and the framework for strategic planning was established. According to the new system, on the top of the hierarchy lies “Poland 2030 – the third wave of modernity,”¹¹⁴ a long-term national strategy which broadly defines challenges and perspective of Poland’s development by the year 2030. The National Development Strategy 2020 is a mid-term strategy which aims “to strengthen and make use of the economic, social and institutional capabilities in order to ensure rapid and sustainable development of the country, and to improve the quality of life.”¹¹⁵ This document also includes the potential initiatives to be funded within the EU 2014-2020 financial perspective. Based on these two documents, the nine cross-cutting strategies introduced are:

- Strategy for Innovation and Efficiency of the Economy “Dynamic Poland 2020”
- Human Capital Development Strategy¹¹⁶
- Transport Development Strategy¹¹⁷
- Energy Security and the Environment Strategy¹¹⁸
- Efficient State Strategy (yet to be adopted)¹¹⁹
- Social Capital Development Strategy¹²⁰

¹¹⁴ The Strategy “Poland 2030 – the third wave of modernity”. Available at: <<http://monitorpolski.gov.pl/MP/2013/121>>

¹¹⁵ National Development Strategy 2020. Available at: <http://www.mrr.gov.pl/english/regional_development/development_policy/nds_2020/strony/default.aspx>

¹¹⁶ Human Capital Development Strategy. Available at: <<http://www.mpips.gov.pl/praca/strategie-i-dokumenty-programowe/strategia-rozwoju-kapitalu-ludzkiego-srkl---projekt-z-31072012-r/>>

¹¹⁷ Transport Development Strategy. Available at: <https://cms.transport.gov.pl/2-4f97ffae72ab-1795917-p_1.htm>

¹¹⁸ Energy Security and the Environment Strategy, Available at: <<http://monitorpolski.gov.pl/mp/2013/136/1>>

¹¹⁹ Efficient State Strategy. Available at: <<http://bip.mg.gov.pl/node/16479>>

¹²⁰ Social Capital Development Strategy. Available at: <<http://ks.mkidn.gov.pl/pages/strona-glowna/strategia-rozwoju-kapitalu-spolecznego.php>>

- National Strategy of Regional Development 2010–2020¹²¹
- Strategy for Development of the National Security System¹²² and
- Strategy for Sustainable Development of Rural Areas, Agriculture and Fisheries¹²³

The overall reform process was an extremely lengthy and arduous task in which not all governmental actors were interested, as each ministry and ministries' departments wanted to have their own strategy. Therefore, a continuous strong guidance provided by the Prime Minister was crucial for completing the reform.

The nine cross-sectoral strategies are being implemented through Programmes – medium-term operational documents prepared for the period of four years and updated annually in accordance with the approval of the budget by the Ministry of Finance. For example, based on the Dynamic Poland 2020 Strategy brought in January 2013, the Programme for Development of Enterprises is currently being prepared. The programmes should be coherent both with the higher-level national planning documents and with the EU planning documents and should take into account the new EU financial perspective.

Strong inter-linkage between the national and the EU documents is reflected in the fact that the 2009 reform coincided with the introduction of the “Europe 2020 Strategy for smart, sustainable and inclusive growth (Europe 2020),” a primary mid-term EU planning document based on which Poland worked out a National Reform Programme (NRP), designed to implement the priorities set in Europe 2020. At the same time, the measures proposed in the NRP take into account the objectives set in two domestic umbrella strategies and nine cross-sectoral strategies in the areas of social and economic affairs.¹²⁴ The rationale for connecting closely the national with

¹²¹ National Strategy of Regional Development 2010–2020. Available at: http://www.mrr.gov.pl/english/regional_development/regional_policy/nsrd/doc_str/stroyny/doc.aspx

¹²² Strategy for Development of the National Security System. Available at: <http://www.minrol.gov.pl/pol/Informacje-branzowe/Strategia-zrownowazonego-rozwoju-wsi-rolnictwa-i-rybactwa-na-lata-2012-2020/Dokumenty-analizy>

¹²³ Strategy for Sustainable Development of Rural Areas, Agriculture and Fisheries. Available at:

http://mon.gov.pl/z/pliki/dokumenty/rozne/2013/09/SRSBN_RP_przyjeta090413.pdf

¹²⁴ Dynamic Poland 2020 Strategy, Council of Ministers, 15 January 2013, p. 3. Unofficial translation.

the EU planning documents is twofold. It ensures that the EU-long term agenda is reflected in the national planning documents, while at the same time it enables Poland to influence the design of EU strategic objectives by incorporating its national priorities and challenges.¹²⁵

Illustration 3. Document Hierarchy, Poland



IV.3.2 Gradual Improvement of the Policy Formulation Phase

The development of a certain policy based on, and in line with, the existing framework of strategic documents as described above, is launched in the responsible line ministry. In the policy design phase, the ministry is obliged to prepare what is called a “Regulatory Test,” which in terms of its purpose, substance and elements represents a mini-impact assessment. It provides information on:

- the reasons for pursuing a certain policy;
- possible options taken into account during the analysis;
- nature and purpose of the proposed solutions;
- costs and benefits.¹²⁶

¹²⁵ National Development Strategy 2020, p. 5.

¹²⁶ Impact Assessment Guidelines, draft unofficial version provided by the officials of the Ministry of Economy.

In the case of the Ministry of Economy, during the preparation of the regulatory test, the consultation process with external stakeholders – associations, interest groups, social partners etc. – is organised in various forms: sending questionnaires, organising pilot projects, telephone calls, informal meetings. In certain cases, the consultation process may be hindered by the lack of motivation of the external stakeholders to engage in consultations, as their awareness of the importance of getting involved may still be rather low.

The policy proposal, together with the regulatory test, is submitted to the Government Work Planning Authority (*Zespol do spraw programowania prac rządu*) for approval. This is a very important step, since it can here be decided that the given proposal should not be subject to legislation, but instead should be implemented by other means. If approved, the ministry in charge would prepare the document called the “Assumptions.” The Assumptions identify in particular the goal and the issues which necessitate regulation as well as the scope of regulation, and are accompanied with a more elaborated regulatory test. Once the Cabinet approves the thus presented policy proposal, the legislative drafting phase can proceed.

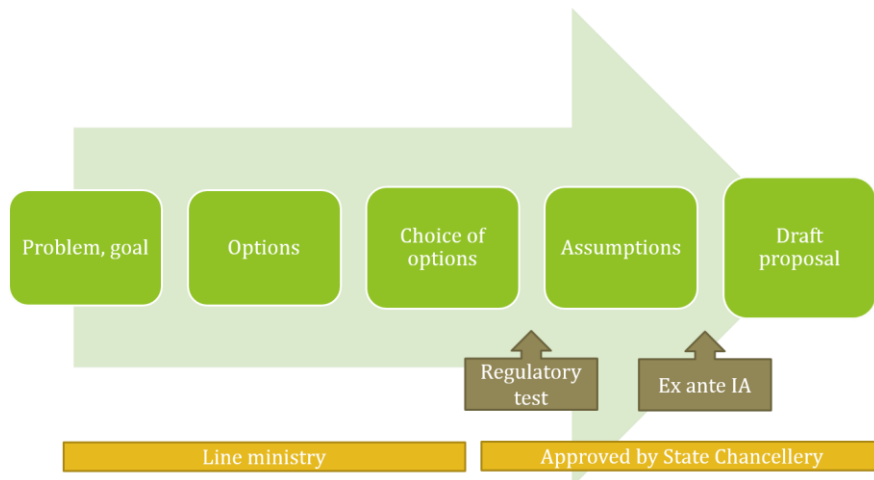
In the current attempts to make the policy making in Poland more evidence-based particular importance is given to the proper performance of the impact assessments. Namely, according to the Guidelines for Impact Assessment, prepared by the Ministry of Economy, impact assessment should be performed continuously, throughout the entire policy making process, from the performance of the regulatory test, ex-ante Regulatory Impact Assessment and ex-post RIA.¹²⁷ After the preparation of a legislative act, the RIA is reviewed by the Department for Strategic Analyses supervised by the PM’s Plenipotentiary for Regulatory Impact Assessment, who can advise the ministries on its scope and quality and if necessary address the disputed issues with the committee preparing the meetings of the Cabinet of Ministers. The IA process should not be seen as a factor delaying the legislative process or as a step to be done pro-forma, but instead should be considered as an instrument for providing substantive arguments why a certain piece of legislation should be introduced.¹²⁸ Since the analytical capacities of the ministries vary, the objective is to establish a unit for impact

¹²⁷ Ibid.

¹²⁸ Ibid.

assessments in each Ministry. To exemplify, in case of the Ministry of Economy, the Department of Economic Regulation Improvement functions as a “think-tank” within the Ministry and performs analyses and research.

Illustration 4. Policy formulation process in Poland



IV.3.3 Growing Role of Government Work Planning Authority

Government Work Planning Authority (*Zespół do spraw programowania prac rządu*) is a governmental institution created in 2008 under the Chancellery of the Prime Minister with the task to coordinate and prepare the legislative and non-legislative governmental documents.¹²⁹ It is chaired by the Head of the Chancellery of the Prime Minister (in practice, by the Deputy Head) and is composed of the president of the Government Legislation Centre, a member of the PM Cabinet and the undersecretaries of state from the Ministry of Finance, Ministry of Economy and the undersecretary in charge of European affairs in the Ministry of Foreign Affairs. The positive aspect of the functioning of this body is that ministries can gather and discuss at the same table about their plans, which was unimaginable until recently, according to the accounts of several Polish interviewees. As a result, the Ministers can discuss openly their plans and priorities, which helps the process of internal coordination and enables early resolution of possible disputes. Among other tasks, this institution is in charge of analysing and evaluating the proposals and subsequently giving

¹²⁹ Regulation establishing the Government Work Planning Authority. Available at: <http://bip.kprm.gov.pl/kpr/bip-rady-ministrow/organy-pomocnicze/organy-pomocnicze-rady/137,Zespol-do-spraw-Programowania-Prac-Rzadu.html>

recommendations on their quality. In light of the tendency to enforce a greater quality of RIA, in accordance with the new Draft Government Rules of Procedure, soon to be adopted, the Government Work Planning Authority will decide whether a certain proposal can be sent together to all interested parties or whether its RIA should be sent for an earlier opinion of the Chancellery of the Prime Minister.

IV.4 Turning the Positive Examples into the Serbian Policy Making Framework – Evaluation of Options

This section offers a brief overview of the possible routes the Government could take with regards to the changes and reforms of the policy making framework in Serbia. The options are defined in terms of the scope and complexity of reforms that they would entail. A brief evaluation of the options is also presented, as a basis for more in-depth analysis and consideration by the Government.

Table 1: Options for Policy Planning and Policy Formulation reforms, according to the scope of reforms required

Policy Option	Policy Planning	Policy Formulation
Option A: “Minor Reform” (practically status quo option)	Establishing a single methodology for developing strategies and increasing the quality of the Government Annual Work Plan → bringing more coherence into the existing system	Impact assessment of laws gradually extended to bylaws; capacities in line ministries to perform RIA gradually improved, but the tool remains in its present, limited format → RIA and annotations remain the only instruments of policy analysis
Option B: “Moderate Reform”	Adopting the methodology of integrated policy planning, including development of an umbrella strategic document; Establishing a hierarchy between the existing documents → increased role of the General Secretariat in monitoring compliance and policy coordination	Broadening the scope and format of RIA to perform proper ex-ante impact assessment (in accordance with the OECD recommendations), including a possible requirement for the approval of “preliminary” RIA before a law is drafted → ministries obliged to produce more evidence-based policies; Systematisation of units within the Ministries which would perform

		policy analysis → ministries getting familiarised with and trained for the novel approach to developing policies
Option C: “Major Reform”	Adoption of a comprehensive integrated policy planning methodology + broadening of the competencies and skills of GSG to review and evaluate the quality of strategies, plans and policy papers	Introduction of Policy Papers (Concept Papers) and an obligation of their approval by the Government prior to legislative drafting; in parallel, ensuring high quality and timely production of ex ante RIA (in its full format); separation of policy making and legal drafting units within the Ministries

Option A: Minor Reform

Advantages. The key advantages of the Option A lie in its low cost and absence of the need to design and undertake comprehensive changes of the existing system. As the option is mainly based on the “business as usual” scenario, it would be quite easy to implement it and its implementation would be possible without significant interest and support of the high level political level.

Disadvantages. The main disadvantage of this option, which essentially undermines its value, is that it would not solve the majority of the existing deficiencies of the policy making framework and as a result the quality of policies would not be improved. It would also not help ensure that Serbia negotiates its EU membership more effectively, with strong evidence and argumentation, or that it becomes a capable and credible member state.

Option B: Moderate Reform

Advantages. The advantages of this option are mainly that it is based on improvements of the already existing and/or already proposed tools and documents, which should not be very difficult to achieve, even in the absence of very strong high level political support. With some improvements, the proposed Integrated Policy Planning Methodology could ensure a solid and coherent policy planning framework (the key improvement would be related to the introduction of an umbrella planning document at Government level). Given that the guidelines of the Office for Regulatory Reform and RIA are already developed and structured in line with best OECD practice and recommendations, the formal improvements of the system

would not be very demanding – they would in fact come down to amending the Government Rules of Procedure so as to ensure that the Office's guidelines are abided by in developing RIAs. RIA could, in such a scenario, fill in a part of the gap in policy analysis and consideration of options prior to legal drafting.

Disadvantages. As no central body would be in charge of assessing and approving the quality of planning and policy documents, the centre of government would remain rather weak and it would be more difficult to ensure that the new documents and processes are not only a formality but serve their function instead. Use of RIA as the only tool for policy analysis and formulation would probably have as a consequence that projects for legislating and regulating in general would trigger policy analysis rather than vice versa.

Option C: Major Reform

Advantages. The Major Reform option would ensure the creation of a comprehensive and fully coherent policy planning and policy formulation framework. If properly implemented, these arrangements would ensure that Serbia plans, prioritises and develops its policies with solid evidence basis and that it only legislates when necessary. In the long run, it would ensure that Serbia becomes an effective EU member state, capable of defining and substantiating with evidence its priorities and national interests in EU negotiations.

Disadvantages. The key disadvantage of this option is its complexity and costs of implementation, which would be higher than for any of the previous options. Costs would be related not only to the high intensity of training which would be needed to enable civil servants to produce high quality policy papers, but also to the increase of the capacity of the GSG (both the number of staff and their skills). The latter disadvantage could partly be overcome through secondment of staff from line ministries to the GSG (though for this solution to be implemented the institute of secondment would first need to be formally introduced into the Serbian administrative system). Finally, the implementation of Option C would require very strong political support from the highest political level (ideally the Prime Minister), which has so far been a major deficiency of all efforts to improve the policy making arrangements in Serbia.

V. National Coordination of EU Policies

V.1. Inter-Ministerial Coordination in Light of EU-Serbia Accession Negotiations: State of Play

By the time this Study went into printing, the Serbian Government had not yet formally established the full coordination system for EU accession negotiations, possibly due to the fact that the negotiations have not officially started. Since 28 June 2013, when the European Council announced the opening of accession negotiations with Serbia by January 2014, three explanatory and three bilateral screenings for negotiating Chapters 23, 24 and 32 were held in Brussels.¹³⁰ Despite the fact that certain elements in the Serbian coordination system for accession negotiations are still being shaped, the main actors, structures and their roles are already known and they have been announced or formally established.

Coordination Body for EU Accession Process – the highest political body which steers the direction of the Government and discusses the most important questions with regards to Serbia's accession to the EU. The Coordination Body is composed of the Prime Minister, who chairs the meetings, the Minister in charge of EU integration; first Vice-Prime Minister; the Minister of Foreign Affairs, Ministers in charge of economy and finance, Minister in charge of agriculture; Director of SEIO; Chief of the Core Negotiating Team; Secretary General of the Government and the Director of the Legislative Secretariat of the Republic. The Government adopted a decision on the establishment of the Coordination Body for EU Accession Process on 23 September 2013.¹³¹

Core Negotiating Team will have the role to assure the unified voice of Serbia in negotiations, i.e. to undertake the horizontal coordination of the national institutions involved in the accession negotiations. The Team will have the permanent structure throughout the entire accession negotiations process

¹³⁰ Explanatory screening for Chapter 23 was held on 25th and 26th September; for Chapter 24 on 2nd, 3rd and 4th October; and for Chapter 32 on 17th October. Bilateral screening for Chapter 32 was held on 26th November; for Chapter 23 on 9th and 10th December; and for Chapter 24 on 11th, 12th and 13th December in Brussels.

¹³¹ The Decision on Establishment of the Coordination Body for the Process of the Accession of The Republic of Serbia to the European Union, available at: <http://seio.gov.rs/upload/documents/nacionalna_dokumenta/pregovori_sa_eu/odlu_ka_kt.pdf>

and will be composed of its Chief, renowned experts in particular negotiating chapters (who are still to be appointed), State Secretary from the Ministry of Foreign Affairs, State Secretary from the Ministry of Finance and the Head of Serbia's Mission to the EU. Its role will also be to participate in the formulation of the Negotiating Positions of Serbia.¹³²

35 Negotiating Groups inherited the system of Working Groups (i.e. Subgroups of the Expert Group) which were established for the overall coordination of the EU integration process and preparation of the National Programme for Integration from 2008 and the subsequent National Programme for the Adoption of the Acquis (NPAA) from 2013.¹³³ Their structure has not altered with the accession negotiations: the 35 Negotiating Groups are composed of the civil servants from the ministries whose purview is covered with the particular negotiating chapter. They are chaired by the State Secretary with the primary responsibility for the given subject area. The Negotiating Groups participate in the screening process; take part in the formulation of the National Position in the given negotiating chapter; monitor the implementation and the revision of the NPAA as well as the EU acquis in the given area.¹³⁴

As part of establishing the EU accession negotiating structures and procedures, the Serbian government equally adopted the following documents:

- The Basis for Negotiations and Conclusion of the Treaty of Accession of the Republic of Serbia to the European Union, with the Proposal of the Conclusion;¹³⁵
- The Conclusion Accepting the Analysis of the Activities in the Process of the Negotiations on the Accession of the Republic of Serbia to the European Union;

¹³² Government Decision on the Adoption of Core Negotiating Team, adopted on 3 September 2013, Available at: http://seio.gov.rs/upload/documents/nacionalna_dokumenta/pregovori_sa_eu/odlu_ka_pregovaracki_tim.pdf

¹³³ Interview, Official, SEIO, 20 July 2013, Belgrade.

¹³⁴ Information from the Seminar on EU Negotiations, Project "Support to EU Integration Process in Serbia," October 2013.

¹³⁵ This document is quite analytical and well structured. It includes an assessment of the financial impact of EU accession and it can be regarded as one of the more positive examples of policy formulation in Serbia.

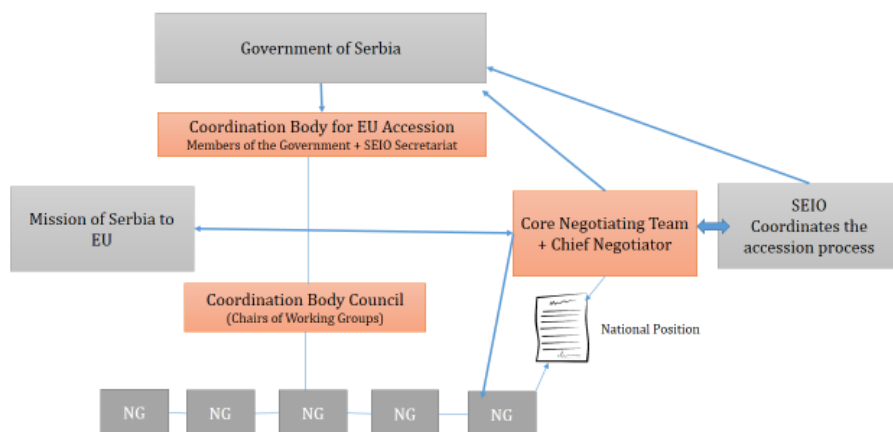
- The Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Process of Implementation of Analytical Review and Assessment of Harmonisation of the Regulations of the Republic of Serbia with the Acquis Communautaire of the European Union and their Implementation (Screening);
- The Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Procedure of Preparing the Negotiating Positions in the Process of Negotiations on the Accession of the Republic of Serbia to the European Union.¹³⁶

The role of the institutions which have had a substantial role in the EU integration process of Serbia to date will be additionally reinforced with the process of accession negotiations. Serbian European Integration Office (SEIO) will continue to be the focal institution with the greatest responsibilities in the EU affairs in charge for, among others, coordination and preparation of the accession negotiations, inter-ministerial coordination in that matter, as well as for providing the assistance to the ministries with regards to harmonisation of the national legislation with the EU acquis. The Mission of Serbia to the EU in Brussels is expected to be reinforced in the future, as it represents the main channel of communication with the European Commission the European Parliament and the Council of the EU, as well as secretariat of the Intergovernmental Conferences. The Minister in charge of EU Integration will enshrine Serbian commitment to the EU membership at the high political level. The role and scope of the involvement of the National Parliament of Serbia in the accession negotiations is yet to be decided.

¹³⁶ Available on the website of the Serbian European Integration Office:
<<http://seio.gov.rs/documents/national-documents.834.html>>



Illustration 5. EU Accession Negotiations Coordination Structure



V.2. Coordination of EU Policies in Member States

V.2.1 Why does National Coordination of EU Policies Matter?

In the course of the development of today's European Union, from the founding Treaty of Rome to the current Lisbon Treaty, the number of policy areas subject to EU decision-making has grown progressively. Likewise, the amount of workload and the complexity of the EU decision-making procedures have evolved, requiring from the member states to become better prepared and organised while participating in the EU policy creation and decision-making processes. For the sake of having their voices heard during the negotiations within the formations of the Council of the EU (the various Councils of Ministers), the member states are challenged to develop sophisticated national coordination systems which would enable them to negotiate EU policies in their favour.

V.2.2 National Coordination of EU Policies: Actors

The 28 member states of the EU are represented in the Council of the European Union, a body that is supported by a Secretariat and more than 150 different Working Groups (often also called working parties, and some of them entitled as committees) at different levels of hierarchy, which prepare the ministerial meetings. Council Working Groups comprise member state representatives that either come from the capitals or from the PermReps in Brussels. While most of the expert and technical work is done

by the lowest-level Working Groups, the items of political nature tend to climb up to the higher level ones. At the highest level, the countries are represented by their ministers, at which level the Council meets in 10 different formations (Economic and Financial Council, Environment Council, Agriculture Council, etc.).

Permanent Representations (PermReps) are the member states' "embassies" in Brussels. Each PermRep is staffed with civil servants coming from the line ministries, with the Permanent Representative to the EU as the Head of the Mission. The Permanent Representative represents the country in the Committee of Permanent Representatives (COREPER),¹³⁷ the highest level working group in the Council that prepares ministerial meetings and filters the previous work done by lower-level working groups. The role of the PermReps is threefold:

- gathering intelligence on developments in EU affairs and reporting to the capital;
- representing its country's position on a given topic in the Council Working Groups by transmitting the Instruction;
- and if possible, to influence the developments on the ground in favour of its country.

The capacities of PermReps to influence EU policies and the level of their independence vis-à-vis the capital vary considerably from one member state to another. The member states whose PermReps are actively involved in formulating national positions, by submitting to the capital comprehensive comments outlining problems at stake, analysis of possible positions of other member states and possible solutions, increase their chances of achieving success in Council negotiations.¹³⁸

¹³⁷ There are two COREPER formations: COREPER II, represented by the ambassador, the Permanent Representative, which deals with justice and home affairs, general affairs and external relations, as well as economic and financial matters. COREPER II also prepares EU summits that bring together the 27 heads of government or state. COREPER I is comprised of Deputy Permanent Representatives and is in charge of employment, social policy, health and consumer affairs; competitiveness, internal market, industry and research; transport, telecommunications and energy; agriculture and fisheries; environment; education, youth and culture.

¹³⁸ Panke, Diana. Good Instructions in No Time? Domestic Coordination of EU Policies in 19 Small States, *West European Politics*, Vol. 33, No. 4, 2010. Available at: <DOI: 10.1080/01402381003794613.>

V.2.3 National Coordination Cycle

Whereas the member states' practices in coordinating EU affairs and negotiating with success differ considerably, the common basic elements of the coordination cycle could nevertheless be extrapolated. Namely, the development of the positions for EU negotiations normally starts with the receipt of the Commission's legislative proposal by the relevant Council working party. The member of the working party from a given country forwards the proposal from the PermRep to the EU coordination unit of the lead line ministry or, in some countries, to the centralised coordinating body, most often situated in the Ministry of Foreign Affairs or directly under the Office of Prime Minister, which decides what is the lead ministry for the issue in question. Domestic procedures of each country prescribe the extent to which the national Parliament is involved (its involvement can range from being informed to having veto powers) and the consultation mechanisms with stakeholders. Once the lead ministry together with the relevant actors decides on the content of the national position, it sends the instruction either directly to the PermRep or submits it to the centralised coordination body. Upon the verification of the content and whether the envisaged procedures have been met, the coordination body sends the instruction to the PermRep to be defended.

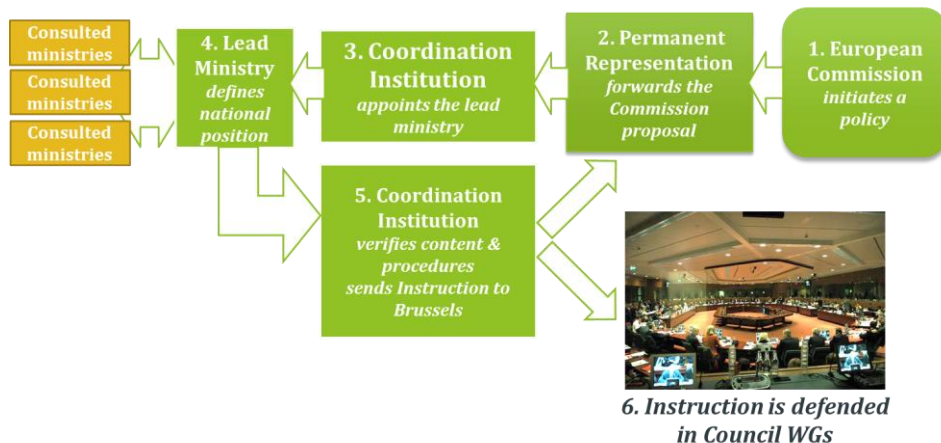
Based on this simplified overview of the coordination cycle, the EU member states' coordination systems can be sub-divided into two groups: centralised and decentralised,¹³⁹ depending on whether the communication between the PermRep and the lead ministry is direct or it involves the intermediary, i.e. the central coordination body. Both types of coordination systems have their advantages and disadvantages. On the one hand, coordination of horizontal and cross-cutting questions, as well as prioritisation of issues, require centralisation, while on the other hand, the risk of overburdening the central coordination body and the demand for expertise require delegation of tasks among the key players.¹⁴⁰ Striking the right balance

¹³⁹ Typology proposed by Kassim et al. in: "The National Co-Ordination of EU Policy: The Domestic Level."

¹⁴⁰ Gärtner, Laura, Hörner, Julian and Obholzer, Lukas. "National Coordination of EU Policy: A Comparative Study of the Twelve "New" Member States." *Journal of Contemporary European Research*. Vol. 7, No.1, pp. 78. 2011. Available at: <<http://www.jcer.net/ojs/index.php/jcer/article/view/275/261>>

between these two requirements thus becomes essential for efficient national coordination of EU policies.

Illustration 6. Simplified overview of centralised coordination systems



V.2.4 Importance of Interministerial Coordination

Since the majority of EU policy issues are cross-sectoral and can be of interest to multiple ministries, interministerial coordination represents one of the most important aspects of national coordination for the EU decision-making process. As internal conflicts of interests among line ministries tend to arrive frequently in the context of EU decision making, member states have established formalised mechanisms for resolution of inter-ministerial disputes. The efficiency of these dispute practices and mechanisms can determine substantially the quality of defending the national positions in the Council arena, since late and inefficient reactions undermine the country's ability to proactively take part in the negotiations.¹⁴¹ It also damages the country's credibility and reputation as a well performing EU member state.

V.2.5 Getting to Good Instructions/Negotiating Positions through Policy Analysis

During the complex and lengthy process of negotiating a certain EU policy, for each member state the challenge is, on the one hand, to assure consistency in defending its position during the entire process of negotiations in the Working Groups and, on the other hand, to maintain its

¹⁴¹ Panke, Diana, p. 780.

proactive stance from the earliest stages of negotiation. At the same time, member states are challenged with the necessity to transpose a growing number of EU directives, caused by the extension of EU competences with the Lisbon Treaty, into their national legislation in relatively short deadlines. For those reasons, they need to invest considerable resources in increasing their capacities for policy analysis. Robust analysis for anticipation of EU policies – the Commission’s proposals – facilitates the fulfilment of both the rights and the obligations of EU membership, i.e. both the right to influence new policies to the benefit of the national interests and the obligation to implement EU policies in a correct and timely manner. Additionally, it can ensure that new EU policies are applied with minimum costs and with maximum benefits to the citizens and businesses.

In this matter, the craft of arriving at a harmonised national position on a certain EU policy and formulating it through an Instruction to be defended in the Council of the EU is a crucial one. A well-written Instruction and the manner in which it is defended is a result of a functional national coordination machinery, supported by sound national capacities for policy analysis. In fact, previously conducted research in the 19 small and medium-sized member states found that the countries in which the communication between the PermRep and the capital functions smoothly, where the internal coordination procedures are straightforward and where the inter-ministerial dispute mechanisms are efficient tend to produce higher quality national instructions and be better prepared for the negotiations on EU affairs.¹⁴² It was equally demonstrated that national Instructions supported by evidence and sound arguments enable the country to negotiate in Brussels effectively.¹⁴³ Bearing in mind the number of national actors and procedures involved in formulating the national position for the EU negotiations, the described dynamics and nature of EU negotiations consequently demand a high level of policy analysis skills from almost the entire national administration. The Latvian practice of formulation of national Instructions below is a pertinent example of the linkage between effective policy making and the performance of a country in the Council negotiations.

¹⁴² Ibid, p. 772.

¹⁴³ Ibid, p. 778.

Content of Instruction for Council of EU Working Groups: Latvia

The content of the Latvian Instruction respects the principles of evidence-based policy making, as it needs to contain the following information:

- A brief description of the EU policy at stake and the envisaged EU voting procedure;
- Analysis of the Latvian situation on the matter, including the impact on the state budget;
- National stance of Latvia and specific interests to be defended;
- Opinions of other EU member states;
- Attitudes of other EU institutions;
- Description of the harmonisation procedures, together with potential diverging views of the ministries;
- Information on consultations held with the civil society and local authorities, foundations, and social partners (trade unions and employers).

V.2.6. EU Accession Negotiations and Negotiations in the EU Context – Policy Making Parallels

In the context of EU membership negotiations, a candidate country can draw a wide range of lessons observing the practices within the negotiations among the member states. Even though the content, the procedures and the dynamics of the accession negotiations significantly differ from the negotiations among the member states, the case study research on national coordination of EU policies in the UK, France, Poland and Latvia found striking examples and parallels that Serbia as a candidate country could consider and emulate in the course of its accession negotiations with the EU. Moreover, both Latvian and Polish interviewees confirmed that EU accession negotiations were a useful learning exercise which pointed to the deficiencies of their policy making and coordination mechanisms which they would need to address in order to uphold membership obligations and perform successfully as member states.

The parallel can especially be drawn between the significance and substance of the Instructions (National Positions) in the EU context, on the one side, and the Negotiating Positions of a candidate country, on the other side. As

expressed by the Polish interviewees, the quality of evidence base outlined in the National Position substantially determines the success of the candidate country in negotiating transitional provisions in its own favour (see more in the following subchapter).¹⁴⁴ Moreover, the functionality of the national coordination system for EU accession negotiations of a candidate country is equally reflected in the content and substance of the National Position. Drawing on the obvious parallels with regards to pertinence of Instructions in the EU context on the one hand, and Negotiating Positions in the accession context on the other hand, for a candidate country like Serbia it is essential to progressively develop and improve the policy analysis capacities of its national actors involved in EU accession negotiations from the earliest stages of accession negotiations. This is crucial not only for the sake of negotiating the transitional provisions successfully, but also because of the need to effectively transpose the growing number of EU directives into national legislation.

V.3. National Coordination of EU affairs in France: Coherent Centralised System¹⁴⁵

France ensures interministerial coordination regarding EU affairs through the General Secretariat for European Affairs (*Secrétariat général des affaires européennes* – SGAE), an institution under the direct authority of the Prime Minister (with a staff of around 200, including 80 policy advisers). The advantage of placing EU affairs coordination at the centre of government is to have the necessary legitimacy over both internal and external affairs. According to the interviewed French experts, if the EU coordination role was given to the MFA, it would not have the same institutional capacity to produce compromises between line ministries and there would be a risk of inconsistency when negotiating in Brussels. For this reason, SGAE staff is seconded from the ministries on a contractual basis and alters every 3-4 years, whereas the Secretary General of SGAE is equally the EU Adviser to the Prime Minister, thus embracing both administrative and political

¹⁴⁴ Transitional provisions or arrangements are agreed between the candidate country and the EU in the areas in which it is not possible for the existing EU rules to apply in full from the date of accession.

¹⁴⁵ The insights in this chapter were provided by Joseph Giustiniani, Adviser on EU integration to SEIO and former SGAE official, as well as the Deputy Permanent Secretary to COREPER I, Adviser at the Permanent Representation of France in Brussels, during the interview in Brussels on 9 September 2013.

functions, which is an exception in French administration. SGAE, together with the French Permanent Representation in Brussels, is the focal institution in the highly centralised French coordination system, characterised by the following features:

⇒ Anticipation and preparation for new EU policies

In close cooperation with the PermRep, SGAE develops tools to prepare for new proposals or policies issued by the European Commission. This is done, for instance, through the analysis of the annual programme of the European Commission. At the very beginning of every rotating presidency, SGAE provides comprehensive information on the priorities of the new presidency as well as on the state of play of each EU proposal. This dossier is sent to the Presidency of the Republic, the Prime Minister's Office, Ministerial Cabinets, members of the French Parliament and members of the European Parliament and to French ambassadors to EU Member States.

SGAE also provides support and expertise to public administration bodies for all issues related to negotiations and cooperation with EU institutions and acts as a centre of expertise carrying out thorough reflection on the future evolutions of the EU. Furthermore, SGAE monitors the formulation of French authorities' responses to open public consultation launched by the European Commission by posting them on its website.

⇒ SGAE coordinates line ministries in the policy development phase of EU legislation.

Once the Commission issues a legislative proposal, one of the 22 thematic sectors of SGAE deliberates which line ministries are concerned with the particular issue and invites them to draft within three weeks a simplified "Impact Fiche" (*fiche d'impact*) – a note indicating which internal legal documents would be altered in case of the adoption of the Commission's proposal, its budgetary and administrative implications, as well as potential difficulties already identified at this stage and finally, the general opinion of line ministries on the Commission's proposal. The preliminary impact fiche is progressively enriched and developed, in parallel with the negotiations on the given text at the EU level.¹⁴⁶ SGAE convenes meetings if needed to settle any disagreement between ministries (see below) or to inform on relevant

¹⁴⁶ Circulaire du 27 septembre 2004 relative à la procédure de transposition en droit interne des directives et décisions-cadres négociées dans le cadre des institutions européennes, Annexe I.

developments in negotiations and continues to be the contact point throughout the entire EU decision-making process until the adoption of the given text or even later. Indeed, SGAE ensures together with the General Secretariat of the Government the transposition of EU Directives and the interministerial settlement of issues related to breaches of commitments in the implementation of EU legislation.

⇒ **Instructions to the PermRep dealt with exclusively by SGAE.**

SGAE is the main interlocutor to the PermRep on the one side, and to the line ministries and other governmental bodies, on the other side (with the exception of the Common Foreign and Security Policy, for which the Ministry of Foreign Affairs is responsible).¹⁴⁷ In other words, the PermRep and the line ministries do not formally communicate and SGAE is the exclusive “middleman” in the process of sending the relevant documentation and proposals and drafting instructions to the PermRep. SGAE also prepares instructions and compiles information for French officials attending EU Councils and the European Council. Such a system is very functional as it prevents potential conflicts of interests and assures a neutral position of SGAE vis-à-vis the ministries. At the same time, having a single and authoritative institution that filters the entire coordination process prevents the risk of cacophony by the French representatives in the Council working groups, caused by potential diverging positions of line ministries. In fact, the French coordination system is so efficient that in 2012, out of 300 dossiers, France did not take its position merely on 3 articles within these 300 dossiers.

Concretely, the coordination cycle in the French system proceeds as follows: The proposal from the Commission is received by SGAE via the PermRep in Brussels. The SGAE operational sectors then decide which is the lead ministry, as well as which ministries should be consulted. The lead ministry prepares the position in consultation with the relevant ministries and sends the position to SGAE. SGAE verifies if all relevant actors have been included in the process, defines the French position to be taken in the Council formations, if necessary after having organised a meeting between the involved ministries and sends it electronically and through diplomatic cable to the French PermRep in Brussels.

¹⁴⁷ Governmental Decree 2005-1283. October 17th 2005.

⇒ SGAE intervenes in reaching a compromise position in case of diverging interministerial interests.

During the process of defining the national position, the situations in which the line ministries would take different positions (for example, industry versus environment interests, or agriculture versus industry) occur frequently. Depending on the difficulties in finding a common ground, there are two ways to resolve the disputes:

1. SGAE convenes and chairs meetings at the administrative level between the representatives of the ministries concerned. If the compromise is reached, the responsible Deputy Secretary-General of SGAE signs the summary of the meeting after which SGAE sends the conclusions as instructions to the PermRep.
2. If the agreement is not reached at the administrative level (which happens in about 5% of the cases), the issue is submitted to the Prime Minister's Cabinet. In the meantime, the conflicted ministers can hold informal consultations with each other. The Secretary General of the SGAE then chairs an interministerial meeting at Matignon (Prime Minister's headquarters) which gathers Cabinet members of the involved ministries. The conclusions of these meetings are prepared in a memo drafted by a member of the Government's Secretariat General (SGG) and sent by SGAE as instructions to the PermRep.
3. In very few cases, and during the French rotating presidency of the Council on a regular basis, the Prime Minister can convene the "Interministerial Committee for Europe" at Ministers' level to give final orientations.

As long as SGAE does not find a common ground between the ministries, the instructions will not be sent to Brussels and the PermRep will abstain from taking a position. Therefore, in order to avoid this situation, SGAE is put under considerable time pressure.

⇒ Proactive PermRep in Brussels

When it comes to defending the national position of France within the Council working groups and bodies, the role of the PermRep goes beyond the mere transmission of the instructions sent from Paris. In fact, since the PermRep officials are permanently based in Brussels and thus follow closely the development of policies, the circumstances and the behaviour of various stakeholders, their expertise and on-ground experience enables them to give

back valuable contributions to SGAE during the negotiations and for the adoption of the instructions. The ‘Brussels-based’ character of the French PermRep allows its staff of 200 experts seconded from the ministries to be well internalised and better prepared for Council negotiations.

In relation to that, the French PermRep invests considerable resources in following closely the work of the Commission and the communications and papers it produces. Timely anticipation of the upcoming initiatives of the Commission by the PermRep is one of the crucial elements in the cycle of formulating the French national position, as the inputs by the PermRep to the SGAE about the developments would subsequently be transmitted to the relevant line ministries, who would have enough time to study and prepare for the issue. In that way, the risks of potential conflicts of interest between line ministries or the unexpected surprises at a later stage are curtailed from the very beginning. Moreover, the permanent presence of the PermRep staff in Brussels allows them to maintain contacts with the Commission officials, transmit the French stance on an issue and informally promote French views ahead of the publication of policy documents.

Table 2. In a Nutshell – Strengths and Weaknesses of the French EU Coordination System

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none">✓ Clear-cut procedures and alternatives for various situations✓ Staff seconded to the PermRep from the Ministries on a 4-year term, allowing them to transfer the knowledge back to the capital and regular turnover of SGAE staff to transfer knowledge to the ministries✓ Coherence and consistence in defending the national position, enabled by the strict channel of communication and the hierarchical power and EU expertise of SGAE✓ Established practice of settlement of inter-ministerial disputes by SGAE	<ul style="list-style-type: none">☒ In complex policy issues, the time-consuming process of defining a national position can sometimes weaken the French position in the negotiations or at least hinder the timely building of alliances within the Council

and constant communication between SGAE and PermRep ✓ Competent and professional PermRep, capable of successfully negotiating French national positions, anticipating Commission's initiatives and influencing the policy making process from the earliest stages	
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V.4. Coordination of EU Affairs in the UK: Consultation Culture translated into EU Context¹⁴⁸

The management and coordination of EU affairs in the UK is performed by the European Affairs Committee, one of the permanent Cabinet Committees. The Committee itself is currently composed of fourteen high-level officials and a number of policy-specific committees.¹⁴⁹ The composition and work of this committee is similar to any other permanent or ad hoc committee established by the Prime Minister, however given the complexity and importance of EU affairs for domestic policies, the European Affairs Committee has greater tasks and responsibilities.

Similarly to the French SGAE, the Committee staff is seconded from the ministries and departments for a period of up to five years. The practice of secondment from the ministries to the centre of government is perceived positively in the UK, as it brings multiple benefits: first, such a system prevents the staff from developing particular Cabinet policies; second, the constant flow of new staff induces fresh insights from the ministries; and third, it trains the civil servants for working at the centre of government. At the same time, the seconded staff is capable of suspending their loyalty to the home ministers during their engagement in the European Affairs Committee, which has so far proven to function well – there is a dominant assumption that the seconded staff will act impartially.

¹⁴⁸ The insights in this Chapter were kindly provided by Simon James, independent government expert and two UK officials from the Permanent Representation of UK in the EU, during the interviews in Brussels, 10 and 12 September, 2013.

¹⁴⁹ UK Government, "Cabinet Committee System", September 2010, p.6, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60639/cabinet-committees-system.pdf>

While the other cabinet committees are formally headed by the Prime Minister, the European Affairs Committee is chaired by the Minister of Foreign Affairs (Foreign and Commonwealth Affairs Secretary of State). This choice is considered to be the right balance between the external and internal aspects of EU policies at the national level. Namely, locating EU affairs at the centre of government assures that domestic considerations in the EU context are treated impartially, while the active involvement of the Foreign Office is crucial notably in gathering intelligence from the EU capitals. Conversely, if the coordination of EU affairs had been placed under the Foreign Office, many fear that it would have undermined the domestic interests for the sake of maintaining good diplomatic relations with the other countries.

In practice, the national coordination of EU affairs in the UK functions as a synergetic triangle between the European Affairs Committee, the Foreign Office and the PermRep of the UK in Brussels:

- European Affairs Committee is staffed with a high percentage of civil servants seconded from the Foreign Office.
- Foreign and Commonwealth Office (FCO) has an EU Directorate which deals with the UK relations towards EU institutions, EU enlargement policy and accession negotiations, European Neighbourhood Policy and EU Common Foreign and Security Policy. Minister for Europe has so far always been a minister under the FCO; likewise, the Head of the British PermRep has always been a FCO diplomat.¹⁵⁰
- The PermRep represents a “mini-Whitehall” in the sense that its staff reflects the administrative composition of the government.

As the system operates on a high level of trust among the actors, it is very well coordinated and the European Affairs Committee is capable of managing the production of instructions reflecting cross-government consultations on very short notice.

The coordination cycle functions in a very similar manner as in France. The Commission proposal is forwarded from the PermRep to the European Affairs Committee, which attributes the item to the most relevant

¹⁵⁰ Miller, Vaughne. “How the Government Deals with EU Business.” House of Commons Library. 10 May 2012, p. 22. Available at: <http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=SN06323>

department/ministry. All the relevant governmental actors are invited to get involved and public consultations are announced on the website of the lead ministry. Upon the collection of inputs deriving from the consultations, the lead ministry is in charge of formulating the national position of the UK on the given topic. The European Affairs Committee would verify whether all the actors have been included before sending the instruction to Brussels.

In reality, the system functions with greater fluidity and constant consultations of the three key actors. The PermRep is actively involved in formulating a national position, as its staff has an on-ground experience and the necessary expertise. The officials from the PermRep would speak regularly to the European Affairs Committee colleagues, write comprehensive reports and constantly gather intelligence on the ground. Their information would be triangulated with the inputs received from the British embassies in the European capitals. Ultimately, it is the European Affairs Committee that would decide and formulate the instruction.

While dealing with EU affairs, the challenge for the European Affairs Committee and other actors involved is not only to formulate the national positions under tight deadlines, but also to take into account the eventual trade-offs and compromises to be made in relation to other member states. With the high number of EU items on the national agenda, the British coordination machinery is required to prioritise issues of concern to the UK within the Council. In such a context, consultation and coordination among all national stakeholders is both a necessity and in the interest of all the parties: if one ministry/department wants to have its issue placed high on the agenda of the UK in the Council, it cannot act in isolation, but is instead motivated to work together with other internal actors.¹⁵¹ Based on this example, the linkage between the national and EU policy making is rather obvious: if a country does not possess capacities to coordinate internally, it risks to be unprepared for the EU negotiations context.

The UK officials sitting across various Council working groups have considerable flexibility while presenting the British national position. That is to say, they are allowed to adapt to the flow of discussions and actively participate without compromising the substance of the national position formulated in London. The overall coordination system makes it possible to write a good quality instruction: neither too detailed nor vague, supported

by arguments, outlining possible solutions and leaving certain leeway to the UK representatives in the Council.

What Can Serbia Learn From the UK and French Examples?

- PermRep which efficiently collects information on the developments in Brussels and on the Commission initiatives;
- PermRep officials are highly skilled in writing reports and analyses to inform the capital; their inputs are taken into account when formulating a national position;
- The practice of secondment from the line ministries to the EU coordination body (European Affairs Committee in the UK/SGAE in France).
- In case of the UK, the network of its embassies in European capitals is a strong tool used while lobbying for the British case, forging coalitions and gathering intelligence.

V.5. Coordination of EU Affairs in Poland Pre & Post Accession: a Valuable Experience¹⁵²

The case of Polish policy making and coordination of EU affairs is a pertinent example for Serbia on how a well-functioning system, based on timely preparations, highly competent civil servants, thorough analysis and sound coordination mechanisms has positively contributed to a country's transformation into a respected and important political player within the EU. The system and practices have evolved gradually, as Poles have been learning how to capitalise on their initial mistakes and lack of experience in EU affairs. The learning process has been used in order to continuously improve the system, due to which numerous features of the Polish system can be taken into consideration.

¹⁵² The insights on Poland's negotiation and coordination practices and structures were kindly provided by: the officials from the Ministry of Finance of Poland, Ministry of Foreign Affairs of Poland; as well as the three high-level experts closely engaged in Poland's EU accession process during the interviews in Warsaw on 3 and 4 September 2013.

V.5.1 Pre-Accession Coordination System of EU Affairs in Poland (1996-2004)

During the negotiation process for EU membership, the European Integration Committee, (Urząd Komitetu Integracji Europejskiej – UKIE) had the focal role in coordinating the government’s work on adopting the EU *acquis* and undertaking the association and accession process. Various arrangements were considered and eventually the Polish model was designed as similar to that of the French coordination system. Like SEIO in Serbia, UKIE was placed directly under the Prime Minister’s Office.

Relations between the actors involved in accession negotiations

Before accession to the EU in 2004, notably in the very early stages of the pre-accession process, there was a discrepancy to a certain degree between the UKIE and the line ministries with regards to their expertise in EU affairs. Namely, as a newly created institution, UKIE recruited young graduates with European academic background, knowledgeable on both domestic and EU legislation and procedures and was able to offer competitive salaries to the newly recruited experts. At the same time, due to the deficiencies in internal capacities and a heavy workload, the ministries would often fail to deliver on the necessary tasks required by the accession process. The EU affairs departments within the ministries would, being the middleman between UKIE and internal units, tend to have difficult relations with UKIE on the one side, but on the other side would be perceived as “UKIE agents” by their own ministries.

The rationale for creating separate EU departments was to create in-house coordination of EU affairs between various organisational units in the ministries, who in a way remained excluded from the EU integration process. In the opinion of some Polish interviewees, internal EU coordination units were essential to disseminate information and expertise among other units of ministries. According to other Polish interviewees, this was a bad approach which should have been avoided. Instead, the entire ministries should have been involved in the accession process, for two reasons:

- because the accession process and the EU *acquis* go beyond mere negotiations, as they concern the transformation of the entire society;
- for the sake of later membership obligations, for which the capacities of the EU departments do not suffice.

The Polish accession process experience exemplifies the general phenomenon that was observed in the 2004 enlargement: namely, for the candidate countries that joined the EU in 2004, the negotiations “at home” and finding a consensus internally turned out to be equally demanding, if not more so, than the accession negotiations vis-à-vis the Commission.¹⁵³ In Poland’s case, internal coordination was a heavy-handed task, performed by UKIE and Directors of EU departments as the Commission’s main interlocutors. Internal units of ministries at times tended to expect EU coordination units to take on board the substance of the pre-accession work, whereas they were relieved of such work and limited to domestic affairs. This approach was dominant until it was generally accepted that the EU accession process is in its substance an internal, domestic exercise.

Therefore, strong political guidance and leadership were extremely important elements of the accession negotiations. In Poland’s case, it was ensured by the subordination of UKIE under the PM office, which gave UKIE a certain leverage towards the ministries. Namely, when preparing the national positions in the negotiations, the very fact of being located under the PM’s office gave UKIE the necessary credibility and authority while negotiating internally with the ministries. The UKIE team, together with the technical experts from the line ministries, knew well the substance of negotiations and of the National Programme of Preparations for Membership (NPPM). Since EU negotiations represent a continuous learning process for the ministries, according to the Polish interviewees, having the institution which would act as a sort of a guide and “beacon” in the course of the accession period is of utmost importance for successful negotiations.

With regards to negotiating the transitional provisions and exemptions, the essential factor that played in Poland’s favour was its ability to convince the EU counterparts with arguments, as well as to demonstrate oneself as being consistent and united. In Poland’s case, once the need for an exception would be identified, the negotiating team would look for the already existing precedents and base the national position on arguments. Even though the precedents would not always be “bought” by the Commission, it was still

¹⁵³ View expressed by some interviewed Polish civil servants. See, also: Dimitrova, Antoaneta and Toshkov, Dimiter. “The Dynamics of Domestic Coordination of EU Policy in the New Member States: Impossible to Lock In?” *West European Politics*, Vol. 30, No.5, pp. 961 – 986. Available at: <<http://www.dimiter.eu/articles/07%20WEP%20-%20%20Co-ordination.pdf>>

important to master them and be prepared to take advantage of them. Nevertheless, apart from good negotiating structures combined with strong political leadership and the described features, the “opportunity factor,” i.e. favourable external circumstances and political momentum had an additional positive impact on Poland’s EU accession process.

Table 3. In a Nutshell – Strengths and Weaknesses of the Domestic Coordination of the Polish Accession Process

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> ✓ EU Coordination Office (UKIE) under the PM office: leverage and authority vis-à-vis the ministries ✓ Highly skilled and competent staff within the Coordination Office and the EU departments in the line ministries ✓ Trainings to UKIE by external experts & to line ministries by UKIE ✓ Well-written and implemented NPM ✓ Good argumentation and knowledge of precedents, resulting in successfully negotiated transitional provisions ✓ Established network of contacts in Brussels 	<ul style="list-style-type: none"> ☒ EU Departments in line ministries as islands: the ministries were not always engaged in the accession process, especially at the beginnings; repercussions for the membership ☒ Challenged communication between UKIE and line ministries, especially in the initial phase

V.5.2 Coordination in Poland Post-Accession

Unlike the accession negotiations, during which the candidate country is mainly focused on the European Commission as the main interlocutor, becoming a member state requires resources for coordination of national administration also towards other EU institutions, mainly the Council of the EU. In Poland’s case, it took some time to fully acquire the “membership mentality,” i.e. to shift from a reactive to a proactive approach within the Council negotiations. The first years of membership were for Poland a learning exercise on gathering information on the Commission’s initiatives and the developments in Brussels, since building contacts requires certain time. For this reason, Polish interviewees pointed out the importance of

investing in building contacts already during the accession period, and especially during the EU observer status period (the period between the signature of EU Accession Treaty and its entry into force). Moreover, learning how to cope with the EU decision-making process and take active participation in the Council negotiations was a major challenge in the first years of membership. However, by failing and learning from past mistakes, Poland has gradually improved its performance in defending its national positions in the Council and is considered today by other EU member states as a strong and influential political actor in the EU.

Coordination system and structure

In 2010, UKIE ceased to exist and the EU affairs coordination system was moved to the MFA, with most of the coordination work done by the Department of the Committee for EU Affairs. The rationale for moving the EU coordination affairs structures under the MFA was, inter alia, to take advantage of the MFA for communicating more easily with the embassies of the member states. The Deputy Minister of Foreign Affairs is at the same time the Secretary of State for EU affairs and plenipotentiary of the PM for preparations for the European Council, so his double-hatted function covers both external and internal aspects of EU membership. However, the political decision of relocating EU coordination from PM to MFA structures met with diverging opinions, where the majority of the interviewees expressed an opinion that EU coordination tasks should in fact be performed under the PM's office.

The system for coordination of EU affairs in Poland was established in 2003 and it has been improved and upgraded four times so far. It functions as follows:

- The EU Council Secretariat General sends the draft EU proposal to the Department of the Committee for EU affairs within the MFA (hereinafter: EU Department), with a copy to the Perm Rep.;
- The EU Department decides which is the lead ministry and copies others interested;
- The Ministry has two weeks to prepare a draft government position;
- The position is sent again to the EU Department for presentation for adoption by the Committee for European Integration.
- The adopted draft position is sent to the Polish Parliament for a discussion. The Parliament issues its own opinion on the EU proposal. If

the positions of the Government and the Parliament match, the draft Government position is the base for negotiating instructions for working groups and committees. If they differ, the Government is obliged to reconsider its position and either incorporate the parliamentary position into its own or pursue the initial position. In the latter case the Government has to justify its decision to the parliament.

- If necessary, the EU Department intervenes to reconcile different interests of the ministries and act as an honest broker. The intervention is done informally, through email, telephone, joint meetings or at the level of the Preparatory Team of the Committee for European Integration. However, if the inter-ministerial clashes occur at a particularly sensitive moment in terms of the decision making procedure or the issue holds political sensitivity, reconciliation is done in a formal manner, usually at the Committee for European Integration level.

Failing, practicing and learning

The functioning of the domestic coordination system for EU affairs had a difficult start in Poland. The ministries were cautious, at times hesitant to take part of the newly established mechanisms, as they were challenged with the need to react quickly on issues which were quite new and where expertise had yet to be acquired in some cases. There were situations in which one ministry was involved in negotiations in Brussels, but did not report the outcomes to Warsaw properly. In such situations, the line minister would blame Brussels for his failure. Following several similar cases, ministers started to be cautious not to surprise other members of the government and “embarrass” themselves at home. Such situations highlighted the necessity to additionally reinforce the internal resources for policy coordination.

Back in Brussels, the staff in the PermRep needed to practice to become more prominent actors within the negotiations in the working groups and committees. The important elements included gathering intelligence, reporting back to Warsaw and defending the national position in a coherent manner. At times, the communication between the PermRep staff and the line ministry could be difficult, as the line ministries would not understand the importance of building coalitions in the Council formations and the need to compromise. Instead, according to several interviewed Polish civil servants, the ministries would sometimes insist that the national instruction

is followed literally, despite the obvious necessity to be more flexible. In order to arrive at a unified national position, field visits by the experts in line ministries from Warsaw to Brussels in order to participate in the working groups would often have a positive impact, as their presence on the ground would make them aware of the nuances and the complexity of the negotiation process.

Unlike “old” member states which have a high propensity for gathering intelligence on the developments within the Commission, according to several interviewees, Poland is still developing skills and resources to influence the Commission with better success. With the aim to anticipate more efficiently the Commission’s initiatives and to be better-prepared, the system of “Fiches” was created in 2011. The Fiche represents an in-house impact assessment document that describes the essence of the proposed initiative, the main actors, potential problems, economic impacts and Polish interests in the matter, and it would be marked with high, medium or sectoral priority. The Fiches are produced jointly by the line ministries, the MFA and the PermRep.

The system of Fiches has helped Poland significantly to get involved from the very early stages of the negotiations. In fact, the two weeks envisaged for adoption of a position represent a formality, while in reality the issue is followed via the system of Fiches from the very beginning of the EU policy cycle.

The rotating EU Presidency chaired by Poland in the second half of 2010 represented an invaluable experience for strengthening Poland’s role and image within the EU. The benefits and lessons learned from the Presidency were numerous. In terms of human capital, the officials in Warsaw had extensive trainings on procedures, soft skills, languages, etc., while the PermRep in Brussels doubled in size. In that way, the number of Polish civil servants familiarised with EU affairs increased substantially in a short period of time. With regards to its image and political weight, the Presidency helped Poland “mature,” i.e. transform itself into a serious political player. Despite the fact that the Presidency was happening in the middle of the EU crisis, Poland effectively chaired the Council formations. Poland also took advantage of the Presidency for its own cultural promotion.

The key to success of the Polish Presidency lies in timely and thorough preparations, which were initiated four years in advance. In these

preparations Poles sought advice from the older member states and learned from their practices. From July 2008 to June 2011, Polish government passed over 50 preparatory documents for the Presidency – communications, programmes, rules of procedures, decisions, etc.¹⁵⁴ Clear and realistic aims of the Presidency were defined as well as the ways to achieve them.

Overview: Factors that contribute to Poland's performance in EU negotiations

- Proper and timely planning of national positions through anticipation of Commission initiatives
- System of fiches: in-house impact assessment for writing national positions
- Proactive PermRep in Brussels
- Experience from the Presidency
- Personalities matter – currently, dynamic Deputy Foreign Minister in charge of EU affairs; increasingly competent civil servants; continuity in desks responsible for areas and particular cases;
- Size also matters

V.6. Coordination of EU Affairs in Latvia: Why Evidence-Based Policy Making Matters

In countries like France, the UK and Poland, performance in EU negotiations is determined not only by internal coordination mechanisms and capacities, but also by their size. In practical terms, even when internal coordination problems would occur in these countries, they could be concealed and overwhelmed by the voting power and considerable coalition potential of these countries.¹⁵⁵ Conversely, small countries such as Latvia cannot rely on their size and thus the need to structure their national positions in a consistent manner from the earliest phases of the negotiations. Being a small

¹⁵⁴ Ministry of Foreign Affairs of Republic of Poland, “Report – Polish Presidency of the Council of the European Union.” Warsaw, April 2012, pp. 17-19. Available at: <http://www.mf.gov.pl/en/c/document_library/get_file?uuid=bd7c8f63-bcc4-4353-bd27-65389fe95357&groupId=764034>

¹⁵⁵ Claim confirmed by the majority of the French, UK and Polish interviewees.

member state in the Council negotiations is not an easy task, and the national coordination system needs to be constantly improved.¹⁵⁶

In other words, for a successful outcome in the Council negotiations, small countries like Latvia need to invest in their human resources, since the result of negotiations may depend substantially on the personal capabilities and preparedness of the officials. In Latvia's case, its officials in the Council groups and committees are competent, well prepared, documented and active in meetings. They are also very successful in infiltrating national positions into the agenda at the early negotiation stages. At the same time, Latvia cannot afford to take a stance on each proposal of the Commission, but instead its centre of government sorts out the policies of priority or highest interest to Latvia, for which the national position would be developed.¹⁵⁷

Linkage between the national and EU policy making

According to the Latvian Law on Development Planning System from 2008, which regulates the types of national policy planning documents and their hierarchy (see the section IV.2.4 on Latvia's policy making), it is the Cabinet of Ministers that determines which documents would be necessary to develop for the protection of Latvian objectives within the EU, as well as the procedures for drawing up, co-ordination, approval and updating of these documents.¹⁵⁸ This chapter of the law is further elaborated through the regulation of the Cabinet of Ministers which sets out in detail the procedures for development, stakeholders' participation and the approval of the national position,¹⁵⁹ as well as by the Cabinet Instruction which proscribes the procedures for the circulation of information about the development of the national position.¹⁶⁰

¹⁵⁶Interview with a Latvian representative in the Mertens working group (coordination of COREPER I). Brussels, 11 September 2013.

¹⁵⁷ During the meeting of Senior Officials, the body composed of high-level civil servants from the ministries, the EU initiatives for which Latvia intends to develop a position are identified.

¹⁵⁸ Development Planning System Law, adopted by the Parliament on 8 May, 2008, in force since 1 January 2009, Section 8.

¹⁵⁹ Cabinet of Ministers Regulation No. 96. Procedures, by which the National Position of the Republic of Latvia shall be Developed, Harmonised, Approved and Updated in Matters of the European Union, 2009.

¹⁶⁰ Cabinet of Ministers Instruction No. 4, February 2009.

Content of Instruction for Council Working Groups: Latvia

The content of the Latvian Instruction respects the principles of evidence-based policy making as it needs to contain the following information:

- A brief description of the EU policy at stake and the envisaged EU voting procedure;
- Analysis of the Latvian situation on the matter, including the impact on the state budget;
- National stance of Latvia and specific interests to be defended;
- Opinions of other EU member states;
- Attitudes of other EU institutions;
- Description of the harmonisation procedures, together with potential diverging views of the ministries;
- Information on consultations held with the civil society and local authorities, foundations, and social partners (trade unions and employers).

Main actors in the development of the national position

Latvia has a loosely centralised coordination system, in which the Ministry of Foreign Affairs plays a coordination role, while the lead ministry is in charge of developing the national position. The important actor in the coordination process and political guidance are the meetings of Senior Officials chaired by the Secretary of State of the Ministry of Foreign Affairs. This formation meets once a week to determine the responsible ministry for a particular proposal of the Commission and decide the timeframe for the development of the national position. The lead ministry would subsequently put the Commission's proposal to public consultations with the stakeholders, who receive the information about the call through the ministry's website and via e-mail. After the closure of the consultations period, the national position is further developed. In case the policy affects crucial national interests of Latvia or concerns the scope of work of several ministries, the developed national position needs to be transmitted again to the Senior Officials, before the final approval by the Cabinet of Ministers. Lastly, the national position is submitted to the European Affairs Committee

of the Parliament, whose opinion is binding.¹⁶¹ The national position is then forwarded to the MFA which sends it to the PermRep in Brussels.

The role of the Ministry of Foreign Affairs in this process is that of a neutral referee in case of conflicting positions of the different ministries, as this ministry is considered not to have its own agenda on the sectoral policies. Moreover, this ministry is renowned in the Latvian administration for the knowledge and expertise of its civil servants.

What Can Serbia Learn From the Polish and Latvian Experiences?

- The positive outcomes of Council negotiations are highly dependent on the national coordination and policy making systems
- Creating evidence-based national instructions, on the basis of standardised, ex ante impact assessment policy papers (called Fiches in Poland)
- Improving the coordination system by learning from its failures and identified limitations
- Investing in human resources and building contacts

V.7. A Roadmap for Serbia – Evaluation of Options

Option A: Decentralised coordination system

- Dismissed, because it would create the danger of cacophony of Serbian voices in Brussels and jeopardise the capacity of the Government to present a unified position in the negotiations. Moreover, especially in the accession negotiations, it is crucial to have strong guidance and authority by the Prime Minister in order to establish the country as a credible partner to the EU.

Option B: Strongly centralised coordination system, under the Office of the PM/General Secretariat

- Role models: French SGAE and Polish UKIE.
- Implementation of this option would entail a strong single focal point at the centre of government, which could be either a separate institution

¹⁶¹ Government Regulation No. 96, 2009.

(SEIO) or part of the government office (General Secretariat of the Government). In the Serbian system so far, it has been demonstrated that for the performance of new and challenging coordination tasks a more successful strategy is the one of establishing and/or maintaining separate institutions at the centre of government (cases in point are SEIO and the Office for Regulatory Reform and RIA).

- In the long run, after accession, this option could entail merging of several coordination institutions at the centre of government, in order to eliminate the separation between domestic and EU policy coordination (however, many EU member states maintain separate coordination bodies dealing only with EU policy).

Advantages. Implementation of this option results in a clear chain of command and a clear-cut division of roles and responsibilities. A strong coordination point at the centre of government (SEIO) ensures that diverging positions of ministries are filtered at home, before reaching the Mission in Brussels, and that Serbia speaks with one voice in the EU capital.

If in the long run the option would be extended to the merging of several coordination institutions at the centre of government, the positive result would be the spillover of skills and competences held by the staff of SEIO (and possibly the Office for Regulatory Reform and RIA) to the General Secretariat of the Government. A merger of these institutions could help induce the reform of the GSG structures as well, which would help ensure sustainability of the reforms required by the EU accession. Otherwise, if the General Secretariat is left unreformed after accession, the lack of EU conditionality may result in total failure of the policy making and coordination aspects of PAR.

Disadvantages. In the long run the burden of passing all proposals and issues through a single coordination centre could become overwhelming and reduce the efficiency and effectiveness of the system. Nevertheless, this disadvantage mainly relates to the post-accession situation and it can be remedied through adequate gradual and carefully monitored increase in SEIO's capacities.

Option C: Loosely centralised coordination system under the Office of PM, with the strong participation of MFA

- Role models: Latvia, UK
- This option presupposes a lead role for the central coordination institution (SEIO), with a strong supporting role for the MFA which ensures coordination with Serbian embassies in EU capital and EU

member states' embassies in Belgrade. It would also involve strengthening of the role of the Mission of Serbia in Brussels, through investing in human resources on the ground (staff of the Mission), which would feed the national coordination structures with the gathered information and analysis.

Advantages. The main advantage is related to the possibility to make use of the MFA's network of embassies in the EU capitals, especially for lobbying purposes. Given the fact that Serbia's progress in accession negotiations will be heavily influenced by political conditionality (normalisation of relations with Pristina), influencing the EU member states may be equally important as influencing the Commission. As witnessed by the interviewees, an early presence and intelligence gathering induces better preparation and results in negotiations.

Disadvantages. In case of Serbia, the key disadvantage relates to the potential risk of not speaking with a single voice, which can be prevented by establishing a strong hierarchy and division of tasks among the actors involved.

Option D: Centralised coordination system, under the MFA

- Role model: current Polish system, which functions well in the current membership context. However, several Polish actors have expressed a view that the previous system with coordination under the Prime Minister was better suited to the needs of EU accession and E policy coordination.

Advantages. Involving the network of embassies more closely in the process would be useful if Serbia wants to profile itself as a member state that takes advantage of its geo-political position and launches good (foreign) political initiatives (regional cooperation, fostering relations with Russia, Turkey, China).

Disadvantages. EU affairs are a domestic than foreign affairs topic. There is a risk that the PM would not have the entire control over the system. The MFA staff may not have sufficient expertise in every EU issue.

VI: Conclusions and Recommendations

This study sought to demonstrate that out of all stages of the policy cycle in Serbia, the policy formulation stage is the least developed, with negative implications for the other stages as well. If problem analysis is not properly performed and policy goals and objectives are not defined, then it will not be possible to set indicators for measuring success of the policy and monitoring its implementation as well as evaluating its overall impact. Furthermore, if policy options are not well analysed and considered and their impacts assessed early in the process, then the legal drafts will not ensure that the best approach to solving a problem is adopted and amendments (or even new legislation) might soon be necessary to address implementation and enforcement problems.

The policy process in Serbia is largely focused on the legal drafting phase, with insufficient preceding analysis and assessment. Various supporting documents (annotation, impact assessment of laws, etc.) are tied to legal drafts submitted for Government's consideration, but policy analysis is not otherwise regulated. Policy proposals in fact reach the Government at a stage when no intervention into policy direction is possible, as the public administration authority proposing a legal draft has already enshrined a policy approach into the submitted text. Whereas multiple elements necessary in a sound and evidence based policy process are scattered around the relevant documents which provide for the legal framework in this area, they do not comprise a coherent system and they lack additional elements which would support proper policy formulation.

Taking into account the policy making systems of the examined countries, the UK can be a role model for Serbia in numerous aspects, as its policy formulation practices are focused on creating evidence-based policies, elaborated consultations with internal and external stakeholders and opting for regulation only after other options are thoroughly analysed, while the centre of government steers the process from the earliest stages of the policy process and requires policy clearance prior to legal drafting. Latvia's case shows that evidence-based policies have helped the country run more efficiently, consequently making the major policy making reforms from 2000s durable and sustainable. Additionally, Poland is a pertinent case in which the public administration itself progressively became aware of the effectiveness of evidence-based policy making, which led to the gradual improvements to its policy making system.

The Study equally demonstrated the intrinsic linkage between the quality and functionality of national policy making systems, on the one side, and the performance of the candidate country/EU member state while arguing for its national position in the framework of accession negotiations/Council negotiations. Even though the content, the procedures and the dynamics of the accession negotiations significantly differ from the negotiations among the member states in the Council of EU, the parallels are striking between the National Positions in the EU context and the Negotiating Positions in the accession context. In fact, the quality of evidence base outlined in the Negotiating Position can substantially determine the success of the candidate country in negotiating transitional provisions in its own favour. The performance of the national policy coordination system, including the EU accession negotiations coordination system, can be evaluated based on the manner in which the Negotiating Position is argued for and defended in front of the EU. The same can be said of the National Position in the Council negotiations, upon accession.

The experiences of the examined EU member states, together with the analysis of context in which Serbia is negotiating its EU membership, indicate that the national policy analysis capacities of a candidate country need to be developed from the earliest stages of negotiations, not only for the sake of negotiating the transitional provisions successfully, but also because of the need to transpose the growing body of EU law into national legislation effectively. The Serbian national coordination system for accession negotiations, mainly relying on the Core Negotiating Team, Negotiating Groups and SEIO, with support of appropriate domestic capacities for policy making and coordination, is challenged to build capacities which would assure that Serbia speaks with a single voice while arguing for the National Positions and fulfil agreed tasks in a consistent manner.

Finally, by developing its policy making and policy coordination systems early in the EU accession process Serbia would prepare itself to act as a proactive member state in the Council of the EU from the early days of its membership, thus making maximum use of the rights and benefits involved in being an EU member state.

Recommendations for Improvements of the Policy Making and Coordination System

Based on the analysis of the Serbian present system for policy formulation as well as the good practices in the four examined EU member states, the three key recommendations for Serbia are:

- To enshrine the policy analysis and policy formulation element into the on-going reforms of the legal drafting and policy planning processes and systems, in order to ensure consistency and synergies among the different reform efforts, inter alia, by improving and widening the application of RIA.
- To introduce a policy paper (“policy basis”) type of document into the existing legislative framework regulating the public administration tasks and Government decision-making, so as to create a formal mechanism for proposing policy options and policy solutions to both the individual decision-makers and to the Government, before any decision to regulate is made.
- To supplement the efforts related to the improvement of skills for legal drafting, civil servants should be trained in policy analysis, collection of evidence, problem analysis and other relevant skills and techniques of major importance for the capacities of the civil service to produce sound and evidence based policies.

The analysis of the policy making and coordination systems of the UK, France, Poland and Latvia reveal three key recommendations with regards to the linkages of policy making and negotiations, both EU accession ones and those in the Council of the EU upon accession:

- Reforms of the policy making system and process should be implemented as early as possible in the accession/EU membership negotiations process. Gaining experience and developing skills for evidence based policy making takes time and the state needs to join the EU policy making system and negotiations as ready as possible.
- Ensuring well analysed, well-coordinated, widely consulted and well-argued negotiating positions should be made a priority in the negotiating process, as they substantially increase the country’s performance both in the EU accession negotiations and in post-accession negotiations in the Council.

- The Serbian administration should maximise its presence in Brussels through direct meetings with EU and member state officials. Frequent meetings and preparations for them increase the awareness of the need to participate with evidenced and well-coordinated arguments and positions as well as increase the knowledge and professionalism of the civil service, which increases Serbia's credibility with European interlocutors and, indirectly, its chances of negotiating more favourable conditions of EU accession.

Based on these key recommendations, a number of smaller scale, related recommendations can be defined, to complement and create a "roadmap" for implementation.

Additional recommendations for policy formulation:

- Production of policy analyses should be the rationale of the policy cycle, with laws positioned as instruments to implement them, instead of the current approach where regulation is a rule and all analysis and justification is only being linked to the legal drafting process as a sort of a formal requirement that has to be met or even a burden.
- RIA should be regarded as an existing tool which can drive the improvements of the policy analysis and development process. Nevertheless, to achieve this effect, impact assessment of laws will first need to be extended to encompass other acts of the Government, as well to cover all elements contained in the OECD guidelines for RIA. As long as policy analysis is based on vague provisions and procedurally not defined, little systematic improvement can be expected.
- As the policy development process is essentially a public administration task, it should be introduced as such more explicitly in the Law on Public Administration. The Law should equally contain a chapter or at least an article defining the policy process and how policies are designed. The principle of evidence based policy making should also be introduced in the relevant chapter of the Law.
- Government Rules of Procedure should be amended so as to bring coherence into the already existing system of documents which need to accompany draft laws and other draft government acts. There needs to be an understanding that formal introduction of new types of documents (especially if not integrated well together) by itself does not bring about effects on the quality of policies and legislation. The focus

should be on quality assurance and building the skills of civil servants to perform the analytical tasks.

- High quality, obligatory policy analysis and writing skills trainings should be developed and implemented throughout the public administration. This type of training should be regarded as “induction training,” necessary and obligatory for all civil servants (or at least a large majority), as analytical thinking and good writing skills should be regarded as a standard in public administration.
- The capacities of the GSG for policy making and coordination need to be increased, including an increase in the number of staff. In light of the current difficulty of hiring new staff, a solution could be found through the introduction of the secondment institute. This would allow the GSG to “borrow” staff from line ministries for limited periods of time. The seconded members of staff would cover several policy areas and perform the policy control and “quality assurance” function.
- Development of procedures and capacities for policy analysis and formulation would also be conducive to more timely and more effective public consultations, as it would enable the consultations to occur at a much earlier stage of the policy cycle, in which external inputs are really needed and valuable.
- An appropriate policy document (whether in the form of a preliminary impact assessment or a policy proposal/paper containing the ex-ante impact assessment) should be introduced into the system and its adoption should be necessary before initiating the legal drafting process. This step would ensure that the Government can really “determine the policy,” as required by the Constitution, as well as that all the relevant effects of a policy proposal are reviewed and discussed at an early enough stage, to prevent failures and dissipation of resources. It would also create a more enabling environment for measurement of success – by setting the indicators (at result level, not only output!) and planning the expected impacts at an early stage.
- Unless they are underpinned by these elements, the newly proposed or recently introduced improvements of the legal drafting process (above all the “background document” and the improvements of the public consultation process) will have very limited impact – alas, they might

just become an additional burden to the process, slowing it down, without bringing the expected effects and benefits.

Additional Recommendations for EU Policy Coordination:

- Ensuring inter-ministerial consultations and coordination in the policy development phase would ensure that potential conflicts and inconsistencies are identified at an early stage, when shifts in the direction of a policy are still possible.
- During the accession negotiations, it is important to establish a clear chain of command between the national actors involved. SEIO should remain under the auspices of the Office of PM, since both its technical expertise and this position gives SEIO credibility and authority of a coordinator in EU matters in Serbia.
- Negotiating positions need to be substantiated with strong evidence and arguments. This helps not only when negotiating transitional measures and derogations, but also throughout the entire process, when Serbia needs to present itself as a trustworthy partner. Trust is being built by being consistent and fulfilling the agreed tasks.
- Ministries should progressively become more involved in the accession process. EU affairs should not concern only the EU Departments of the ministries. For this reason, ministries should be provided trainings by SEIO and external actors as well as study visits to Brussels. Familiarisation with EU affairs of the ministries is particularly important with the approach of membership, when the engagement of almost the entire public administration is required.
- Lower-ranked civil servants in the ministries should be empowered to take decisions and assume responsibility, i.e. to 'own' the decision-making process and feel like an integral part of it. Leaving the entire decision making to the ministers is inefficient, especially in the EU-related issues, which are highly technical and require specific expertise, to be found among heads of units or assistant ministers.
- The accession process can be significantly facilitated if the candidate country invests its human resources. The Serbian Mission to the EU can have a focal role in building contacts and gathering intelligence on the ground.

How to prepare for accession – Advice to Serbia based on Poland's experience

- Create evidence-based policies. Making evidence-based cases while negotiating is crucial. This is of crucial importance for succeeding transitional periods and exemptions.
- Build trust through being consistent. If Brussels start trusting you since the beginning, they are ready to give more.
- Prepare your positions in a timely and thorough manner. Well-performed preparations are key to success.
- Build strong internal capacities for coordination of EU affairs.
- Involve more people in the EU accession process. Second SEIO staff to the ministries and vice versa.
- Do not present yourself as humble. Defend your position with arguments.
- Establish the clear chain of command. EU coordination issues should remain under the PM's Office.
- Set an ambitious agenda – time limits are your best friends.
- Create coalitions of friends within the EU that you can count on.
- Make good use of observer status [last phase before accession] for learning the decision-making process, the Council structures and for further establishing contacts.

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Annex 1: List of Abbreviations

AWP	Government Annual Working Plan
BRE	Better Regulation Executive
CCEE	Central and Eastern Europe countries
CEE	Central and Eastern Europe
COREPER	Committee of Permanent Representatives
CSCC	Cross-Sectoral Coordination Centre
CSO	Civil society organization
DfID	Department for International Development
DG	Directorate General
EI	European integration
ENA	National School of Administration/École Nationale d'Administration
EU	European Union
FCO	Foreign and Commonwealth Office
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GOP	Annual Operational Plan
GSG	General Secretariat of the Government
IA	Impact Assessment
IGC	Inter-Governmental Conference
IPA	Instrument for Pre-Accession Assistance
MFA	Ministry of Foreign Affairs
MoB	Memorandum on the Budget
MOP	Mid-term operational planning
NDP	National Development Programme
NG	Negotiating Group
NGO	Nongovernmental organization
NPAA	National Plan for the Adoption of the Acquis
NPPM	National Programme of Preparations for Membership
NPR	National Reform Programme
NPRD	National Plan for Regional Development
OECD	Organisation for Economic Cooperation and Development
PAR	Public administration reform
PermRep	Permanent Representation
PM	Prime Minister
RIA	Regulatory Impact Analysis

RPC	Regulatory Policy Committee
SEIO	European Integration Office of the Republic of Serbia
SGAE	General Secretariat for European Affairs/Sécrtariat général des affaires européennes
SGG	General Secretariat of the Government/Sécrtariat Général du Gouvernement
SIDA	Swedish International Development Cooperation Agency
SIGMA	Support to Improvement in Governance and Management
SIPRU	Government Social Inclusion and Poverty Reduction Unit
SME	Small and medium-sized enterprises
TEU	Treaty on the European Union
TFEU	Treaty of the Functioning of the Union
UK	United Kingdom
UKIE	European Integration Committee/Urząd Komitetu Integracji Europejskiej
UNDP	United Nations Development Programme
WB	World Bank

Annex 2: Detailed Methodology of Conducted Research

I. Research Approach and Method

For the purpose of this research, a neo-institutional approach was adopted since it was deemed to be the most appropriate due to the fact that it is not limited to only the formal aspects but also incorporates informal rules and procedures of political life.¹⁶² Moreover, given the fact that the functioning of the Serbian public administration is heavily influenced by external circumstances, it is necessary to take into account the behaviour of the actors involved beyond the formal norms, if the goal of identifying and analysing deficiencies in policy-making process in Serbia is to be attained.

With regards to methodology, a qualitative approach to research, comprised of qualitative and adaptive data collection, was utilised, as “[t]he research process is not locked into rigid designs but is adaptable to changing situations and has the ability to pursue new paths of discovery as they emerge.”¹⁶³ Additionally, in order to achieve the goal of this research, a qualitative methodology was deemed to be the most suitable for “[engaging] in research that probes for deeper understanding rather than examining surface features.”¹⁶⁴ In other words, due to the depth and richness of findings which stem from a qualitative approach,¹⁶⁵ it was deemed most appropriate in order to produce adequate conclusions and policy recommendations for the specific circumstances of the milieu in Serbia.

The comparative method is adopted due to its primary characteristic of “developing, testing and refining theories about causal relationships” and establishing generalizations.¹⁶⁶ Namely, four country case studies were selected in order to be able to draw parallels and make conclusions on the

¹⁶² March David, and Gerry Stoker (ed), “Theory and Methods in Political Science”, Palgrave, third edition, 2010, pp. 66-67.

¹⁶³ Ibid, p. 257.

¹⁶⁴ Johnson, Scott D. “Will our research hold up under scrutiny? Journal of Industrial Teacher Education, 32.3(1995): 4. Ed. Nahid Golafshani, “Understanding Reliability and Validity in Qualitative Research.” The Qualitative Report, Vol. 8 No. 4, (2003): pp. 603. Available at: <http://www.nova.edu/ssss/QR/QR8-4/golafshani.pdf>

¹⁶⁵ Brymam, Alan. Quantity and Quality in Social Research. Routledge, 1998.

¹⁶⁶ Hopkin, Jonathan. “The Comparative Method” in: Theory and Methods in Political Science, Ed. David March, Gerry Stoker. Palgrave, third edition, 2010, pp. 285-308.

basis of EU Member States' policy making systems and procedures found and examined.

II. Country Case Studies Rationale

1. The United Kingdom

Reasons for selecting the UK as the first case study emanate mainly from the strength and reputation of the British policy making system, which has been recognised in both academic and practical literature. Even though it can be said that the British example is not applicable in the Serbian context, since the UK has long, gradual and sustainable democratic tradition, while institutional and administrative capacities are still underdeveloped in Serbia, the research team believes that the strength of the UK's example is exactly in providing a vision of "the end of the road." In other words, despite the fact that Serbia will realistically not be able to perform its policy making in the same way as Britain in the foreseeable future, the analysis of an almost "ideal" example can serve as a guideline and the assurance on the right path of the undertaken reforms.

2. France

Out of the six founding members of the EU, Serbia is most compatible with the features of the political and legal system of France. For the connoisseurs and practitioners in the Serbian policy making system, certain positive practices of France in terms of policy making and inter-ministerial coordination can be easily conceived in the Serbian context. Moreover, the French example is particularly pertinent in the area of inter-ministerial coordination of European affairs, characterised by a very clear chain of command, authoritative and centralised coordination system and strong cooperation among the ministries.

3. Poland

Among the member states that joined the EU in 2004 and 2007, it can be said that Poland has benefited the most from becoming an EU member, as it saw a remarkable economic growth and managed to gain considerable weight in the negotiations within the Council of the EU. Moreover, Poland is one of the biggest beneficiaries of the EU structural funds and the common agricultural policy. However, the first years of the EU membership in Poland have seen major hurdles in formulating and defending its national policies. Progressively, Poland has improved its policy making and coordination

practices, which enabled it to nowadays become one of the most influential countries in the EU. The lessons for Serbia are manifold: the Polish example sheds light on the problems a candidate country faces during the accession negotiations period and the subsequent management of obligations as an EU member; the linkage between the deficient administrative capacities and the outcome of accession negotiations; the importance of thorough and timely preparations, etc.

4. Latvia

This “Baltic Tiger” is found adequate for deeper research given its successful track in public administration reform and particularly the policy making system and coordination mechanisms. The Latvia is one the few new member states where reforms have proven to be sustainable and effective, and as such have contributed significantly to Latvia’s performance as an EU member state. Latvian example can be instructive for Serbia, as some of its features can be applicable in the Serbian context.

III. Data Collection and Analysis

The research component of the study was comprised of two complementary phases: archive desk research and field research. In this way, the research team was able to compare and contrast the existing findings and claims with ground-level experience.

III.1 Desk Research

Archive-based research entailed an examination of both primary and secondary sources and enabled a triangulation of sources which promises “to increase the validity of a study by seeking the degree of agreement in the investigation outcome from the use of multiple methods and measurement procedures.”¹⁶⁷ In this regard, the primary sources consisted of the laws and regulations of the Government of Serbia regarding the policy-making process, while in the cases of the selected EU Member States, the relevant national legislation was taken into consideration. Concerning the secondary sources, which make the most of the archive research material for this study, they span the relevant studies conducted by SIGMA (notably the papers no. 27, 31, 35, 37, 39, 43, 48), OECD reports on public sector modernisation, academic and policy papers on the questions related to particular

¹⁶⁷ Ma, Agnes and Brahm Norwich. Triangulation and Theoretical Understanding. *Int. J. Social Research Methodology*. Vol. 10, No. 3, July 2007, pp. 211–226.

characteristics of the policy cycle of the EU member states, academic literature on policy making and coordination, and the related research/studies/papers conducted by other relevant entities and projects, for example GIZ, The World Bank, EIPA, etc.

III.2 Field Research

Based on the preliminary findings of the archive-based research, field research was conducted. Primary data were collected through in-depth, semi-structured elite interviews which are presented in the literature as “enabling a ‘special insight’ into subjectivity, voice and lived experience.”¹⁶⁸ The interlocutors were selected through a combination of nonprobability purposeful sampling and the snowballing technique so as to produce sound conclusions and policy options and prevent the possibility of going astray.¹⁶⁹ This type of sampling implies the researchers' background knowledge on the topic, as they select the interviewees in line with the relevance of the interviewee's knowledge, experience and opinion to the study.

For the purpose of exploring the deficiencies of the policy making system in Serbia, interviews were held with a wide spectrum of high-level civil servants, above all from the relevant central Government bodies, such as the Serbian European Integration Office, the Office for Regulatory Reform and Regulatory Impact Assessment; the Legislative Secretariat of the Republic, the General Secretariat of the Government as well as the Social Inclusion and Poverty Reduction Unit of the Government. To gain an insight into the specific policy making experiences of individual ministries in Serbia, interviews were also held with the representatives of the Ministry of Economy, Ministry of Justice and Public Administration, Ministry of Trade and Telecommunications. Finally, the interviewees also included representatives of the academic community and renowned experts in this

¹⁶⁸ Atkinson, P. and Silverman, D. “Kundera's Immortality: the interview society and the invention of the self.” *Qualitative Inquiry*, vol. 3 (3): p. 304-25. (1997)

¹⁶⁹ Nonprobability purposeful sampling entailed a previously defined group which is deemed to be relevant for the study, based on the researchers' background knowledge of the topic. The snowballing sampling technique can be understood as a subcategory of the purposeful sampling method and signifies that the population sample of the interlocutors is broadened through the recommendations of initial interviewees who further recommend others deemed to meet the criteria of the research as well.

field.¹⁷⁰ The first-hand experiences of two research team members working on policy development in Serbia (mainly in the sectors of regional development, public administration reform, trade, consumer protection, etc.) were also used to complement the findings of the conducted interviews with Serbian policy makers.

In order to propose concrete and applicable recommendations for improving the policy making system in Serbia, in particular in regards to the policy formulation phase and inter-ministerial coordination, the significant added value of the study were the face-to-face interviews with the relevant officials of the four EU member states,¹⁷¹ with the officials of the EU member states' Permanent Representations to the European Union, as well as with officials from the European Commission.¹⁷² Prior to the interviews in the EU member states, the research team held three interviews with experts from OECD/SIGMA, who provided valuable input for the subsequent stages of the research.

Each of the interviewees was given a tailored-made questionnaire prior to the realisation of the interview. This practise proved to be very effective, as it enabled the interviewees to prepare prior to the meeting, which resulted in very productive and high-quality discussions during the interviews. The questions and topics of the interview were formulated according to the expertise and position of the interviewee. The general pattern of the

¹⁷⁰ In Serbia, a total of 9 interviews were conducted with civil servants and 4 interviews with academics and experts.

¹⁷¹ In Warsaw, a total of 10 interviews were conducted with the high-level officials from the Ministry of Economy; Ministry of Finance; EU Coordination Department at the Ministry of Foreign Affairs; State Chancellery; as well as with two renowned experts involved in Poland's accession into the EU. In Riga, a total of 8 interviews were held, including the officials from the Cross-Sectoral Coordination Centre; Ministry of Economy; Ministry of Finance; Ministry of Agriculture; representatives of civil society organisations; as well as with three experts formerly involved in the reform of Latvia's policy making system. As for the UK and France, a total of 10 interviews were held (five for each country), mainly through video and phone interviews as well as personal meetings in Belgrade. The reason for less of interviews with British and French experts compared to Poland and Latvia is due to the availability of online sources in English and French language, both mastered by the research team.

¹⁷² In Brussels, a total of 9 interviews were conducted with the representatives of the Permanent Representations to the European Union of the four case studies; the officials from DG Enlargement and DG Enterprise, a Member of Cabinet of the European Commissioner for International Cooperation as well as with the Director General in DG Education, a former Chief Negotiator of Poland for EU membership.

questionnaire began with rather general questions, continued on with inquiries related to the experience and particular expertise of the interviewee, so as to finally arrive at a discussion of recommendations and potential future developments in that particular field.

III.3 Systematization of Data – The Policy Cycle

From the very onset of the development of the thought in the field of policy analysis, the policy process has been looked upon as a sequence of discrete policy stages/phases which allows for a systematic and comprehensive assessment of the variety of burgeoning divergent approaches, perspectives and models present in the literature and research.¹⁷³ Despite the criticism stemming from dissenting views, the stages typology persevered as an ideal-type for rational, evidence-based policy making which stresses on the interaction of different actors and institutions within the policy process.¹⁷⁴

For the purpose of this policy research project, the policy process was broken down into 12 separate stages, combining the phases identified in Sigma paper no. 39 “The Role of the Ministries in the Policy System: Policy Development, Monitoring and Evaluation”¹⁷⁵, Young & Quinn¹⁷⁶ and the one brought forth by Howlet and Rammesh in “Studying Public Policy: Policy Cycles and Policy Subsystems.”¹⁷⁷ Such a break-down was modified so as to fit and reflect the needs and particularities of the Serbian policy system.

¹⁷³ Werner Jann, and Wegrich Kai. *Theories of the Policy Cycle in: Handbook of Public Policy Analysis*. 2007.

¹⁷⁴ Ibid.

¹⁷⁵ Sigma Paper no. 39, “The Role of the Ministries in the Policy System: Policy Development, Monitoring and Evaluation”, 21 March 2007.

¹⁷⁶ E. Young, L. Quinn, “Writing Effective Policy Papers”, Open Society Institute, 2002.

¹⁷⁷ Howlet, Michael and M. Rammesh. “Studying Public Policy: Policy Cycles and Policy Subsystems”, Oxford University Press, 2009, p. 13.