

## Regulatory Impact Assessment in Hungary

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*RIA used to implement a Community directive*

We have arrived to a very difficult and ramifying question. When a candidate country, like Hungary is preparing to implement a Community directive in order to fulfil the requirements before the accession, impact assessment can be used to answer several different questions:

- Is there a working system in Hungary that fulfils the purposes of the directive, or do we have to create a new system?
- If there is a working system, what changes must be made in order to make it compatible with the directive?
- If there is no such system, is there a real need to comply with the directive or just a legal obligation?
- Can we use the system introduced in a member state, or do we have to create a brand new system, as the Hungarian daily life is so different?
- How will the change in the system affect those who are applying it every day?

The answers to these questions are quite important. If there is a working system, then to preserve it and just make certain changes is almost always much easier and cheaper than to create a brand new one. This was the case with the media-law. Television and radio broadcasting has a significant past in Hungary, so to create a new broadcasting system was not an alternative. Instead, there had to be made alterations for the commercial television companies, setting the minimum quotas for European and Hungarian productions, the protection of the children by setting the limits and criteria of what can be broadcasted and what not, etc.

It is also quite important to modify only what is absolutely necessary, and to keep working things whenever possible; this is the major challenge for impact assessment in the field of agricultural law: there are lots of excellently trained veterinarian and phytosanitarian experts in Hungary, who has been making their job for decades, and there are working farms that have been producing food for a long time. It is very difficult to force these farms to use new technology in fighting diseases and in keeping the factories clean, and to implement animal-friendly measures. However, one must see that most farms or food-processing factories are not prepared financially for these changes. Forcing these companies to introduce a system that was developed in Western Europe over the course of 50 years in a much shorter time proved for several factories impossible. There had to be found a solution, and this was the derogation: these factories may continue to produce with the present technology for a few years, but only for the home market.

The change in the system may not only affect the future of a company, but also the present and the past. There are several industries, which do not produce goods to be placed on the market in a short time, but only after several years. This was the case with the wine producers of Hungary. There are huge quantities of quality wine in Hungary that was bottled into 1-litre bottles years ago. These bottles are not compatible with the Community requirements. Still, impact assessment showed that neither the limiting of these bottles into the home markets, nor the rebottling of the wine was an acceptable method: the first would result in serious losses for the producers, who bottled the wine in *bona fides* into 1-litre bottles, while the second would ruin the wine. This way a solution was found: these products can be sold on the market, but no new wine can be bottled into 1-litre bottles.

Sometimes, the producers are not the only ones, who got accustomed to a certain product. This is the case with the milk with a fat content of 2.8%. Most Hungarians buy this kind of milk, as it is creamy

enough, but not as expensive as the whole milk. The idea of removing this kind of milk from the stores from the day of accession would be hard to accept even for the citizens, as they would be forced to make a serious decision: will they buy the whole milk which is much more expensive, or will they buy the cheaper milk which they really do not like? The decision is quite important, as for a family with two children this can mean a difference of 1.000 HUF a month, that is 1% of the salary of an above average paid employee!

Of course, in some cases, RIA has no use if we have to harmonise a Community directive. This was the case with the regulation on the residues of titan-dioxide mining and production. Hungary had to create its own rules to comply with the directive, even if there is no titan-dioxide mining or production in Hungary, and we do not even plan to establish a titan-dioxide mine or plant in the future, so these rules will have no significant impact on reality. After these examples, we can make some conclusions:

- RIA can be used to measure the efficiency of the current regulation and to measure the difference between the current regulation and the modified system;
- RIA helps the law-sponsor to prepare the changes in the producers' and the consumers' habits and possibilities
- when a Community directive or regulation is created, it is created to serve the needs of the Community on a general level. RIA helps a country to find the way to implement it on its national level
- in some cases, decisions to be made will have to be just the opposite to the results of RIA

*Used in meta-juristic regulation (in a regulation created to be solely used in the creation of other regulations)*

In this part, we will take a look at a very important question: how did the process of legislation changed after Hungary decided to apply for a membership into the European Union. In Hungary we had to introduce a new checkpoint in the process of legislation. As a first step the Government has set up a new department in the Ministry of Justice, the Department of European Community Law. Its main purpose is to coordinate the process of harmonisation and to provide legal experts with help in the creation of acts and decrees. This does not mean that other ministries do not have experts on Community law in their legal departments, but the department in the Ministry of Justice has to review all acts and decrees before they could be published in the Official Journal of Hungary. The coordination of the process of harmonisation is the major area where RIA is used in the Ministry of Justice. We had to create a set of rules to serve as a basis in the creation of the text of a regulation - to fix the names of the institutions of the Community, to fix the method of referring to Community legislation, and to introduce the "harmonisation clause", which can be used to identify a regulation as a regulation with the purpose of harmonizing Community legislation, and to define exactly the number and title of Community legislation in question. As this clause has a strict form, it can also be used for legal informatics. This set of rules was published as The Guide of the Minister of Justice on the Managing of Harmonisation Issues. We also had to create the Harmonisation Programme, which is a report on what has been done, what has not been done (and why) and what has to be done. The report is not just for one year, it is divided into half-year periods, and covers the period till the date of accession. This report is updated yearly, in February. This work requires the use of RIA, *inter alia*:

- What is needed to be implemented from the Community acquis, and how?
- When the regulation will be created? (This question had greater significance before, when we had several years till accession and at that time, we wanted to prepare the most important regulations. For example, the aforementioned titan-dioxide regulation was low on the priority list. In the case of the Codex Alimentarius, the foodstuffs frequently used in Hungarian kitchens were more important than those that are only used on rare occasions)
- Do we have to create a new regulation, or to modify the old?
- What has changed since last year?
- If a regulatory work is finished, is it satisfactory?

- Perhaps the Community *acquis* has changed, and we must change our legislation as well.
- If something was not implemented in time, what are the reasons?
- Did the competent ministry run into difficulties of finding the best way to implement the *acquis*? Was it the lack of experts or money, or was it simply “forgotten”?
- What has been done to catch up with the delay?
- Will it be ready the next year?
- Are there any problems which can only be solved by the request for derogation?
- What can be done to prevent further delays?

If we can answer these questions, we have much better chances in completing the Programme, that if we would make the Programme by instinct. Members of our Department are lawyers who already learned about Community law in the University, and this way we can also give advice on the proper wording and construction of the legal text of the directive. RIA is less needed in this field, but it is still present, as we must create regulations that can be understood by laymen too, who sometimes view the technical terminology of the Community with some suspicion. In this process, we had to force the use of Hungarian equivalents of the expressions rather than the Latin form.<sup>1</sup>

*RIA Used after the legislation, to see how the regulation works in an “outside laboratory environment”*

If RIA was used in the creation of a regulation, then it can be used to see if the regulation works in the real life. This is necessary to evaluate if there are any modifications needed, and also to measure the efficiency of the impact assessment methodology that has been used during the law-drafting phase. A good example is the new Code on Commercial Enterprises: the old code limited the minimum capital of Limited Liability Companies to 1.000.000 HUF and to 10.000.000 HUF for Companies Limited by Shares. Years after the Code came into force, the Government saw, that due to the improvement of the economy and to inflation, the limits that once served to grant a stable capital are no longer fulfilling their purpose, and more and more phantom enterprises appeared with the illusion that there is a significant capital behind them. So in the new Code these limits were raised to 3.000.000 HUF and 20.000.000 HUF respectively, to better fulfil their original purpose. Also we can see that while the minimum capital requirements were “just” doubled in the case of a Company Limited by Shares, it was tripled for a Limited Liability Company. This was to re-establish the credibility of these smaller enterprises, as they represent a significant portion of the economy.

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<sup>1</sup> For example, directive can be said both as “direktíva” and as “irányelv” in Hungarian. But while the first has an alien form, the second holds the implicit meaning “something that is not the regulation itself, but something that must be followed when the Hungarian regulation is made”.