

## CHAPTER 8.

# REGULATORY REFORM IN WESTERN BALKAN COUNTRIES AND ITS SIGNIFICANCE FOR THEIR EU ACCESSION PROCESS<sup>1</sup>

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### *Abstract*

*This paper analyses the role of regulatory reform in the transition process of Western Balkan countries and its importance for the acceleration of their EU accession process. The authors explore the progress achieved in this reform area in the region, with the main focus on regulatory reform policies, regulatory impact analysis (RIA), public consultation and simplification of the existing regulation. They also elaborate the importance of regulatory reform for the fulfillment of Copenhagen criteria, in the context of the improvement of legal and regulatory environment, as an important factor for the improvement of the competitiveness of the countries from this region. The paper concludes that regulatory reform became one of the most important segments of Western Balkan countries' reform agenda, and its continuation is of a crucial importance for the continuation of their transition and EU accession process. As the global financial and economic crisis gave more importance to the quality of regulations and regulatory reform, bringing them into the focus of strategies for fighting the crisis, countries of the region could benefit from this approach, making regulatory reform a key vehicle for promoting support for economic recovery and growth. Such approach would positively influence the acceleration of their EU accession progress.*

**Key words:** *regulatory reform, regulatory policy, EU, better regulation, smart regulation, regulatory impact analysis (RIA), economic crisis*

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## INTRODUCTION

**Regulatory reform** refers to changes that improve regulatory quality to enhance the economic performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform (OECD 2005: 4). Regulatory reform has a strong link to competitiveness, as one of its main objectives is to improve the national economies efficiency. Consumers are benefited, as reforms in the regulatory environment can have a direct impact on the productivity as well as quality and diversity of services and products.

It was not long ago that countries started focusing on regulatory policy, i.e. the regulatory tools and institutions which are relevant for boosting the transparency, efficiency and accountability of regulations. It started life as deregulation<sup>4</sup> in the 1970s and 1980s, following the rapid growth of regulation through most of the twentieth century and the dawning realization that the accumulation of this regulatory stock was harmful to business, stifling entrepreneurship and innovation. With policies to increase competition in markets in the 1980s and 1990s, deregulation broadened to become regulatory reform. Regulatory reform became an essential adjunct to structural reforms, reaching out beyond the network sectors to encompass product market reforms as well as the liberalization of professional services. (OECD 2010: 12).

**A number of studies support the view** that efficiency and quality of regulation affect private investment and economic performance. Djankov et al. (2002) argue that the quality of institutions and excessive regulation can have a significant negative impact on investment. Jalilian, Kirkpatrick and Parker (2007) have shown that there is a strong causal link between regulatory quality and economic growth and confirm that the standard of regulation matters for economic performance. Busse and Groizard (2008) claim that countries need a sound business environment in the form of good government regulations in order to be able to benefit from FDI. These findings confirm the importance of a favorable legal and regulatory environment for economic growth and efficient investment in the Western Balkan countries.

Since the 1990s the OECD has played a fundamental role in stimulating the diffusion of regulatory policies at the international level. The *Recommendation for Improving the Quality of Government Regulation* from 1995 was the first-ever

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<sup>4</sup> Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance

international statement of regulatory principles common to OECD member countries. Broadening this fundamental text to encompass market openness, competition policy and microeconomic principles in a multidisciplinary framework, the OECD published a *Report to Ministers on Regulatory Reform* in 1997, which recommendations have provided guidance to member countries to: (i) improve regulatory policies and tools, (ii) strengthen market openness and competition, and (iii) reduce regulatory burdens. Based on 1995 principles, in 2005 the OECD adopted a new set of Guiding *Principles for Regulatory Quality and Performance* (OECD 2005a) which set out: (i) the importance of political commitment to regulatory reform, (ii) the desirable characteristics of good regulation, and (iii) the links with competition and the elimination of barriers to trade and investment. These Principles emphasize effective and continuous regulatory management in order to secure high-quality regulation. Even though the 2005 principles still remain relevant, the OECD member countries recognized the need for the expansion of their coverage, in the light of more recent experience, including the global financial and economic crisis.

#### **REGULATORY REFORM IN THE EUROPEAN UNION – FROM BETTER TO SMART REGULATION**

Compared to some OECD countries, in particular the UK and the Netherlands, regulatory reform at the EU level was not a focus priority until the early 1990's, when the EU started regulating areas such as the single internal market. The European single market is itself a regulatory reform strategy designed to reshape national regulations that formerly fragmented the European market into a unified market based on common or recognized rules (Jacobs, 2010). Considering that regulation originating at the EU level has a strong impact on the members states regulatory environments, it was crucial to start focusing on the quality of EU legislation, in addition to the regulatory policies adopted at the member states level. Since the regulatory environment in the European Union is developed both by the EU and its Member States, regulatory reform needs to be achieved within a multi-level context (Renda, 2008:5).

Even more focus and political support was given to the “better regulation”<sup>5</sup> agenda in the EU after the adoption of the Lisbon Strategy for Growth and Jobs (European Commission, 2000) and in particular Mandelkern Group on Better Regulation Final Report of 2001 (European Commission, 2001). By stressing the importance of regulation for the achievement of public policy objectives as well as the need of adequate political support and resources, the Mandelkern Report set

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<sup>5</sup> Better regulation is a synonym for regulatory reform, which is generally accepted in the EU

the principal elements of the regulatory reform agenda both at the EU and the member states level. Since the adoption of the Mandelkern Group Report, significant progress has been made in the implementation of regulatory reform. Better Regulation was incorporated in the renewed Lisbon Strategy (European Commission, 2005), with the aim of improving European and national regulation in order to increase European competitiveness. In 2006, the Commission adopted the Better Regulation strategy (European Commission, 2006), its first comprehensive, consistent and full-fledged strategy for improving the quality of the regulatory processes and EU regulation. The Better Regulation Strategy is a broad strategy to improve the regulatory framework both at the **European and national level** - containing a range of initiatives: (i) to consolidate, codify and simplify **existing legislation** and (ii) improve the quality of **new legislation** by better evaluating its likely economic, social and environmental impacts. The strategy was launched in order to ensure that the regulatory framework in the EU contributes to achieving growth and creating jobs, taking into account not only the social and environmental objectives, but also the benefits for citizens and national administrations. The Strategy covers three regulatory areas: (i) the simplification program, (ii) the Action Program for reducing administrative burdens, and (iii) the impact assessment system. With the implementation of the Strategy, a program for simplification of the existing EU legislation, aimed at reducing administrative burdens and an impact assessment system have been put in place at the EU level. In order to monitor the results, the European Commission published three annual strategic reviews of better regulation in the European Union, which give an overview of the realization of the agenda in this field. The Better Regulation strategy also seeks to reinforce the constructive dialogue between all **regulators** at the EU and national levels as well as with **stakeholders**. The European Parliament and the Council have an equally important responsibility when adopting new legislation. As to the Member States, they have an important role to play insofar as they implement and transpose EU legislation. Better regulation strategy was an important segment of the EU reform agenda ( see also Allio, 2007).

The better regulation agenda became an important segment of the EU reform agenda and led to a significant change in how the Commission makes policy and proposes to regulate. Stakeholder consultations and impact assessments are now essential parts of the policy making process. The Commission has simplified much existing legislation and has made significant progress in reducing administrative burdens (see more in European Commission, 2009 and 2009a).

The global economic and financial crisis contains important lessons for regulatory policy, confirming that markets do not exist in isolation. They exist to serve a purpose which is to deliver sustainable prosperity for all, and they will not always

do this on their own. Regulation has a positive and necessary role to play. The crisis has highlighted the need to address incomplete, ineffective, and underperforming regulatory measures and, in many cases, to do so urgently (OECD, 2010a). The global economic crisis gave more importance to the quality of regulations and regulatory reform, bringing them into the focus of strategies for fighting the crisis. The crisis has highlighted the need to address incomplete, ineffective, and underperforming regulatory measures. The Commission made a significant step, deciding that Better regulation has to become smart regulation and be further embedded in the Commission's working culture. The European Commission adopted a Smart Regulation Strategy in October 2010, which aims to further improve the quality and relevance of EU legislation (European Commission, 2010). The aim of smart regulation is to design and deliver regulation that respects the principles of subsidiarity and proportionality and is of the highest quality possible. Smart regulation will evaluate the impact of legislation throughout the whole policy cycle, from the design of legislation to implementation, enforcement, evaluation and revision. The European Commission will closely work with the European Parliament, the Council and member states on the implementation of the smart regulation strategy, giving special importance to the voice of citizens in the regulatory process. Smart regulation became an important segment of the EU's Strategy Europe 2020 - A strategy for smart, sustainable and inclusive growth (European Commission, 2010a).

## **REGULATORY REFORM IN WESTERN BALKAN COUNTRIES**

Regulatory reform in Western Balkan countries became one of the key reform areas with the initiation of their transition process in the early 2000s. It has been closely correlated and strongly influenced by: (i) the transition process from a socialist to a market economy and (ii) the EU accession process. At the beginning of the transition process, regulatory reform in the countries of the region was driven by the need for a substantial transformation of their socialist legal systems into a market economy legal system, and was characterized by deregulation and intensive drafting of new regulations. However, in spite of a visible progress in the quality of new regulation, there were problems in their implementation, due to non existence or poor functioning of adequate institutional infrastructure. The intensification of the EU accession process of Western Balkan countries has positively influenced not only the process of drafting laws and other regulations, but the strengthening of the existing and the building of new institutions, necessary for their implementation.

## Regulatory Reform Strategy

The growing awareness in the countries of the region that the efficiency and quality of regulations affects economic performance, led to their more strategic approach to regulatory reform, and adoption of comprehensive, or fragmented regulatory reform strategies.

Albania's Government Program 2005-2009 contains some segments of a regulatory reform strategy. In this respect special importance was given to (i) the reduction of administrative barriers and (ii) the improvement of the implementation of laws. The following Government Program 2009-2013 also contains regulatory reform as a priority area, and special importance is given to the reform of inspections. In December 2010, the Albanian Government adopted the Regulatory Impact Analysis strategy as an ambitious strategy of RIA implementation in the Albanian legal system, and its implementation is under way.

*Table 1. Regulatory Reform Strategies in Western Balkan countries*

Country	Regulatory reform strategy	Segments of regulatory reform strategy
<b>Albania</b>	x	
<b>Bosnia and Herzegovina:</b>		
<b>BH State</b>		x
<b>BH Federation</b>		x
<b>Republic of Srpska</b>	x*	
<b>Macedonia</b>	x	
<b>Montenegro</b>	x	
<b>Serbia</b>	x	

\* A medium term Regulatory Impact Analysis strategy is expected to be adopted by the end of 2011.

Bosnia and Herzegovina, due to its complex administrative structure, has only segments of regulatory reform present in its policies. One of the entities, Republic of Srpska, prepared a medium term Regulatory Impact Analysis strategy which is expected to be adopted by the end of 2011.

The first comprehensive regulatory reform strategy adopted by the Government of Macedonia was contained in the Program of the Government 2006–2010. That two-pronged strategy used tools such as: (i) the regulations guillotine, to review the stock of regulations (2006-2009) and (ii) regulatory impact assessment (RIA), to review the flow of regulations (2009). Both of these pillars have already been implemented in the Macedonian legislative system, and a new Regulatory reform strategy was adopted in October 2011.

The Government of Montenegro adopted a Regulatory reform strategy in December 2009. This strategy covers the following areas: (i) reform of areas relevant for the World Bank Doing Business indicators, (ii) the implementation of the regulations guillotine, and (iii) RIA implementation. The implementation of this strategy is under way, and the first results are visible in the doing business and regulations guillotine, while the RIA implementation is still in an early phase.

Serbia adopted a Regulatory Reform Strategy for the period 2008-2011. The Strategy introduces explicit standards for regulatory quality through the introduction of principles of good regulatory practice, and covers the following areas: (i) one-time elimination of redundant and unnecessary regulations; (ii) Strengthening the existing regulatory quality control system (RIA) in the course of creating and adopting regulations; (iii) creation of a system of forward planning for new laws and regulations; (iv) establishing the tools for maintaining the quality of regulatory environment both at national and local level; (v) establishing the tools for coordinating regulatory activities, and (vi) enhancing the transparency of laws and regulations through consultation. The Strategy benefited from the EU Better regulation agenda. The implementation of this Strategy is in its final phase, and the drafting of the new Strategy 2011-2014 is under way.

### **Institutional capacities for regulatory reform**

Building of institutional capacities for regulatory reform in Western Balkan countries started in the early 2000s with the establishment of temporary bodies which were given the task to implement reforms in this area. In the last few years, these institutional capacities went through a significant transformation and improvement.

Table 2. Institutional framework for regulatory reform in Western Balkan countries

<b>Country</b>	<b>Central regulatory oversight authority</b>
<b>Albania</b>	Regulatory reform task force
<b>Bosnia and Herzegovina:</b>	
<b>BH State</b>	No oversight authority
<b>BH Federation</b>	No oversight authority
<b>Republic of Srpska</b>	Council for regulatory reform
<b>Macedonia</b>	Coordinative Committee and Committee for Regulatory Reforms
<b>Montenegro</b>	Council for Regulatory Reform and Improvement of Business Environment
<b>Serbia</b>	Council for Regulatory Reform

The main central regulatory oversight authority in Albania is a Regulatory Reform Task Force established in 2005, to lead the design and implementation of a regulatory policy. The work of this Task Force has been supported by the Trade Policy Department within the Ministry of Economy, Trade and Energy. The implementation of the newly adopted Regulatory Impact Analysis strategy will strongly depend on the strengthening and the efficiency of the existing institutional framework for regulatory reform.

In Macedonia, the institutional framework for regulatory reform was established with the objective to implement the Regulatory Reform Strategy (2006-2009), and is composed of: (i) the Coordinative Committee headed by the Deputy Prime Minister of the Government for economic affairs, which provides political support and is supported by the Sector for Economic policies and Regulatory Reform, (ii) the Committee for Regulatory Reforms, comprised of representatives of the Sector for Economic System Current and Development Policies and heads of the ministries' working groups, and (iii) working groups of the ministries and state administrative bodies that provide the presence of the operative level of the administration. This institutional structure strongly contributed to the successful implementation of the previous regulatory reform strategy, and will play an important role in the implementation of the newly adopted Strategy.

A Council for the Elimination of Barriers to Business was the first regulatory oversight authority established by the Government of Montenegro in 2008 as a body responsible for the implementation of the Action plan for Elimination of Business Barriers (2007). After the adoption of the strategic Action plan of Regulatory Reform in December 2009, the Council for elimination of barriers to business was renamed the Council for Regulatory Reform and Improvement of



Business Environment and redesigned as a body responsible for the implementation of that Action plan.

In Bosnia and Herzegovina, there is no body responsible for regulatory reform at the state level, nor within the Federation of Bosnia and Herzegovina. However, at the level of one entity – the Republika Srpska, the Government established the Council for Regulatory Reform in 2006, responsible for the implementation of regulatory reform in this entity of Bosnia and Herzegovina.

The first step of creation of an institutional framework for regulatory reform in Serbia was the establishment of a temporary Inter-ministerial Working Group on Deregulation (2002). In 2004 this Inter-Ministerial Working Group was transformed into the Council for Regulatory Reform, as a temporary Government body, supported by technical Secretariat staffed with independent regulatory reform experts. In December 2010, the Council for Regulatory Reform was transformed into a permanent government Office for RIA and Regulatory Reform. This government body is staffed with civil servants and has the mandate to continue to deal with the quality control of RIA as well as with the reduction of administrative burdens on a permanent basis.

### **The Implementation of Regulatory Impact Assessment in the development of new regulations**

Regulatory Impact Analysis (RIA) is a structured tool which enables the analysis of probable positive and negative impacts of different potential solutions to the issue being examined. It is a tool through which the policy makers can assess in advance the impact of the proposed laws in terms of the potential costs, benefits and risks. (OECD, 1997a). RIA is becoming widely used as a method of improving the quality of regulatory environment not only in OECD and EU countries, but in a number of other countries as well.

In the countries of the region, RIA implementation lags behind activities related to the simplification of existing legislation because it requires not only political support, but also resources for training, performing adequate RIAs, and the establishment of adequate institutional infrastructure. Investing into a good RIA system does not produce immediate results and is therefore less attractive to the political structures. RIA is at an early phase of implementation in most of the countries in the region and it is necessary to raise the awareness of its significance in order to secure its place as a stable and integral part of the legislative process (see more in Penev, Marušić, 2011).

Table 3. *Obligation to perform Regulatory Impact Analysis – RIA in Western Balkan countries*

<b>Country</b>	<b>Formally introduced RIA</b>	<b>Introduction of RIA in progress</b>	<b>RIA has not yet been introduced</b>
<b>Albania</b>		x	
<b>Bosnia and Herzegovina</b>			
<b>BH State</b>		x	
<b>BH Federation</b>			x
<b>Republic of Srpska</b>		x	
<b>Macedonia</b>	x		
<b>Montenegro</b>		x	
<b>Serbia</b>	x		

Most of the governments of the countries of the region have initiated the implementation of RIA in their legal systems.

Within the countries of the region, RIA is most advanced in Serbia, where it is applied to all draft regulations and has been formally introduced into the legislative system in 2004 (see also Penev, Marušić, 2009a). The Government empowered the Council for Regulatory Reform to perform quality control of RIAs and issue mandatory opinions on the quality of RIA's performed by the ministries, which opinions have to accompany the draft legislation on their way to the government adoption. In the early stage of implementation, RIA was performed at a basic level. In order to improve the quality of RIA, significant efforts were invested in RIA implementation, in particular capacity building of government officials to perform RIA, whereby RIA is now part of the official Government training agenda. In December 2010, the Council for Regulatory Reform was transformed into a permanent government Office for RIA and Regulatory Reform, staffed with civil servants and empowered to continue the quality control of RIAs.

Macedonia has officially introduced the obligation to perform RIA with amendments to the Rules of Operation of the Government (2008). The implementation of this new mechanism became obligatory from 1<sup>st</sup> January 2009. RIA is obligatory for all draft laws, with the exception of laws that are in an "urgent" adoption procedure, which number is limited. The Sector for Economic Policies and Regulatory Reform in the General secretariat of the Government was empowered to implement RIA and to review the proposed legislation.

Albania is in a process of introducing RIA into the legislative system. The RIA strategy, which was adopted in December 2010, envisaged RIA introduction into the Albanian legal system by the end of 2011. However, the progress achieved in 2011 was limited, and further progress in RIA implementation is expected in 2012.

RIA implementation in Bosnia and Herzegovina is still in its early stages. Republic of Srpska has made more advances in implementing RIA in its legal system where RIA implementation began in 2007, with the conduction of several pilot RIAs. A medium term Regulatory Impact Assessment (RIA) Strategy (2011 – 2015) has been drafted with the aim to introduce ex-ante and ex-post RIA of drafts and legal acts in the Republic of Srpska, and its adoption is expected by the end of 2011. At the state level in Bosnia and Herzegovina RIA pilot project for the FDI law was conducted by the Ministry of Foreign Trade and Economic Relations, and four RIA pilots were conducted by the Directorate for European Integrations.

RIA implementation is one of the three main pillars of regulatory reform in the strategic Action plan of regulatory reform of Montenegro, adopted in December 2009. A pilot RIA was performed for the business licensing reform, and the Government initiated a RIA training program for government officials. Amendments to the Rules of Procedure of the Government providing for the formalization of RIA are underway and should be adopted by the end of 2011. The Council for Regulatory Reform will be empowered to perform oversight over RIA implementation.

RIA implementation lags behind in the countries in the region with respect to the activities related to the simplification of existing legislation, as RIA implementation not only requires political support, but also resources for training, performing adequate RIAs and the establishment of adequate institutional infrastructure.

## **PUBLIC CONSULTATION IN THE LEGISLATIVE PROCESS**

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment (OECD 2010a: 74). Wide and effective public consultations with stakeholders have become an inherent part of the law drafting process in the EU, gaining even more importance in the Europe 2020 - A strategy for smart, sustainable and inclusive growth

(European Commission, 2010a) and in the EU Smart regulation strategy (European Commission, 2010) as well.

Consultation process in the countries of the region has been permanently improving, but is still lagging behind the role and importance it got in the EU law drafting process. Most of the Western Balkan countries have introduced a legal obligation for public consultation on legislative proposals for laws that significantly change the legal regime in a certain area or are of a particular interest to the public. In Macedonia and Bosnia and Herzegovina, interested non-governmental groups are supposed to be consulted from an early stage of the drafting process. The main constraint for an effective public consultation process in the countries of the region is time constraint, as the legislative agenda is very intensive and does not leave sufficient time for consultation. The consultation process may continue in law-adopting procedures in the parliament, but it is not obligatory. The standing committees may organize public hearings with all stakeholders in order to get their opinions on laws of certain importance before discussing the draft laws at the plenary session.

*Table 4. Public consultations in Western Balkan countries*

<b>Country</b>	<b>Public consultation mandatory for all laws</b>	<b>Public consultation mandatory for complex and systemic laws</b>	<b>Public consultation non mandatory</b>
<b>Albania</b>		X	
<b>Bosnia and Herzegovina:</b>			
<b>BH State</b>	X		
<b>BH Federation</b>	X		
<b>Republic of Srpska</b>	X		
<b>Macedonia</b>	X		
<b>Montenegro</b>			X
<b>Serbia</b>		X	

Public consultations in Albania are mandatory for draft laws of particular importance, which are then discussed in much broader circles of interested stakeholder, including private sector representatives, state institutions, NGOs, experts and others. Even though there is no formally introduced obligation of public hearings in the Parliament, they can be conducted during the law-adopting process.

Public consultations in Bosnia and Herzegovina are formalized in the Rules on Consultation in Legislative Drafting and the Rules of Procedure of Parliaments of Bosnia and Herzegovina and entity parliaments. Rules on Consultation in Legislative Drafting prescribe that Ministries and other government bodies in Bosnia and Herzegovina can organize consultations during any phase of the law drafting process and they specify the minimum obligations for conducting these consultations. According to the Rules, after finalizing the pre-draft law, every institution is obliged to make the draft law available on its web-page and provide the option of receiving comments through the internet and to send the text of the draft law for comments to a number of interested stakeholders and other relevant Government bodies. For laws of significant public interest additional consultations should be conducted and this process can include a much broader cross-section of interested stakeholders, including NGOs, local and international experts, other government bodies, and the legal community. Public consultations in Bosnia and Herzegovina are mandatory not only at the BH state level, but on the level of entities, as well.

Macedonia has introduced mandatory public consultations in 2009, introducing the obligation of public consultation from the early phase of the drafting process. All the draft laws have to be posted on the web site of the ministry in charge, to get comments from the relevant stakeholders.

Public consultations in Montenegro are not mandatory, but the Rules of Operation of the Government prescribe that preliminary consultation can be held in the process of drafting laws and other regulations that govern complex and systematic issues. Public consultations can be conducted when the Government determines that they are necessary for the drafting process.

Public consultation in Serbia became mandatory in 2004, but only for laws that significantly change the legal regime or are of particular interest to the public. The introduction of mandatory RIA has positively influenced the practice of public consultation in Serbia, due to the fact that a report on public consultation is a segment of the RIA report. However, the improvement of the public consultation process envisaged in the Strategy for Regulatory Reform has not yet been achieved and needs substantial improvements, in particular forward planning of laws and the public availability of the annual legislative program of the Government.

In order to improve the consultation process, benefiting from the practices already implemented in the EU, ' governments should make the consultation process an essential part of the policy making process, lengthening the period for consultation and strengthening the voice of stakeholders further in line with the

recently adopted EU Smart Regulation agenda. Using the EU experiences, Western Balkan countries' governments should adopt guidelines on public consultation, in order to set minimum good-practice consultation requirements on ministries in the development of new regulations and establish a system of monitoring compliance with the consultation requirements.

### **SIMPLIFICATION AND ADMINISTRATIVE BURDENS REDUCTION**

Simplification efforts have evolved in recent years in the context of growing pressure from businesses to reduce administrative burdens and improve economic performance, in particular in the context of the current global financial and economic crisis. Even at the EU level, simplification is an important part of the regulatory reform agenda, as seen through the goal of reducing administrative burdens by 25% and establishing the Impact Assessment Board.

In most of the Western Balkan countries, the comprehensive elimination or replacement of redundant and unnecessary regulations are seen as an important precondition for the creation of a new legal system in line with market economy standards to help foster an investment-friendly environment (Penev, Marušić 2009: 50).

*Table 5. Simplification and Administrative Burdens Reduction in Western Balkan countries*

<b>Country</b>	<b>Systemic/one time review of existing legislation</b>	<b>Partial-sectoral one time review of existing legislation</b>	<b>None</b>
<b>Albania</b>		x	
<b>Bosnia and Herzegovina:</b>			
<b>BH State</b>			x
<b>BH Federation</b>		x	
<b>Republic of Srpska</b>	x		
<b>Macedonia</b>	x		
<b>Montenegro</b>	x		
<b>Serbia</b>	x		

Albania initiated its simplification and administrative burdens reduction program with the adoption of a Regulatory Reform Action Plan from 2006. The main aim of this reform was (i) the improvement of the existing legal framework through

the removal of administrative barriers to business and (ii) the overall simplification of the regulatory framework affecting business. The implementation of this program gave several positive results, including: the complete transformation of the business registration process and the reform in the business licensing system. Simplification and administrative burdens reduction program is also an important segment of the new Government Program for the period of 2009-2013, where special importance is given to the reform of inspections.

The simplification program in Bosnia and Herzegovina was sectoral and mainly focused on the reduction of administrative burdens in the area of licensing and inspections. The simplifying process of existing regulations started in Republic of Srpska in 2006, through the regulations guillotine focused on the inspections system, where radical improvements have been achieved. A similar process was envisioned in the Federation of Bosnia and Herzegovina, focusing mainly on (i) the area of inspections and (ii) the improvement of the business environment. However, the simplification program has not yet been initiated at the state level in Bosnia and Herzegovina.

With the aim of creating a favorable legal and regulatory environment, the Program of the Government of Macedonia 2006–2010 anticipated the implementation of a process of massive deregulation and reform of the regulatory institutions. The reform was comprehensive and included all regulations relevant for the economy, and was fully implemented.

Simplification and Administrative Burdens Reduction program in Montenegro has started with the adoption of the Action plan for Elimination of Business Barriers (2007). The implementation of this program was followed by the adoption of the strategic Regulatory reform action plan (2009), with the simplification and administrative burdens reduction program as one of its segments. The main goal of this reform was to reduce the administrative costs of operation by abolishing or amending regulations that were outdated, creating unnecessary administrative costs or not being applied. The implementation of this reform is still underway.

In the context of the global financial and economic crisis, as well as growing pressure from businesses to reduce administrative burdens, the Government of Serbia initiated a comprehensive review of the stock of regulations. One of the targets set by the Regulatory Reform Strategy was to reduce administrative costs by at least 25% by 2011. This goal was in line with the EU and good international practice. The reform was less focused on the number of legislation to be abolished, but rather on the abolishment of unnecessary administrative

procedures, decreasing costs and overall regulatory risk, and increasing the competitiveness of the Serbian economy. In terms of reduction of administrative costs, visible results have already been achieved, with EUR 170 million of annual savings for businesses. These reforms represent a positive step and should be further broadened, sharpened, and sustained over time. The challenge is to extend this one-time reform to those regulations that have not yet been covered or have not been sufficiently simplified. The reform was focused on business related regulations exclusively and did not cover regulations affecting citizens. In particular, emphasis should be put on continuing the simplification of tax procedures, labor regulations, inspections and licensing. Administrative burden and administrative costs reduction is one of the areas that will be taken forward by the permanent Office for RIA and Regulatory Reform, including the institutionalization of a continued dialogue between the Government and the businesses and citizens in the simplification agenda.

The simplification of existing regulations, in particular by using tools such as the regulations guillotine, is an attractive reform for the political structures that operate in an insufficiently stable political environment such as the Western Balkan region, because this reform can show concrete results in a short period of time. Consequently, in most of the countries in the region, political support for reform was widespread. The quality of the implementation of this reform depends not only on the quality of participation of all stakeholders, but also on continued political support throughout the process (Penev, Marušić, 2011).

#### **SIGNIFICANCE OF REGULATORY REFORM FOR THE EU ACCESSION PROCESS OF WBCS**

The principal objective and policy priority of the Western Balkan countries is to transform their economies into viable market economies and to achieve integration into the European Union. EU accession is seen as crucial to a successful domestic transformation. This process provides a unique incentive for political and economic reform in the enlargement countries, and aims to bring them up to European standards in all areas covered by the EU treaties (European Commission, 2010a).

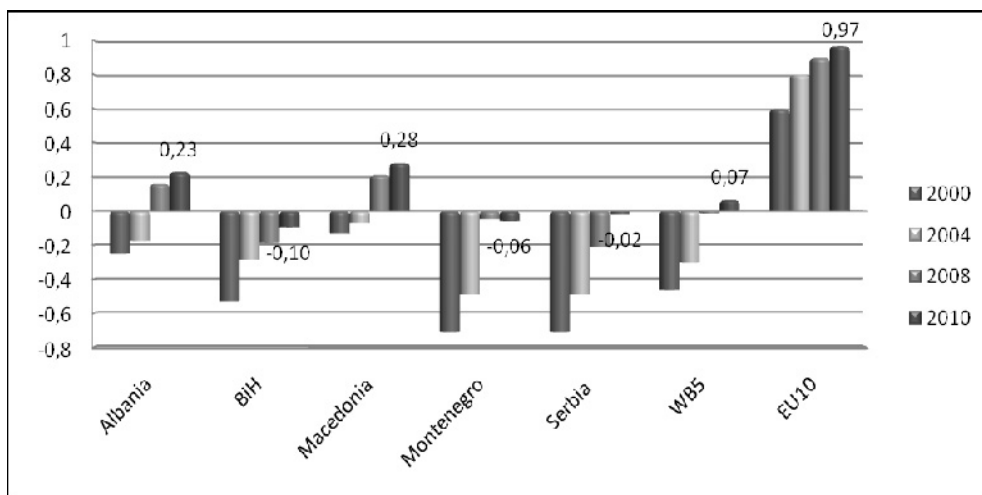
In June 2003, the Thessaloniki EU-Western Balkans summit confirmed the EU's support for the European perspective of the Western Balkan countries, while the Lisbon Treaty's entry into force (December 2009) ensures that the EU can pursue its enlargement agenda (<http://europa.eu>). To become EU members, countries of



the region have to fulfill political and economic criteria, and to accept the *Acquis Communautaire*, defined in the Copenhagen criteria for their EU accession<sup>6</sup>.

Adoption and implementation of the *Acquis Communautaire* into the legal and regulatory system of Western Balkan countries, on the basis of a third Copenhagen criterion, has been the fundamental element of their regulatory reform. Adoption of the *Acquis Communautaire* requires a comprehensive review and approximation of domestic legislation. Implementation of the *Acquis* is an important precondition for the improvement of the quality of the legal and regulatory environments of Western Balkan countries, which would increase competitiveness and productivity of their economies.

Graph 1. World Bank Governance Indicators - Regulatory quality, 2000-2010



Source: World Bank Governance Indicators Database

Note: The values of indicators range from -2.5 to 2.5, with higher scores corresponding to better outcomes

<sup>6</sup> The European Council meeting held in June 1993 in Copenhagen identified the economic and political requirements candidate countries need to fulfill to join the EU. These requirements are known as the Copenhagen Criteria: (i) political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; (ii) economic criteria: the existence of a functioning market economy as well as the capacity to cope with competitive pressures and market forces within the Union; and (iii) acceptance of the Community *acquis*: the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

According to the Commission's annual Progress Reports which monitor and assess the political and economic situation in the countries of the region and the implementation of reforms and related measures, all the countries of the region have been consistently making progress in the approximation of their legislation, but further efforts are needed to strengthen administrative capacities for the implementation and enforcement of legislation (see more in European Commission, 2011). The World Bank Governance Indicators, which measure the quality of laws and their implementation in more than 200 countries, only confirm the findings from the Commission's annual Progress Reports related to the quality of laws and their implementation in Western Balkan countries.

Countries of the region achieved notable improvement in the quality of laws in the last decade (Graph 1). This improvement was directly influenced by the progress each of the countries in the region achieved in their EU accession process. Macedonia, which has been an EU candidate country since 2005, has achieved the biggest progress in regulatory quality in the region. Nevertheless, even this consistent improvement of regulatory quality, the countries of the region are still significantly lagging behind the ten new EU member states.

As pointed in the European Commission's annual Progress Reports, implementation of laws and more generally rule of law still represents a significant problem in the countries of the region, mostly due to the lack or poor functioning of the necessary institutions (Graph 2).

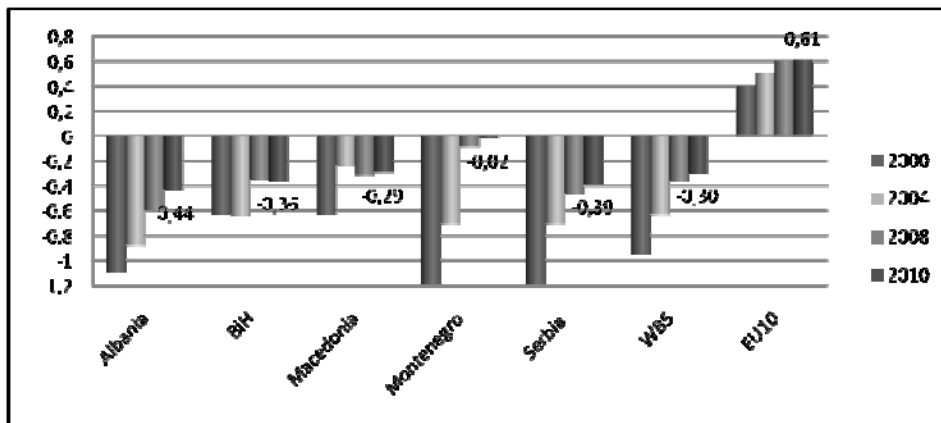
Strengthening the rule of law has been identified as a continuing major challenge and a crucial condition for countries moving towards EU membership. This issue has been given greater attention in recent years at all stages of the accession process, in line with the renewed consensus on enlargement.

The progress achieved in Western Balkans countries in this area in the past decade, was significantly smaller than that achieved in the new ten EU member countries due to the fact that progress in this reform area was a precondition for EU membership. Therefore, it is expected that the accession process will significantly influence this area in the Western Balkans countries the forthcoming period.

As the implementation of the Acquis further progresses, this will improve the legal and regulatory environment of the Western Balkan countries in the process of accession, lowering investment risks through the creation of a market-oriented trading regime, increasing transparency, reducing the discretion of local regulators to impose anti-market restrictions, protecting private property, and linking small economies to large economies, harmonization of the legislative

regulations with the regulations that exist in the EU. This increases investment and stimulates growth over the medium-term. (Jacobs, 2010)

Graph 2. World Bank Governance Indicators - Rule of law, 2000-2010



Source: World Bank Governance Indicators Database

Note: The values of indicators range from -2.5 to 2.5, with higher scores corresponding to better outcomes

In the period of economic crisis, the improvement of the quality of regulations and their implementation are of crucial importance for the creation of a more favourable legal and regulatory environment, as an important segment of business environment. In that context the continuation of EU harmonization process and the implementation of the Acquis, as well as the implementation of some segments of EU better and smart regulation agenda, should be among the key concerns in the forthcoming period for Western Balkan countries.

## CONCLUSIONS AND RECOMMENDATIONS

Regulatory reform became not only one of the priority areas of Western Balkan countries' reform agenda, but also one of the most successful reform areas in the past decade. The main motive for this reform was the improvement of the competitiveness and economic growth of their economies, through the improvement of their legal and regulatory environment. The approximation of their legal systems with the EU Acquis, as one of the key preconditions for the countries of the region to become EU members, was an additional motive for the implementation of this comprehensive reform.

In the period of economic crisis, the improvement of the quality of regulations and their implementation are of crucial importance for the creation of a more favorable legal and regulatory environment, as an important segment of the overall business environment. In that context (i) countries of the region should secure a continued approach to the simplification and reduction of administrative burdens instead of “one-time” reforms, and these programs should be effectively monitored and evaluated; (ii) more importance should be given to transparency of the legislative process, in particular the consultation process, by securing a continued dialogue between the Government and the businesses and citizens in the simplification agenda and law drafting process, (iii) the existing quality control system (ex-ante RIA) in the course of creating and adopting regulations should be strengthened, and (iv) a system of ex-post RIA should be created in order to evaluate the impact of adopted legislation after their implementation.

In view of the intensified EU accession process of Western Balkan countries, there is a clear need to connect regulatory reform with this process and move further towards a “smart regulation” approach that is recognized at the EU level as a new approach to policy-making. Countries of the region could benefit from this approach, making regulatory reform a key vehicle for promoting support for economic recovery and growth, especially in the period of crisis and post-crisis.

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