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Preventing Corruption Risk in Legislation: Russia

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Synonyms

Anti-corruption screening of laws; Corruption proofing; Corruption risk assessment

Introduction

Corruption risk assessment of draft laws and other normative acts aims to exclude the possibility of intentional exploitation of the legal provisions for corrupt purposes. It is a relatively new instrument in the anti-corruption strategies implemented by developed nations, countries in transition, and the developing world. Up-to-date experience demonstrates that various loopholes, defects, and intentionally built-in clauses in existing legal norms are far from being exceptional and constitute the source of large-scale illegal practices.

The Russian Federation was one of the first countries on the post-Soviet space that initiated corruption risk assessment of legal and other normative acts both at the federal and regional levels. The practices of corruption risk assessment of legislation are in many ways innovative and also from the international perspective. Despite the high demand in many countries in Europe for crime-proofing mechanisms that can be applied to the legislative process, there has been little implementation in the field (Savona 2017).

The Essence of Corruption Proofing

Corruption risk assessment (often called *corruption proofing*) of legal acts can be defined as "a review of the form and substance of drafted or enacted legal rules in order to detect and minimize the risk of future corruption that the rules could facilitate" (Hoppe 2014). Corruption risk assessment of legal acts should be clearly distinguished from corruption of the legislative process itself such as bribery of members of a parliament or nontransparent lobbying practices.

The importance of the corruption risk assessment of legislation is highlighted by the UN Convention against corruption. Article 5 Paragraph 3 of the convention stipulates that "Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption."

The introduction of effective and easily operationalized mechanisms of corruption proofing requires elaboration of a sound

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methodology applicable for the assessment of various types of legal and normative acts. Corruption risk assessment of legislation is classified into screening of draft laws and screening of enacted legislation and normative acts. As a rule, it is divided into "initial" and "advanced" assessment. The "initial" type assessment deals with identification of "typical" *corruption risks* or *factors of corruptibility*, i.e., those provisions (regulatory defects, legal formulas, and lacunas) that (a) are often encountered in laws and other normative acts irrespective of the sphere they regulate and (b) with a high degree of likelihood that can be exploited for corrupt purposes. These factors constitute the most obvious indicators of potential corruptibility.

The anti-corruption screening of legal and normative acts can be implemented by the official structures and by civil society organizations and independent experts. The "official" assessment is conducted by government agencies and other public institutions, whereas the "independent" one is undertaken by NGOs, various professional or citizen's associations, and nongovernmental experts.

A list of "typical" corruption risks (also often called corruptibility elements or factors) in legislation makes up an essential part of the methodology (methodological guidelines) developed in particular for the "initial" corruption risk review. Such a list facilitates in conducting a corruption-proofing exercise in line with certain standards and provides the ground for comparison and verification of the results achieved. Verification may be required in order to prevent potential abuse of the assessment procedure itself.

Most frequently encountered "typical" corruption risks (factors) are linked to excessive discretion of public authorities, a lack/insufficiency of control mechanisms, inadequate responsibility and sanctions, ambiguous linguistic formulation, excessive requirements for exercising the rights of persons, limited access to information, lack of transparency, and conflict between legal provisions.

The "advanced" or "targeted"-type assessment is aimed at the identification of "non-typical" corruptibility factors, specific to a particular area of regulation. Both "initial" and "advanced" assessment can be implemented by the drafters of the laws.

In terms of the preparation and organization of corruption risk assessment, the whole process can be divided into several phases – (a) apprehension of the importance and urgency of the problem by major stakeholders, (b) development of unified methodology (guidelines) and training of experts, (c) adoption of respective normative framework providing for regular assessment of draft and existing legislation and other legal acts, (d) carrying out assessment proper, and (e) appropriate enforcement of its results. The order of these phases is largely presentational, and in reality it can be altered, or some activities can be carried out simultaneously.

The start of practical activities in the Russian Federation involving the preparation and implementation of corruption risk assessment of legal acts using standard methodologies dates back to the year 2004. The bulk of the initial work for conducting regular corruption-proofing exercise was done by the Center of Strategic Studies (CSS – a think tank affiliated to the RF Government) in cooperation with INDEM Foundation (NGO) and the Institute of Legislation and Comparative Law, a government-funded entity.

The same year the Center of Strategic Studies presented the first version of the *Guidelines for Initial Assessment of Laws for Corruption*, which has been regularly improved and updated since then. The guidelines have been widely used for corruption proofing of the draft legislation by the State Duma's Commission on Counteracting Corruption and by other commissions of the Duma since November 2005.

The *Guidelines* defined the following key methodological principles of the effective corruption risk assessment: (a) comprehensive nature – meaning that all known corruptibility factors should be identified; (b) accessibility – proposed methodology should be easily applied even by an expert with brief experience; (c) verifiability – subjective factors should be reduced to the largest extent possible; (d) uniformity of practice – existing standards of assessment should be binding in all cases; (e) independent oversight – there

should always be an opportunity for independent corruption screening conducted by a public organization or appropriately skilled citizens.

The official requirement of conducting the anti-corruption assessment of legal and normative acts was formally introduced in the Concept of Administrative reform in the Russian Federation enforced by the Government Enactment No. 1789p on October 25, 2005. On 17 July 2009, the State Duma adopted Law FZ No.172 "On the Anti-corruption Assessment of Normative Legal Acts and Draft Normative Legal Acts." The law provides for mandatory corruption proofing of draft laws and other normative acts including Presidential Decrees (Ukaz) and Government Resolutions, as well as bylaws and normative acts at the level of regional authorities and local self-government.

In accordance with Article 3 of the abovementioned law, corruption proofing can be performed by the Office of the Prosecutor General, the Ministry of Justice, the government and state institutions, and civil society organizations/experts duly accredited by the Ministry of Justice. By its Resolution No. 96p of 26 February 2010, the Russian Government approved "the Rules and Guidelines of Conducting Corruption Risk Assessment of the Normative Acts and Draft Normative Acts." The guidelines comprised 11 corruptibility elements (risks):

1. Excessive discretionary authority.
2. Defining authority by the formula "has the right".
3. Establishing unjustified exceptions to the general rule.
4. Excessive freedom for setting bylaws.
5. Adoption of regulations outside authority.
6. Filling in gaps in legislation by introducing bylaws in the absence of due authority.
7. Lack of or incomplete administrative procedures.
8. Rejection of competitive procurement procedures.
9. Excessive requirements placed on individuals before they can exercise their rights.
10. Lack of clear regulation of the rights of citizens.
11. Linguistic ambiguity.

Law FZ No. 172 stipulates that amendments to existing laws are also subjected to anti-corruption screening. Information about new draft laws and other regulatory acts as well as conclusions of the accomplished anti-corruption assessments are placed on the government web site – www.regulation.gov.ru.

The institution which issued a regulatory act is obliged to consider a prosecutor's appeal (based on the conclusions of a corruption-proofing examination) and provide a written response within 10 days upon receipt of appeal. In case the recommendations of a prosecutor are not accepted, he/she can take the case to a court. In 2015 there were 465 such cases across the country (Dmitriev and Kudashkin 2013).

Similarly, the drafters of a legal act are given 30 days to consider conclusions of a corruption risk assessment prepared and submitted by the Ministry of Justice, other government bodies, or independent experts. However, written response (with either consent or objections) is mandatory only if the conclusions incorporate recommendations to "remedy" the defects of the normative act.

The practice of conducting corruption-proofing reviews in Russia has not been confined only to the federal center. Starting from 2005 the authorities in several Russian regions launched elaboration of their own corruption-proofing methodologies (*guidelines*) followed by the experimental application of this tool in the legislative process. By 2017 such anti-corruption expertise was conducted in the absolute majority of the Russian regions involving also the level of local self-government. Corruption risk assessment performed in recent years by the government agencies and independent experts allowed to remove corruptibility-related clauses in a number of important draft laws at the stage of their "readings" in the State Duma.

Conclusion

The accumulated experience in Russia and other countries demonstrate that major prerequisites of the effective implementation of corruption risk assessment are:

1. The comprehensive nature of any corruption-proofing exercise which provides for the mandatory coverage of all draft laws and regulatory acts as well as regular screening of enacted legislation.
2. The transparency of the process by involving civil society representatives and making public the results of the corruption-proofing exercise.
3. The political support from the highest authority.
4. Legally binding requirements to provide written feedback to the conclusions of anti-corruption assessment and penalties for non-compliance with the assessment related norms and rules.
5. Adequate dispute resolution which offers equal opportunities to all the parties.
6. High level of professionalism of experts engaged in conducting corruption risk assessment.
7. Regular monitoring and evaluation of the impact and efficacy of corruption-proofing activities.

One of the major challenges in implementing corruption risk assessment of laws and regulatory acts is proper enforcement of its results, which should exclude unsubstantiated selective approach to the identified corruptibility elements in the draft and enacted legislation in terms of their removal.

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