

## IMPROVEMENT OF REGULATORY POLICIES IN PUBLIC ADMINISTRATION: INTERNATIONAL PRACTICE AND THE CASE OF KAZAKHSTAN

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### **Abstract**

*Due to aggravating problems in the world economy, it has become essential to further improve public administration systems, in particular, regulatory processes. This is because government regulation can both be a catalyst for, or a barrier to, development in any area of public life. Therefore, issues of regulatory improvement have been high in the agenda of government strategies of developed countries for many years. Regulatory decisions are set out in various legal regulations, which have social and economic impacts on various target groups, (e.g. people, business and the state). The main idea of improving government regulation is to streamline it, to remove excessive barriers and to avoid unreasonable costs. This article reviews global trends in regulatory policy-making and international practices for improving the quality of regulatory decisions. It also presents some efficient instruments and processes towards improving the quality of regulatory decisions in Kazakhstan and from around the world. Lastly, it provides recommendations for improving the process of evaluating the impact of regulatory decisions in Kazakhstan.*

**Key words:** *government regulation, regulatory reforms, regulatory impact assessment, public consultations, retrospective analysis, assessment of social and economic implications, scientific economic review.*

The currently prevailing unfavourable external economic conditions make it essential that governance is improved. In this context, governance is viewed as the effect of regulation on public and private lives of people, manifested through the system of its institutions while they implement their policies (Atamanchuk, 2004). Consequently, regulation is an essential element of governance.

Government regulation constitutes a framework of standard-based measures of legislative, executive and of oversight nature, adopted by duly legitimated government authorities and community-based organizations for stabilizing and adapting the existing social and economic system to the changing conditions (Kholodov, 1997). In a modern economy, government regulation is executed through application of administrative, legal and economic regulation. Administrative and legal regulation manifests into the creation of a legal framework. [Economic] regulation is used both for promoting activities required by the society and for suppressing undesirable ones. Thus, regulatory measures are the key instruments for a state to impact its social and economic system and to promote economic growth and social well-being.

Low quality of regulation may contribute to more bureaucracy, corruptive practices and abuse of power. This is why most developed countries consider regulatory improvements as a critical element of governance reforms, based on the following principles:

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- Regulation only in case of “market failures” or where there is a need to address important social and economic issues in ensuring a reasonable distribution and use of resources;
- Reduction of administrative burden.

For example, in 2011, the UK Government launched the “Red Tape Challenge” programme, when regulatory measures were published online and businesses and community were encouraged to publicly express their opinions, propose solutions and present analytical information on such measures. Based on the feedback received, the Government was able to improve, to maintain or to abolish some measures. In some cases, regulation per se (e.g. fire safety requirements) is not a burden for business, costs emerge due to enforcement activities of government institutions (e.g. frequent inspections). In 2012, the UK launched the “Focus on Enforcement” campaign to make such cases known. These two initiatives yielded the following results:

- Over 2,400 regulations scrapped;
- Saved home builders and local government councils around £100 million by reducing hundreds of locally applied standards to 5 national standards;
- Realised £90m savings annually to business from Defra reducing environmental guidance by over 80%;
- Businesses with a good record have had fire safety inspections reduced from 6 hours to 45 minutes, allowing managers to quickly get back to their job;
- Childcare providers now have to read 33 pages of need to know guidance instead of wading through over 1,100 pages (HM Government, 2016), etc.

In 2015, building on the success of the above programmes, the UK launched a new one titled “Cutting Red Tape”, which combined and embodied best practices of the earlier programmes. The new programme assumes active involvement of businesses into large-scale revisions of regulations in various sectors. By doing this, the Government has committed to reduce the financial burden on businesses by £10 billion over the next 5 years.

From 2010, any new UK regulation was introduced based on the principle of “One-in, One-out”, which meant that any regulation creating unnecessary costs to business must be neutralized by other deregulatory measures realising equivalent savings to business. In 2013, the decision was made “to raise the bar”. Hence, the regulation management system started operating on the “One-in, Two-out” approach, i.e. for each pound of a newly introduced administrative burden, two pounds should be saved. In March 2016, the Department for Business, Innovation and Skills announced the future version of this programme, the “One-in, Three-out”.

In 2013, Australia launched a far reaching initiative to reform its regulatory system in order to reduce regulatory burden and to improve productivity. The Government committed to reduce the burden on individuals, community-based organizations and business by AUD 3 billion over 3 years; however, this objective was achieved much earlier, in two years. During this period regulatory costs were reduced by AUD 4.5 billion. Over 3,600 redundant legal acts and over 10,000 other legislative instruments were abolished. For each dollar of a newly introduced regulation, the Government made decisions to reduce costs by over 11 dollars (Australian Government, 2015). Such measures yielded results only at the national, but at the international level as well. Australia leap frogged in the WEF’s ranking for the World

Competitiveness Index for the “Burden of administrative regulation” criterion from 124<sup>th</sup> place in 2014 to 80<sup>th</sup> place in 2015 (WEF, 2015).

In Belgium, reforms aimed to simplify regulation resulted in reducing administrative costs for individuals and business by €1.25 billion in the period between 2008 to 2014<sup>3</sup> (OECD, 2015).

The above cases demonstrate that the key idea in improving public regulation is about reducing and/or eliminating redundant barriers. International practice reveals three dimensions of a comprehensive approach to addressing issues of regulatory policy improvements: [i] regulatory impact assessment (RIA); [ii] involvement of interested parties and; [iii] retrospective analysis (ex-post evaluation).

RIA is a mechanism of systematic identification and evaluation of costs and benefits of proposed regulations (OECD, 2006). This instrument of quality improvement is used in over 70 countries worldwide. Best practices of RIA are found in the OECD countries, where impact assessment and public consultations are mandatory processes and steps for enacting any regulation in 33 out of 34 member countries (OECD, 2015). In sum, the idea of applying RIA practices, in different countries, is to gather evidence for making informed regulatory decisions in order to avoid unreasonable costs for its target groups<sup>4</sup>.

Regulatory Impact Assessment procedures can be described as a sequence of the following steps:

1. Problem definition and description;
2. Setting regulatory objectives;
3. Identification of options to achieve the objectives;
4. Cost-benefit analysis of identified options;
5. Public consultations;
6. Conclusions and results, presentation of a recommended option; and
7. Implementation and monitoring of the selected option.

In the CIS region, the RIA process is applied, under different names, in Russia, Ukraine, Moldova, Kyrgyzstan and in Uzbekistan. In Russia it is called regulatory impact assessment (RIA), in Kyrgyzstan it is named as regulatory impact analysis (RIA) and in Uzbekistan as legislative impact assessment framework (LIAF).

It is worth noting the very active application of RIA in the Russian Federation, where by the end of 2015 over 4,600 RIAs were completed during a five-year period. Over 50,000 opinions and comments were contributed in conducting these impact assessments. It was concluded that 30 to 40% of draft regulations were excessive and costly to the relevant entities. Furthermore, starting from 1 July 2016, new legal regulations will be subject to actual impact assessment (AIA). This system will replace the existing process of expert review of legal regulations of federal government bodies; aiming to identify whether there are any provisions which unreasonably hamper business and investment activities. In other words, actual impact assessment will help to identify the correlation between regulatory objectives, RIA results and the effects of the regulation.

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<sup>3</sup> About 65% of the savings benefitted business and the remaining 35% benefitted individuals.

<sup>4</sup> A target group may be a group of individuals or groups of entities associated with the issue in question or engaged in the process of development and directly or indirectly affected by a proposed regulation (both positively and negatively). There are three major target groups in society: the state, business and people.

The AIA will consist of the following stages:

- Preparation of a draft AIA Plan, its public discussion and approval by the Government Administrative Reform Commission;
- Preparation of and AIA report for a legal regulation and its public discussion;
- Preparation of opinion on AIA by the Russian Ministry of Economic Development; and
- Review of the AIA report and opinion by the Commission.

It is noted that the AIA will be prepared and publicly discussed by federal regulatory bodies themselves, however, this function will be performed, until 1 July 2017, by the Ministry of Economic Development in order to set the right tone.

In Kazakhstan, the analysis and evaluation process of regulations started with the adoption of the Law of the Republic of Kazakhstan “On legal regulations” (No. 213, 24 March 1998), which sets out the key principles of expert review of draft regulations, i.e. on anti-corruption, legal, linguistic, environmental, financial regulations, etc. However, the operationalization of instruments contributing to improving the quality of regulatory decisions started in 2011 with the amendments made in the Rules of Scientific Review approved by the Government Resolution “On measures to improve law making activities” (No. 598, 30 May 2002). These measures required law writers to evaluate social and economic implications of laws and regulations. The results of such evaluation would be presented in a datasheet containing the identified social and economic implications of draft regulations, which includes the following sections:

- Evaluation of whether a draft law meets government strategic objectives;
- Evaluation of social and economic implications, risks and assumptions;
- Cost-benefit analysis;
- Source of funding; and
- Answers to key questions recommended by OECD for RIA.

The findings of such evaluation are then subject to expert review carried out by an independent research entity. The review process of draft laws and regulations is organized by the Ministry of National Economy, and it includes the following phases:

1. Identification and description of issued to be addressed by a draft regulation;
2. Description of all known and effective ways, mechanisms and approaches to address the above issues, including those used at different historical phases and abroad;
3. Analysis of the ways, mechanisms and approaches to address the issues as proposed by the reviewed draft regulation, potential implications of the ways to address the issue proposed by the reviewed draft.

The next step in the evolution of regulatory analysis and evaluation was the institutionalization of regulatory impact assessments, in 2015. According to the Entrepreneurship Code of the Republic of Kazakhstan, regulatory impact analysis is an analytical procedure for comparing costs and benefits of proposed regulatory instruments and associated requirements. Such analysis allows assessing whether the objectives of public regulation will be achieved in the future. Its purpose is to improve efficiency and effectiveness of government policies with respect to the use of specific regulatory

instruments by assessing alternative options for achieving specific objectives or addressing specific issues.

Regulatory impact analysis is carried out by government bodies for the draft regulations they prepare. The findings of such analysis are reviewed by the competent body responsible for entrepreneurship, which issues its opinion, irrespective of whether the government bodies comply with the existing procedures; and if it disagrees with the conclusions it carries out an alternative regulatory impact analysis. Regulatory impact analysis is applied only to new regulations applicable to private business, whereas assessment of social and economic implications and expert economic reviews cover a wider range of social and economic implications for three main target groups: the state, business and people.

Experience has demonstrated that such assessment is carried out by many government bodies inadequately. It is viewed as a mere formality. In this context, economic justification and cost and benefit estimates seem to be absent. Experience in conducting assessment and reviews has demonstrated that the approved datasheet template lacks:

- Adequate elaboration and presentation of the relevant social and economic implications assessment; it primarily concentrates on providing legal information;
- An analysis of problems to be addressed through a draft regulation, which prevents adequate understanding of whether different objectives and options have been properly identified;
- An analysis of the existing situation and of the government regulatory measures currently applied, which may lead to maintaining excessive government regulation in a given area;
- A presentation and analysis of best international practices for addressing similar issues, which makes it difficult to judge whether the selected option is reasonable and can potentially be successful;
- An indication of alternative regulations and other ways and means to address the issue considered by a government body;
- A provision for suggesting alternative ways for achieving the same objectives; an element that prevents having a complete analysis to decide whether the proposed arrangements are objective and feasible in the draft legal regulation;
- A cost benefit – analysis, which contains quantified benefits and costs in relation to its target group or groups.

Nowadays, the assessment of social and economic implications and the provision of expert economic reviews is only conducted for draft laws, in Kazakhstan. Such assessments and provisions of expert reviews is not conducted on the content of final laws or on any bylaws introduced in the process of enactment. Furthermore, law texts contain many references to other legal acts and draft laws, which might complicate administrative procedures while they are implemented or enforced. This situation may create opportunities for corruptive practices as interpretation of provisions contained in a legal text can vary.

Currently, there are no requirements for public consultations and presentation of their outcomes in Kazakhstan. The scope of functions for conducting public consultations systematically and recording opinions by government bodies has not been defined. Neither, a methodology exists for defining how to carry out such consultations. In most cases, public consultations held by government bodies are rather informal. Pursuant to the Law “On Legal Acts” (No. 480-V, 6 April 2016), draft concept papers of draft laws and regulations together

with explanatory notes and comparative tables should be published online for public discussions. However, it is noted that the discussions of such drafts are not active mainly because of low awareness of people about the process and the inherent difficulty in understanding the legal language used in these drafts.

At the same time, Kazakhstan has no meaningful and objective cost-effectiveness analysis of the implementation of national laws. At present, retrospective analysis of the legislation is limited to legal monitoring. Pursuant to the “Rules of Legal Monitoring of Legal Regulations” (Government Resolution No. 964, 25 August 2011), legal monitoring of regulations is carried out by relevant departments and/or institutions of the government body, which drafted a legal regulation. This process is regulated by the Ministry of Justice and it is mainly focused on identifying provisions which are contradictory to the existing legislation or are obsolete, corruption prone, or ineffective. As a result, current monitoring practices do not allow for adequate cost-effectiveness evaluation of laws and regulations.

An analysis of best practices in the regulatory decision making processes has resulted to some recommendations for improving the assessment of social and economic implications and expert economic review of draft laws.

First, a key element for the development of an adequate impact assessment system is high-level political support. This is corroborated by the fact that in 29 out of 34 OECD countries, a minister or another high-level official is assigned the responsibility for assisting the government in carrying out regulatory reform (OECD, 2015).

Second, worldwide practices of regulatory decisions assessment demonstrates that the assessment process needs to be supported, controlled and overseen by a special department of the government or by a ministry. These bodies provide methodological guidance and oversee assessments undertaken by drafters of regulations. Some examples from around the world are:

- Better Regulation Executive in the Department for Business, Innovation and Skills in the UK;
- Office of Management and Budget under the Presidential Administration in the USA;
- Regulatory Affairs Sector of the Treasury Board of Canada Secretariat in Canada;
- Office of Best Practice Regulation in the Department of Finance and Deregulation in Australia;
- Department of Regulatory Impact Assessment of the Ministry of Economic Development in the Russian Federation; and
- Impact Assessment Board under the EU Commission President in the European Union.

Third, the assessment template used in Kazakhstan needs to be further improved. Some cumbersome sections ought to be removed and replaced with others for providing adequate analysis in assessing the objectivity and reasonableness of a proposed regulation.

Fourth, it is proposed that the scope of assessments and reviews is expanded by using mechanisms of assessment of several different legal acts, i.e. draft laws, government regulations, government department regulations, specific rules, procedures, instructions, etc. In this context, government bodies would be required to provide together with their proposed drafts, all relevant supporting materials, including draft bylaws.

Fifth, the process of public consultations needs to be formalized. World practice demonstrates that effective consultations with target audiences for proposed regulations are key to making quality regulatory decisions. For example, the “General principles and minimum standards for consultation of interested parties” adopted by the European Commission (COM 704, 11 December 2002), specifically indicate that consultations with interested parties can only supplement the decision-making process but never replace it because only relevant authorities can take responsible decisions on the context of legislative procedures. The key principle of consultations declared by the EU Commission is “to give interested parties a voice, but not a vote”. At the same time, the EU Commission recognizes that by enhancing the involvement of target groups in policy making effective consultations help to improve the quality of the policy outcome.

Sixth, it is proposed to introduce the requirement, for legislation-drafting government bodies, to undertake comprehensive cost-effectiveness evaluation of adopted laws. Such retrospective evaluation of legal regulations ought to include analysis of achieved objectives, level of effectiveness and enforceability, as well as any side effects. For instance, in Denmark the outcomes of adopted laws are analysed three years after they have come into effect. Germany uses the concept of retrospective RIA, which assesses the extent to which the objectives have been achieved. In the UK, impact assessment indicates how and when effectiveness of proposed regulation is to be measured. Furthermore, internal monitoring by the relevant government body is supplemented by an independent regulatory performance evaluation (Akhmetzhanova et al, 2012).

In conclusion, current global economic conditions and trends in the field of regulation require enhancing the instruments for improving regulatory decisions. Summarizing the evolution of regulatory measures assessment at the international level, one could say that such evolution was gradual and was impacted by institutional, social, cultural and legal conditions, which were country-specific. Thus, it seems that there is no a standard model in place. However, existing good practices can and should be adapted in Kazakhstan. The enhancement of the processes for evaluating the social and economic implications of regulatory decisions, in line with the recommendations proposed in this article, can become an essential instrument for screening out and abolishing hasty, inappropriate and outdated regulatory decisions.

## References

- Akhmetzhanova S., Tussupbekov M., Aubakirova Z., Djilkibayeva A., Duissembayeva A., Zheksenayeva K., Iskakov S., Kopeshova K., Kyssykov A., Tileubergen D. 2012. *Regulatory Impact Assessment in Kazakhstan: Theory, Challenges, Ways to Improve*. Astana: Institute of Economic Research, pp. 150.
- Atamanchuk G. 2010. *Theory of Governance*. Moscow: Omega L, pp. 525.
- Australian Government, 2015. Cutting red tape, [<https://cuttingredtape.gov.au/>].
- Entrepreneurship Code of the Republic of Kazakhstan dated 29 October 2015 No.375-V.
- EU Commission, 2002. *General principles and minimum standards for consultation of interested parties by the Commission*.
- HM Government, 2016. Cutting red tape, [<https://cutting-red-tape.cabinetoffice.gov.uk/>].
- Kholodov L., 1997. *Basics of Public Economic Policies*. Moscow: pp. 226.
- Law of the Republic of Kazakhstan “On normative legal acts” (No. 213, 24 March 1998).
- Law of the Republic of Kazakhstan “On legal acts” (No. 480-V, 6 April 2016).

OECD, 2006. *Determinants of quality in regulatory impact analysis*. OECD, pp. 49.

OECD, 2015. *Regulatory Policy Outlook*. Paris: OECD, pp. 226.

Resolution of the Government of the Republic of Kazakhstan “On approval of the Rules of Undertaking Legal Monitoring of Normative Legal Acts” (No. 964, 25 August 2011).

Resolution of the Government of the Republic of Kazakhstan “On measures to improve law making activities” (No. 598, 30 May 2002).

UK Department for Business, Innovation and Skills, 2016. “One-in, two-out” rule, [<https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-regulation/2010-to-2015-government-policy-business-regulation#appendix-4-operating-a-one-in-two-out-rule-for-business-regulation>].

World Economic Forum, 2015. *Global Competitiveness Report 2015-2016*. Geneva: WEF, pp. 384.

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