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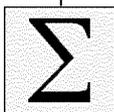
The Role of Ministries
in the Policy System: Policy
Development, Monitoring
and Evaluation

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**THE ROLE OF MINISTRIES IN THE POLICY SYSTEM:
POLICY DEVELOPMENT, MONITORING AND EVALUATION**

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This publication is based on a Sigma paper and on reports by EU Member States prepared in 2005 at the request of several new Member States. The original paper and some Member State reports were then used as background documentation for a Sigma workshop for countries in the CARDS region on the role of ministries in policy systems, held in November 2005. This revised version of the paper, prepared after the workshop, includes as an annex a summary of insights from EU Member States as well as comparative information concerning the CARDS region, which was gathered during the workshop on the basis of a questionnaire.

This publication presents the steps in the policy process and offers a framework for assessing and developing the role of ministries in the policy process, as well as insights on how the policy process is currently organised in Western Balkan countries. Its contents complement the information provided in a previous Sigma paper, which had emphasised the structure and work of the government secretariat.

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SIGMA

Support for Improvement in Governance and Management
A joint initiative of the OECD and the European Union, principally financed by the EU

THE ROLE OF MINISTRIES IN THE POLICY SYSTEM: POLICY DEVELOPMENT, MONITORING AND EVALUATION

SIGMA PAPER NO. 39

Prepared for Sigma by Michal Ben-Gera

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FOREWORD

Western Balkan countries, driven by the requirements of the Stabilisation and Association process and the prospect of EU accession, are striving to improve their policy-making capacities, especially at the level of ministries. The capacity of line ministries, in Western Balkan countries and in some new Member States, to develop policy options, carry out policy analysis, monitor policy implementation and evaluate policies is often rather weak.

This publication is based on a Sigma paper and on reports by EU Member States prepared in 2005 at the request of several new Member States. The original paper and some Member State reports were then used as background documentation for a Sigma workshop for countries in the CARDS region on the role of ministries in policy systems, held in November 2005. This revised version of the paper, prepared after the workshop, includes as an annex a summary of insights from EU Member States as well as comparative information concerning the CARDS region, which was gathered during the workshop on the basis of a questionnaire.

This publication presents the steps in the policy process and offers a framework for assessing and developing the role of ministries in the policy process, as well as insights on how the policy process is currently organised in Western Balkan countries. Its contents complement the information provided in a previous Sigma paper, which had emphasised the structure and work of the government secretariat.

The target audience for this publication is primarily government offices/secretariats and ministries of countries in the CARDS region, but the publication could prove useful to other transition countries currently in the process of strengthening their policy development, monitoring and evaluation capacities.

All Sigma publications are available on the Sigma website.

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EXECUTIVE SUMMARY

This paper offers a framework for assessing and developing the role of ministries in the policy process, covering OECD member countries, central and eastern European countries (CEECs), and countries of the Western Balkans (ex Yugoslavia and Albania). The analysis is based on a background paper and country papers prepared for a CARDS seminar held in Budva (Montenegro) in November 2005, which are supplemented by the results of a written questionnaire completed by participants during the event.

Overview of the Policy Process

- Schematically speaking, a policy process is initiated by a political decision, which is followed by detailed policy development, producing options for the policy instrument to be subsequently applied. Once chosen, the instrument is implemented and assessed, leading to further policy development or to reconsideration and modification of the initial policy decision.
- The policy process is driven by players (head of government, the government, committees of the government, individual ministers, the Government Office, central and line ministries as well as civil society) acting according to rules of procedure and producing specific outputs (policies).

Functions of Ministries in the Policy-Making Process

- In this publication, the policy process is broken up into 12 separate steps. In the description of each step, the functions (lead, secondary, or minor) performed by ministries are specified. For each step, survey information on the situation in CARDS countries and in new Member States is provided.
- *Definition of priorities:* Ministries should make a contribution to the definition of priorities as well as to the analysis of government strategy documents, identifying priorities that apply to them. In the countries surveyed, ministries participate in this process, but fewer than half use these strategy documents to determine real policy priorities.
- *Policy and legislative planning:* Ministries should have a good awareness of developments and problems in their respective areas of competence so that they can identify the needs for developing policy and legislative proposals. They should also have the internal capacity to contribute to the elaboration of the annual government work plan prepared by the Government Office. Responses to the questionnaire indicate consistent participation of ministries in the planning process, but reveal weaknesses in the horizontal planning and management of human resources corresponding to identified priorities.
- *Preparation of Policy Proposals* (including policy analysis, impact assessment and consultation with civil society): This preparation is managed by the relevant department (sector) in ministries and/or by a supporting central unit responsible for legal drafting and co-ordination. Nearly all of the CARDS and new Member State governments reported that they did not have sufficient capacity to prepare policy proposals. Only about one-third of the participating countries consult civil society on a regular basis, and the quality of impact assessment is often found to be inadequate.
- *Preparation of Legal Drafts:* Ideally, drafting begins after policy options have been assessed and after the government has agreed on a preferred option. In most new Member States and CARDS countries, there is rarely a separation between the policy development and the legal drafting phases, given a lack of resources and as a result of tradition. Only

four out of 14 countries reported sufficient resources for law-drafting across ministries, a precondition for harmonising legal systems with the EU *acquis*.

- *Inter-ministerial consultations*: Rules of procedure establish consultation requirements, and “consulted” ministries are supposed to improve the quality of substance. In contrast to the requirements in the CARDS countries, in the four new Member States there is an obligation to consult with all ministries. It is unclear, however, how “deep” these consultations go.
- *Submission of items to the Government Office*: Once a policy paper or legal draft is ready, it is normally signed by the minister and sent, together with supporting material, to the Government Office for scheduling (government session or meeting of ministerial committee). In almost all of the governments surveyed, there is an internal process to approve items prior to their transmission to the Government Office.
- *Review by the Government Office*: In this step, the respective ministry has to be prepared to discuss and answer all of the questions that the Government Office might have on a particular item. Open lines of communication seem to be the rule in most of the governments surveyed.
- *Review by ministerial committees*: Committees (or commissions, as referred to in countries of former Yugoslavia) act as “funnels” for policy proposals in related policy areas as they are forwarded to the government session. All but one government have such a system in place.
- *Decision by the Government (Council of Ministers)*: The role of ministries in this step is to brief the minister for government meetings and to ensure proper follow-up afterwards. Very few administrations surveyed had given to the ministry secretary the significant task of reviewing government decisions and assigning tasks to sectors.
- *Parliamentary process and passage*: This step is normally determined by the Constitution and/or by parliament, with the Government Office being responsible for ensuring that the interests of the government are properly represented. In the event of parliamentary amendment proposals, the ministry must develop an appropriate response.
- *Implementation*: Implementation is the responsibility of individual ministers and their ministries or agencies and often requires secondary legislation. Responses to the questionnaire reveal important weaknesses in most policy systems in terms of implementation (about half of the respondents signaled the absence of any monitoring; the remainder reported that implementation monitoring fell into the remit of ministerial sectors only).
- *Monitoring and evaluation*: It should be the responsibility of ministries to assess whether policy objectives are met and whether policies are cost-effective. Beyond a very informal “evaluation”, such an assessment is rarely carried out in the region under review, which significantly hampers the crucial feedback loop in the policy process.

Summary and Recommendations

The paper concludes that it is desirable to strengthen the role of ministries in the policy-making process in transition countries.

- In their specific areas of competence, in co-ordination with the Government Office, ministries should take a lead role in a number of steps in the policy-making process, especially in terms of the content of policy – policy development, preparation of drafts, consultations, implementation, monitoring and evaluation.

- Conference participants identified priority areas for improving the policy process, with the following considered as most important: more training in policy skills for ministry staff, strengthening of central units in ministries to perform policy functions, and clearer procedures within ministries.
- A majority of participants, when asked what changes might be required in the rules of procedure, stressed the importance of impact assessment.

The main recommendations for strengthening the role of ministries in the policy process are the following:

- “Rules of Procedure” of the government should describe ministerial responsibilities more clearly, including the type of analysis to be performed (e.g. impact assessment, cost/benefit analysis).
- The Government Office should support ministries in their assessment of policy proposals.
- The rules of procedure should foresee a discussion of policy proposals by the government prior to the process of law-drafting.
- Ministries should review and revise their internal procedures for preparing policy items for the government. Also, methods and procedures should be devised to internally co-ordinate and control quality.
- Training of ministerial staff in policy analysis and impact assessment across all sectors and in policy development techniques should be made a priority.

CHAPTER 1: INTRODUCTION

This paper offers a framework for assessing and developing the role of ministries in the policy process. The paper is based primarily on Sigma experience in assessing the policy-making and coordination systems in EU Candidate Countries, many of which became Member States in 2004. The objective is to create a basis for learning from this experience, specifically in order to apply it to the governments of the Western Balkans (CARDS region). Accordingly, an early version of this paper was discussed in a workshop organised by Sigma for governments of the CARDS region (Budva, Montenegro, 1-2 November 2005) and this version of the paper builds on the results of that workshop.

In preparing the first version of this paper, Sigma asked a number of EU Member States (including new members) to prepare short “country papers” to provide information on how their ministries participate in the policy process. Eight responses were received in time for incorporation in the paper (Austria, Czech Republic, Germany, Hungary, Poland, Slovakia, Slovenia and Spain). These country papers were useful as initial indications of the variability of approaches, although they provided a limited basis for comparative analysis, due to great variability of focus and approach. The annex to this paper provides some interesting examples from these country papers to illustrate various aspects of the policy process in ministries. The full papers are available from Sigma.

In order to gather comparative information, Sigma prepared a questionnaire that was completed by participants from all 10 Western Balkan governments during the Budva workshop. In addition, the questionnaire was also completed by experts participating in the workshop from four new Member States (Czech Republic, Estonia, Hungary, and Poland). As a result, we now have comparative information on various aspects of the policy process in ministries from 14 governments. These are presented in tables throughout this paper. The reader should be aware that the questionnaires were completed by the participants in the workshop, and may not represent an “official” position of governments. Also, many of the questions may be given to subjective interpretation, and there may also have been some tendency to beautify reality at least in some cases. Nevertheless, the answers are illustrative, and point quite clearly to some of the strengths and weaknesses of the policy process in the region.

As was noted, the focus of the paper is on the role of ministries in the policy process. The paper will focus only marginally on the decision-making role of the government itself and on the role of the Government Office as co-ordinator of the overall policy system. These issues are addressed in detail in Sigma Paper No.35 (2004), *Co-ordination at the Centre of Government: Functions and Organisation of the Government Office*. Also, the paper will not address in any detail the technical issues involved in the actual development of policy, such as policy analysis, impact assessment, and consultations. Technical details can be found in Sigma Paper No. 31 (2001), *Improving Policy Instruments through Impact Assessment*. Both of these papers can be found on the Sigma website (www.sigmaweb.org).

Note on terminology: the term “Government Office” is used throughout the paper to refer to the administrative organ that serves the head of the government (normally the Prime Minister) and the Government/Council of Ministers. The actual term used varies from government to government – for example, General Secretariat, Government Office, Government Secretariat, Chancellery, Cabinet Office.

CHAPTER 2: OVERVIEW OF THE POLICY PROCESS

Policy is a complex term, with multiple meanings. In everyday language, it is applied to a very broad range of actions, from the most personal (e.g. “it is my policy never to give personal information by phone”) to the global (e.g. global environmental policy, international nuclear policy), and even to the universal (e.g. “honesty is the best policy”). In this paper, we use the term in a restricted sense, focusing on policy that is developed and implemented by the executive branch of government. A useful working definition for our purposes is:

“Policy is a deliberate action of government (the executive branch) that in some way alters or influences the society or economy outside the government. It includes, but is not limited to, taxation, regulation, expenditures, information, statements, legal requirements, and legal prohibitions.”

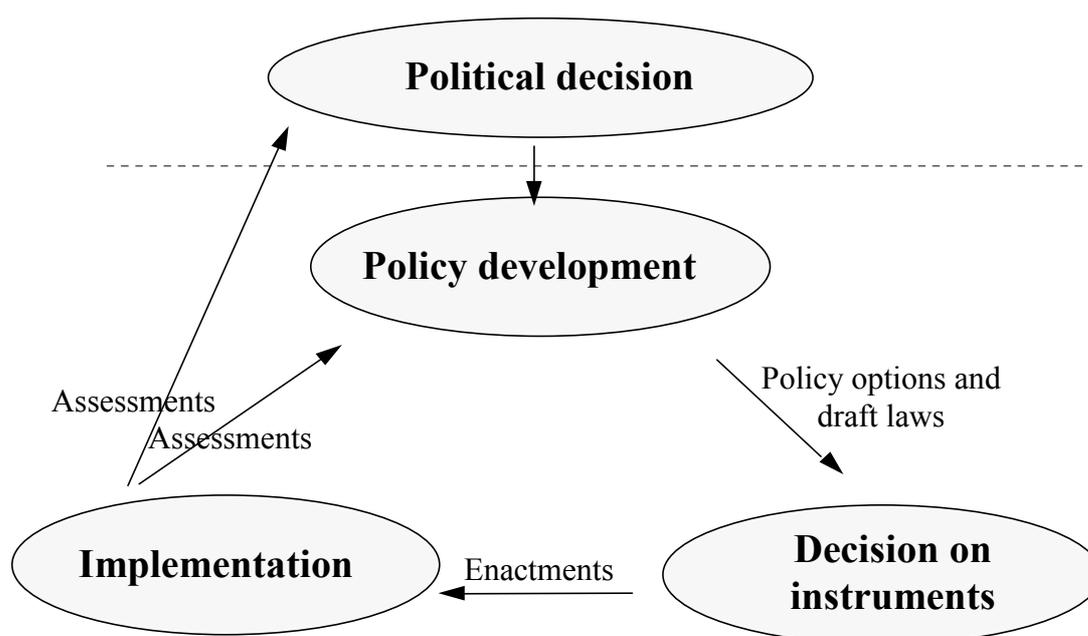
The reader should be aware that it is impossible to clearly distinguish between the terms “policy” and “strategy” as they are commonly used. What one government calls an “economic development strategy” another might call an “economic development policy”. In this paper, we attempt to use the term “strategy” to refer to documents with broad objectives that cut across a number of ministries and have at least a medium-term horizon. In this sense, a strategy cannot be, in and of itself, directly implemented. Rather, in order for its goals to be achieved, a strategy requires a number of policies and pieces of legislation to be developed and passed. Thus, an economic development strategy would have a time horizon of, say, five to ten years, and would require that a large number of ministries develop policies and legislation that, taken together, would promote the objectives of the strategy.

It is also difficult to distinguish between the terms “policy” and “politics”, and many languages do not even have separate terms for these two concepts. It is useful to distinguish them by using the term politics to refer to the considerations and activities of politicians that are directed towards their attempt to get elected or re-elected and to create personal and group alliances among themselves. Policy, on the other hand, is what politicians decide to implement. To be sure, the decision to adopt and implement a policy is often based on political considerations, but it normally remains possible to distinguish between these considerations and the outputs.

Policy is produced by the policy process, which is normally conceptualised as a cycle. A simplified model of the policy cycle is presented below, and much of this paper provides further elaboration of this process.

As this model shows, the policy process is normally initiated by a political decision (usually in the form of general policy objectives), followed by detailed policy development that produces options for more specific political decisions on the policy instrument to be enacted (passed). Once enacted, the instrument is implemented and subsequently assessed, which in turn leads to further policy development (and possibly amendments to the instrument) or even to reconsideration and modification of the initial political decision. It should be made clear to the reader that these steps are not always deliberate and orderly or of high quality, but that nevertheless they always happen to one degree or another, in a conscious or unconscious way.

Simplified policy cycle



Within the executive policy system, there are a number of important players. They are: the head of the government (the prime minister or the president of the government), the government (council of ministers), committees of the government, individual ministers, the government office, central and line ministries, and civil society. (parliament is also involved – in passing government legislation, proposing legislation, or amending government bills. However, since it is not part of the executive, its activities are not specifically covered in this paper.) On the basis of the constitution, laws, regulations, conventions, and political culture, each of the players within the policy system has a role (or roles) to play and specific activities to perform. For the most part, these roles are played in an interactive manner with some of the other players. In the various elements and steps of the policy system, each player may have a lead role or a supporting role, depending on the nature of the task to be performed.

The **processes** that define and guide the policy system are normally codified in the “rules of procedure” of the government or similar documents. Typically, these rules of procedure specify how the government (and its commissions) makes decisions, how the Government Office should handle preparations for meetings of the government, how ministries (and some other “administrative bodies”) should submit proposals to government meetings, and some of the actions ministries are required to undertake prior to submission, such as inter-ministerial consultations and review by a legislative body of the government. The rules of procedures are normally not very specific on how ministries should develop their policy and legislative proposals,

although in recent years some governments in the region have added some details, such as the requirement that ministries should undertake a fiscal impact assessment.

Policies constitute the **output** of the policy system, and they are almost always embodied in legal acts. While this point is often ignored, it is important to realise that every legal act embodies policy, even where the policy is not clearly or coherently stated. For example, legislation that establishes speed limits on various types of roads embodies the policy of the government to restrict driving speeds, and to do so differently on highways, secondary roads, and streets in built-up areas. The objectives for establishing various speed limits might be stated in the act (for example, to increase safety, reduce accidents, reduce gasoline consumption, or limit noise) or they might be unstated and thus only inferable by deduction from the legal act itself. It is possible, in fact, that the links between the stated objectives and the legal provisions are not logical or coherent. Nevertheless, by definition, legal provisions always embody some policy, even if only by default.

Theoretically, it is possible to distinguish between a policy and a legal draft, and between activities related to policy development and those related to legal drafting. Simply put, the policy is the content, or substance, and the legal draft is the embodiment of this substance in a legal language and format. Policy development is the process of deciding what should be achieved, what should be done to achieve it, how to do it, who should do it, etc. For example, following a political decision to undertake measures to reduce car accidents, policy development would involve analysis of the causes of accidents, their distribution among different sub-populations and on different roads, the rules and policies already in place, the experience of other governments, etc. A number of options for reducing accidents would then be developed – for example, lower speed limits, better enforcement of existing limits, higher age requirement for first license, and education and information campaigns. It would then be necessary to assess the costs and benefits of each of the options (impact assessment, consultations) and to present the options and supporting analysis to the government for its decision. All of these steps are part of policy development. Once there is a decision on the option(s) to follow, the legal drafting can begin, putting the selected option or options into language that fits the legal tradition, the constitution, etc.

However, in the real world, the distinction is much more blurred, because legal considerations themselves are often an important aspect of substance. For example, options that require enforcement of speed limits must specify how and by whom this will be done. However, this specification has legal implications, some of which cannot be known until the draft has actually been prepared and lawyers have taken a good look at the legality of various approaches, such as their implications in terms of fundamental freedoms. Moreover, the legal act introducing a new policy may clash with other legal acts, and so the process of legal drafting may require some reassessment of policy decisions and options. In practice, therefore, it is very important to use the methods and skills of both policy analysis and legal drafting when preparing items for government decisions. True, it is normally useful, and reduces waste of effort, to start first with some policy development rather than rushing into drafting before the main objectives and principles of the policy have been clarified. However, it is not really necessary, and often not useful at all, to separate these activities completely into strictly sequential steps. Co-operation with legal experts in the early stages of policy development may be a very efficient way to avoid wasting time looking at options that clash with legal considerations.

The subject of this paper is the role of ministries (and certain other administrative bodies) within the policy system and the functions they should perform at each step in the policy process. Ministries play a central role in the policy system since they are the primary bodies that develop and implement policies and legislation related to the sector in the economy and society falling

within their area(s) of competence. These functions of ministries are derived from sectoral responsibilities and are often referred to as “line functions”.

In addition, a number of ministries also have “horizontal functions” within the policy system, and in this respect they deal directly with other ministries rather than with the outside world. For example, the Ministry of Finance, in addition to its line responsibilities (e.g. tax collection) has a horizontal responsibility for the preparation and management of the budget. In this respect, it deals with all other ministries during the preparation of the budget, and it also has an ongoing role of reviewing all proposals of ministries that have budgetary implications. In some countries, the Ministry of Justice, in addition to its line (sectoral) responsibility for the justice system (criminal law, judges, court operations), also has a responsibility for ensuring the integrity of the body of legislation. As such, it is charged with reviewing legal drafts prepared by ministries in terms of their legal language and consistency with the Constitution and other laws in force. (In the governments of former Yugoslavia, this function is usually performed by a legislative secretariat, not by the Ministry of Justice). These ministries perform a dual role within the policy system, both as line ministries with respect to their areas of competence and as horizontal ministries with a special role within the policy system itself. Where necessary, both of these aspects will be touched upon in this paper.

CHAPTER 3: THE FUNCTIONS OF MINISTRIES IN THE POLICY-MAKING PROCESS

To review the role of ministries in detail, it is useful to break up the policy-making process into 12 separate steps and to look at the functions to be performed by ministries at each step. The policy-making process encompasses the stages in the cycle, including setting priorities, policy development, decision-making, monitoring and evaluation. A summary list of the 12 steps – and the players involved in each of them – is presented in the table below. As can be seen from the table, ministries have a role to play in each of the 12 steps, although in some of the steps they have the lead role while in others only a secondary or even a minor role.

Summary Table: Roles of the Ministry in the 12 Steps of the Policy Process

Step	Body with lead role for preparation/support	Other contributing bodies	Decision/approval
1. Definition of priorities	Parties, PM Cabinet (Government Office)	Government Office, all ministries	Government, parliament
2. Policy and legislative planning	Government Office	All ministries, Legislative Secretariat	Government
3. Preparation of policy proposals	Sponsoring ministry	Working groups, NGOs, outside experts	Minister
4. Preparation of legal drafts	Sponsoring ministry	Working groups, NGOs, Legislative Secretariat, outside experts	Minister
5. Inter-ministerial consultations	Sponsoring ministry	Some/all other ministries (normally MoF in horizontal capacity)	Minister
6. Submission to Government Office	Sponsoring ministry		Minister
7. Review by Government Office	Government Office	Sponsoring ministry	Secretary General
8. Review by Commissions	Government Office	Sponsoring ministry	Commission chair, government
9. Decision by Government	Government Office	Sponsoring ministry	Government
10. Parliamentary process and passage	Parliamentary Office	Government Office, sponsoring ministry	Parliament
11. Implementation	Sponsoring ministry	NGOs, outside experts, local government	Minister
12. Monitoring and evaluation	Sponsoring ministry, Government Office	Outside experts, NGOs	Minister, government

In this chapter, we discuss each of the above 12 steps by providing a general description of the step as well as a description of the role of ministries in the step, and by presenting the results of the Sigma questionnaire. In addition, where available, specific examples relevant to the step are provided in the annex of country papers.

3.1 Step 1: Defining the Government's Priorities

General Description of the Step

While it is common to see the policy process as a cycle, it makes sense to treat the government's priorities as the starting point. Policy priorities are essentially political statements of intention set by the government as a whole. Most new governments in Europe and the Western Balkans present a four-year programme at the time of their initial confirmation by parliament. These programmes developed during the election campaign, and were often finalised during coalition negotiations. In addition, during their term in office, many governments engage in some form of formal strategic planning (annual or multi-year) and also establish horizontal policy priorities from time to time through other documents adopted by the government – e.g. European Integration Strategy, privatisation strategy and economic development strategy. The annual budget process is also used in some governments as an opportunity to set strategic directions by reallocating funds to areas considered as priority areas for the government. Taken together, these various documents establish the strategic framework for the work of the government.

The strategic framework should form the basis for policy development. In practice, it is rare to find a situation where all of the government's strategy documents are fully aligned with one another and can thus form a clear guide to the policy process. As priorities are often presented in an abstract and general manner, it may be difficult to derive specific actions from them. Strategy documents may be prepared by various task forces (and sometimes by external consultants) and then adopted by the government with little regard to either practicality or the interrelation of the documents. Nevertheless, strategies and long-term programmes adopted by the government do provide some idea of the political intentions of the government, and as such constitute a useful starting point for the whole process.

In general, it should be the task and responsibility of the Government Office to ensure that these strategies are linked to one another and that the work of ministries is in line with the strategies.

The Role of Ministries

With respect to the priorities of the government, the role of ministries is essentially twofold.

First, ministries should be involved in making a contribution to the definition of the priorities themselves. In some cases, those preparing the strategy may ask ministries for their contribution, as is normally the case in the preparation of national strategies related to European integration. However, even where the team developing a strategy does not specifically ask ministries for their contributions, ministries should be ready to "convince" the team to include some of their own priorities in the strategy. This will allow them, if the strategy is subsequently adopted, to use the adopted strategy as additional justification (and possibly a source of new funds) for pursuing their priorities. Whether or not ministries are asked for contributions, they need an internal process and capacity to first identify priorities within their own area of competence and to then feed them effectively into the government's strategy documents. In any event, draft strategy documents should be circulated to ministries for comments before they are finalised, and ministries should have the capacity to respond to such documents in a coherent institutional manner.

Second, ministries should analyse all of the government's strategy documents to identify priorities that apply to them, and they should respond to them with their own policy initiatives that conform to the strategy and contribute to its realisation. In some cases, it is clear from a strategy document that a certain ministry will have to prepare a specific policy or legal act. This is not always the case, however, partly because strategies may be general and vague, and partly because some strategic priorities may touch on the interests of the ministry only indirectly. For

example, the government may include in a strategy document the commitment to improve services to disadvantaged communities or to certain poorer regions of the country. Concerned ministries should then review their activities and services in order to identify ideas for policies and/or legislation that would contribute to meeting this strategic commitment.

Table 1: Step 1: Defining the Government's Priorities

CARDS Region	Ministries involved in preparing Government strategy documents	Ministries have a process to participate in strategic planning	Who is responsible within ministries for strategic plans	Ministries have process to derive policy priorities from strategy documents
Albania	Yes	Yes	Ministry Secretary	Sometimes
BiH – Federation	Yes	Sometimes	Political Cabinet	Yes
BiH – RS	Yes	Yes	Political Cabinet	Sometimes
BiH – State	Yes	Yes	Political Cabinet	Sometimes
Croatia	Sometimes	Sometimes	Each Sector	Sometimes
Kosovo	Yes	Yes	Ministry Secretary	Yes
fYR Macedonia	Yes	Yes	Ministry Secretary	Yes
Montenegro	Yes	Yes	Ministry Secretary	Yes
Serbia	Yes	Yes	Political Cabinet	Sometimes
SaM – Union	Yes	Yes	Political Cabinet	Sometimes
New Member States				
Czech Republic	Yes	No	(No process)	No
Estonia				
Hungary	Yes	Yes	Policy unit	Yes
Poland	Yes	Yes	Each sector and central unit	Yes

As this table shows, almost all of the governments report that ministries are involved in the government's strategic planning process, and have an internal process to perform related tasks. On the other hand, once the strategy documents are prepared, fewer than half of the governments report that they have a consistent process whereby ministries actually derive their policy priorities from such documents. This finding confirms the observation often made by Sigma that strategy documents at times remain statements of good intentions without any follow-up.

3.2 Step 2: Annual Policy and Legislative Planning

General Description of the Step

Most governments have an established process to plan their policy and legislative output, normally on an annual basis. In some cases, there are two separate plans, one for all items that should reach the sessions of the government and the other for legal acts only. The plan usually consists of a list of items to be prepared by ministries, the name of the responsible ministry, and the timing (usually the specific month) for submission of the item to the government for decision. The preparation of the plan is the task of the Government Office, which also monitors progress in implementing the plan, revising it if necessary, normally on a quarterly basis.

The annual plans are prepared on the basis of input provided by ministries. In some cases, this is a purely "bottom-up" process, where the Government Office merely staples together the items that have been received from ministries, while in other cases the Government Office has the authority to exercise judgment in compiling the plan based on the input provided. This means that

the Government Office assesses if the plans submitted by ministries take sufficient account of the priorities of the government, and may request additional input from a ministry if it has not included items that are required to meet strategic priorities. Conversely, it may indicate to a ministry that it has included too many items, some of which the government or parliament may not have time to consider. In this manner, the preparation of the plan becomes an interactive process between ministries, which promote specific sectoral priorities, and the Government Office, which is responsible for considering cross-sectoral and government-wide issues. The final decision on the plan, including the resolution of any conflicts, is the responsibility of the government.

The Role of Ministries

Ministries play a significant role in determining the legislative and policy agenda. On an on-going basis, ministries should have a good awareness of developments and problems in their respective areas of competence so that they can identify the need to develop policy and legislative proposals. Ministry plans should respond to:

- the government's declared priorities;
- public pressure (including from special interest groups);
- international agreements and commitments;
- problems arising from existing policies (including enforcement and implementation problems); and
- the need to implement policy more efficiently and to save money.

In addition to this ongoing process, ministries need to have a good internal process for responding specifically to the annual request of the Government Office to submit their input to the plan, in order to ensure that:

- government priorities are reflected in the ministry's plan, especially priorities related to harmonisation with European legislation;
- all departments within the ministry are involved in determining the ministry's priorities for policy and legislative initiatives in the upcoming year;
- the legislative department (where it exists) is closely involved;
- there is an internal co-ordination process to ensure that the overall submission of the ministry is realistic and balanced; and
- the ministry has the capacity to adequately fulfil the plan.

Ministries should also have an internal process that ensures maximum fulfilment of the plan and allows for modifications in the event that it is absolutely impossible to meet the plan. Ideally, if the ministry finds that it cannot prepare all of the documents in the plan, it should be in a position to decide which items are of the highest priority and divert resources for their preparation.

Table 2: Step 2: Annual Policy and Legislative Planning

CARDS Region	Ministries participate fully in the government's annual planning process	Ministries have internal process to monitor performance on plan	Who is responsible for planning/monitoring	Resources of legal department reallocated regularly to priority items
Albania	Yes	No	Ministry Secretary	Sometimes
BiH – Federation	Yes	Yes	Ministry Secretary	Yes
BiH – RS	Yes	Yes	Ministry Secretary	Yes
BiH – State	Limited	Yes	Ministry Secretary/ Political Cabinet	Yes
Croatia	Limited	No	Ministry Secretary	Sometimes
Kosovo	Limited	Yes	Ministry Secretary	Yes
fYR Macedonia	Yes	Yes	Ministry Secretary	--
Montenegro	Yes	Yes	Ministry Secretary/Political Cabinet	Yes
Serbia	Yes	Yes	Ministry Secretary/Political Cabinet	Sometimes
SaM – Union	Yes	Yes	Ministry Secretary/Political Cabinet	Sometimes
New Member States				
Czech Republic	Limited	No	Political Cabinet	No
Estonia	Yes	Yes	Ministry Secretary	Sometimes
Hungary	Yes	Yes	Central unit in ministry	Yes
Poland	Yes	Yes	Ministry Secretary	Sometimes

The questionnaire responses suggest that there are not many problems with this step in the process. Annual planning is commonly carried out by the Government Office in almost all governments, and it is normally based on input from the ministries, usually in the form of a list of items the ministry plans to submit to government in the coming year. The fact that this is normally the responsibility of the Ministry Secretary is also a positive finding, because it is normally the Ministry Secretary who is best positioned to ensure that the process of preparing the input is fully horizontal and covers all units in the ministry. The final issue raised in the table is a bit more troubling. It shows that in about half of the governments the drafting resources of the ministry are not reallocated to priorities. This is probably an indication that the ministries are not managed internally as fully integrated organisations, with adequate horizontal planning and management of human resources. This issue will be reflected again throughout this paper.

3.3 Step 3: Preparation of Policy Proposals (including policy analysis, impact assessment, consultations with civil society)

General Description of the Step

The process of developing policy proposals normally includes the following steps:

- Identification of the issues that the policy needs to correct or improve;
- Setting of specific objectives to be met by the policy (quantitative and qualitative);

- Preparation of options for approaches and actions that would meet the objectives;
- Impact assessment of the options;
- Inter-ministerial consultations to address cross-ministry issues;
- Consultations with civil society; and
- Recommendations to the minister of a preferred option.

Policy development can be a complex activity and often requires the skills of a multidisciplinary team, including economists, social scientists, subject-matter specialists (e.g. agriculture, education), financial specialists, and lawyers. Where the administration does not have the internal resources, it may contract external assistance or seek assistance from international donors.

The Role of Ministries

Essentially, all of the tasks in this step are performed by the sponsoring ministry (unless the preparation is assigned to an external body, but this is the exception). The preparation of policy proposals is the central role of ministries within the policy system. Since it is the ministries that are in regular interaction with their social and economic sectors, they are really the only bodies within the administration that possess enough detailed knowledge and practical experience of the issues requiring policy and legislative response. In some cases, the government may establish special task forces or inter-ministerial working groups to carry out this step, but even then the role of the ministry with specialised knowledge is crucial, as it normally leads the working group.

It is the responsibility of the expert staff in the ministry to ensure that the minister and the government receive the best information as they make decisions that affect the society and the economy. In fact, all of the techniques of policy analysis and policy development are aimed at producing high-quality, reliable information for decision-makers. In cases where a substantially new or revised policy is developed, the preparation of policy proposals requires significant analysis and consultation with stakeholders, as well as special attention to funding and concrete implementation requirements (including personnel and institutions).

Wherever policy cuts across the responsibilities of more than one department within the ministry, it is customary to create a working group within the ministry to develop the policy and perform the necessary analysis. Also, wherever policy cuts across the responsibilities of more than one ministry, it is useful to create an inter-ministerial working group under the lead ministry to ensure that all of the issues are considered in the preparation and analysis phase.

There are essentially two models for the organisation and management of policy development in ministries: it is either fully in the hands of the relevant department (sector) or there is also a supporting central unit with responsibility for legal drafting and some co-ordination.

In most cases, the main responsibility for preparing and developing policy is assigned to the sectoral department within whose scope the issue fits best. The department is responsible for carrying out whatever analysis is to be done, for consulting with civil society, and for clarifying issues within the ministry and with the political staff of the minister. If a ministry or inter-ministerial working group is established, the department acts as its chair, and it also manages inter-ministerial consultations and briefings of the minister where necessary.

At the same time, it is quite common for ministries to have a central legal unit, and whether or not this unit is involved in legal drafting depends, at least in some cases, on the legal expertise available in the sectoral department. In some cases, the legal unit is also responsible for co-ordinating the treatment of comments received from other ministries during inter-ministerial

consultations and for managing the process whenever the ministry is consulted by other ministries. In some cases, the legal unit is also the contact point with the Government Office before and after the commissions and the government discuss items developed by the ministry.

What seems clear from some of the papers prepared for Sigma by the eight countries (see Annex) is that the role of the legal unit in the policy process is often inconsistent and may vary from ministry to ministry in the same country. Its role seems to depend on the relative strength of the legal unit and the sectoral departments, as well as on the working style of the state secretary in the ministry and on tradition. It is important to note that none of the eight countries has a central unit with expertise in policy analysis or impact assessment that could serve as a resource for the whole ministry.

Sigma's assessments of policy-making and co-ordination capacities of EU candidates in Central and Eastern Europe and of Western Balkan governments over the past few years have repeatedly found that policy-development skills and habits are not well developed in ministries. As there appears to be no tradition of policy development, together with an insufficient recognition of its importance, ministries tend to proceed almost directly to the drafting of legislation without sufficient prior analysis. The result is often legislation that does not have a sufficient basis in reality, can be costly or difficult to implement, causes resentment in the target group, and requires repeated amendments. Sigma Paper no. 31, *Improving Policy Instruments through Impact Assessment*, provides significant detail on the techniques that should be used in policy development. However, it is certain that ministries would need significant training in these techniques and also that ministers would have to become convinced of the value of policy analysis before any improvements could be made in this area.

This issue is especially important to consider because policy development within a ministry is usually not the role of only a small group of people. As was noted above, policy development in this region is the task of all of the structural departments within the ministry, and so training in policy analysis techniques needs to be widespread in order to bear fruit. Fortunately, many training modules and courses on these topics, where the necessary skills can be learned, already exist.

Table 3.1: Step 3: Preparation of Policy Proposals (including policy analysis, impact assessment, consultations with civil society)

CARDS Region	Ministries develop policy proposals prior to drafting legislation	Ministries normally submit policy proposals to the government for decision	Ministries have a centralised unit to perform some policy development tasks	Ministries have capacity to perform policy tasks
Albania	Yes	Yes	No	Some
BiH –Federation	Yes	Only in special cases	No	Some
BiH – RS	Yes	Yes	No	Some
BiH – State	Yes	Yes	No	Some
Croatia	Sometimes	Yes	No	Yes
Kosovo	Sometimes	No	No	Some
fYR Macedonia	Sometimes	Only in special cases	No	Some
Montenegro	Yes	Yes	No	Some
Serbia	Yes	Yes	Sector for Economic-Financial	Some
SaM – Union	Yes	Yes	Yes	Some
New Member States				
Czech Republic	Yes	Yes	No	Some
Estonia	No	No	Yes	Some
Hungary	Sometimes	Only in special cases	No	Some
Poland	Yes	Yes	No	Yes

Table 3.2: Step 3: Preparation of Policy Proposals (including policy analysis, impact assessment, consultations with civil society)

CARDS Region	Rules of Procedure require ministries to submit impact assessment	Ministries consult with civil society in preparing policy documents and legislative drafts	Civil society able to make meaningful input into ministries' proposals
Albania	Yes	Sometimes	Often
BiH –Federation	Yes	Sometimes	Often
BiH – RS	Yes	Yes	Often
BiH – State	Yes	Sometimes	Rarely
Croatia	Yes	Sometimes	Often
Kosovo	Yes	Only on legal drafts	Often
fYR Macedonia	Yes	Sometimes	Often
Montenegro	Yes	Yes	Often
Serbia	No	Yes	Often
SaM – Union	No	Only on legal drafts	Often
New Member States			
Czech Republic	Yes	Sometimes	Often
Estonia	Yes	Sometimes	Often
Hungary	Yes	Yes	Rarely
Poland	Yes	Yes	Often

The two tables above address the central issue of how ministries develop policy proposals. Although most of the respondents report that ministries prepare policy proposals before drafting legal acts, our experience shows that this is not so common. Perhaps this issue is better

addressed by the more indirect questions. For example, almost all of the governments report that ministries do not have sufficient capacity to prepare policy proposals. In addition, although most of them claim that civil society can often make meaningful input into policy proposals, only about a third consult civil society on a regular basis. Accordingly, although the rules of procedure of all but two governments require that ministries prepare impact assessment, it seems clear from the responses to the other questions that the quality of such assessments may often be insufficient.

Organisationally, it is interesting to note that only Estonia has a central unit in ministries to perform policy development tasks (Croatia mentions the Economic-Fiscal Unit, but it appears that the unit only assists in costing proposals). In this respect, the governments of the Western Balkans follow the normal European model (old and new Member States) whereby policy development is conducted in the relevant sector of the ministry, and not by a central unit of specialists (as is sometimes the case with legal drafting). In our view this approach is perfectly valid, as long as there are sufficient horizontal processes in the ministries to coordinate policy internally and to consult sufficiently.

3.4 Step 4: Preparation of Legal Drafts

General Description of the Step

This step involves the drafting of the actual legal text of policy instruments (legislation, tax codes, decrees, etc.). Ideally, drafting begins after the policy options have been assessed (normally by the initiating ministry) in terms of impacts and implementability and after the government, or at least the minister, has agreed on the preferred option. In most central and eastern European and Western Balkan governments, however, there is rarely a separation between the policy development phase and the legal drafting phase. This has to do with tradition, but also with limited resources and time constraints. Combining policy development with legal drafting is not ideal, but as this habit cannot be changed overnight, it is important to search for the most effective ways of combining the two steps.

A useful guide and detailed checklists on legal drafting are provided in Sigma Paper no. 15, *Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe*.

The Role of Ministries

Drafting is the task of ministries, supported by the legislative secretariat. The role of ministries in this step is rather clear and unproblematic. Most ministries in the region have the capacity to prepare legal drafts, and they are also able to work together with the legislative secretariat to solve problems as they arise. The drafting is usually performed either by the lead department within the ministry or by a specialised legislative department, and sometimes it is a combination of both.

Usually a well articulated process is set up within the ministry to approve legal drafts internally by the collegium of the ministry, chaired by the minister. The minister's political staff (cabinet) normally also play a role in the internal approval process.

Table 4: Step 4: Preparation of Legal Drafts

CARDS Region	Ministries have sufficient legal staff of good quality to prepare legal drafts	Ministries have a central drafting unit	If there is a central unit, is it responsible for all of the ministry's drafting?
Albania	Yes	In some ministries	Only for legislative technique
BiH –Federation	In some ministries	In some ministries	Yes
BiH – RS	In some ministries	No	--
BiH – State	In some inistries	In some ministries	No
Croatia	No	Yes	No
Kosovo	In some ministries	Yes	Yes
fYR Macedonia	In some ministries	No	--
Montenegro	In some ministries	In some ministries	Yes
Serbia	Yes	Yes	?
SaM – Union	In some ministries	In some ministries	Yes
New Member States			
Czech Republic	In some ministries	No	No
Estonia	Yes	Yes	Yes
Hungary	Yes	Yes	Yes
Poland	In some ministries	In a few ministries	No

It is interesting to note, as the first column of the table shows, that the majority of respondents indicate that there are not sufficient drafting resources in the ministries. Only four out of 14 governments report sufficient resources across the ministries. This is surprising, given the legal tradition of these administrations, and may be related to the low salary levels in the administration combined with demand for lawyers elsewhere in the economy. Needless to say, having sufficient drafting resources in the ministries is a necessary – if not sufficient – condition for efficient operation of the policy system. This issue will greatly increase in significance as governments become more fully engaged in the harmonisation of their legal systems with the EU *acquis*.

In terms of organisation, in some cases there are central drafting units, in others drafting is done (like policy development) in each sector of the ministry. We believe that both of these systems can work well as long as there is good and ongoing cooperation between policy and legal specialists. In about half of the governments there is a mixed approach, whereby some ministries have a central unit and others do not. This too can work, but it may complicate matters when it is decided to regularise the policy system and introduce more order and more consistent procedures for the policy work of ministries. It is normally easier to establish rules across the system where the structures across ministries are consistent.

3.5 Step 5: Inter-ministerial Consultations

General Description of the Step

In many areas of policy and legislation, a number of ministries may have valid concerns, as many policy areas cut across the competencies of several ministries. This is true in the case of line ministries because many social policies are interrelated (e.g. education and health policies are related to the labour force) and because policies in many areas have consequences for the economy (e.g. environment, transport and agriculture). In the case of a horizontal ministry, such as the Ministry of Finance, it is clear that almost all policies have budget implications and they

therefore affect the ministry's mandate. The purpose of inter-ministerial consultations is to ensure that the interests of other ministries are raised and discussed at the expert level so that as many conflicts as possible are resolved before items reach the session of the government (or its commissions), which should focus on political issues.

Normally, the rules of procedure establish detailed requirements for inter-ministerial consultations. The items are normally sent to other ministries under the signature of the minister. The rules of procedure then set the time limits for consultations and also normally specify that the sponsoring ministry is to submit to the government, along with the item, a list of any comments that were not accepted, together with justification.

The Role of Ministries

Ministries perform two different roles. On the one hand, as sponsoring ministries, they are responsible for carrying out and managing consultations. This involves:

- deciding to which ministry the item is to be sent for comments (unless the rules specify "all ministries");
- collecting the comments, analysing them, and deciding which comments to accept and incorporate into the document;
- in some cases, calling meetings to discuss the comments, especially where they are substantial; and
- preparing a list of comments that are rejected and providing justification for the rejection.

The second role is to act as the "consulted" ministry and to prepare responses to items sent by other ministries for consultation. This function requires a process within the ministry for distributing the item to the relevant departments, gathering and collating the comments, agreeing on the comments through an intra-ministerial process, and preparing a letter for the minister, who forwards the comments to his counterpart in the sponsoring ministry.

In most Western countries, consultations are required not only for legal drafts but for all policy items on the agenda of government meetings. This is not always the case in Central and Eastern Europe and the Western Balkans, where inter-ministerial consultations focus only on legal drafts, and usually at a late stage in their development. This approach is often inadequate for ensuring serious inter-ministerial considerations on the policy's substance. Consultations on fully elaborated drafts usually take place too late, are too formal to provide an opportunity for in-depth discussion, and tend to focus on marginal drafting details. When this is the case, the main objective of inter-ministerial consultation, which is to improve the substance of policy, is not really achieved.

Table 5: Step 5: Inter-ministerial Consultations

CARDS Region	Type of consultations required by the Rules of Procedure	Consultations required on policy documents or only on fully elaborated legal drafts	Inter-ministerial consultation procedure facilitates in-depth input
Albania	Ministries with interest	Both	Yes
BiH –Federation	MoF, MoJ, Legislative Secretariat	Both	Yes
BiH – RS	Ministries with interest	Both	Yes
BiH – State	Ministries with interest	Both	No
Croatia	Ministries with interest	Both	Yes
Kosovo	Ministries with interest	Only legislative drafts	Yes
fYR Macedonia	All ministries	Both	Yes
Montenegro	Ministries with interest	Only legislative drafts	No
Serbia	Ministries with interest	Both	No
SaM – Union	Ministries with interest	Only legislative drafts	No
New Member States			
Czech Republic	All ministries	Both	No
Estonia	All ministries	Both	Yes
Hungary	All ministries	Only legislative drafts	Yes
Poland	All ministries	Both	Yes

The difference between the governments of the Western Balkans and the new EU Member States is striking in terms of the extent of required consultations. In the former, with the exception of fYR Macedonia, a sponsoring ministry can decide which other ministries it will consult. In most such cases, there is a specific obligation to consult the Ministry of Finance wherever there are financial implications. In the four new Member States there is an obligation to consult all ministries, an approach that is more likely to ensure that no interests are missed. It is worth noting that the majority of governments report that the inter-ministerial consultations procedure facilitates in-depth input from the consulted ministries. This report is in contradiction with the usual Sigma observation that much of the consultation is formalistic and deals with minor drafting issues. This issue clearly requires further research and probably a better definition of the term “in-depth”.

3.6 Step 6: Submission of Items to the Government Office

General Description of the Step

Once the policy paper or legal draft is ready, it is normally signed by the minister and sent to the Government Office for scheduling, either directly for the government session or for the meeting of the ministerial committee(s).

The Role of Ministries

The ministry is responsible for finalising the draft and for having it approved according to the internal rules up to the level of the minister. The ministry also completes the “dossier” of supporting material that must accompany all documents prepared for decision by the government.

Table 6: Step 6: Submission of Items to the Government Office

CARDS Region	Ministries have a specified process internal approval before submission to Government Office	If yes, what is the process?
Albania	Yes	Consultations with all sectors
BiH –Federation	Yes	Minister approves
BiH – RS	Yes	Minister approves
BiH – State	No	--
Croatia	Yes	Consultations with all sectors
Kosovo	Yes	Agreement of Political Cabinet
fYR Macedonia	Yes	Review by Expert Collegium
Montenegro	Yes	Review by Assistant Ministers and Ministry Secretary
Serbia	?	?
SaM – Union	Yes	Review by Expert Collegium with Minister
New Member States		
Czech Republic	Yes	All sectors are consulted
Estonia	Yes	All sectors are consulted
Hungary	Yes	---
Poland	Yes	Legal Department then Minister

It appears from the responses that in almost all of the governments there is a specific process for internal approval of items before they are transmitted to the Government Office. Of these, it is clear that the best approach – consultation with senior management across the ministry – is the most common.

3.7 Step 7: Review by the Government Office

General Description of the Step

In almost all systems, the Government Office has the authority to review the submissions received from ministries and to return them for further work if necessary. In some central and eastern European and Western Balkan governments, the Government Office only has the competence and capacity to review the formal aspects of the document, e.g. whether all of the necessary signatures and attachments have been included in the dossier and whether all of the legally required consultations have taken place. The Government Office in most OECD countries also reviews the substance of proposals, especially to ensure that the issue has been analysed in sufficient depth, alternative policy options have been assessed, inter-ministerial issues have been resolved, cross-sectoral concerns have been addressed appropriately, and the proposal is in line with government policy and priorities and with other policy initiatives under consideration. In some cases, there is a parallel review by advisors in the Office (Cabinet) of the Prime Minister, who deal with political/party/coalition issues.

The Role of Ministries

In this step, the role of the ministry is simply to be prepared to discuss any issues and answer any questions raised by the Government Office. Ideally, the ministry has clearly designated a person whom the Government Office can contact in the event that there are any issues to discuss.

Some governments in the region have established in recent years a system whereby the secretaries of ministries meet on a weekly basis, under the chairmanship of the government secretary, to review items collectively before they reach the commissions and the government sessions. This allows for one final check on the readiness of the items and for the resolution of some issues that had not been resolved by ministry experts but do not require political resolution. If such a meeting takes place, the ministry staff should be able to brief the ministry secretary prior to the meeting on those items sponsored by the ministry and also on any unresolved issues regarding items of other ministries.

Table 7: Step 7: Review by the Government Office

CARDS Region	Open and regular lines of communication between ministries and the Government Office	A weekly meeting of ministry secretaries to prepare items for the government	If yes, do ministries brief the Secretary for this meeting?
Albania	No, mostly formal	No (planned soon)	---
BiH –Federation	Yes	No	---
BiH – RS	Yes	No	---
BiH – State	No, mostly formal	No	---
Croatia	Yes	?	?
Kosovo	Yes	Yes	Yes
fYR Macedonia	Yes	Yes	Yes
Montenegro	Yes	No	---
Serbia	Yes	No	---
SaM – Union	Yes	No	---
New Member States			
Czech Republic	No, mostly formal	No	---
Estonia	Yes	No	---
Hungary	Yes	Yes	Yes
Poland	Yes	No	---

Open lines of communications between ministries and the Government Office appear to be the rule in most governments, with only three exceptions. The weekly meeting of ministry secretaries (chaired by the Government Secretary) is quite uncommon, as it is held in only three out of 14 governments (with one more government planning to introduce it). Given that such meetings are often recommended by Sigma consultants, it would be interesting to study in greater depth the usefulness of such meetings, e.g. do they lead to better resolution of inter-ministerial conflicts, and do they lead to more efficient and effective government sessions.

3.8 Step 8: Review by Ministerial Committees

General Description of the Step

In most governments there is a system of ministerial committees that reviews items before they are decided by the government. The committees (usually referred to as commissions in the governments of former Yugoslavia) are normally set up according to subject matter (e.g.

European integration, social issues, economic issues), and their members are the ministers in the related sectors. The committees may be chaired by the Prime Minister, a deputy prime minister, or the minister most directly concerned with the committee's subject matter. In many governments these committees act as "funnel" committees, that is, items **must** pass the committee before being scheduled for the session of the government. In these cases, the committees normally have significant authority to require from ministries additional work or conflict resolution before recommending that an item moves to the session of the government. The committees are almost always served by the Government Office.

The Role of Ministries

The role of ministries in this step is to brief the minister for the committee meetings that he/she attends to make sure, insofar as possible, that he/she is informed of all of the relevant issues that might come up in the meeting, especially in relation to items sponsored by the ministry but also to others where the ministry has significant outstanding concerns.

In some cases, the ministry may send experts to support the minister by responding to technical questions in the committee meeting.

Table 8: Step 8: Review by Ministerial Committees

CARDS Region	Ministries have a process to brief ministers for meetings of government committees	Ministry senior staff attend government committee meetings
Albania	Yes	Only to support minister
BiH –Federation	Yes	Can attend and speak
BiH – RS	Yes	Can attend and speak
BiH – State	Political Cabinet	Only to support minister
Croatia	Yes	Can attend and speak
Kosovo	No operative committees	---
fYR Macedonia	Yes	Can attend and speak
Montenegro	Political Cabinet	Only to support minister
Serbia	Yes	Can attend and speak
SaM – Union	Yes	Can attend and speak
New Member States		
Czech Republic	Political Cabinet	Can attend and speak
Estonia	Yes	Only to support minister
Hungary	Yes	No
Poland	Yes	Only to support minister

The most interesting fact from this table is that all but one government – Kosovo – have committees of ministers to discuss issues before they reach the session of the government. (A process is currently underway to introduce such committees in Kosovo as well). It also appears that in all of the governments where there are committees, ministers are briefed in preparation for their meetings, and senior ministry staff can attend either to simply support the minister or even to speak. These findings are more positive than was expected based on previous Sigma observations.

3.9 Step 9: Decision by the Government (Council of Ministers)

General Description of the Step

The agenda of the government session is normally prepared by the Government Office and often approved by the Prime Minister. Dossiers for the session are circulated to ministers by the Government Office a specified number of days before the session. To ensure that only items that have been fully reviewed are on the agenda, the practice of bringing items directly to the meeting is normally discouraged, although this rule is enforced with varying degrees of success. Following the government decision, items are either sent back to the relevant ministry – for further work or for implementation – or to parliament for decision in the case of primary legislation.

The Role of Ministries

As in the case of government committees, the first role of ministries in this step is to brief the minister for meetings of the government to make sure, insofar as possible, that he/she is informed of all of the relevant issues that might come up in the session, especially in relation to items sponsored by the ministry, but also to others where the ministry has significant concerns.

Following the meeting, each ministry must process the decisions that apply to it and ensure follow-up.

Table 9: Step 9: Decision by the Government (Council of Ministers)

CARDS Region	Ministries have process to brief ministers for sessions of the government	Ministries have process to follow up government decisions to ensure timely performance of ministry tasks
Albania	Yes	Responsibility of each sector
BiH – Federation	Yes	Managed centrally in ministry
BiH – RS	Yes	Responsibility of each sector
BiH – State	Responsibility of Political Cabinet	Responsibility of each sector
Croatia	Yes	No
Kosovo	Responsibility of Political Cabinet	Responsibility of each sector
fYR Macedonia	Yes	Managed centrally in ministry
Montenegro	Responsibility of Political Cabinet	Managed centrally in ministry
Serbia	Yes	Responsibility of each sector
SaM – Union	Yes	Responsibility of each sector
New Member States		
Czech Republic	Yes	Responsibility of each sector
Estonia	Yes	Managed centrally in ministry
Hungary	---	---
Poland	Yes	Managed centrally in ministry

The important issue addressed in this table is the process in ministries to follow up decisions of the government and ensure that ministries perform the assigned task(s). Where the answer is that this is the responsibility of each sector, the indication would seem to be that the ministry as a whole may not be managing this step appropriately, as this approach leaves too much to chance. It would seem better for ministries to have a process whereby the Ministry Secretary makes sure that after each government session decisions are reviewed, tasks are assigned to specific sectors or individuals, and there is a process of reporting back to ensure timely completion. This type of process appears to exist in only a very few of the administrations responding to the questionnaire.

3.10 Step 10: Parliamentary Process and Passage

General Description of the Step

This step is required for some government decisions, but not all. The procedures for passing legislation in parliament are normally determined by the Constitution and/or by parliament itself. For legislation originating from the government, the Government Office is normally responsible for ensuring that the interests of the government are represented.

The Role of Ministries

The role of ministries in this step is to be prepared to explain and defend the legislative proposals that they have sponsored in parliamentary debates and in the parliamentary committees that review them. In most cases, it is the minister himself/herself who must appear in parliament, but he/she is likely to need the support of the ministry's legal and policy experts if complications arise.

If parliament proposes substantive amendments, the ministry must be prepared to analyse and assess them, and to develop an appropriate response (to accept, reject, or compromise) and justify this response.

Table 10: Step 10: Parliamentary Process and Passage

CARDS Region	Ministries have process to prepare and support Minister for parliamentary debates of draft laws	If yes, who is responsible?
Albania	Yes	Upon request of parliament
BiH –Federation	Yes	Staff assigned by the government
BiH – RS	Yes	Deputy Minister for specific sector
BiH – State	Yes	---
Croatia	Yes	Assistant Minister briefs Minister
Kosovo	Yes	Legal Department and/or Political Cabinet
fYR Macedonia	Yes	Staff assigned by the government
Montenegro	Yes	Informal, but normal practice
Serbia	Yes	Responsible sector
SaM – Union	Yes	Responsible sector
New Member States		
Czech Republic	No	---
Estonia	Yes	Responsibility of Government Office
Hungary	Yes	Secretary for Parliamentary Relations (in ministry)
Poland	Yes	Responsible sector

3.11 Step 11: Implementation

General Description of the Step

Depending on the need for parliamentary legislation, concrete implementation of legal acts may follow directly from the government decision or begin after the parliamentary law is passed. Implementation includes preparation and passage of secondary legislation (where necessary), followed by concrete implementation in the field, which is obviously beyond the scope of this paper.

The Role of Ministries

Implementation is the responsibility of individual ministers and their ministries or agencies. In the case of primary legislation, parliamentary passage often gives rise to the need to prepare secondary legislation in the ministry. The preparation of such legislation is in fact a “mini” policy process and as such may necessitate some of the activities described under steps 3-5 above, followed by internal approval within the ministry and signature by the minister.

Once the legal framework is in place, concrete implementation and/or enforcement may begin. These activities are part of the overall ongoing administrative responsibilities of the ministry and related agencies, and are outside the scope of this paper.

Table 11: Step 11: Implementation

CARDS Region	Ministries have a specified process to monitor the implementation of decisions of the government	If yes, how is this process managed?
Albania	Yes	Responsibility of each sector
BiH – Federation	Yes	Responsibility of each sector
BiH – RS	Yes	Ministry Secretary
BiH – State	No	----
Croatia	No	Responsibility of each sector
Kosovo	No	Responsibility of each sector
fYR Macedonia	No	Responsibility of each sector
Montenegro	Yes	Responsibility of each sector (managed by political cabinet)
Serbia	Yes	Responsibility of each sector
SaM – Union	Yes	Responsibility of each sector
New Member States		
Czech Republic	No	---
Estonia	No	---
Hungary	Yes	Responsibility of each sector
Poland	Yes	Ministry Secretary through central formal process

This table exposes one of the most important weaknesses of most of the policy systems in the region, the insufficient attention in ministries to implementation of decisions. About half of the respondents indicate that there is no process in ministries to monitor implementation. Moreover, of those reporting that there is a process, almost all report that it is the responsibility of each sector. As was pointed out with respect to following the tasks assigned by the sessions of the government, “responsibility of each sector” in fact means that implementation is not managed consistently by senior management of the ministry, and is left too much to chance. Without a well-elaborated process, how can the ministry – and the minister – be sure that the tasks related to implementation (e.g. preparation of secondary legislation, setting up of administrative units and procedures required for implementation) are in fact performed?

3.12 Step 12: Monitoring and Evaluation

General Description of the Step

There are generally two types of monitoring and evaluation. The first is formal and concerns primarily the monitoring of the performance of ministries in meeting deadlines set in government

decisions. This is the role of the Government Office, and many governments have a system (usually computerised) for following up on government decisions and monitoring the performance of tasks assigned to ministries.

The second involves assessing the actual effectiveness of policy and legal requirements in meeting their objectives. This type of evaluation can only take place some time after implementation, often more than a year or two. The methods and techniques for conducting such ex post evaluations are essentially very similar to those used for ex ante impact assessments.

The Role of Ministries

Evaluating the effectiveness of activities in terms of meeting policy objectives and cost-effectiveness should be the role of ministries. However, it can be said with some confidence that this is rarely done in the region, and certainly not on a regular and coherent basis. It is likely that a certain amount of informal "evaluation" takes place, since those who are implementing policy cannot avoid forming some opinion on the policy's effectiveness. As this informal assessment is essentially done in an ad hoc way, however, it cannot really sustain the necessary feedback loop between existing policy and the need for change and reform.

It is unlikely that an orderly process will develop in ministries until the Government Office elaborates guidelines and directives in this area for approval by the government and until there is some method for enforcing these requirements. Once this has been done and ministries have accepted their responsibility to engage in evaluation on a regular basis, several sources of information indicate how to carry out such an evaluation, including training courses and training materials prepared by various universities and training institutions.

Table 12: Step 12: Monitoring and Evaluation

CARDS Region	Ministries conduct ex post evaluation of the effectiveness of their policies and programmes	Evaluation required by the Rules of Procedure
Albania	Sometimes	Yes
BiH – Federation	Sometimes	Yes
BiH – RS	Yes	Yes
BiH – State	Rarely	Yes
Croatia	Sometimes	
Kosovo	Sometimes	Yes
fYR Macedonia	Rarely	No
Montenegro	Yes	Yes
Serbia	Sometimes	No
SaM – Union	Sometimes	No
New Member States		
Czech Republic	No	No
Estonia	Sometimes	No
Hungary	Sometimes	Yes
Poland	Sometimes	No

This table again exposes an important weakness in policy management in ministries: the lack of systematic evaluation of the effectiveness of policies and programmes. Admittedly, this is a difficult task and may be time-consuming and expensive. Yet it is crucial if the administration is to avoid serious implementation deficits, a problem often identified by the EC when assessing progress toward the adoption of the *acquis*. Also, where there is no ex post evaluation, it is difficult for ministries to determine where policies and legislation need to be revised in order to

meet their objectives more effectively. As some of the literature shows, it is often possible to conduct evaluations with limited resources by using inexpensive techniques, such as consultations and interviews with target group(s) and simple assessments of implementation cost-effectiveness.

CHAPTER 4: SUMMARY AND RECOMMENDATIONS

4.1 Issues for Improvement

Ministries are in a unique position to take the lead role in a number of steps of the policy-making system. These steps are all related to the content of the policy: policy development, preparation of drafts¹, consultations, implementation, monitoring and evaluation. What these areas have in common is that they are very directly related to the substance of the policy itself and to the responsibility of the individual minister for a specific field of activity rather than to the collective responsibility of the government as a whole. This is the logic of the division of responsibility between ministers on the one hand – as individual members of the government, supported by their respective ministries – and on the other the government collectively, supported by the Government Office.

In the specific area of the ministry's competence, the ministry has (or should have) an advantage in performing these tasks, because it is precisely the ministry that is responsible for ongoing development and maintenance of:

- contacts with the relevant public affected by the policies and legislation implemented by the ministry;
- ongoing, in-depth expert knowledge of the particular area of activity;
- knowledge of existing policies and legislation, including any of their weaknesses, such as the dissatisfaction of recipients; and
- knowledge of implementation and enforcement needs and difficulties.

This is a double-edged sword, however. Unless the ministry maintains the above elements in good order by remaining constantly in contact with the people and groups within its area of competence, and unless the ministry listens and learns from experience, it will not be able to develop good policy and legislation, and will instead increase expectations and frustration. Policy development is not a theoretical science or an objective mechanical process, even if it uses some scientific tools and formal procedures to analyse problems and assess solutions. Fundamentally, policy development is a matter of judgment that evolves through an interactive process between ministry experts and the societal actors whom they serve and whose actions they regulate.

Respondents to the questionnaire appear to be fully aware of the importance of an adequate policy development process. Respondents were asked to indicate how satisfactory the policy and legislative system was in ministries. All but one replied that the system required improvement. Respondents were then asked to indicate in which areas their systems required modification. The results are provided in Table 13 (respondents could check as many areas as they wished, and most of them checked five or six out of the 11 areas proposed).

¹ Note that the responsibility for legal drafting in countries that follow the Anglo-Saxon model is placed in parliament (UK) or in the Ministry of Justice (Canada) rather than in ministries. This is possible as long as ministries prepare their policy documents in sufficient detail to allow for drafting by legal experts who are not experts in the substantive field.

Table 13: What Should be the Focus of Steps to Improve the Policy Process?

	No. of governments that indicated this area:
Revision of the Government Rules of Procedure	6
More control by the Government Office	8
Clearer procedures within ministries	10
Requirement for preparation of policy documents prior to drafting	8
Better inter-ministerial consultations	7
More consultations with civil society	8
Stronger central units within ministries to perform policy functions	11
A more decentralised process within ministries	2
More authority given to legal departments in ministries	3
More staff in legal departments	6
More training in policy skills for ministry staff	13

As a follow-up question, respondents were asked which elements of the Rules of Procedure would be most important to amend. The results, in Table 14, again focus on policy preparation in ministries.

Table 14: What Changes Might be Required in the Rules of Procedure to Improve the Process?

	No. of governments that indicated this element:
More time for review of items	3
Better specification of inter-ministerial consultations	6
Clearer requirements for policy concepts	11
Requirement for impact assessment	11
More authority to the Government Office to review proposals and return them if they are not adequate (quality control)	6

4.2 Recommended next steps

To improve the role of ministries in the policy process, the following should be considered:

1. The “rules of procedure” of the government should describe more fully the responsibilities of ministries in providing high quality information to the government in support of the items they have put forward for government decisions. The rules might specify the type of analysis that should be performed (e.g. impact assessment, cost/benefit analysis, comparative analysis). They could also specify the type of information that is required (e.g. impact on industry, distribution of benefits and costs across the country, advantages and disadvantages of options, views of NGOs and civil society organisations, and substantive views of other ministries).
2. The Government Office should develop its capacity to assess the quality of the information provided by ministries in support of their items and should be given the authority to return items for further work if the information is insufficient or of low quality.
3. The rules of procedure should include a requirement that policy papers be presented and discussed by the government prior to legal drafting, at least in cases where major policy changes are contemplated. Making this requirement operational is not easy, but it is possible and necessary.
4. Ministries should review and revise their internal procedures for preparing items for the government, paying special attention to clarifying and strengthening:

- the procedure for annual planning of policy work;
 - procedures for consulting external interest groups;
 - procedures for inter-ministerial consultations;
 - the process for intra-ministerial clearance; and
 - procedures for monitoring, evaluating, and reporting the achievements and shortcomings of policies.
5. Ministries should establish a method and a procedure for internal coordination and quality control of their policy and legal output. Current approaches to policy management within the ministry should be reviewed, and ministries should give serious consideration to developing a more centralised and comprehensive management by top-level officials (e.g. the Ministry Secretary).
 6. Ministries should clarify and regularise the roles and responsibilities of the legal unit in the policy process.
 7. Ministries should develop the expertise of staff throughout sectoral departments in policy analysis and impact assessment. Training of staff across all sectors in policy development techniques should be a priority. As a first step, ministries might consider establishing a small unit with technical expertise in these areas to act as internal “consultants” to sectoral departments.

ANNEX: EXAMPLES FROM COUNTRY PAPERS

Step 1: Defining the Government's Priorities

Slovenia: In June 2005 the Government adopted the Development Strategy of Slovenia for the period 2004-2013 (first ten years of EU membership), which is a policy paper covering the overall development of the whole country.

There is also a set of documents passed by the Parliament which is very important for the overall policy-making and where the role of the ministries is significant, namely National Programmes. National Programmes are documents for the preparation of national policy. At present there are 14 National Programmes in different areas of social development (research, social care, sport, protection of environment, safety on road traffic, etc.). The National Programme is prepared and drafted by responsible Ministry and proposed to the Government. The Government (when accepted) passes it to the Parliament, which passes it through a special legislative procedure. A National Programme is not the law, but is adopted by the Parliament and it has significant implications for the area of social life that is regulated by it.

The Prime Minister can give the minister an obligatory directive for the work of the ministry. If the Minister thinks that the obligatory directive does not correspond to the set policy of the Government, he/she can demand that the Government discuss this question.

Hungary: In conformity with the Act on Legislation, the government has to elaborate a legislation program for a period of five years, describing the laws and the most important government decrees for preparation. In the course of elaboration of this legislation program, all the heads of the institutions of executive powers are consulted, and also the president of the Supreme Court, the Supreme Prosecutor, the social organizations and the trade unions, and the local government of Budapest and the county self-governments.

Austria: At the beginning of the Government period, civil servants of the ministries study very exactly the government programs, political strategies and political objectives in order to be able to derive from them the future line and actions.

Slovakia: The primary document outlining the orientation of the government and its objectives in the individual areas of public policy is the government manifesto, which every government must present to the National Council within 30 days of its appointment. On the basis of the manifesto, parliament passes a vote of confidence in, and gives mandate to, the government.

The government manifesto can therefore be viewed as the mandate of the parliamentary majority for the government to prepare and implement steps proposed in the manifesto. This mandate has two aspects. First of all, it is a general expression of confidence in the government by the majority of deputies representing – based on the outcome of general election – citizens. At a more practical level, however, the expression of confidence based on the manifesto can also be perceived as a non-formal commitment of the parliamentary majority to support bills introduced by the government in accordance with the manifesto.

Under the conditions of a coalition government – not only in Slovakia – a government manifesto also fulfils another non-formal, albeit a crucial, role: the role of an agreement between the individual political parties participating in the formation of the government, on its objectives and tools in the individual areas of public policy. The period of preparation for the formation of the government and its manifesto should then be a period during which the future participants in the government agree on the principal limits and ambitions of governing, which – when complied with – will make it possible for the government, its members and for parliament to relatively peacefully and productively work within the agreed confines.

Poland: Policy priorities are set by the Government as a whole and agreed upon at the time of the forming of the Government and sometimes in a coalition agreement. But this procedure is not of a systemic nature. It depends on the situation particularly between coalition partners. The principal document, which sets out the priorities of the Government, is an *exposé* of the Prime Minister presented to the Parliament at the beginning of the Government's term. All governmental work programmes should be in line with the Prime Minister's *exposé*.

Czech Republic: There are no formal procedures prescribed for preparation of the Government Policy Statement. The Statement is usually prepared by the Prime Minister's Cabinet of Advisors. The Policy Statement is more or less a compilation of submissions presented by individual Ministries. This can, and in many cases did, jeopardize the consistence and coherence of the Policy Statement. Unfortunately, there is often not enough time for preparation and adjustment of the Policy Statement. Substantive consultations with Ministries do not take place before the Policy Statement is submitted to the Government and the Parliament.

Apart from a few political priorities decided and highlighted during the coalition negotiations, such as Pension Reform or important draft laws, it is a discretionary power of those in charge of writing the Policy Statement which legislative or policy tasks will be included in the Statement. Many changes occur at the last moment as the departments "compete" for getting their own planned piece of legislation or policy proposal into the Statement to gain importance for it. Therefore, one can find a very detailed list of legislation to be prepared in one area and only some general policy declaration in the other area.

The other way of setting Government priorities is the preparation of particular strategic concepts such as the Convergence Programme or the Economic Strategy. A particular Minister is usually responsible for preparing such a document. Even though formal procedures for preparation of Government policy proposals exist, the style, way of preparation, and quality of content of such documents differ.

Step 2: Annual Policy and Legislative Planning

Slovenia: The annual Government programme consists of a list of laws and regulations that are planned to be adopted in the coming year. Each piece of legislation has to have only a short explanation. The annual Government programme is more a work plan than a policy paper. A similar paper is an annual report which comprises a list of adopted law and regulations.

Spain: The identification of a problem usually comes from a governmental program. The governmental program, which is essentially an executive summary of the electoral program that plays a role in the party elections that support the government, takes shape in the legislative calendar. The legislative calendar is a non-comprehensive document that is prepared by the CoG in accordance with the Ministries.

Besides the governmental program and unforeseen problems (such as an environmental catastrophe), the other sources of problem identification are public opinion and international agreements. The problem of domestic violence is one of the issues that are addressed by public opinion. Thus, the first law that was passed by the current Government was the Domestic Violence Law. The same can be said, for instance, for the housing policy.

Slovakia: The government manifesto in Slovakia is reflected in two basic planning documents of the government in the area of public policy – the Government's Work Plan and the Plan of the Government's Legislative Tasks. These annual documents are approved by the government at the beginning of each year and therefore they can be regarded not only as the implementation plan for the government manifesto, but also as the opportunity to complement key government priorities, set beforehand, by other tasks that are the result of ministers' initiative or the result of requirements not covered in the manifesto.

On the basis of the Government's Work Plan and the Plan of the Government's Legislative Tasks, individual sponsors are tasked to present their proposal for the government deliberations in the scheduled month.

Hungary: In accordance with the Government decision about the government's procedural rules, the Government decides on its working plan for a half-year long period in which the tasks to fulfil are detailed and monthly scheduled. In parallel with the preparation of the working plan, the Government adopts a law-making program that is published in the Official Journal. In the course of the elaboration of the working plan and law-making program, the Government also takes into account the obligations originating from Hungary's EU membership. The half-year long planning periods assure the possibility of modifying the existing policies if needed according to the implementation problems, economic elements, or emergency situations.

Poland: The planning process of Council of Ministers work is based on annual work programmes, normally managed by the Chancellery of the PM (CHoPM). There are annual and sometimes shorter term CoM's work programmes, which are being compiled by the CHoPM drawing on the inputs provided by the Ministries in a bottom-up procedure. The CHoPM is not responsible for ensuring the coherence of the operational plans with the Government's priorities. It is the responsibility of the Ministers to provide coherence with the overall strategic objectives of the government.

Czech Republic: The Annual Plan of Legislative Actions of the Government as well as the Annual Plan of Non-Legislative Actions of the Government are prepared by the Government Office and approved by the Government each year. Besides, Legislative and Non-Legislative Outlooks of the Government Actions for the following two years are issued every year. These documents are collated by the Government Office following the Ministries' submissions and based on the Government Policy Statement. The Government Office is also responsible for monitoring whether the Ministries comply with the Plans. Every month, the Government discusses the Report on Fulfilment of the Government's Task for the past month.

Step 3: Preparation of Policy Proposals (Including Policy Analysis, Impact Assessment, Consultations with Civil Society)

Slovenia: Cost/benefit analysis of each draft piece of legislation (or draft law) is focused only on their effect on the state budget. Changes for the state budget have to be estimated for the next three years and have to include proposals for compensation of increased expenditure or compensation for decreased income of the state budget. When the financial analysis does not estimate cost for the budget and some cost arises later, these costs are compensated from the budget provision of the submitter of the analysis (usually a ministry).

The policy cycle in administration is highly formalised and legalistic. Activities in policy development, monitoring and evaluation are prescribed; there is not much room for preparation of policies as options that serve a variety of stakeholders. Only a few policy papers could be found in the system (i.e. governmental strategies, national programmes). Mostly the policy development consists of legal drafting. In the process of legal drafting, techniques of impact assessment, preparation and analysis of different options are rare. Regulatory impact assessment is limited to impact on state budget; consequences for other stakeholders (economy, citizens, environment) are not assessed systematically.

Spain: An initiative, once negotiated with the other interested parties, definitively takes shape in a normative project that has to rely on an explicative memorandum as well as an economic memorandum. Throughout the process of policy development, diverse drafts are utilized and modified according to the contributions of the different players that are involved in the process.

The explicative memorandum and the economic memorandum are obligatory for all normative projects. Also it is necessary in Spain that laws contain a memorandum on their possible effects on equality between men and women. The projects that deal with the natural environment have to be accompanied by a report on any environmental impact that could arise from them.

Slovakia: The Act on the Division of Tasks and Responsibilities allocates responsibility for particular areas of policy to ministries and other central government agencies. The Act vests in the bodies the responsibility for the formulation of a single State policy in the allocated areas, as well as for the implementation of the policy. The Act further tasks them to study “the issues in matters that fall under their jurisdiction and to analyse the results achieved... to take measures aimed at solving current issues... to work out strategies for the development of the assigned areas and for dealing with major issues, to prepare drafts of proposed legislation and – after the review process – to present them to the government.”

It is rare in Slovakia for a ministry to have a policy unit responsible for all policy development and none of the multi-sectoral line ministries has it. Even where a policy unit exists (e.g. in the Ministry of Environment), it is not the sole source of policy documents and laws within a ministry, but it is one of the producers and is charged with the task of ensuring consistency and cohesion of all other outputs. Therefore, the usual structure of the ministry in Slovakia contains various line departments responsible for policies in their purview. These departments draft most or all policy documents, but the role of two other horizontal departments should be mentioned.

The legal department of each Ministry is responsible for drafting legislation. Since legislation is one of the key forms of policy development in Slovakia and is frequently not preceded by any formal policy document that would lay down in detail the policy to be legislated, legal departments are deeply involved in policy development by the virtue of their responsibility for legislation. Also, the financial department is responsible for budget preparation and execution, which also brings an important policy role. Additionally, each policy proposal and draft law need to be costed, which is sometimes done by line departments, but sometimes by financial department.

More recently, Slovakia has seen some institutional innovation, with two ministries, Ministry of Finance and the Ministry of Labour, Social Affairs and Family, establishing the Institute of Financial Policy and the Institute of Social Policy as departments within the ministry. These two institutes serve as a mixture of an internal think-tank and a policy unit on issues that cross the boundaries of line departments or for which the ministry is not officially responsible, but in which it has an abiding interest.

Formal and informal rules for the intra-ministerial process of policy preparation cover steps from the very start until the policy document or a draft law is approved by a minister and sent out into the wider world. But Ministries in Slovakia tend not to have any formal rules or manuals on how policy documents should actually be developed and the process organised. Instead, the process tends to be organised in an *ad hoc* and highly variable fashion.

Hungary: In the course of policy development, the Ministry responsible for the given field establishes different kind of advisory bodies, which can be composed of experts, researchers and other specialists. Generally in the case of the horizontal issues, a committee of the representatives of the concerned administrative bodies is established to develop a policy and elaborate a decision based on consensus.

In the ministries, the departments responsible for different fields of the sectoral public administration within the institution direct the concerned policy development and decision-making. Only in a few ministries is there a special unit responsible for analyses and strategy making. According to this structure, the sectoral departments – in collaboration with the analyses and strategy making units, if there are any – prepare the documents related to the

special sectoral policy, and the law departments are responsible for the elaboration and finalisation of the legal texts only.

Czech Republic: A concrete approach to policy preparation (prior analysis, consultation with stakeholders, setting up working groups, etc.) is a discretionary power of the responsible Ministry (or another authority). Therefore, the approach differs not only from ministry to ministry but also from document to document. The most usual way is that the Minister assigns the task to prepare the proposal to a particular department in the Ministry. The department then undertakes the preparatory work, such as analysing the existing situation, data gathering, etc. If some co-operation of other departments or other Ministries is necessary, they are then asked for concrete help on an ad hoc basis. Less often, a ministerial or inter-ministerial working group is established by the responsible department. Rarely, stakeholders outside the government are invited to participate in the working group.

If there is a substantial change in an Act, the substantial intent of the Act must be prepared and submitted to the Government first. Only after the substantial intent is approved by the Government, the Ministry begins to work on a paragraph wording. The substantial intent should include analysis of the legal and factual state, a proposal of solution including a justification of necessity of Government action and the analysis of the economic, social and environmental impacts including impacts on public budgets, business environment and fair treatment of men and women. The guidelines for the Impact Assessment procedures as well as public consultation are under preparation.

Newly, the quality of assessment of impacts on business environment is also reviewed by the Department for Regulatory Reform and Central State Administration Reform in the Government Office in co-operation with the Cabinet of the Deputy Prime Minister for Economy. This is a pilot phase that should result in a systematic quality control of all economic, social and environmental impact assessments.

Germany: Legislation responds to and attempts to manage societal developments. Whether legislation is passed regarding a particular issue and what form it takes serves as an indicator of political culture and reveals a great deal about the state of a society. In Germany, an average of 400 to 500 laws are passed in each legislative term. More than 80 per cent of proposed legislation is drafted by the federal ministries. Revisions to these proposals desired by the Bundestag during its consultations are usually also drafted by the relevant ministry in a process known as assistance with legislative formulation. As a result, the ministries are largely responsible for preparing and drafting new federal legislation. However, the ministries do not have special legislative divisions; instead, the unit responsible for the relevant subject is also responsible for drafting legislation related to that subject.

Bills have to contain the explanatory memorandum. The following list provides an overview of the wide range of items subject to approval and examination. The relevant lead organisation is obligated to take these criteria into account and respond to them concretely as far as possible. The lead organisation must explain:

- the purpose and necessity of the bill and its individual provisions;
- the matters of fact underlying the bill, and the findings on which it is based;
- whether there are other possible solutions, and whether the task can be performed by private parties, and what considerations led to their being rejected, as the case may be;
- whether duties of disclosure, other administrative obligations or reservations on the granting of permission are being introduced or extended together with corresponding government monitoring and permission procedures, and what grounds argue against replacing them by voluntary obligation of the addressee of the legal norm;

- whether the law can be limited as to time;
- whether the bill proposes to simplify the law and administrative procedures, and in particular whether it simplifies or supersedes current regulations;
- whether the bill is compatible with the law of the European Union;
- changes to the current legal position.

Bills must also contain a regulatory impact statement. Regulatory impact means the main impacts of a law. This covers its intended effects and unintended side effects. The account of the foreseeable regulatory impacts must be drawn up in consultation with the respective competent federal ministries, and with regard to the financial implications it must indicate what the calculations or assumptions are based on. The impacts on the public budgetary income and expenditure (gross) must be presented, including the foreseeable impacts resulting from implementation of the law. The income and expenditure accrued to the federal budget must be broken down for the period of the Federation's multi-year financial planning stating whether and to what extent the additional expenditure or reduced revenues are taken into account in the multi-year financial planning, and how they can be compensated for. It may become necessary to calculate, or even estimate, the sums in consultation with the Federal Ministry of Finance. If there are no foreseeable financial impacts, this must be stated in the explanatory memorandum.

Furthermore, the explanatory memorandum must give details, in consultation with the Federal Ministry of Economics and Labour, of:

- the costs to industry, and to small and medium-sized enterprises in particular; and
- the impacts of the law on unit prices, price levels in general and its effects on the consumer.

The federal ministry responsible for the bill must obtain details of the experts and associations involved, and small and medium-sized enterprises in particular.

As a rule, the relevant work units within the Ministry, which maintain the appropriate lists, are aware which interest associations are to be given the opportunity to respond to which issues. In many cases, the associations request to be included on these lists. Inclusion not only serves to increase acceptance of the new legislation, it can also relieve the courts, for example by pointing out possible conflicts, which may then be resolved in the legislation. By itself, a ministry cannot be expected to anticipate all possible effects of new legislation, given the highly complex network of issues and unintended consequences. For this reason, seeking input from interest associations is crucial to ensuring good legislation.

Poland: The preparation of policy proposals is constitutionally and thereby predominantly the task of the Ministries and other state bodies. However in certain circumstances the Government may assign a task to a specialized organ (such as an *ad hoc* task force). The Government considers policy options and agrees policy principles prior to the drafting of legislation by the Ministries. However in some urgent cases Ministries proceed directly to drafting.

Step 4: Preparation of Legal Drafts

Hungary: The texts of legal regulations have to be elaborated under the responsibility of the competent Minister. The text of acts has to be prepared in co-operation with the Minister of Justice who is responsible for the legal quality of the Bills. In the case of the preparation of the most important or complicated acts, the Government can decide on the creation of a codification committee in which the delegates of the Government, civil organizations, trade unions and researchers and experts participate.

Conforming to the Act on Legislation, the citizens have the right to participate in the formulation of regulations. The government decree about the government's procedural rules also includes the obligation to assure the participation of the civil and social representatives in the preparation of Bills. Those NGOs, social organizations and trade unions have to be involved in the whole procedure of the rule-making wherever their defined interests are in relation with the regulated area. In practice, these organizations are consulted about the draft texts. It means that the responsible ministry sends the Bill and specifies a deadline for receiving the comments. In some cases, but on facultative basis, the draft texts are published for discussion on the Internet site of the Ministry.

In the case of a wide-reaching regulation, the government and the ministries can also organize consultation meetings, public hearings with the main interested organizations, university experts, local governments, private representatives, and experts of international organizations for further discussion.

The organisation of the ministry and so the methodology of work varies ministry by ministry, but in each ministry there is a department dedicated to law affairs and codification activity, and in some of them a deputy state secretary directs this activity.

Czech Republic: The Legislative Rules of the Government focus rather on formal aspects than procedures of preparation. According to the Rules, the preparation is preceded by an analysis of current legal and factual state. Legislative drafts are sent to the Legislative Council of the Government (LCG) for its statement. The Council is an independent commission consisting of civil servants, independent experts and academics and chaired by the Minister responsible for legislation (sometimes this Minister is also a Deputy Prime Minister, and sometimes this function is also merged with the function of the Minister of Justice). The LCG usually discusses its statement with the submitting Ministry.

Germany: The preparation of draft legislation is subject to the provisions of the Guidelines for Drafting Legal Provisions and Administrative Regulations, issued by the Federal Ministry of the Interior. The structuring of draft legislation is subject to the provisions of the Manual on Legal Drafting issued by the Federal Ministry of Justice and to recommendations of the Federal Ministry of Justice in individual cases.

The Federal Ministries of the Interior and of Justice must be involved in examining all legal norms for compatibility with the Basic Law and in all other cases where doubts arise as to the application of the Basic Law. These two ministries in particular have a service function: By examining the bill's constitutionality and its regulatory impact in accordance with principles of systematic and legal scrutiny, they provide a kind of quality control. Without a positive result, the draft legislation may not be submitted to the Federal Government for adoption.

The language used in bills must be correct and understandable to everyone as far as possible. It should reflect the equality of men and women. Generally, bills should be submitted to the editorial office of the German Language Society at the German Bundestag to review the correctness and comprehensibility of the language used.

Step 5: Inter-Ministerial Consultations

Spain: The negotiation with the other Ministries is done in two phases. In the first phase, during the preparation of the first draft and once the Ministry has unified its internal position, this is accomplished by a formal request. The Technical General Secretary of the Ministry is in charge of requesting these observations. The Technical General Secretary of the Ministry is also in charge of managing the process of responding to consultation requests from other Ministries.

If the observations made by the other Ministries are not accepted, the Ministry, which heads the proposal, has to explain to those that made the observation the reasons why it was rejected.

The second phase of inter-Ministerial negotiation is done through the General Commission of the Secretaries of State and Sub-Secretaries. The Commission meets weekly and studies all the issues that are going to be dealt with by the Council of Ministers session of that week. Normally a legislative project takes a minimum of three weeks to be approved by the Commission so that the Council of Ministers can decide on it.

Although the Commission formally meets on Wednesdays under the direction of the Ministry of the Presidency (CoG), it permanently functions as a 'Virtual Commission'. The 'Virtual Commission' is a computer application, which allows the Ministries to make observations on certain projects via the Intranet of the Ministry of the Presidency.

After the meeting, the Commission produces two indexes. The Red Index collects the issues where an agreement has not been reached. These issues are either postponed until a later meeting, dropped, or are left to the Council of Ministers to make a definitive decision.

The Green Index is composed of those issues that have been agreed upon by the Commission. Having reached an agreement in the Commission, the Council of Ministers normally approves them without discussion. Ultimately, The Council of Ministers has the authority to revisit an issue that has already been agreed upon in the Commission and even reject it.

Slovakia: A draft proposal approved by the minister/other sponsor could theoretically be presented by the sponsor directly to the government meeting that would pass it without or with modifications, or reject it. However, due to the fact that the government is overburdened and due to its political nature, such a system would not be efficient nor would it serve its purpose. Therefore there are several intermediate steps between the development of the ministerial version and the introduction of the draft to the government meeting. The first such step is the inter-agency review process. In the framework of this process, the sponsor sends the draft to all central bodies that are in any way concerned with the proposal and possibly to other relevant institutions as well. In practice almost every draft is sent for commenting to all central government agencies, deputy prime ministers and relevant non-governmental institutions (trade unions, employers, local and occupation-based self-government, etc.) Persons, entities and institutions addressed in this way can present their comments on the draft.

Hungary: Within the Ministry, the department responsible for law affairs and codification is responsible for the coordination and formulation of the position of the ministry in the course of the administrative circulation process. In the case of draft texts of legal regulations elaborated by other public administration institutions, the law department formulates the official position of the ministry, summarising the opinions given by the different sectoral departments. In connection with the proposal elaborated by the ministry itself, the law department - in collaboration with the sectoral department - is responsible for taking into consideration the position of other ministries.

Directly preceding Government meetings, the meeting of administrative state secretaries, as a decision preparation forum, formulates the positions and makes proposals because the main objective of the meeting is to clarify differences in views of the competent participants of the state administration system. The state secretaries' meeting discusses the proposals and reports on its agenda, formulates positions and makes recommendations to the Government. The state secretaries' meeting has the task of resolving any differences remaining after the administrative circulation process and formulating positions on controversial administrative or technical issues. The meeting can also decide to send the item to one of the Ministerial Committees for further discussion. Thus, this forum is a link between the government's administration management mechanism and the government's political decision mechanism.

The state secretaries' meeting may invite the promoter to submit a supplementary proposal to the Government meeting, reflecting the position of the meeting in an approved format, if possible. If the proposal needs to be re-worked, the state secretaries' meeting may require the submission of

a new proposal in line with the requirements set forth in the decision. The Minister sponsoring the proposal must attempt to clarify any outstanding issues by personal consultation before the Government meeting.

Germany: In matters affecting the remits of more than one federal ministry, those ministries will work together to ensure that the Federal Government speaks and acts consistently. Prompt and comprehensive involvement is the responsibility of the lead federal ministry. In simple cases, verbal involvement is sufficient, but must be recorded in the files. Drafts from other federal ministries arriving for co-signature must be processed and forwarded speedily. Opinions must be brought to the attention of the federal ministries concerned. As long as any differences of opinion persist, the lead federal ministry must not take any generally binding decisions requiring the other federal ministries' approval.

The greater the potential impact of a ministry's action, the more important it is to cooperate and coordinate with other ministries and interests. Cabinet Submissions and legislative proposals are therefore subject to formal conditions and requirements.

Federal ministries affected by the proposed legislation are to be involved from an early stage in its preparation and drafting. "Affected" federal ministries are all those whose remits are affected.

Differences of opinion between ministries are to be resolved before the Cabinet meeting; the Federal Chancellor shall personally attempt to achieve understanding between the federal ministers. If a personal attempt at achieving agreement under the Federal Government Rules of Procedure is made to no avail, the Cabinet Submission must state this. The material points at issue must be stated, together with proposals for solutions. The federal ministry striving for a dissenting solution must send the lead federal ministry a contribution, which must be included in the cabinet submission.

Poland: The Head of the Chancellery of the Prime Minister can organise inter-ministerial conferences and *ad hoc* sessions of permanent committees in order to settle differences that appeared during inter-ministerial consultation.

Czech Republic: The inter-ministerial consultations are specified by the Rules and apply to both non-legislative and legislative items. Non-legislative documents must be sent for comments to all the Ministers, Deputy Prime Ministers and the Head of the Government Office. The material is also sent to the Prime Minister's Cabinet for information. Heads of other central state administration authorities, the ombudsman and/or heads of regional government will obtain the document for comments only if it relates to their agenda. The Ministries (and other authorities mentioned above, if applicable) then have 10 working days for submitting comments. This term can be shortened only in exceptional cases and with the agreement of the Prime Minister.

If the document relates to EU affairs, the above described inter-ministerial comment procedure can be replaced by the formal procedures set for the Government Committee for EU. This can happen only if none of the Committee members asks for standard inter-ministerial consultations.

Similar procedures apply also to the legislative documents preparation. The draft (whether a substantial intent, draft law or draft government resolution or by-law) is submitted for comments to all the Ministers, Deputy Prime Ministers, the Head of the Government Office, and the Governor of the Czech National Bank. The draft has to be sent to other authorities (e.g. the President's Cabinet, Constitutional Court, Supreme Audit Office, regional governments, etc.) only if it relates to their area of competence. In addition to that, in selected cases the draft is also sent to the Economic Chamber and the Association of Co-operatives. Last but not least, if the draft has an impact on employers' and employees' interests, it is also sent to their respective associations included in the so-called "tripartite".

The time limit for submitting comments is 15 working days minimum (20 in case of a paragraph wording of a draft law). This term can be shortened only in exceptional cases and with the agreement of the Prime Minister or the Head of the Legislative Council of the Government. The draft is also sent for information to the Department of Compatibility and the Department of Government Legislation of the Government Office.

If any comment is marked as “fundamental”, the submitting Ministry has to deal with it and try to find a consensual solution. If it is not possible, this “disagreement” has to be clearly indicated in the report accompanying the submitted document.

The report on inter-ministerial consultation including a list of whom the document has been sent to, how long the time for comments was and what the results are (whether there are any “disagreements”) is a part of the so called “submission report” that has to accompany the submitted document. If the document is significantly changed following the inter-ministerial comment procedure, it has to be sent for another round of comments.

It should be noted that the electronic system is used for the inter-ministerial comment procedures as well as for the submission of documents to the Government.

Step 6: Submission of Items to the Government Office

Spain: Internal coordination to finalise submissions to the Council of Ministers is done by a central Department within the Ministry. The Technical General Secretary is the principal horizontal advisement unit to the Ministry. It is in charge of reporting on the legislative projects initiated by the Ministry. The reports published by the Technical General Secretary maintain a strict relation with the formal legal aspects of the proposal. As well, this unit creates the explicative memorandum that must accompany the entire project and which serves to explain what the policy consists of and the reasons that have driven it. The Technical General Secretary oversees the drafting of the explicative memorandum based on the information given by the Secretary of State that initiated the policy.

Step 7: Review by the Government Office

Country papers did not provide specific examples.

Step 8: Review by Ministerial Committees

Slovenia: Every matter that goes to governmental procedure has to pass the working body and has to have consensus of the members of the body. Working bodies of the Government are permanent or temporary. The ministers and directors of governmental services are members of the working bodies of the Government by their position.

Spain: The economic aspects of all proposals are negotiated in the Ministerial Commission. The Economic Affairs Delegate Commission analyses the impact and relevance of a proposal from a point of view of rationality and control of public expenditure. The Commission is composed of the Ministers of the economic Ministries. As well, the Director of the President’s (Prime Minister) Office, the Director of the President’s (Prime Minister) Economic Office, the Secretary of State of Economy, and the Secretary of State of Finance and Budget also attend.

Hungary: There are number of ministerial Committees called “cabinets”. The cabinet is a consultative body, expressing preliminary opinion on issues requiring government decisions or affecting the political and economic objectives of the Government. The cabinets are not authorised to take decisions instead of the government. At present there are the following cabinets:

The *social policy cabinet* discusses issues of major importance for social policy purposes, specifies the measures required for their resolution and prepares related decisions.

The *economic cabinet* comments on conceptual issues relating to the economy, prepares the economic policy decisions of the Government and takes positions concerning policy issues relating to the reform of public finances. The cabinet discusses proposals to be submitted to the Government bearing on the economy or containing budgetary commitments.

The *national security cabinet* coordinates the policies relating to national security and prepares decisions relating to the protection of the state and public safety.

The *cabinet of European affairs* discusses strategic issues originating from Hungary's EU membership along with EU-related drafts of outstanding importance together with the domestic measures ensuing from them. Furthermore, the Cabinet ensures efficient and effective representation of Hungary's interests as a Member State in the European Union.

The *development policy cabinet* co-ordinates the Government's development policy plans and proposals, co-ordinates the development of the second Europe Plan and prepares the related decisions.

The *rural policy cabinet* strengthens the effectiveness of rural policy, as part of which it facilitates sounder preparations and implementation of the necessary governmental actions to improve the situation and conditions of small municipalities, villages and so-called homesteads.

Poland: The policy and legislation items must be submitted and debated by a relevant standing committee before they are scheduled for the session of the Government. In these cases, the committees normally have significant authority to require additional work or capacity to resolve disputed matters before forwarding them to the session of the Government. Normally, Ministries brief their Ministers in preparation for the sessions of the committees. In many cases, higher civil servants participate in the sittings of Committees supporting their ministers.

Step 9: Decision by the Government (Council of Ministers)

Country papers did not provide specific examples.

Step 10: Parliamentary Process and Passage

Spain: In the Cabinet of the Minister there are Parliamentary advisors of the Minister that are in charge of preparing the answers to questions from the members of Parliament and for developing the Ministers hearings before the Parliament.

Hungary: Within the Prime Minister's Office a special unit, the Parliamentary Secretariat, is responsible on behalf of the Government for bringing in the Bills, proposals and reports to the Parliament, for preparing the participation of the Government in the activity of the Parliament and for coordinating the elaboration of Government positions in relation with the MP's amendments and other proposals, and those of Parliamentary committees. Additionally, there is a special unit in every Ministry, directly subordinated to the Minister or the political state secretary, that prepares the activity of the Minister and the political state secretary in relation with Parliament.

Step 11: Implementation

Country papers did not provide specific examples.

Step 12: Monitoring and Evaluation

Spain: In Spain, public policy evaluation is seen as an objective evaluation. It is not always that way, because on many occasions, quantifiable objectives are not determined. So, for example, Spain relies on a permanent Immigration Observatory that produces very exhaustive statistical reports. Nevertheless, not quantifying the expected number of immigrants or the level of integration of these immigrants, it is very difficult to measure if the policy is or is not successful.

To avoid these problems and reverse the fundamental deficiencies in order to create well functioning public services in Spain, the current Government has decided to initiate a Public Policies Quality Evaluation Agency that will be assigned to the Ministry of Public Administration and will work with officials as well as professionals from several sectors. Besides that, the Agency will establish mechanisms for cooperation with the other State administrations, especially with the Autonomous Communities, given that they manage the greatest part of the public services in Spain.

Despite the nascent existence of associations that group together university experts for the evaluation of public policies, it seems that public initiative is necessary so that policy evaluation in Spain is at the same level as the most advanced nations around her.

Hungary: In accordance with the Act on Legislation, the rule making institutions and those of execution have to follow the effects of the legal regulations, they are also obligated to bring to light elements that hinder applicability, the lack of effectiveness, or the implementation difficulties. The experiences of these failures have to be taken into account in the course of the further rule making procedure.

Ministries, in collaboration with the concerned ministers and public administration bodies, have to examine continuously the effectiveness of the legal regulation and after drawing the conclusions to take the necessary measures for achieving the appropriate goals.

In the monitoring activity the Government Bureau, functioning within the Prime Minister's Office, has a special task. It keeps a record of tasks with deadlines set in the government resolutions or working plan. This unit also prepares a monthly register concerning the implementation failures. The minister responsible for implementation must explain in writing the reasons for failing to observe deadlines and indicate the modified completion date. The Government Bureau prepares and submits to the government every month a proposal containing recommendations for modifying the completion dates of the various tasks. If the successful implementation of the policy or task laid down in a government resolution requires some modification, the responsible minister has to initiate the modification of the existing rule or the issue of a new one in the frame of a separate proposal.

In addition, the Prime Minister may call upon the ministers to report on the implementation of tasks delegated to the Government.

Germany: In the explanatory memorandum for the bill, the lead federal ministry must state whether and, if so, after what period of time, a review is to be held to verify whether the intended effects have been achieved, whether the costs incurred are reasonably proportionate to the results, and what side effects have arisen.

Poland: The Chancellery of the Prime Minister monitors the implementation, and provides regular reports to the Government on the extent to which the Ministries successfully implement Government decisions.

Czech Republic: The Office of the Government is also responsible for monitoring the implementation of the Government's decisions. If the Government resolution charges some of the Ministers with some kind of a task (usually to prepare a paper or draft law and/or submit it to the Government), the "task sheet" is prepared for every single decision of the Government. The Office of the Government monitors whether these tasks have been followed. If not, it can inform the Government and the Prime Minister. However, there is no review of how the Government decisions were complied with in the sense of content, performance and effectiveness.