

The Concept and Legal Nature of the Institute for Assessing the Regulatory Impact of Draft Normative Legal Acts

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ABSTRACT: In order to fully understand the mechanism of the institute of regulatory impact assessment (RIA) and determine the prospects for its development, it becomes relevant to study the processes of formation of this institution, identify the problems of its existence at the present stage and develop recommendations for optimizing its further implementation in the regulatory policy of the state.

The article aims: to analyze the main approaches to the formation of the institute of regulatory impact assessment, to identify the problems of functioning of this institute, to determine the prospects for the existence and development of the institute of regulatory impact assessment.

The methodological basis of the work is the method of cognition and analysis of the institute of regulatory impact assessment. General scientific research methods were also used – historical and logical, comparative, analysis and synthesis, deduction and induction.

According to the results of the study, it is concluded that at present there is a need to include market levers for the introduction of this institution into the regulatory policy of the state. Also, at this stage of development and implementation of the institute under consideration, insufficient attention is paid to finding alternative ways to solve the problem and choosing the optimal one.

KEYWORD: regulatory impact assessment (RIA), public policy, OECD, legal expertise, normative legal acts.

Introduction

The effectiveness of regulation of normative activity is an important tool for achieving the goals of public policy. The State has a wide range of regulatory instruments that are designed to improve the social, economic and business environment.

It should be noted that the regulatory policy of the state is necessary for the proper functioning of public relations. It is this kind of norms that create the so-called "rules of the game" for citizens, society and business in general. The regulatory policy of the state protects the rights and legitimate interests of citizens, supports the functioning of market relations. The purpose of regulatory policy is to ensure the effective operation of the regulatory "lever" so that regulation and the regulatory mechanism work in the public interest.

The quality of the socio-economic development of society, as well as the quality of normative legal acts, strongly depends on the quality of the processes of drafting normative legal acts.

1	ISSN 2690-9626 (online), Published by "Global Research Network LLC" under Volume: 3 Issue: 7 in Jul-2022 https://grnjournals.us/index.php/AJSHR
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It should be noted that state regulation is carried out through the adoption of normative legal acts of various forms (laws, by-laws).

When drafting regulatory legal acts, their probable consequences on socio-economic life, in particular, on the implementation of entrepreneurial activity, are not always fully taken into account.

As a result, there are many cases of unforeseen consequences for citizens, businesses and society as a whole. Such negative consequences are mainly the result of poorly planned, far-reaching decisions.

Such decisions can negatively affect the business climate and investment attractiveness of the state, as well as strengthening the confidence of the business environment in the state.

Currently, one of the effective ways that affect the quality of the adoption of regulatory legal acts is the Institute for Regulatory Impact Assessment (RIA).

History & Theoretical Framework Of Ria

The Institute of Regulatory Impact Assessment was first introduced in the second half of the XX century in European countries. This process was closely related to the public administration reforms taking place in European countries at that time. Denmark was the first country to introduce this institute. Further, the introduction of the institute of regulatory impact assessment into the legislation took place in the USA, Finland, Canada, Australia, Great Britain, Holland, Germany.

It should be noted that in countries such as Switzerland and France, the procedure for conducting RIA is specified in the Constitution [1].

As can be seen, the institute of ODS was first used in OECD countries. Given that this institution was originally formed in the above countries, it seems appropriate to analyze in more detail the concept of regulatory impact assessment, which is given in English (Regulation Impact Assessment / RIA).

So, this term can be divided into the following parts:

- "regulation" in translation from English, the meaning of this term is given as "authoritative", "governing", "managing". Fundamental in this context is the word "power", "management" and it is used in relation to the state as the main bearer of power;
- "impact" in English means "impact", "influence". In this case, the meaning of the above term is perceived as an action aimed at solving or obtaining a certain result;
- "assessment", which means "assessment", "value determination", "value determination". The emphasis in this case is on the process of determining the indicators of the object of evaluation, expressed in monetary units [2].

Based on the above, it can be stated that the English-language name of the term RIA refers to the action of the state to identify and assess the potential benefits and costs of the proposed regulations.

Currently, in legal science and in law enforcement practice, there is no generally accepted definition regarding the concept of regulatory impact assessment.

Therefore, the study of the term regulatory impact assessment is very important.

It should be noted that most of the work in the field of RIA at the moment is devoted to the issues of RIA as a procedure, which, at first glance, is justified from the point of view of the applied nature of this tool.

Considering that the source of RIA is law enforcement practice, that is, the evaluation process initially began, and after that the conceptual apparatus of this phenomenon was already formed, theoretical approaches regarding the definition of the concept of RIA allow us to distinguish different points of view [12].

2	ISSN 2690-9626 (online), Published by "Global Research Network LLC" under Volume: 3 Issue: 7 in Jul-2022 https://grnjournals.us/index.php/AJSHR
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On the other hand, RIA is not just a procedure, but a full—fledged institution, which means that focusing only on "technical" aspects leads to the loss of a number of its fundamental elements that determine the functioning of RIA as a whole.

Consideration of the RIA as an institute allows us to fill in the gaps existing in the field of study of this area, as well as provide answers to current issues of improving its effectiveness.

Since historically the first mentions of RIA relate to the works of foreign researchers, it seems appropriate to turn to the opinions of foreign scientists who conducted their research on this topic.

So, Scott Jacobs, who is considered a world expert on regulatory policy, defines RIA as a tool, a method:

- ✓ systematically and consistently considering individual potential consequences arising from government actions;
- ✓ transmitting information to decision makers [3].

As can be seen, according to S. Jacobs, the RIA is an effective complement to the decision-making mechanism at the government level, primarily in terms of the ability to assess the costs and consequences affecting third parties.

Other American researchers Colin Kirkpatrick and David Parker consider RIA as a policy analysis method that is designed to assist officials in developing, implementing and monitoring regulatory system improvements, providing a methodology for assessing the likely and actual consequences of proposed regulation [4].

The opinion of the above scientists is an approach focused on law enforcement practice, based on the methodology of assessing the consequences of decisions of authorized bodies.

The view of British specialists regarding RIA is interesting. In their opinion RIA is:

a continuous process of searching for reasons for government intervention and understanding its consequences, as well as planning various options for achieving the goal;

A tool for policy development to assess possible costs, benefits and risks that may have an impact on business, the environment and society as a whole in the long term [5].

From the approach followed in the UK, it follows that RIA in this country is considered as an impact not only on a certain object, in respect of which regulation is directed, but also on other spheres of public life that may change as a result of such actions.

Studying the definition of the concept of regulatory impact assessment, it is worth turning to the opinion of E. Giddensom, who formulated the RIA as a long-term structure in time and space [6].

S. Huntington considers the RIA as a stable, meaningful and reproducing behavior [7].

According to the American scientist D. North, RIA are the rules of the game, which, with the help of a certain framework, organizes the relationship between the subjects involved in the RIA procedure.

Based on D. North's point of view, it can be concluded that the RIA serves as the basis for the development of a new form of regulation that establishes a link between the state and business entities [8].

As we can see, scientists from OECD countries in most cases consider the assessment of the regulatory impact of draft regulations from an economic point of view.

However, this perception of RIA is quite controversial. Since the RIA process evaluates not only the economic consequences of the adoption of a regulatory act, but also the legal and social consequences. That is, there is a comprehensive analysis of the draft regulatory legal act.

The view of domestic scientists regarding the subject under consideration is very attractive.

In particular, T.Abdusattarov RIA considers through the prism of legal expertise of draft normative legal acts. In his opinion, RIA is the activity of a specialist with special knowledge in the legal field, who conducts research on a specific issue in this area, the results of which are drawn up in the form of a conclusion [9].

Scientists M.K.Nazhimov and S.A.Saidullaev also consider RIA as a legal examination and propose the following definition:

"The RIA is a separate institution that defines the complex of interaction between various state and non-governmental organizations, as well as individuals, arising in the process of developing, adopting and practical application of legal documents.

That is, it is the activity of legal entities and individuals to make conclusions from the point of view of the adopted legal document or its compliance with the Constitution and legislation, as well as the established rules of legal technique for its draft [10].

In addition, Sh.A.Saidullayev analyzed aspects related to the role and importance of legal expertise in preventing gaps in legislation [11].

However, to consider the institute of RIA exclusively as a type of legal expertise of draft regulatory acts is very controversial. In our opinion, RIA should not be considered as a type of examination of regulatory legal acts, but more broadly.

It should be noted that the examination (legal) should be understood as the analysis, study of draft normative legal acts for their compliance with the current legislation.

The purpose of legal expertise is to assess the compliance of the analyzed draft regulatory legal act with certain legal criteria and rules of legislative technique.

With RIA, a comprehensive study of draft regulatory legal acts takes place.

The RIA of draft regulatory legal acts makes it possible to assess whether the proposed regulation is the best option, whether the benefits obtained as a result of the proposed regulation are positive [13].

At the same time, RIA contributes to a significant reduction in the risk of developing and accepting proposals that would have a negative impact on doing business.

The importance of evaluating draft regulatory legal acts lies in the potential impact that they can have both on the positive and negative sides on the implementation of entrepreneurial activity.

Ideally, through RIA, the best benefit or the best alternative solution to the problem is chosen, the expediency of the state's participation in the regulation of legal relations, that is, the establishment of certain rules, is justified.

It is important to emphasize that the quality of the process of adopting regulatory legal acts has a direct impact on the expected results after their adoption. This means that the document development process has a significant impact on achieving the intended goals. In this regard, it is important to remember that regulation in one way or another can create or eliminate new markets, can create artificial barriers for business entities, innovative development of the country.

In general, regulation should be focused on solving a specific problem.

The State should monitor the quality of regulatory legal acts, while it is important to ensure the openness of the process of drafting regulatory legal acts, to involve the public and interested parties in this process.

Since the process of developing a regulatory legal act can have a positive or negative impact on business activity, it seems necessary to pay attention to reducing potential risks as a result of the adoption of the document being developed when developing a draft document.

To achieve these goals, one of the most widely used tools is RIA.

Conclusion & Recommendation

Based on the above, it is proposed to give the following definition of the concept of "Regulatory impact assessment":

Regulatory impact assessment is a process that consistently analyzes potential risks, benefits and costs, positive and negative impact of a draft regulatory legal act on business activity.

From the above definition, it can be seen that the main features of RIA are that it is a process in which, using the analysis method, the positive or negative impact of the draft regulatory legal act on the implementation of entrepreneurial activity is consistently assessed.

Based on the above definition, it is not difficult to understand that a consistent analysis is a key element of the ODS of regulatory legal acts.

In this procedure, potential risks are studied in detail, benefits and costs are assessed, the positive and negative impact of the draft regulatory legal act on entrepreneurial activity is analyzed, the emerging legal consequences for business entities as a result of the adoption of such a document are predicted. That is, separate, key aspects of the project are analyzed, a comprehensive analysis of the feasibility of state regulatory intervention in business activities is carried out.

References

1. Belyayev A.N., Derman D.O., Sigankov D.B. Metodicheskiye podxodi k meta-otsenivaniyu kachestva zaklyucheniya ob otsenke reguliruyemyego vozdeystviya // *Proyektirovaniye, monitoring i otsenka*. – 2011. – №1. – URL: www.pmojournal.ru
2. Kolegov V. V Sovershenstvovaniye sistemi otsenki reguliruyemyego vozdeystviya v gosudarstvennom upravlenii na regionalnom urovne. Dissertatsiya na soiskaniye uchenoy stepeni kandidata ekonomicheskix nauk. Spetsialnost 08.00.05 - *Ekonomika i upravleniye narodnim xozyaystvom (menedjment)* Moskva – 2015. P 18.
3. Jacobs S.H. An Overview of Regulatory Impact Analysis in OECD countries. *Regulatory Impact Analysis: Best Practices in OECD countries*. Paris. OECD publications. 1997. URL: www.oecd.org/gov/regulatorypolicy/35258828.pdf / P. 13
4. Kirkpatrick C., Parker D. *Regulatory Impact Assessment and Regulatory Governance in Developing Countries* // *Public Administration and Development*. 2004. Vol. 24. P. 333–344.
5. *Better Regulation Framework Manual. Practical Guidance for UK Government Officials*. July 2013. URL: www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf.
6. Giddens E. *Ustroyeniye obshchestva: Ocherk teorii strukturatsii*. — M.: Akademicheskij projekt, 2003. P. 63

7. Xantington S. Politicheskiy poryadok v menyayushixsya obshchestvax. — M.: Progress-Traditsiya, 2004. S. 32
8. Nort D. Instituti, institutsionalniye izmeneniya i funkcionirovaniye ekonomiki. — M.: Fond ekonomicheskoy knigi “Nachala”, 1997. P. 17
9. Abdusattarov T. Huquqiy ekspertiza tushunchasi va mohiyati // Qonunchilik hujjatlarini ekspertiza qilish muammolari. Ilmiy-amaliy seminar materiallari / Mas’ul muharrir F.Otaxonov. — T.: TDYUI, 2005. —P.44.
10. Najimov M.K., Saydullayev Sh.A. Qonunchilik texnikasi. O’quv qo‘llanma. Qayta ishlangan va to‘ldirilgan 2-nashr. —T.: TDYUI, 2009. — P.129.
11. Saydullayev Sh.A. Huquqdagi bo‘shliqlar: nazariy-huquqiy muammolar. Yuridik fan. nomz. diss.... Avtoreferati. — T.:TDYUI, 2011. — P.26.
12. Khujayev, S. A. (2018). Judgments under the law of the republic of uzbekistan «on banks and bank activity» in the new edition. International Journal of Legal Studies (IJOLS), 4(2), 295-301.
13. Мукумов Б. Перспективы развития модели «Умного регулирования» //Современные тенденции развития цифровизации в сфере юстиции. — 2022. — Т. 1. — №. 1. — С. 75-78.