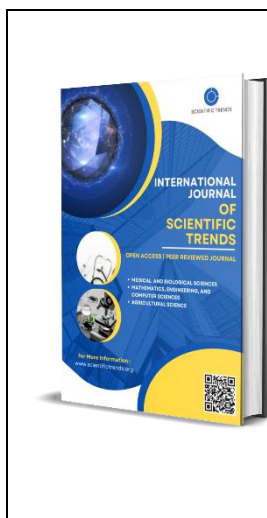


Regulatory Impact Assessment as A Means of Combating Corruption in The Preparation of Regulatory Legal Acts

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Abstract

This article examines the assessment of regulatory impact as a tool for preventing corruption in the preparation of regulatory legal acts in the Republic of Uzbekistan. It is substantiated that corruption is caused not only by the illegal behavior of officials, but also by defects in regulatory regulation, including the uncertainty of legal formulations, excessive discretionary powers and non-transparency of administrative procedures. based on the concept of assessing the corruption impact of regulation, and the importance of the participation of civil society institutions in this process is emphasized. It is concluded that it is necessary to include mechanisms for preventing corruption risks in the RIA procedures.

Keywords: Regulatory impact assessment (RIA), corruption, anti-corruption expertise, regulatory legal acts, rule-making, corruption-causing factors, quality of regulation.

Introduction

Regulatory impact assessment (hereinafter referred to as RIA) in modern conditions should be considered not only as a tool for analyzing the economic feasibility of regulatory regulation, but also as one of the most promising means of preventing corruption at the stage of preparation of regulatory legal acts. Such an understanding is especially relevant for the Republic of Uzbekistan, where in recent years there has been an intensive update of legislation, modernization of the public administration system and consistent development of administrative reform mechanisms. In these conditions, the quality of the prepared normative legal acts is important not only from the point of view of legal technique, but also from the point of view of anti-corruption security of the state. Its emergence is often predetermined by the content of the normative regulation itself, if the draft normative legal act initially contains legal structures that allow for excessive freedom of administrative discretion, non-transparency of procedures, uncertainty of decision-making criteria, multiplicity of conciliation stages, or others elements that can create conditions for the selective application of the norm [1]. In this sense, the corruption risk arises not only at the stage of implementation of a legal prescription, but much earlier, at the time of its design. That is why low-quality rule-making should be assessed as an independent source of corruption-causing potential [2].

It should be noted that anti-corruption expertise is traditionally aimed at identifying special corruption-causing factors in the text of the draft regulatory legal act. However, in the context of the increasing complexity of the regulatory environment, a formal analysis of the text of the norm is no longer enough. It is equally important to establish how the proposed regulatory mechanism will operate in practice, whether it will create additional administrative barriers, whether it will increase the dependence of citizens and business entities on the discretion of the official, whether it will not create a situation in which access to the right, permission, approval or public service will actually be conditioned not by the law, but by informal influence. It is here that the importance of regulatory impact assessment is fully revealed.

RIA makes it possible to establish a wider range of defects in legal regulation than classical anti-corruption expertise. If the latter reveals mainly special corruption-causing factors of the draft text, then the RIA makes it possible to analyze the future legal regime in its actual functioning. It shows whether the proposed regulation is proportionate, reasonable, transparent and enforceable, whether it entails excessive obligations, prohibitions and restrictions, does not provoke unjustified costs, and also does not create grounds for abuse and selective application of the law. Thus, the RIA acts as a legally significant filter of the quality of the draft regulatory legal act, capable of identifying such regulatory decisions that can create conditions for the emergence of corruption even before the adoption of the act [3].

This approach is of particular importance in the light of foreign doctrine, within the framework of which the concept of assessing the corruption impact of regulation has been developed. Its methodological meaning lies in the fact that the draft regulatory legal act should be analyzed not only in terms of legality, economic efficiency and administrative feasibility, but also in terms of what corruption incentives and opportunities it can generate in the future. In this approach, the quality of regulation is considered as an independent factor in the prevention of corruption. Accordingly, corruption is understood not simply as a result of the personal dishonesty of a particular official, but as a consequence of a defective regulatory design that allows for the abuse of power, the emergence of informal payments, the establishment of privileged regimes and the creation of structures designed for the selective application of the norm. For the legal system of the Republic of Uzbekistan, this approach seems to be especially significant, since it allows us to consider the assessment of regulatory impact not in a narrow managerial sense, but as an integral element of the anti-corruption policy in the field of rule-making.

An equally important aspect is the participation of civil society institutions in the procedures for evaluating draft normative legal acts. The modern rule of law state assumes that rule-making should not be confined to departmental discretion. Independent expertise, professional discussion of projects, participation of the scientific community, public councils and other public institutions make it possible to create an additional level of control over the content of the future act. Such legal filtration external to the drafting body reduces the risk of adopting norms that formally look neutral, but in fact create unjustified advantages for individual entities, lay down hidden lobbying mechanisms, generate artificial barriers for citizens and businesses, or expand the powers of the administrative apparatus. That is why public consultations and independent expert participation should not be considered as an optional annex to the RIA procedure. On the contrary, it is in combination with an open discussion of the draft that RIA acquires the most pronounced anti-corruption character.

For the Republic of Uzbekistan, this formulation of the issue is of particular practical importance. In the context of the policy of openness of public administration, digitalization of the law-making process and the development of institutions of public control, special attention should be paid to ensuring that draft regulatory legal acts undergo not only departmental and legal and technical verification, but also the procedure for a meaningful assessment of their potential corruption-causing effect. This means that when preparing draft regulatory legal acts, it is necessary to systematically identify cases of excessively broad powers of administrative bodies, non-transparent approval and resolution procedures, gaps in legal regulation, uncertain and evaluative wording, unjustified preferences for certain entities and other structures that can lead to unequal access to public goods and services [4]. In this understanding, RIA acts as a means of ensuring legal certainty, proportionality of regulation and prevention of abuse, and therefore as a real tool for combating corruption in the law-making activities of the state.

At the same time, it would be methodologically incorrect to oppose the assessment of regulatory impact and anti-corruption expertise. These mechanisms do not coincide in their direct subject, but functionally complement each other. Anti-corruption expertise is focused on identifying special corruption-causing factors in the text of the draft regulatory legal act, while RIA allows you to assess a wider range of consequences of the proposed regulation and identify systemic defects that create prerequisites for corrupt behavior. It is their combination that forms a comprehensive mechanism for ensuring the quality of rule-making [5]. Therefore, in the current legal system, RIA should be considered not as an economic and managerial procedure external to the law, but as part of a modern legal mechanism for the preparation of regulatory legal acts, focused on legality, transparency, predictability and anti-corruption stability of regulatory decisions.

Based on the above, it can be assumed that the further development of RIA in the Republic of Uzbekistan should be associated with the strengthening of its anti-corruption component. In this case, we are talking not just about a formal expansion of the list of evaluated consequences, but about a fundamental rethinking of the purpose of this procedure. In modern conditions, a qualitative assessment of a draft regulatory legal act should include not only an analysis of its socio-economic consequences, but also a forecast of the corruption-causing effect of the relevant regulation. Only with this approach can we ensure the transition from a reactive model of combating corruption, based mainly on the identification of offenses that have already been committed, to a preventive model, in which the state eliminates corruption risks at the stage of rule-making. This, in our opinion, is the key importance of RIA as a means of combating corruption in the preparation of regulatory legal acts in the Republic of Uzbekistan.

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