

Chapter 5

The development of new regulations in Lithuania

This chapter reviews the processes for the development of new regulations, with special attention for forward planning, administrative procedures and legal quality; the use of ex ante impact assessment of new regulations; and the consideration of alternatives to regulation.

The structure of regulations in Lithuania

Written laws passed by the legislature are the main source of regulation in Lithuania. Substantive parts of the law are codified in the Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Code of Administrative Offences and the Labour Code. Laws adopted by the *Seimas*, Lithuania's Parliament, apply to all state institutions, i.e. the executive, the legislature, agencies and municipalities. The executive can pass resolutions that are implemented by the executive and its agencies. In some cases, a recommendation can be given to sub-national levels to apply government resolutions. This is, for example, the case for burden reduction and the use of impact assessment at the sub-national level (Box 5.1).

Box 5.1. The structure of regulation in Lithuania

Lithuania's regulation stem from the following key sources:

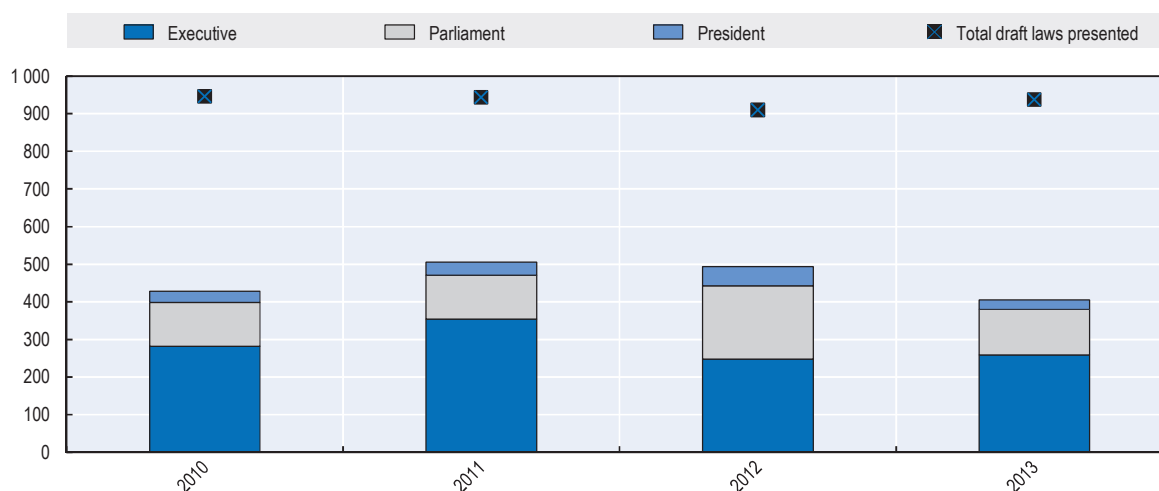
- Constitution of the Republic of Lithuania;
- Constitutional laws;
- Ratified international treaties;
- Laws: they are initiated by parliament, the President and the executive and adopted by Parliament; they represent the primary legislative source;
- Resolutions of the *Seimas* and government: they are adopted either by the Parliament or the Cabinet of Ministers;
- Ministerial and agencies orders/resolutions: they are adopted by a ministry or agency and concern primarily the activity of that body; and
- Acts of local municipal authorities: they are adopted by municipal councils within their areas of competence; they cannot conflict with laws and resolutions.

Trends in the production of new regulation

The President of the Republic, the executive and members of Parliament have the right to initiate laws by submitting a draft to the *Seimas*.¹ On average, approximately 900 draft laws are submitted to the *Seimas* every year. Approximately a third are submitted by the executive and two-thirds by members of parliament. About half of them are adopted and become laws. Approximately two-third of the adopted laws stem from an executive draft and one-third from a parliamentary draft (Figure 5.1).

There was a slight increase in the production of laws in 2011 and 2012 (505 and 494 laws adopted, respectively) when compared to 2010 and 2013 (428 and 405 laws adopted, respectively). This upward trend could have been the consequence of the elections in October 2012 (and the desire to have legislation passed at the end of a government mandate) (Figure 5.1).

Figure 5.1. Presented and adopted laws in Lithuania

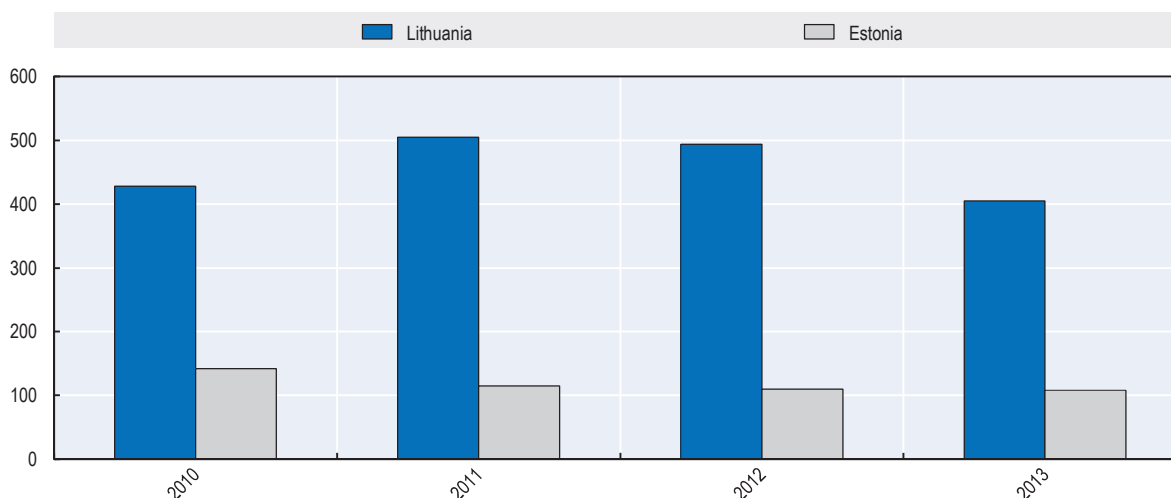


Note: Data covers registered laws (*Registruoti įstatymų projektai*) and adopted laws (*Priimti įstatymai*) in the annual parliamentary sessions of the *Seimas* (i.e. sessions IV-V in 2010; VI-VII in 2011; VIII-IX-I in 2012; II-III in 2013).

Source: *Seimas* statistics, www3.lrs.lt/pls/inter/w5_show?p_r=252&p_k=1.

It is difficult to determine whether a country passes too many or too few laws (or just about right). In addition to the challenge of determining an optimal legislative production in relation to the economic and social problems that public institutions need to address, the legal system as well as the administrative culture and the approach to decision making can determine a preference (or need) for legislating, rather than using other methods. Comparing countries of similar size, economic structure, legal culture and administrative tradition can, however, offer some reference point. Compared to neighbouring Estonia, Lithuania appears to adopt a significant number of laws. Between 2010 and 2013, Lithuania adopted on average 458 laws per year (compared to 115 laws adopted in Estonia). A number of these laws are amendments to existing legislation (Figure 5.2).

Figure 5.2. Adopted laws in Lithuania and Estonia



Note: Data covers adopted laws (*Priimti įstatymai*) in the annual parliamentary sessions of the *Seimas* (i.e. sessions IV-V in 2010; VI-VII in 2011; VIII-IX-I in 2012; II-III in 2013).

Source: *Seimas* statistics, http://www3.lrs.lt/pls/inter/w5_show?p_r=252&p_k=1; information provided by the Estonian Ministry of Justice.

Procedures for making new regulation

Forward planning

Planning of legislative initiatives within the executive relies on the Priority Measures for the Implementation of the Government Programme for 2012-16, the Annual Legislative Programme and the List of Priority Legislative Initiatives.

- The **Priority Measures for the Implementation of the Government Programme for 2012-16** identify some of the key legislative initiatives that are expected to be presented in the course of the government's term in office.
- The actual legislative agenda of the government is set through the **Annual Legislative Programme**. The Government Office prepares this Programme, taking into account proposals submitted by the ministries. Proposals include the title of the draft law or resolution, the objectives to be achieved by intended legislation, the timeframe for submission to the government and the Parliament. In addition, for draft laws that are still in the early stages, ministries have to submit information on the scope of the problem, intended changes and possible impacts. The Legislative Programme is approved by the government at the beginning of each year. Based on the annual Legislative Programme, the Government Office prepares a Semi-annual Legislative Programme that is submitted to the *Seimas* at the beginning of the spring and autumn parliamentary sessions.
- Since 2013, the Government Office has also prepared a **Priority List of Legislative Initiatives**. The Priority List includes legislative proposals whose impacts are expected to be assessed in greater depth. The List draws on proposals submitted by line ministries and proposals selected by the Government Office drawing in part on the 2012-2016 Priority Measures and to a large extent on the Annual Legislative Programme. In 2013, the Priority List included 14 proposals (all selected by the Government Office). In 2014, it included 26 proposals (2 submitted by ministries and 24 selected by the Government Office). The Priority List is approved by the Cabinet of Ministers. It is not usually submitted to the *Seimas* as the proposals included in the List are at an early stage of development.

The Priority List could potentially serve as a filter, offering an opportunity to slow down a certain “rush” to legislate. However, this role is not yet fully exploited as it appears that there are no clear and objective criteria for the inclusion of proposals on the list (which would then undertake a more in-depth impact assessment). Some OECD countries have introduced triage systems or threshold tests to filter legislative proposals to undertake more in-depth impact assessments (Box 5.2).

Box 5.2. Threshold tests to apply in-depth impact assessments

Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The development of a Triage Statement (low, medium, high impact) early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA. Also, when there is an immediate and serious risk to the health and safety of Canadians, their security, the environment, or the economy, the Triage Statement may be omitted and an expedited RIA process may be allowed.

Box 5.2. Threshold tests to apply in-depth impact assessments (*cont.*)

Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation”, where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

The **USA** operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for “economically significant” regulations (which are a subset of all “significant” regulations) is set out in Section 3(f)(1) of Executive Order 12866: “Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities”.

Source: OECD (2015), *OECD Regulatory Policy Outlook*, forthcoming.

Administrative procedures

An administrative regulation, adopted in 2013, sets out the main procedures for drafting government legal acts and conducting quality checks before submitting proposals to the Cabinet of Ministers.² The regulation implements the provisions set out in the 2012 Law on the Basics of Legislation that identifies the guiding principles for preparing legislation (Box 5.3).

Box 5.3. The 2012 Law on the Basics of Legislation

Adopted on 18 September 2012, the Law No. XI-2220 on the Basics of Legislation establishes the principles and stages of legislation, rights and obligations of state and municipal institutions and other persons involved in the process of legislation. The law requires that all persons involved in the process of legislation must be guided by the following principles:

- necessity;
- proportionality and respect for rights and freedoms of an individual;
- openness and transparency;
- efficiency;
- clarity; and
- consistency.

Source: Art. 3, Sec. 2 of the Law on the Basics of Legislation,
<https://www.e-tar.lt/portal/lt/legalact/tar.b4fa4c56b8d5>.

Legal quality

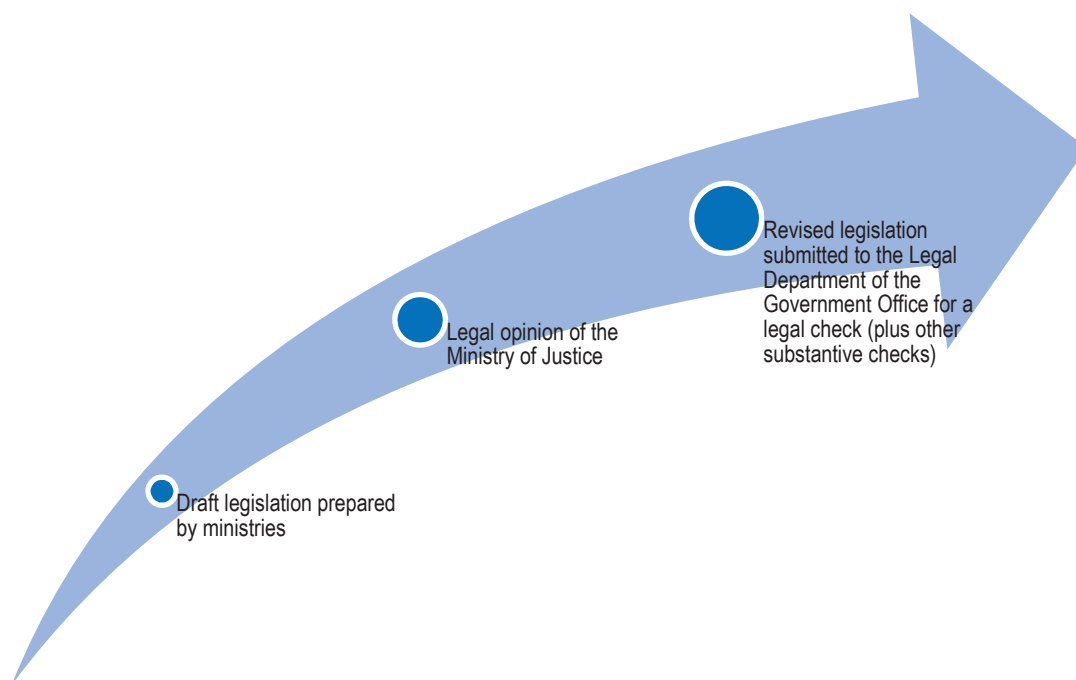
Specific technical requirements for legal drafting are set out in an order of the Ministry of Justice of December 2013.³ These requirements apply to all institutions and agencies of the government (but not to independent entities like, for example, the

National Commission for Energy Control and Prices that regulates energy, drinking water supply and waste water treatment).

Draft laws and resolutions submitted to the government go through multiple legal checks:

- **The Ministry of Justice provides a legal opinion on all legislative proposals (law or resolutions) submitted to the government.** This opinion focuses on the legality of the proposals and the quality of legal drafting. The legal opinion does not assess in depth the ‘appropriateness’ of the regulatory choice and design, nor the ‘effectiveness’ in terms of costs and benefits.
- **Following the Ministry of Justice’s legal opinion and any necessary modifications, the draft is submitted to the Legal Department of the Government Office for an additional checking on compliance with laws, government resolutions and technical legal requirements.** The draft is also examined on the subject matter by other units of the Government Office (Figure 5.3).
- Once the draft law is submitted to Parliament, **the Legal Department of the Seimas checks compliance of the draft with the laws which are already in effect and technical law-making requirements.**

Figure 5.3. Government legal checks on draft legislation



The role of the Ministry of Justice and the Government Office in checking legal quality changed over time. In 2009, the Legal Department of the Government Office was downsized and the main role in assessing the legality of draft legislation was assigned to the Ministry of Justice. In 2013, this decision was reversed and the role of the Government Office was restored.

Ex ante impact assessment of new regulation

Policy on regulatory impact assessment

Impact assessment was first introduced in 2003 as part of the reforms aimed at preparing Lithuania for EU accession (see Chapter 3 on regulatory reform and policies). A new impetus to support the use of impact assessment has come from the adoption of the Law on the Basics of Legislation in September 2012. Article 15 of the Law on the Basics of Legislation states that impact assessment must be conducted for all legislative initiatives that introduce new regulation or change legal regulation substantively. The provisions of the Law apply to all rule-making entities at all levels (national and sub-national).

The Law sets the following principles to guide the use of impact assessment:

- The extent and depth of impact assessment should be proportional to expected impacts: the decision to conduct the impact assessment will be taken by the sponsoring institution;
- Positive and negative impacts on the relevant sector as well as on individuals or groups of individuals affected by the draft regulation must be assessed.
- The assessment is expected to take into consideration impacts on:
 - the economy,
 - public finance;
 - social environment;
 - public administration;
 - legal system;
 - crime and corruption;
 - environment;
 - administrative burden;
 - regional development;
 - other relevant areas.

Any draft law, be it initiated by the government or the *Seimas*, has to be accompanied by an Explanatory Note that identifies, among other things, the objectives of the proposed legislation, its overall impacts, as well as impacts on the national and local budgets, business environment and corruption. Explanatory Notes also list the institutions and stakeholders consulted during the preparation of the draft. Explanation of impacts is mostly descriptive (Box 5.4).

Box 5.4. Explanatory note for draft legislation

A draft law submitted to the *Seimas*, with the exception of a draft law submitted by the citizens of the Republic of Lithuania implementing the right granted by the Constitution, shall be accompanied by an explanatory note which must indicate the following:

1. the reasons leading to the preparation of the draft, the objectives and goals of the prepared draft;
2. initiators of (institution, persons or representatives authorised by the citizens) and persons in charge of drafting a law;
3. the current legal framework regulating the issues considered in the draft law;
4. envisaged legal regulation provisions and expected positive results;
5. assessment results of the planned legal regulation impact (provided such an assessment must be carried out during the preparation of the draft law and its results are not presented in a separate document), potential negative consequences of the enacted law and the measures which should be taken to avoid these consequences;
6. effect of the enacted law on crime and corruption;
7. effect of the implementation of the law on business conditions and business development;
8. incorporation of the law into the legal system, the legal acts which must be adopted, the legal acts currently in force which must be amended or repealed upon adoption of the submitted draft;
9. the compliance of the draft law with the requirements of the Law on the State Language, the Law on Legislative Framework and the assessment of the definitions used in the draft and the terms referring to the definitions in accordance with the procedure laid down by the Law on the Term Bank and the legal acts implementing this Law;
10. the conformity of the draft law with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union documents; and
11. those who should adopt secondary legislation, if necessary for the implementation of the law, and the time limits for adoption thereof.

Source: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=492370.

Draft laws and resolutions prepared by ministries can also include a separate statement assessing regulatory impacts. This is not mandatory as impacts can be presented in the Explanatory Note. This statement is relatively short (a couple of pages even for relatively complex legislative proposals) and mostly descriptive. It covers overall impacts, fiscal impacts and administrative burden. There is no explicit requirement for the consideration of alternative options to the proposed legislation (Box 5.5).

Box 5.5. Expected regulatory impact statement

Title	
Responsible institution	
Objectives	
Impacts on relevant areas	
Public finance impacts	
Impacts on administrative burdens and other relevant areas	
Other information	

Source: https://www.e-tar.lt/portal/lt/legalact/tar.814f485eb18b/tais_474315.

Legislative proposals included in the Priority List of Legislative Initiatives – 14 in 2013 and 26 in 2014 – undergo a more in-depth Regulatory Impact Assessment (RIA). As of March 2015, 14 of them had been completed. These RIAs are more comprehensive: they include a wider range of impacts (e.g. social impacts and impacts on the public administration) and the consideration of alternative options (no action plus at least two options). The level and scope of quantification of the assessment can vary. An effort is made to use some data to back up the assessment of the problem and the proposed solutions. Nevertheless, the RIAs that have been conducted appear to include general descriptions of expected impacts with some quantification of administrative costs (but less developed analysis of other benefits and costs) (Box 5.6).

Box 5.6. Regulatory impact assessment for priority legislative initiatives

Priority item			
Institution			
Problem description			
Purpose	- Status quo - 1 st Option - 2 nd Option		
Impact on relevant sector	- Status quo - 1 st Option - 2 nd Option		
Impact on public finances	- Status quo - 1 st Option - 2 nd Option		
Impact on administrative burden			
Economic impact			
Other impacts	Status quo	1st Option	2nd Option
Social			
Public administration			
Regional development			
Legal system			
Crime			
Comparison of alternatives			
Proposed option and implementation			
Other information			

Source: https://www.e-tar.lt/portal/lt/legalact/tar.814f485eb18b/tais_474315.

Institutional framework

Policy

The Government Office is responsible for developing and co-ordinating impact assessment policy by:

- formulating the overall policy, requirements and methodologies;
- monitoring the quality of impact assessment of priority legislative initiatives;
- providing support and advice to public sector institutions conducting impact assessment.

Two staff members of the Strategic Planning and Monitoring Unit with background in law, economics and public management work full time on impact assessment. In addition, other sector units in the Government Office take part in the monitoring of the quality of impact assessments. The Strategic Planning and Monitoring Unit checks compliance with the policy and methodologies for impact assessment (e.g. consideration of alternatives, quality of evidence, etc.), whereas the sector units check policy content (e.g. alignment with government priorities, availability of alternatives, etc.) There is also a network of staff from other ministries who can be consulted and provide advice on the evaluation of impacts.⁴

The Ministry of Economy is responsible for developing methodologies for measuring the reduction of administrative burden on businesses and the Ministry of Interior is responsible for methodologies on measuring administrative burden on citizens.

Implementation

For legislative proposals that are not included in the priority list, the assessment of the impacts included in the Explanatory Note (or presented separately in a statement of expected regulatory impacts) is prepared by the ministry which drafts the proposed legislation. It is usually the ministry's department or unit in charge of the relevant policy area which is primarily responsible for the quality of the impact assessment. The ministry's legal department conducts a legal quality check of the draft legislation, including the explanatory note and the impact assessment, before the package – draft law or resolution, explanatory note and/or separate statement of expected regulatory impacts – is posted on the online legislative platform and other ministries and external stakeholders can provide comments. All ministries do not look at all draft legislation. The Rules of Procedure of the Government and other acts determines when a certain act must be sent to a specific ministry (in all other cases the drafting ministry decides with which ministry to consult). There is no specific check on the quality of these assessments of impact conducted by the Government Office beside the legal check conducted by the Legal Department. The absence of any specific control on the quality of the impacts included in the Explanatory Note appear to constitute a “missing opportunity” as it could help improve the quality of all legislation initiated by the government.

The process is different for the measures included in the Priority List. For these measures, responsible ministries prepare the RIA before the preparation of the draft legislation. Four institutions check the quality of the RIA:

- The Government Office for the overall quality of the impact assessment;
- The Ministry of Finance for the quality of assessment of fiscal impacts;

- The Ministry of Economy for the quality of impact assessment on the economy including competitiveness, SMEs and administrative burden on enterprises; and
- The Ministry of Interior for the quality of impact assessment on public management, administrative burden on citizens and central government and local government institutions and agencies.

Quality assurance institutions have 10 working days to review the impact assessment results and present their comments to the drafting institution. Final alternatives and impact assessment results are then presented to the government and discussed either in the Government Strategic Committee or the government (preparatory) meeting. Based on the decision of the government, the drafting institution prepares either a draft law or a non-regulatory measure. In practice, however, there is a tendency, even for these measures, to develop alternatives and a draft legal act at the same time, and to go for the regulatory measure. As of March 2015, all measures on the Priority list led to the preparation of a draft law and no one to the adoption of another measure.

Methodological guidance and training

Methodology and guidance

In 2012, the government approved the Methodology on Impact Assessment of Draft Legislative Acts, which serves as the main guide for government institutions preparing impact assessments. The Methodology includes questions to be considered when preparing impact assessment, covering:

- relevant area;
- public finance;
- administrative burden on citizens and central government and local government institutions and agencies;
- economy (including competitiveness, SMEs, administrative burden on enterprises);
- social environment;
- public management;
- environment;
- regional development;
- legal system;
- crime; and
- other areas where appropriate.

The Methodology recommends the use of Cost-Benefit Analysis (CBA) or Cost-Effectiveness Analysis (CEA), when possible. The Government Office developed specific guidance to help ministries apply CBA and CEA. In practice, CBA and CEA are rarely used when developing regulatory proposals, even for the more in-depth impact assessments for the proposals included in the Priority List, reflecting a general lack of analytical skills among civil servants.

The Ministry of Economy and the Ministry of Interior developed methodological guidance on how to calculate administrative burden on businesses and citizens, based on the Standard-Cost Model. Both methodologies were adopted by the government and define the formulas to be used to calculate administrative burden.

When conducting impact assessment, ministries can outsource advice and analyses when they do not possess the required expertise or skills or face time constraints. The service is usually acquired through a public procurement procedure. Ministries responsible for sectors such as energy, environment, social protection or transport tend to rely on external advice.

Training

The Government Office leads training on the overall approach to impact assessment. Between 2009 and 2011, about 120 civil servants – staff developing regulations and heads of strategic planning units – were trained in impact assessment. Training covered:

- process of *ex ante* impact assessment (steps and participants, principles, impact assessment aspects);
- main methods and cost-benefit analysis;
- *ex post* impact assessment (steps and methods, design of *ex post* impact assessment).

Upon request of the institution preparing the RIA, the Government Office can organise discussions with some quality assurance institutions (Ministry of Finance, Ministry of Economy, and Ministry of Interior). In addition, the institution preparing the RIA can collaborate separately with each quality assurance institution (it is, for example, common practice to discuss the RIA with the Government Office in the last stages of the preparation of the RIA).

The Ministry of Economy also organises special trainings/seminars on how to identify and measure administrative burdens for businesses. Training sessions have taken place at least once a year for state and municipality institutions. Further support is given to civil servants via telephone, e-mail or live consultations on concrete measurement issues and questions. In order to stimulate administrative burden reduction at municipal level, the Ministry of Economy will train officials from all municipalities in the course of 2015. The trainings are organised in the main Lithuanian cities in the centre of a region, inviting municipalities of that region.

Training on impact assessment is an optional module in the initial training for newly-recruited civil servants.

Public consultation and communication

The ministry responsible for drafting the legislation decides whether public consultation is necessary given the scope of the proposal. It also decides on the extent of consultation. Moreover, the Methodology on Impact Assessment stipulates that public consultation can be arranged at different stages of impact assessment: when defining the problem, formulating the goals or regulation alternatives, assessing the impact of alternatives, etc.

In practice, ministries tend to consult with stakeholders through formal and informal working groups and networks, sometimes also in the early stages of preparation of the draft legislation. However, feedback from stakeholders appears to be sought more to confirm a preferred option rather than to identify and evaluate different options. The Explanatory Note provides too little information and data to engage stakeholders in a constructive discussion on the impacts of the proposed legislation (with the view of improving its provisions).

Evaluation of progress

The Government Office is conducting a review of the impact assessment process in consultation with the other institutions, in order to take stock of the use of impact assessment. Results are expected to be presented to the government in mid-2015. As of March 2015, the Government Office was preparing a questionnaire to be circulated among the quality assurance institutions (the Ministries of Finance, Economy and Interior).

Alternatives to regulation

There is no explicit policy encouraging the use of alternative to regulation such as certification, covenants, general rules as an alternative to permits. The Methodology on Impact Assessment of Draft Legislative Acts requires providing several options to solve identified problems but does not provide any guidance on possible non-regulatory options.

Risk-based approaches

When checking the quality of impact assessment, the Government Office may ask institutions to assess the risks in implementing different options. However, risk assessment is not systematically used and legislation is generally not based on risk analysis or any systematic focus on activities relating to business and citizens with a high risk profile.

Notes

1. Under Article 68 of the Constitution, citizens also have the right to submit legislative proposals, provided that a draft is supported by at least 50 000 signatures. However, laws stemming from citizens' proposals are rare.
2. Government Resolution No. 337 "Regarding Adoption of the Rules of Procedure of the Government of the Republic of Lithuania", 17 April 2013.
3. Order of the Minister of Justice No. 1R-298 of 23 December 2013.
4. www.lrv.lt/lt/veikla/poveikio-vertinimas/kontaktiniai-asmenys/.

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