



Executive Summary of the Public Audit Report

LEGISLATIVE PROCESS

16 March 2018, No. VA-2018-P-40-6-2



SUMMARY

Legislative process is a certain form applicable to the defining of social order aimed at the proper execution of state functions, expectations of civil society and creation of conditions for efficient development of the society and the state.

Clarity, reasonableness, and efficiency of the legislative process relies on the entire process of creating legal (legislative) regulation. The purpose of the legislative process regulation is to create unified, coherent, sustainable and effective legal system based on the appropriateness, proportionality and respect for individual rights and freedoms, openness and transparency, efficiency, clarity and systematic principles. Legislative framework expresses certain requirements for legal entities involved in the legislative process, namely: obliges them, when drafting legislation (legal acts), to assess the impact of the envisaged legal regulation and all potential alternatives of envisaged legal regulation, in order to ensure necessity and appropriateness of the existing legal regulation as well as its monitoring and providing consultation to the public in all legislative stages¹.

The Constitutional Court has repeatedly stated in its jurisprudence that domination of the law is the very essence of the constitutional state constructional principle; the imperative of constitutional law domination means freedom of the Government limited by law which must be complied with by all entities bound by legal relations without excluding any lawmakers. This principle shall be strictly followed when creating and implementing the law².

Supreme Audit Institution, when conducting state audits, annually establishes particular deficiencies in the legal regulation³. Unclear excess regulation and legal acts which are often not aligned with each other complicate application of the law, cause legal controversies and increase the administrative burden and scope of public administration activities, preconditions corruption and the inefficient use of state budget funds as well as other negative effects. According to the opinion of 32 per cent of Lithuanian population, 18 per cent of companies' managers and 17 per cent of state officers' imperfect laws and gaps in the law cause serious problems to be dealt with⁴.

The goal of the audit is to assess whether the applicable legislative (law-making) process ensures preconditions required for creation of unified, coherent, sustainable and effective legal system and to address the following issues:

- Is the applicable assessment of legal regulation reveals the relevance of legal regulation and enables the identification of the need for changes;
- Whether responsible legislation is being developed and adopted.

During the audit, in the course of analysis of the legislative process, the main focus was made on drawing and adoption of laws – legal acts aimed at implementation of the most important tasks

¹ The Law on Legislative Framework of the Republic of Lithuania, Articles 7, 15 and 24.

² Resolution of the Constitutional Court of the Republic of Lithuania of 8 July 2016.

³ Public Audit Reports: 29/03/2017 No. VA-P-50-3-6 "Are there conditions in place for the effective functioning of the internal control system in the public sector"; 03/03/2017 No. VA-P-30-1-4 „Is housing affordable for low-income residents"; 30/09/2016 No. FA-P-10-3-4-1 "The correctness of the State Social Insurance Fund's annual report for the year 2015 and the legality of the management, use and disposal of funds and assets"; 24/09/2015 No. FA-P-10-7-26-1 "On the results of the financial (legality) audit carried out in the State Social Insurance Fund in 2014"; 20/07/2015 No. FA-P-10-6-10-1 "On the results of the financial (legality) audit carried out in the Ministry of Health of the Republic of Lithuania"; 01/09/2014 No. FA-P-30-1-48 "On the results of the financial (legality) audit carried out in municipalities of the Republic of Lithuania".

⁴ Lithuanian Corruption Map 2016. Access via Internet: <https://www.stt.lt/lt/menu/tyrimai-ir-analizes/>.

of legal regulation, because all law-makers are involved in the aforementioned stages, unlike during the drafting of other legislation. The laws govern the most important relations in the sphere of human rights and freedoms, ownership, management, use and disposal of state and municipal assets, public service, tax and other social relations. The incorrect legal regulation established by the law could also cause the incorrect regulation stipulated in legal acts implementing the law (Government resolutions, ministerial orders, etc.).

Audited entities:

- Ministry of Justice commissioned to the execution of the following functions: to formulate state policy in the areas of development of the national legal system and regulation of legal processes (including the legislative process), organise, coordinate and control implementation of the aforesaid processes; to prepare draft Government resolutions and other legal acts according to their competence; to issue conclusions on draft legal acts in cases and in accordance with the order prescribed by legal acts⁵;
- Government Office commissioned to the execution of the following functions: to verify draft legal acts submitted to the Government and the Prime Minister; to participate in improving the system of envisaged regulatory impact assessment⁶;
- European Law Department under the Ministry of Justice commissioned to the execution of the following functions: to coordinate the transposition of EU legislation into national law and its implementation; to issue conclusions on the compliance of the draft law and Government resolutions with the EU law⁷.

We gathered information from audit entities, the Office of the Seimas and all ministries (in some selected ministries we have carried out an extensive analysis of legislative processes, namely, the Ministry of Finance, the Ministry of Social Security and Labour). The audit included analysis of legal acts regulating particular legislative processes and their implementation practices. Data provided in the "Legislative tendencies and indicators in the European Union Member States and Lithuania" studies developed by the Parliamentary Investigation Department of the Seimas in 2015 and in the "Prospects for the ex-post evaluation of legal regulation in Lithuania"⁸ scientific studies developed by the Institute of Law in 2017. We have discussed issues of interest with representatives of academic society, business and non-governmental organisations. In cooperation with the Committee on Legal Affairs of the Seimas we have organised a discussion with representatives of law-makers, executive authorities, academic society, and Lithuanian Bar Association in order to consider legislative process tendencies prevailing in Lithuania.

Period of audit – years 2014–2017. When assessing occurred changes we have also used data from other extensive time periods. We have analysed data of the legislation in the Seimas from 15/11/2004 to 16/11/2008 (hereinafter referred to as the 2004–2008 time period), from 17/11/2008 to 14/11/2012 (hereinafter referred to as the 2008–2012 time period), from 16/11/2012 to 10/11/2016 (hereinafter referred to as the 2012–2016 time period), and from 10/03/2017 to 11/07/2017.

⁵ Clauses 7, 8.1, 8.3 and 8.9 of the Statute of the Ministry of Justice of the Republic of Lithuania approved by the Resolution No. 851 of the Government of the Republic of Lithuania on 09/07/1998 (Resolution wording No. 1464 as of 13/10/2010).

⁶ Clauses 9.1 and 9.8 of the Statute of the Government Office of the Republic of Lithuania approved by the Resolution No. 254 of the Government of the Republic of Lithuania on 27/03/2013.

⁷ Clauses 8.1 and 8.2.1 of the Statute of the European Law Department under the Ministry of Justice approved by the Order No. 1R-204 of the Minister of Justice of the Republic of Lithuania on 02/07/2014.

⁸ Access via Internet: <http://teise.org/wp-content/uploads/2018/01/Ex-post3.pdf>.

During the audit we have assumed that conditions required for establishing proper legal regulation and creating unified, coherent, sustainable and effective legal system could be formed when managed information about the necessity, suitability, sufficiency, efficiency and the need for changes in the existing legal regulation is reliable. When drafting and adoption of legislation is based on reasonable, reliable and comprehensive information about potential effect of envisaged legal regulation, the likely positive and negative effect on the area of that legal regulation and on persons or groups thereof in respect of whom the envisaged legal regulation will apply, as well as its effect on the economy, state finances, social environment, public administration, legal system, crime situation, level of corruption, environment, administrative burden, regional development and other areas⁹. When Lithuanian national law is harmonised with European Union directives in time and considering all the possible alternatives¹⁰. When Legislative Information System of the Office of the Seimas publishes all the required information¹¹ and public consultations in all legislative stages are held¹². When there is enough time for legislation, urgency and extreme urgency status is being applied only in exceptional cases when there is an obvious need due to unforeseen exceptional circumstances of a particular social, economic or political life of a country nature.

During the audit, it was revealed that:

There are not enough actions aimed at the assessment of the relevance of existing legal acts for the achievement of goals set forth for the for regulatory purposes

In order to assess the necessity, sufficiency, and efficiency of legal regulation and identify the need to change or abandon it, all valid legal acts shall be subject to regular monitoring and assessment. The state institutions, when planning the monitoring of legal regulation, failed to assess the relevance and challenges of legal regulation, as it is required by the Law on Legislative Framework of the Republic of Lithuania¹³. Therefore, monitoring was performed for legal acts that did not relate to the Governmental priority and other strategic goals of the state as well as to the regulation of relevant public relations (protection of health, education, etc.).

Executed monitoring is fragmentary. There are more than 84 thousand of valid legal acts in Lithuania, however only 47 (0.06 per cent) of legal acts have been subject to regulatory monitoring performed by state institutions within the last 3 years (2014–2016). One or several articles have been assessed in 64 per cent of monitored legal acts. According to the conclusion provided by the Institute of Law “in almost all cases, regulatory monitoring is carried out only formally, but not in order to find out the true, real effect of the legal acts”.

Only 11 per cent of state institutions commissioned to the execution of monitoring performed it; none of municipalities was involved in this process¹⁴.

Such volumes and results of poor-quality monitoring of legal regulation could not form a precondition required for identification of obsolete or excessive regulation to be subject to changes, thus, legal acts making negative effect on the economy, state finances, public administration, social environment, persons or groups thereof remain in force.

⁹ The Law on Legislative Framework of the Republic of Lithuania, Article 15(2).

¹⁰ The Law on Legislative Framework of the Republic of Lithuania, Article 9(2).

¹¹ The same, Article 5(2).

¹² The same, Article 7.

¹³ The same, Article 24(2).

¹⁴ The Institute of Law “Prospects for the ex-post evaluation of legal regulation in Lithuania”, 2017, pages 108–109. Access via Internet: <http://teise.org/wp-content/uploads/2018/01/Ex-post3.pdf>.

Systematic assessments of legal regulation that would help to create a unified, coherent and sustainable legal system have not been performed at all.

The Ministry of Justice is in charge of coordination of monitoring of legal regulation. The Law on Legislative Framework of the Republic of Lithuania establishes that monitoring shall be aimed at the assessment of the effect of legal regulation on both the regulated area and other areas as well as their administrative burden. Execution of the assessment of administrative burden on economic operators preconditioned by applicable legal acts falls into the area of competence of the Ministry of Economy, where administrative burden on citizens and other persons is under the competence of the Ministry of the Interior. Thus, three Ministries are responsible for coordination of the assessment of legal regulation, but their competences are not mutually inclusive.

Preparation of Draft Legal Acts does not Include the Assessment of Envisaged Consequences of Legal Regulation or Includes Only Formal Assessment

Participants of the legislative process do not properly fulfil their duties requiring assessment of the effect of envisaged legal regulation and provision of assessment results along with the draft law submitted to the Seimas¹⁵.

Analysed explanatory notes (10 per cent of new wordings of laws enacted within 4 years) stated that legal regulation envisaged for implementation would not cause any negative consequence to the regulated area and persons in respect of whom the envisaged legal regulation will apply as well as to crime situation, level of corruption, and would not affect business conditions business and its development environment, would not require additional state budget funds. These estimates are unreasonable and unjustified. Possible alternatives to legal regulation are not provided. Ministries do not provide an opportunity to ascertain execution of the assessment or substantiation of the assessment performed since 9 Ministries of 14 do not record processes carried out during preparation of the draft legal act and assessment of its potential effect. An instrument for assessing the effect of legal regulation applicable to legislative process was established in 2003. Legal acts define areas and cases to be subject to the assessment of consequences of envisaged legal regulation; however, there is no effective system for assessing and monitoring of the effect to date:

- Preparation of draft legal acts and assessment of their effect is assigned to various specialists of the Ministries; there are almost 2,000 of them in all 14 Ministries. It would be inefficient and unreasonable to the state to train such number of specialists qualified in effect assessment. 11 (out of 14) Ministries face a lack of trainings on execution of the assessment of envisaged legal regulation effect, and only about 10 per cent of all specialists were trained in the required field during the period of audit;
- Control mechanism could not ensure proper assessment of the effect of envisaged legal regulation and alternatives to legal regulation during the introduction of changes to the existing legal regulation.

Overabundance of Legal Acts and Their Adoption after Urgent and Extra-Urgent Consideration could not Ensure Conditions Required for Detailed Assessment of Draft Legal Acts Submitted to the Seimas

The Seimas receives about 700 draft laws on average each year; this is 2-4 times more than draft laws submitted to the parliaments of the neighbouring states (the Estonian Parliament has an average of 200 draft laws per year, Poland - 338, Latvia - 417).

¹⁵ Statute of the Seimas of the Republic of Lithuania, Article 135 (3) (5-7 and 12)

3,779 draft laws were registered at the Seimas during 2012-2016, more than a half of which (2 200) was submitted by the members of the Seimas. The Seimas accepted 30 per cent of draft laws proposed by the members of the Seimas and 85 per cent of draft laws submitted by the Government. Management board of the Seimas required the Government to give an opinion on 860 draft laws. The Government has submitted 838 conclusions by April 2017 where only 3 per cent of them (26) was submitted following the 4-week submission term stipulated in the Statute of the Seimas.

The Statute of the Seimas provides an opportunity to consider draft laws applying urgent or extra-urgent consideration procedures. The application of these procedures allows the Seimas to react promptly to situations requiring quick solutions. However, the excessive application of emergency procedures could undermine the publicity of the legislative process, reduce the transparency of the whole process and could not ensure the required level of legal regulation due to the decreasing opportunities of parties concerned to take part in the legislative process, as well as due to the circumstances preventing the Seimas committees from the consideration of a draft law and publication of relevant information making it public. Therefore, urgent or extra-urgent consideration procedures should apply only in exceptional cases when it is obviously required by exceptional social, economic or political circumstances of a country's life, however, the Statute of the Seimas does not define clear criteria under which this procedure may be applied.

Urgent or extra-urgent consideration procedures are being applied in Lithuania for approximately 50 per cent of all consideration cases. In European countries, e.g., Finland, Sweden, United Kingdom, and Poland this per cent does not exceed 5 for all draft laws ¹⁶, in neighbouring Estonia - 10 per cent. Almost 70 per cent of proposals for consideration of draft laws applying urgent or extra-urgent consideration procedures were reasoned that Lithuania was late in transposing the directives into national law. It shall be noted that Lithuania, as well as other EU Member States, is provided with a 2-year time limit for preparation and adoption of legal acts transposing provisions of the directives ¹⁷. The legislative process during the audited period was very intense in quantitative terms. High flow of adopted laws and frequent application of urgent and extra-urgent procedures increases the risk of errors.

Delays in Transposing EU Directives into National Law and Failing to Assess all Potential Alternatives of Envisaged Legal Regulation

Lithuania delayed transposition of 54 per cent (108 of 199) of EU directives which deadline for transposition ended in the 1st half of 2014-2017 due to failure to prepare drafts of laws and other legal acts transposing EU directives in time.

Lithuania did not perform throughout assessment of all potential alternatives of directives in order to reveal ones that comply interests of Lithuania the most. Control mechanism could not ensure proper assessment of the effect of envisaged legal regulation and alternatives to legal regulation during the transposition of directives the exact results of which should be provided to the Seimas along with draft legal acts.

Insufficient Involvement of Public into the Legislative Process, Lack of Publicity and Transparency

¹⁶ Study of the Parliamentary Research Department of the Seimas of the Republic of Lithuania „Legislative tendencies and indicators in the European Union Member States and Lithuania“, page 41

¹⁷ Access via Internet: <http://eur-lex.europa.eu/legal-content/LT/TXT/?uri=URISERV%3AI14527>.

The Seimas launched a new Legislative Information System for publication of documents related to legislative process in 2013, i.e., system containing legislative initiatives, draft legal acts and accompanying documents, legal regulation monitoring documents, etc.¹⁸ The Ministries failed to publish 98 per cent of legislative initiatives, 65 per cent of legal regulation monitoring certificates, 39 per cent of legal regulation monitoring plans for the time period 2014–2016. This particular system enables all persons to load their proposals for announced and published draft legal acts. This opportunity is rarely used though. The public has submitted proposals only for 8 per cent of draft laws prepared by the Ministries.

11 Ministries out of 14 face the lack of information about other ways to consult public or about their application. Due to the lack of consultations in the course of preparation of draft legal acts the major part of expectations of civil society and public remains unheard and the opportunity to form favourable public attitude to changes in the legal regulation is missed. Consultations are adjourned to the Seimas, thus legislative processes are prolonged and workload of the Seimas committees is increased. Public submits to the Seimas committees about 4 thousand proposals for the consideration of draft laws (2014-2016) annually.

Changes in the Course of Audit

The Government specified the Work Regulation of the Government¹⁹ in 2017 in order to improve the legislative process and established particular measures to strengthen the control of preparation of draft legal acts.

Pursuant to the necessity to implement recommendation of the Organisation for Economic Co-operation and Development related to the application of *ex post* assessment of legal regulation in Lithuania the Government along with the Ministry of Justice initiated a study on the prospects of *ex post* evaluation of legal regulation in Lithuania conducted by the Institute of Law in 2017.

Having assessed the evidence collected during the audit, we hereby present our conclusions and recommendations the proper implementation of which would contribute to a creation of a unified, coherent, sustainable and effective legal system and efficient and smooth execution of legislative process.

The audit was carried out in accordance with the Public Audit Requirements and the international standards of supreme audit institutions. A scope of the audit is provided in Annex No. 1, "Audit Methodology and Scope" (page 40).

Conclusions

Implementation of legislative process could not form conditions required for the creation of a unified, coherent, sustainable and effective legal system due to the inability to assess the adequacy of the existing legal regulation process and to ensure responsible legislation in the course of preparation and adoption of legal acts:

1. Fragmented and poor-quality monitoring of legal regulation could not provide sufficient information about the necessity, suitability, sufficiency, efficiency of the existing legal regulation and the need for changes in the is reliable and prevent directional and sequential

¹⁸ The Law on Legislative Framework of the Republic of Lithuania, Article 5 (2).

¹⁹ Work Regulation of the Government approved by the Resolution No. 728 of the Government on 11/08/1994-08-11.

improvement or adequate addressing of changes in various areas of public life. There is a lack of a coordinator (manager) of legal regulation assessment who would unify competencies required for proper assessment of legal regulation suitability and identification of needed changes (Chapter 1).

2. Lack of efficient system for assessment of potential effect of envisaged legal regulation: insufficient number of training sessions for specialists employed by the Ministries, imperfect knowledge in the sphere of the effect assessment, applicable control mechanism could not ensure proper assessment of the effect of envisaged legal regulation and submission of information justifying the results hereof to the Seimas. Therefore, gaps in the legislation and its negative consequences are often revealed only after the adoption of the law (Section 2.1).
3. Overabundance of legal acts and their adoption after urgent and extra-urgent consideration generally shortens the time available for consideration of draft laws and prevents creation of conditions required for adoption of efficient legal regulation, minimises opportunities to ensure transparency and publicity of the legislative process through the omission of some important stages of usual procedure for draft law consideration and reduction of the involvement of parties concerned (Sections 2.2 and 2.3).
4. Insufficient involvement of public groups in respect of whom the envisaged legal regulation will apply in the legislative process causing uncertainties in their opinion on the envisaged legal regulation, problem solving and expectations. Lack of publicity and transparency of the legislative process. Incomplete and insufficient information published on the Legislative Information System of the Office of the Seimas (Sections 2.5, 2.3 and 2.1).
5. Delays in preparation of legal acts transposing the EU directives into national law causing improper execution of obligations of the Republic of Lithuania towards the EU. Inability to perform throughout assessment of all potential alternatives of solutions to be implemented during the preparation of the aforementioned legal acts in order to reveal ones that comply interests of Lithuania the most (Sections 2.4 and 2.1).

Recommendations

To the Management Board of the Seimas of the Republic of Lithuania

In order to ensure sufficient time for drafting and publishing of laws and minimise cases requiring urgent or extra-urgent consideration procedures applying them only in exceptional cases when there is an obvious need due to unforeseen exceptional circumstances of a particular social, economic or political life of a country nature we recommend to define clear and exact criteria according to which the Seimas may consider draft laws applying urgent or extra-urgent consideration procedure and decide on the deadline applicable to the submission of the opinion of the Government on the relevancy of proposed changes in the draft law under consideration and include these criteria into the Statute of the Seimas (Conclusion 3).

To the Government of the Republic of Lithuania

1. In order to ensure consistent and directional improvement of the existing legal regulation, as well as efficient use of human resources we recommend to reorganise the legal regulation monitoring system in a way, concentrating all competencies of various institutions required for proper assessment of legal regulation and devolve on the assessment of relevant and problematic areas of legal regulation instead of execution fragmental assessment (Conclusion 1).
2. In order to ensure preparation of draft legal acts complying with the interests of the public and the state in time and in the most proper way:
 - 2.1. To rearrange the effect assessment system in order to ensure throughout assessment of the potential effect of envisaged legal regulation on persons or groups thereof in respect of whom the envisaged legal regulation will apply, as well as its effect on the economy, state finances, social environment, public administration, level of corruption, administrative burden and other areas and to submit assessment results and substantiating documents to the law-maker (Conclusion 2).
 - 2.2. To define measures ensuring preparation of legal acts adapting the national legal system to the EU law in time and upon the consideration of all alternatives of such transposition to the national law (Conclusions 5 and 2).
 - 2.3. To establish procedures and ways for public consulting (Conclusion 4).
 - 2.4. To ensure that Legislative Information System of the Office of the Seimas contains all information required for announced by the Law on Legislative Framework of the Republic of Lithuania (Conclusion 4).
3. In order to form conditions required for the improvement of legislative processes, the documentation, accumulation and categorisation of data directly related to the legislative process (Conclusion 2).

A plan for the implementation of the recommendations is provided in the section titled, "Plan for the Implementation of Recommendations" (page 37).