

REGULATORY IMPACT ASSESSMENT FRAMEWORK

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No. VAE-2

SUMMARY

Relevance of the audit

Regulatory policy is one of the main tools of government policy to improve the well-being of society, not only to respond to the changing environment, but also to actively shape it. According to the OECD, without a framework for updating regulation and anticipating new developments, governments will not be able to keep up with a rapidly changing society¹. According to the European Commission, regulatory impact assessment promotes evidence-based decisions and contributes to better regulation that maximises the benefits at the lowest cost while respecting the principles of subsidiarity and proportionality².

Lithuania stands out from other European Union countries with an extremely large and growing number of registered legislative initiatives, of which around 66% are adopted. 2,469 pieces of legislation were adopted between 2020 and 2023 (I-VII sessions of the Seimas), of which 7% are new laws or laws regulating previously unregulated relations³. The amendment of some legal acts is due to the need to correct the identified errors or shortcomings in legal regulation. Studies carried out in Lithuania in 2022 show that monitoring of existing legislation is not considered as a legislative stage and that legislative initiatives are not based on the results of impact assessments⁴. The Lithuanian regulatory impact assessment framework scored 6.3 (out of 10), ranking 17th out of 41 countries (9th out of 27 EU countries)⁵. Experts note that the regulatory impact assessment

¹ OECD (2019), Better Regulation Practices across the European Union, OECD Publishing, Paris. Internet access: <https://doi.org/10.1787/9789264311732-en> (accessed on 29 January 2024).

² EC Better Regulation Guidelines 2021, p. 30.

³ Study of the Office of the Seimas "Trends of the activities of the Seimas of the Republic of Lithuania in the legislative field of the term of office 2020-2024 (Overview of statistical data of sessions I-VII)", 2024.

⁴ Towards the quality of legislation. Introduction of a cyclical legislative model. Free Market Institute, 2022, p. 6.

⁵ Sustainable Governance Indicators: Evidence-based Instruments. Internet access: https://www.sgi-network.org/2022/Good_Governance/Executive_Capacity/Evidence-based_Instruments (accessed on 29 January 2024).

is carried out in a formalistic manner, with insufficient stakeholder involvement and without systematic regulatory oversight of impact assessments.

Appropriate and timely impact assessments (*ex ante* and *ex post*) help to ensure the quality of the legislation adopted, its compatibility with the existing legal framework, to make the whole legislative process more transparent and open, and to promote democracy in the legislative process.

Objective and scope of the audit

The objective of the audit is to assess whether the regulatory impact assessment framework ensures the proper conduct of impact assessments and the use of their results.

Key audit issues:

- ✓ whether regulatory impact assessments enable to make justified decisions on the improvement of legal regulation;
- ✓ whether the quality of regulatory impact assessments is ensured.

Audited entities:

- ✓ The Office of the Government, which coordinates the *ex-ante* impact assessment of the envisaged legislation, performs regulatory oversight of the impact assessment, participates in the development of the framework for assessing the impact of proposed legislation, and identifies priority legislative initiatives.
- ✓ The Ministry of Justice, which coordinates the *ex-post* impact assessment of the current legal regulation, performs regulatory of the impact assessment.

As impact assessments were assigned to ministries, we cooperated and collected information from all ministries. We also cooperated with representatives of the Government's Strategic Analysis Centre, Lithuanian Free Market Institute, Lithuanian Business Confederation, and International Relations and Political Science Institute.

Audit period: 2020-2023 (until 31.10.2023). To assess trends and developments, in some cases, we have also used data for the years 2018-2019, 2023/11-12, and 2024.

The audit was carried out in accordance with the International Standards of Supreme Audit Institutions. The scope of the audit and the methods used are described in more detail in Annex 2, 'Audit Scope and Methods' (page 42).

Main audit results

The regulatory impact assessment system needs to be improved to ensure that impact assessments (*ex ante* and *ex post*) are designed in line with the established selection criteria, that all mandatory aspects of impact are assessed, that legislative cyclicity is maintained in the use of the results of *ex ante* evaluations for *ex post* evaluations, and that the adequate regulatory oversight of the *ex ante* evaluations is performed.

1. The planning and performance of regulatory impact assessments have weaknesses

- ✓ 82 of the 139 (59 %) selected draft legal acts met at least one criterion set by the Government for the selection of draft laws and resolutions of the Seimas which require a more detailed *ex ante* evaluations, but they were not included in the list of priority legislative initiatives and 80 of them were not subject to a more detailed *ex ante* evaluation. As a result of introducing a review provision in the law, an *ex-post* evaluation was planned for 4 of the 17 (24 %) selected new (original) laws (which regulate previously unregulated public relations) and 3 out of 18 (17 %) laws adopted as part of priority legislative initiatives. This does not take into account some of the legal regulation that has a significant impact on society (sub-section 1.1, page 12).
- ✓ Regulatory impact assessments lack justification, therefore opportunities are missed to assess possible solutions to public policy problems and their implementation (sub-section 1.2, page 16):
 - the impact of any of the 27 priority legislative initiatives has not been assessed in all aspects identified, although the impact assessment of the area concerned, of public finances, administrative burdens, and the economy is mandatory in all cases. Most often, in 16 out of 27 (59% legislative initiatives, the impact on administrative burdens was not assessed. It is estimated that 20 initiatives will require around EUR 164.1 million and EUR 119,4 million annually. Due to the short duration of the legislation (impact assessment is too early) or the unallocated funding linked to its implementation, it is not possible to assess whether the need foreseen by the legislation has been met. Out of 82 draft legal acts that met the selection criteria for higher impact draft laws and parliamentary resolutions, only two (2%) were subject to a more detailed *ex ante* evaluation. In 54 of the 57 selected non-priority legislative initiatives, the *ex ante* evaluations contained in the explanatory notes did not assess all mandatory impact aspects and did not provide the justification for the evaluations to ensure that decisions of public interest in the areas of health, social protection, environment, education, public security, etc. were soundly based.
 - Two *ex-post* evaluations were carried out between 2022 and 2023, with a further 16 planned by 2032. During the period of two *ex post* evaluations no monitoring of the legislation assessed was carried out, leading to a lack of data on the extent of the application of the legal regulation. In preparation for the next *ex-post* evaluations, at least once a year, 5 Ministries collect information on 7 of the 16 *ex-post* evaluations planned by law, out of the remaining 9 laws 2 have already entered into force, but no data are collected. In the context of the *ex post* evaluation of the Law on Lotteries, the impact was not assessed against all the established criteria and the evaluation was returned for revision. Failure to prepare for or properly perform an *ex-post* evaluation does not ensure that the implications for the field of legal regulation are identified.
 - For both *ex-post* evaluations, public consultations were carried out to gather information. Consultations were carried out on 21 of the 27 (78%) *ex ante* evaluations of priority legislative initiatives. In 5 out of 21 (24%) cases, the deadline for stakeholders to submit comments and proposals was less than 10 working days. In 6 out of 21 (29%) cases, 4 Ministries did not produce reports on the results of

public consultation on priority legislative initiatives or other types of evaluation documents. Inadequate public consultation does not involve stakeholders in public policy decisions.

- ✓ Of the 27 priority legislative initiatives, 18 laws were adopted between 2021 and 2023, 6 drafts were prepared and 3 were under preparation. The recommendations made in the report of one *ex-post* evaluation are being implemented. However, the results of the impact assessments of envisaged and existing legal regulation are under-utilised, as only 3 laws (17 %) out of the 18 laws adopted between 2021 and 2023 as part of the priority legislative initiatives have been scheduled for *ex-post* evaluation. This does not ensure interaction between *ex ante* and *ex post* evaluations throughout the legislative cycle. The Office of the Government considers it inappropriate to take measures to include a provision for *ex-post* review in the drafting of legislation implementing the priority legislative initiatives. According to the Ministry of Justice, it uses all the measures put in place to implement the inclusion of the provision on *ex-post* review in the relevant legislation. In the case of adopting 9 of 17 laws for which an *ex-post* evaluation is foreseen, the primary objectives of the adoption of legal regulation were not distinguished or the indicators of their achievement were not provided, and the expected changes were not defined. In the two *ex-post* evaluations, a more detailed *ex ante* evaluation was not carried out and the ministries carrying out the *ex post* evaluation encountered problems with the identification of the purpose of the subject of the evaluation, and with the collection of data. In the absence of a quality *ex-ante* evaluation based on defined indicators, there is no primary basis for *ex post* evaluation (sub-section 1.3, page 24).
- ✓ Measures for the implementation of a recommendation of the 2018 public audit "Legislative Process" on the introduction of a systematic model for the review of existing legislation have not been implemented as planned by the Office of the Government. Five Ministries indicated that they carried out 22 systematic reviews between 2020 and 2023, identifying the need for legislative changes to remove or replace obsolete regulation, deregulate or reduce regulatory burdens. Institutions carrying out systematic reviews of legal regulation are aware of their benefits, but due to the abundance of legal acts, lack of human resources and lack of methodology, they are difficult to carry out. Without systematic reviews, the possibilities of identifying gaps in legal regulation and eliminating excessive legal regulation are not exploited (sub-section 1.4, page 25).

2. Regulatory oversight of regulatory impact assessments and competence of assessors should be improved

- ✓ Only procedures for the regulatory oversight of *ex-post* evaluations are in place. The Ministry of Justice carried out regulatory oversight of all (two) of these evaluations, and the draft report of one of *ex post* evaluations was submitted for quality review almost 1 year later than required. The Office of the Government carried out regulatory oversight of the *ex ante* evaluations of 16 out of 27 (59 %) of the priority legislative initiatives prepared/under preparation when it should have carried out regulatory oversight of all these initiatives. The Ministries with the competence for the regulatory oversight of carrying out *ex ante* impact assessment made comments on 9 out of 27 (33 %) priority legislative initiatives. All these comments were made by the Ministry of Economy and Innovation on the impact assessment of administrative burdens.

Defective regulatory oversight does not ensure that informed decision making is used (sub-section 2.1, page 27).

- ✓ There is no function within a Ministry to pool the competence needed for impact assessments, which leads to missed opportunities to ensure continuity in the use of relevant competence. 8 out of 14 ministries lack specialists, competence, and knowledge in carrying out these assessments. At least one drafter of 27 (out of 116, or 23%) of the draft legislation assessed had received training in this area. A project carried out by the Government's Strategic Analysis Centre during which the impact assessment training was organised ended at the end of 2023. Since 2024, no impact assessment training is planned and therefore the development of the competencies needed to carry out the assessments will not be ensured (sub-section 2.2, page 31).

Changes during the audit

On 16 November 2023, the Methodological legislative recommendations and Recommendations on the codification and consolidation of legislation were updated to include the need to carry out a systematic analysis of the relevant existing legislation when drafting new legislation or when deciding on the need to codify an area of legal regulation.

In 2024, the methodology for assessing the impact of envisaged legal regulation⁶ was amended: environmental and climate change impact assessment will be mandatory for priority legislative initiatives; impact assessment of other (non-priority) legislative initiatives will no longer be presented in a separate document, but will be presented in an explanatory note; the list of ministries and bodies that advise on impact assessment and perform the regulatory oversight of the *ex ante* evaluation has been extended.

Recommendations

For the Office of the Government

1. To carry out impact assessments of regulatory initiatives of greater economic, social, environmental, political significance and sensitivity, establish a mechanism for listing, modifying, and updating these initiatives (key result 1).
2. In the interests of legislative efficiency, openness, and transparency, review and, where necessary, revise the requirements so that impact assessments of priority legislative initiatives are justified in all mandatory respects and are subject to public consultation (key result 1).
3. To increase the quality of impact assessments of legislation:
 - 3.1. review and clarify the roles and responsibilities of coordinating and regulatory oversight bodies (key result 2)

⁶ Approved by Government Resolution No 63 of 17 January 2024. The amendments entered into force on 1 March 2024.

- 3.2. take measures to enable the development and maintenance of competence in regulatory impact assessment (key result 2).
4. To harmonise the application of the systemic regulatory review, provide information to ministries on the possible definitions and cases for conducting this review (key result 1).

The measures and deadlines for the implementation of the recommendations, the expected impact of the audit and the indicators for assessing changes are presented in the report under the heading 'Plan for the Implementation of the Recommendations' (page 34). Relevant information on the state of the implementation of recommendations, results and changes that have taken place is published in open data on the website of the National Audit Office at <https://www.valstybeskontrole.lt/LT/AtviriDuomenys>.