

## PUBLIC POLICY AND REGULATORY IMPACT ASSESSMENT IN THE SERBIAN LEGAL FRAMEWORK

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**Abstract.** *Impact assessment of public policy documents and regulations is an analytical process aiming to assess the positive and negative effects that public policy measures or solutions enacted in regulations can have on the population and economic entities. Depending on whether the impact assessment takes place in the process of developing documents or after their adoption, application and evaluation of the achieved results, there are ex-post and ex-ante impact assessments. In the Republic of Serbia, this area is regulated by the Act on the Planning System and the Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents. The latest amendments to the Act on the Prohibition of Discrimination have introduced provisions that emphasize the obligation and importance of public authorities to take into account the principle of equality when conducting an ex-ante impact assessment. By applying the normative method, the author presents the basic elements of the planning system of the Republic of Serbia and the procedure for conducting impact assessment, indicating that this process is identical for both public policy documents and regulations.*

**Key words:** *public policy, regulation, impact assessment, planning system*

### 1. INTRODUCTION

Every decision made by an individual or a group of people (a family, a private company or a government) has different effects on many areas of everyday life (economy, labor market, environment, air pollution, etc.). These effects can be positive or negative. Negative effects cannot always be fully eliminated but good planning and assessment can mitigate or minimize them. Every government intervenes trying to resolve different social problems by using public policies. Legislative intervention is one of the public policy

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instruments which may be used beside other options, such as the provision of goods and infrastructure or economic incentives. In the process of developing public policies and regulations, governments use impact assessments whose aim is to find the best possible solution with the least negative effects that may cause difficulties in achieving specific public policy goals.

This article analyses the impact assessment of public policies and regulations<sup>1</sup> in the Republic of Serbia by assessing the provisions of the Act on the Planning System (hereinafter: the Planning System Act, PS Act 2018)<sup>2</sup>, and the Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents<sup>3</sup> (hereinafter: Regulation 8/2019). The paper aims show that there is no difference between public policy documents and regulations in the process of impact assessment. For the first time since 2018, there is a subject-specific law which regulates the entire planning system in the Republic of Serbia and its elements, and the accompanying Regulation which prescribes in detail the impact assessment procedure introduced in 2019.

## 2. THE PLANNING SYSTEM ACT AND TYPES OF PLANNING DOCUMENTS IN THE REPUBLIC OF SERBIA

Under the Planning System Act (PS Act, 2018), there are five elements of the planning system of the Republic of Serbia: 1) planning documents; 2) planning system participants; 3) the public policy system management process; 4) the process of aligning the content of planning documents with the content of other planning documents and regulations; and 5) linking public policy adoption and implementation process with the mid-term<sup>4</sup> planning process” (Article 2 §1, point 2, PS Act). There are two types of planning system participants: a) the National Assembly, the Government and the local state authorities which enact the public policy documents by adopting them in accordance with their responsibilities and mandate, and, b) other planning system participants which participate in the process of developing public policies in accordance with their mandate, but they do not enact them (e.g. ministries, the Public Policy Secretariat of the Republic of Serbia). The public policy system management process encompasses different elements and actions. It may be defined as “the process of public policy planning, impact assessment, planning documents preparation and adoption, coordination, public policy implementation, implementation monitoring of public policy, public policy performance evaluation aimed at reviewing and improving it, policy improvement based on performance evaluation findings, and reporting on public policy performance” (Article 2 §1, point 5, PS Act). The process of development and implementation of planning documents is based on a number of principles, which aim is to provide: cost-effectiveness of planning documents; fiscal sustainability; realistic assessment of established policies’ possibilities and limitations; relevance and reliability; consistency and conformity; planning continuity of the policy cycle;

<sup>1</sup> The term *regulation* in this article is used for both laws (legislative acts) and by-laws (regulatory acts).

<sup>2</sup> Act on the Planning System, *Official Gazette RS*, No. 30/2018

<sup>3</sup> Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, *Official Gazette RS*, No. 8/2019.

<sup>4</sup> A mid-term plan is defined as “a comprehensive planning document covering a period of three years and enabling linking of public policies to a medium-term expenditure framework” (Article 25, para.1 of the Planning System Act, *Official Gazette RS*, No. 30/2018). The mid-term planning process is regulated in the accompanying Regulation on the Methodology of Drafting Mid-Term Plans (*Official Gazette RS*, No. 8/2019).

proportionality in *ex-ante* and *ex-post* impact assessments; preventive and the precautionary measures to minimize negative effects; equality and non-discrimination of proposed policies and their measures; coordination and cooperation among planning system participants; transparency and partnership in consultation processes; responsibility of institutions in charge of implementing the public policy; a time frame (time-limits) for the implementation of a public policy document and execution of provided measures/activities; and integral and sustainable growth and development (Article 3 PS Act).

The Act on the Planning System defines a planning document as “an act where planning system participants set goals, establish public policy priorities and/or plan measures and activities for achieving them, within their respective competences and in connection with their functioning” (Article 4 §1 PS Act). There are three types of the planning documents: 1) development planning documents; 2) public policy documents; and 3) other planning documents (Article 4 §2 PS Act). This classification is based on the broadness scope of their regulation and the level of importance for the authority which develops and establishes a specific public policy.

Development planning documents are defined as “planning documents of the broadest scope and the highest importance for the statutory authority” (Article 5 §1 PS Act). There are four types of development planning documents: 1) Development Plan<sup>5</sup>; 2) Investment Plan; 3) Spatial Plan of the Republic of Serbia and other spatial plans, general urban plan; and 4) Development Plan of the Autonomous Province and development plan of a local government unit (Article 5 §2 PS Act).<sup>6</sup> A public policy document is defined as “a planning document where planning system participants set or elaborate already established public policies in accordance with their respective mandate” (Article 10 § 1 PS Act). There are four types of public policy documents: 1) strategy; 2) programme; 3) policy concept paper; and 4) action plan (Article 10 § 2 PS Act).<sup>7</sup>

In line with other planning documents, the Act on the Planning System recognizes the following documents: the Government’s Programme, the Action Plan for the Implementation of the Government’s Programme, the Government Annual Work Plan and the National Programme for the Adoption of EU *acquis*. For instance, the Action Plan for the Implementation of the Government’s Programme 2023-2026,<sup>8</sup> adopted by the Government RS in 2023, includes four implementation groups: IG1 Sustainability; IG2 Innovations and the Digital Age; IG3 Development; and IG4 A Fairer Society. The Action Plan envisages mechanisms for monitoring the implementation of the Government’s priority goals which are part of the Government Programme 2023-2026<sup>9</sup> presented by the candidate for the Prime Minister and adopted by the National Assembly of the Republic of Serbia in 2022.

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<sup>5</sup> The adoption procedure and other details are prescribed in the Regulation on the Procedure for the Preparation of the Draft Development Plan of the Republic of Serbia (*Official Gazette RS*, No. 54/2023).

<sup>6</sup> The adoption procedure and other details are prescribed in the Regulation on Mandatory Elements of the Development Plan of Autonomous Province and Local Self-Government Unit (*Official Gazette RS*, No. 107/2020).

<sup>7</sup> The map of the current public policy documents in the Republic of Serbia is available at the Public Policy Secretariat website: <https://rsjp.gov.rs/cir/sema-jp-mapa/> (access: 24. 08. 2023).

<sup>8</sup> The Action Plan for the Implementation of the Government’s Programme is available at the following link: <https://rsjp.gov.rs/wp-content/uploads/APSPV-2023-2026-1.pdf> (access: 24. 08. 2023).

<sup>9</sup> The Government Programme 2023-2026 (25 October 2022) is available at the following link: [https://rsjp.gov.rs/wp-content/uploads/ana-brnabic-eksపోze-1022\\_cyr.pdf](https://rsjp.gov.rs/wp-content/uploads/ana-brnabic-eksపోze-1022_cyr.pdf) (access: 24. 08. 2023).

### 3. IMPACT ASSESSMENT OF PUBLIC POLICY DOCUMENTS AND REGULATIONS

Public policies are used by governmental institutions for solving concrete social problems which are recognized as priorities in a society (Jovanić, 2019: 20). For instance, if a country deals with a problem of air pollution,<sup>10</sup> high levels of domestic violence, or there is a need to decrease the level of some preventable illnesses among general population, a government will introduce specific actions through a public policy with implementation measures. Concrete social problems may be treated in different ways. Due to limited resources, it may be necessary to conduct an impact assessment and find the best possible solution.

The Planning System Act defines public policies as “courses of action of the Republic of Serbia, the Autonomous Province and local government unit, in specific areas, aimed at achieving desired goals in the society” (Article 2 §2, point 1 PS Act). Based on this definition, public policies have the following common characteristics: they are actions which are taken by all levels of state authorities, including the central/national authorities, autonomous province and local governments units; public policies are created in specific fields (in Appendix 11, the Regulation 2019 recognizes 18 fields of planning and implementation of public policies); a public policy aims to achieve specific goals. Relevant literature identifies other common characteristics of public policies: they are developed in the political decision-making processes (Jovanić, 2014: 98); they are closely connected with the executive power (Flin & Asker, 2021: 62); and it is important to emphasize other social actors which participate in the process of development of public policies, such as non-governmental organizations, stakeholders and target groups (Knill & Tosun, 2021: 27).

Impact assessment is an analytical tool for assessing potential positive and negative effects of concrete measures envisaged in public policy documents or solutions envisaged in regulations and selecting the best possible option to achieve the concrete goals/aims. Based on the provided definition, impact assessment is one of the elements of the public policy management system. In the Planning System Act, impact assessment (analysis of effects) is defined as “an analytical process carried out in the course of planning, formulating and adopting public policy and legislation in order to identify the change to be achieved, its elements, cause-effect relationships, and to select the optimal measures to achieve the public policy goals (*ex-ante* impact assessment), as well as during and after the implementation of adopted policies and regulations in order to evaluate performance, review and improve the public policy and/or legislation (*ex-post* impact assessment)” (Article 2 §1, point 7 PS Act). This definition includes several characteristics of impact assessment: a) it is an analytical process; b) it is applicable to both public policy documents and regulations in an equal manner (Bradaš & Sekulović, 2020b: 9); c) it is performed throughout the entire public policy and legislative cycle, including the development, formulation, adoption, implementation and evaluation of public policy and legislation effects. In this regard, we can distinguish *ex-ante* and *ex-post* impact assessment. In terms of methodology, the impact assessment process is identical for public policy documents and regulations; the only difference is the object of assessment (Dimitrijević & Vučetić, 2021: 87). This approach was accepted in the legal provisions of the Planning System Act (2018) and the Regulation (08/2019). The Regulation stipulates that an *ex-ante* analysis is not mandatory in specific cases when public policy documents do not have a high impact

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<sup>10</sup> The impact assessment of public policies and regulations on environment protection is one of the oldest impact analyses which has been put into practice, first by the USA and then by the EU (Bradaš & Sekulović, 2020a: 6).

on society and/or do not represent a high priority<sup>11</sup>, and in other cases recognized by the Regulation (8/2019).

An *ex-ante* analysis can be performed in the form of a basic or detailed assessment, which depends on the level of impact and priority (envisaged in Appendix 1 of the Regulation) as well as on the complexity and range of measures to be implemented (in line with the principle of proportionality and precaution).<sup>12</sup> A detailed analysis will be performed if a proposing party envisages that a document will have a significant impact on society.<sup>13</sup> A detailed impact assessment of regulations pertaining to gender equality and micro, small and medium-sized enterprises<sup>14</sup> will be performed when the test results indicate the need for such analysis.<sup>15</sup> In case it is considered that measures or solutions from proposed public policy documents or regulations will not cause significant effects, the impact assessment is performed through the process of answering the questions contained in Appendices 2-10 of the Regulation (8/2019)<sup>16</sup>; otherwise, the impact assessment is conducted through the prescribed steps of an *ex-ante* analysis in accordance with Chapter III of the Regulation.<sup>17</sup>

It is important to mention the Act on the Prohibition of Discrimination<sup>18</sup> (hereinafter: the Anti-Discrimination Act, AD Act), whose last amendments included new provisions on the *ex-ante* impact assessment based on the implementation of the principle of equality.<sup>19</sup> The Anti-Discrimination Act stipulates that the public authority will be responsible to conduct an *ex-ante* analysis of regulations or public policy documents in the context of their compliance with the principle of equality when these documents are important for ensuring the exercise of the rights of socio-economically vulnerable persons or groups of persons (Article 14 §4 AD Act). The Anti-Discrimination Act stipulates that the conducted analysis should contain the following elements: “1) comprehensive description of the situation in the concrete field with special reference to socio-economically vulnerable persons and groups of persons; 2) assessment of the necessity and proportionality of the intended changes in accordance with the principles of equality and the rights of socio-economically disadvantaged persons and groups of persons; 3) risk assessment for the rights, obligations and legally based interests of persons and groups of persons in

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<sup>11</sup> In that case, the *ex-ante* assessment is performed on the basis of results of the impact test which is an integral part of the Regulation (Appendix 1). Article 6 of the Regulation enlists the specific cases when an *ex-ante* analysis is not mandatory (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, *Official Gazette RS*, No. 08/2019).

<sup>12</sup> Article 8, paragraphs 1-2 of the Regulation No.8/2019.

<sup>13</sup> Article 8, para. 4. of the Regulation No.8/2019.

<sup>14</sup> Impact assessment tests on gender equality and micro, small and medium-size enterprises are available at the Public Policy Secretariat website: <https://rsjp.gov.rs/sr/alati-za-sprovođenje-analize-efekata/> (access: 25. 08. 2023).

<sup>15</sup> Article 8, paragraph 5 of the Regulation No.8/2019.

<sup>16</sup> Appendices 2-10 of the Regulation contain the key assessment questions in the following fields: Appendix 2 - Key questions for the analysis of the existing situation and correct definition of the change being proposed; Appendix 3 - Key questions for identifying goals and objectives; Appendix 4 - Key questions for identifying public policy options; Appendix 5 - Key questions for the analysis of financial impact; Appendix 6 - Key questions for the analysis of economic impact; Appendix 7 - Key questions for the analysis of social impact; Appendix 8 - Key questions for the analysis of environmental impact; Appendix 9 - Key questions for the analysis of governance impact; Appendix 10 - Key questions for risk analysis.

<sup>17</sup> Article 8, para. 6 of the Regulation No.8/2019.

<sup>18</sup> Act on the Prohibition of Discrimination (Anti-Discrimination Act), *Official Gazette RS*, No. 22/2009 and 52/2021

<sup>19</sup> For more details about the impact assessment through the implementation of the principles of equality and non-discrimination, see: Mihajlović, A. 2023. *Vodič za primenu procene uticaja propisa i javnih politika na socioekonomski najugroženije građane i građanke*. Beograd: A11 – Inicijativa za ekonomska i socijalna prava.

accordance with Article 14 § 3 of the AD Act” (Article 14 §5 AD Act). In particular, the Anti-Discrimination Act recognizes the following socio-economically vulnerable persons or groups of persons: persons with disabilities, national minorities, underprivileged women and men, persons of different sexual orientation or gender identity, elderly persons, and others, with special emphasis on their position the field of labor and employment (Article 14 §3 AD Act).

The authority which is responsible for the *ex-post* analysis will monitor the implementation and effects of a particular public policy document or regulation. Based on the findings, the authority can propose concrete amendments to these documents. The state authority in charge of monitoring the quality of the conducted an *ex-ante* analysis and issuing an opinion on the quality of *ex-ante* analysis is the Public Policy Secretariat of the Republic of Serbia. Its opinion is based on the report about the conducted *ex-ante* impact assessment submitted by a proposing party. The Public Policy Secretariat delivers an opinion stating that an impact assessment is: a) complete; b) partial; c) insufficient; d) unnecessary, i.e. there is no need for an impact analysis.<sup>20</sup>

#### 4. PARTICIPATION OF STAKEHOLDERS AND TARGET GROUPS IN THE PROCESS OF DEVELOPING PUBLIC POLICY DOCUMENTS

The process of developing public policy documents must be transparent and inclusive for all interested parties to express their needs, comments and a vision what a new public policy document should include. The lack of participation of all stakeholders and target groups in the process of creating public policies and regulations may hinder their efficient and effective implementation in practice, and necessitate a new legislative intervention (CRTA, 2018: 7).

Notably, the Planning System Act (2018) has introduced the mandatory process of conducting consultations at all stages of the development of public policy documents and regulations, including cases when impact assessment analysis is not mandatory. Article 34 § 5 of the PS Act envisages that, in case the impact assessment is not done, an annex which contains information on the consultation process will be part of a public policy document or regulation draft. Article 36 of the PS Act stipulates that a public debate in the process of developing public policy documents shall be held in accordance with the Government act regulating public debate in the process of drafting legislation.

The Planning System Act recognizes two groups of interested parties that participate in the process of developing public policies: stakeholders and target groups. Stakeholders are defined as “authorities and organizations, and natural and legal persons having an interest in the public policy measures”. A target group is defined as “a group of natural and/or legal persons and/or other stakeholders affected by the public policy measures” (Article 2 § 2, points 15-16 PS Act).

Stakeholders and target groups are entitled to submit an initiative to the Public Policy Secretariat for the implementation of a specific consultation process method. After the submission of this initiative, the Public Policy Secretariat may propose to a public administration authority which is an authorized proposer “to implement a specific consultation method during consultations, and to include certain stakeholders and target groups in the

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<sup>20</sup> Article 49, para.1, point 1-4 of the Regulation No. 8/2019.

working group for the preparation of the public policy document” (Article 35 § 1 of the PS Act). The Regulation (8/2019) recognizes different consultation process techniques: focus group; round table; semi-structured interview; panel; survey; submission of written comments.<sup>21</sup>

There is a difference between a consultation and a public debate process in developing public policy documents and regulations: *a consultation* is used in the initial stage when a draft document is still being developed and when it is necessary to collect data from the interested parties; *a public debate* is the next stage when a draft document is completed and used to inform the wider audience, including stakeholders and interested parties, on the proposed measures and to collect additional suggestions for the final intervention in the document. The Government of the Republic of Serbia has established a platform “eConsultation” (*srb. eKonsultacije*)<sup>22</sup> where stakeholders and interested parties can participate in the process of developing concrete documents, leave their comments and monitor the transparency of the entire procedure how a draft document is created.

## 5. CONCLUSION

The planning system of the Republic of Serbia and its elements have been regulated by the Planning System Act (2018), and the Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents (2019). Public policies are seen as courses of action by the central and local authorities aimed at achieving concrete goals in the society. Impact assessment is one element of the planning system and creation of public policies and regulations. As different solutions have different effects on various segments of everyday life, it is very important to formulate and choose those solutions with the least negative effects. Impact assessment can be performed as an *ex-ante* or *ex-post* analysis, depending on whether it is conducted in the process of developing and adopting or in the process of implementation and evaluation of the effects of concrete public policy documents and regulations. The Public Policy Secretariat of the Republic of Serbia is the state authority in charge of monitoring the quality of conducted *ex-ante* analysis and issuing an opinion, which is part of the public policy documents and regulations adoption procedure. The last amendments to the Anti-Discrimination Act introduced additional rules which strengthened the quality of implementing the *ex-ante* analysis from the perspective of human rights and application of the principle of equality. The described process of impact assessment is identical for public policy documents and regulations. The method of assessing public policy documents and regulations is the same; the only difference is the object of assessment (a public policy document or a regulation) and the sequence of assessment. Namely, the impact assessment of public policies will be done first; if it demonstrates the need for regulatory intervention, the impact assessment of regulations will be performed. Yet, this is not always a rule and the procedure will depend on concrete documents and fields of state intervention.

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<sup>21</sup> Article 41 § 2 of the Regulation No. 8/2019.

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## **ANALIZA EFEKATA DOKUMENATA JAVNIH POLITIKA I PROPISA U PRAVNOM PORETKU REPUBLIKE SRBIJE**

*Analiza efekata dokumenata javnih politika i propisa jeste analitički proces koji ima za cilj procenu pozitivnih i negativnih efekata koje mere javnih politika ili rešenja u propisima mogu da imaju po stanovništvo i privredne subjekte. Zavisno od toga da li se analiza efekata odvija u procesu razvoja dokumenata ili nakon njihovog usvajanja, primene i evaluacije ostvarenih rezultata, razlikujemo ex-ante i ex-post analizu efekata. Ova oblast u Republici Srbiji je regulisana Zakonom o planskom sistemu Republike Srbije i Uredbom o metodologiji upravljanja javnim politikama, analizi efekata javnih politika i propisa i sadržaju pojedinačnih dokumenata javnih politika. Izmenama i dopunama Zakona o zabrani diskriminacije uvedene su odredbe kojima se posebno naglašava obaveza i značaj organa javne vlasti da prilikom sprovođenja ex-ante analize efekata imaju u vidu poštovanje načela jednakosti. Primenom normativnog metoda, cilj rada je da se prikažu osnovni elementi planskog sistema Republike Srbije i postupak sprovođenja analize efekata, kao i da se ukaže da je ovaj postupak identičan kako za dokumente javnih politika tako i za zakone i uredbе.*

*Ključne reči: javne politike, regulacija, analiza efekata, planski sistem.*