LEGAL REGULATION PROCESS CREATING MANAGEMENT IN THE POLISH GOVERNMENTAL ADMINISTRATION

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Abstract
According to the regulations of the Polish Constitution, the tasks of head and regional governmental administration bodies in Poland include creating certain legal regulations. The Council of Ministers is also entitled to implement the bills prepared by itself into the Sejm. The Government Legislation Centre provides the coordination of legislative activity of the Council of Ministers, the Prime Minister and other governmental administration bodies. The proceedings connected with creating governmental legal acts, is regulated in the resolution of the Council of Ministers from October 29th, 2013 – The Regulations of the works of the Council of Ministers. The regulation of impact assessment (RIA), public consultations or giving opinions on projects during each phase of proceedings, are of particular significance. A new solution is to recommend performing the regulation of impact assessment ex-post, namely performing the assessment sometime after the already legible acts have been functioning, so called RIA ex-post. The dissertation includes widely presented main assumptions of the Polish process of creating legal regulations by the Council of Ministers and the rules of its coordination.

Key words: *economy, law, government, governmental administration, legislation, regulatory impact assessment*

1. INTRODUCTION

Creating law is a complicated, force- and time-consuming activity. Numerous entities participate in those actions. Pursuant to the Polish Constitution, an initiative right to submit bills to the Seym belongs to: MPs, the Senate, the Polish President and the Polish Council of Ministers. Moreover, within so called a people's initiative, the right belongs to a group of at least 100 000 citizens (art. 118 of the Polish Constitution). Public administration plays a significant role in the process of creating the law. Pursuant to art. 221 of the Polish Constitution, an exclusive legislative initiative within the budget act, the act on budget provisory, the amendment of the budget act, the act on taking a public debt and the act on granting financial guarantees by the state. The Polish Council of Ministers, pursuant to art. 146 of the Polish Constitution also submit executive acts to the bills, namely resolutions. The regulations of the Polish Constitution entitle to submitting the resolutions of the Prime Minister and particular ministers as well. There are many legal acts in Poland that regulate creation the law by the Polish Council of Ministers, ministers included in the council and the Prime Minister. These, besides the Polish Constitution, include:

- the act from August 8th, 1996, on the Polish Council of Ministers (unanimous text: Journal of Laws from 2012 pos. 392);
- the act from July 20th, 2000 on announcing normative acts and several other legal acts (Journal of Laws from 2011 No 197, pos. 1172 with later amendments);
- the act from July 7th, 2005 on the lobby activity in the process of creating the law (Journal of Laws No 169 pos. 1414 with later amendments);
- the resolution of the Polish Council of Ministers from December 23rd, 2002 on the way of functioning of the national system of notification of norms and legal acts (Journal of Laws No 239 pos. 2039 with later amendments);

- the decree No 190 of the Polish Council of Ministers from October, 29th, 2013 – The Regulation of the works of the Council of Ministers (The Polish Monitor pos. 979).

The last legal act is of particular significance. It describes detailed algorithm of the proceeding of the Council of Ministers with the projects of governmental documents. Those are the following papers: projects of the assumptions to the bills, the bills, resolutions of the Council of Ministers, resolutions of the Prime Minister or resolutions of ministers (§ 19 par. 1 of the regulation of the works of the Council of Ministers).

Legislative activity is increasing constantly in Poland. Only from 1998 to 2004 the number of acts and resolutions passed each year increased nearly twice, and the number of the pages of the Polish Journal of Laws and total number of words of the passed legal acts increased three times (Goetz & Zubek 2005, p. 7). The tendency is still maintained. The reason of that factual state is the necessity to adjust the Polish law to the EU's one. Public administration bodies, mentioned before, actively participate in the process of creating the law. Their activities in that area are coordinated by the Government Legislation Centre.

2. THE GOVERNMENT LEGISLATION CENTRE – THE COORDINATOR OF THE GOVERNMENT LEGISLATIVE ACTIVITY

The Government Legislation Centre was established on January 1st, 2000. It was created on the basis of an organizational unit, previously functioning in the Prime Minister Chancellor's Office, named the Government Legislation Centre (GLC). It is a public organizational unit directly subordinated to the Prime Minister (art. 14a of the act on the Council of Ministers). It also entitled the GLC the statute describing its internal structure. The mission of GLC is to care for cohesion of the Polish legal system and proper course of the government legislation process.

The basic GLC tasks include:

- providing coordination of the legislation activity of the Council of Ministers, Prime Minister and other public administration body;
- legal service of the Council of Minister;
- publishing the Polish Journal of Laws and the Polish Official Journal "Polish Monitor", with the Prime Minister's entitlement;
- legislative application arrangement.

The act on the Council of Ministers particularly takes into account legal service performed by GLC. Thus, in the act there are its duties mentioned in a casuistic way in that matter. Those include:

- drafting governmental bills;
- drafting legal-legislation attitudes to the governmental legal bills;
- legal and formal coordinating the course of agreements of the governmental legal bills;
- monitoring of publishing executive regulations to acts by public administration bodies.

GLC occurs in a dual character. Its duties are drafting governmental bills. However, there is an exception to the rule. Legal regulations may entitle other entities to prepare legal bills. In such cases, GLC makes opinions every time concerning legal matters and the principles of appropriate legislation on the bills prepared by other entitled public administration bodies. The same procedure concerns the bills of other legal acts worked out by proper entities. The legal commission plays a significant role in the process of a bill evaluation. Pursuant to the Regulations of the Council of Ministers, it is appointed any time to evaluate a particular draft. The GLC Chairperson establishes the commission and appoints its members, indicates ministries and central offices whose representatives are obliged to participate in the meetings of the legal commission. The chairperson of the Legal Commission is always a GLC employee. The tasks of the commission include: evaluation of the bill and a draft of a decree according

to legal, legislative and edition matters. As a result of the works, the legal commission finally arranges the content of bills and drafts of decrees with respect to legal, legislative and edition matters.

3. BASIC RULES OF THE GOVERNMENT LEGISLATION PROCESS

The regulations of works of the Council of Ministers describe the course of governmental legislative process in details. It consists of 6 phases:

- working out a normative act draft;
- arrangements, consultations and giving opinions of a draft;
- examination of a draft by a proper committee or committees of the Council of Ministers to examination of cases of particular categories;
- examination of a draft by The Permanent Committee of the Council of Ministers;
- examination of a draft by legal commission;
- examination of a draft by the Council of Ministers.

The governmental legislative process is based on certain rules. The most important ones, as it is assumed, are: the principle of openness of the governmental legislation process and the principle of public consultations on a draft of a normative act. According to the principle of openness, each person interested in it may acquire information on the legislative works of the government without delay. The electronic platform "The Government Legislation Process" works for that purpose, managed by the Government Legislation Centre. The system presents current course of governmental works over creating the law. There are any data collected in it concerning governmental legislation process. The Government Legislation Process obligatory places as follows: drafts of the assumptions of bills, bills, and drafts of decrees of the Council of Ministers, the Prime Minister and ministers as well as documents concerning the works over the drafts mentioned above. Any person interested in it may acquire information he/she is interested in, pursuant to the division into particular phases of the governmental legislation process.

However, the principle of consultation is included in three actions as follows: performing arrangements, giving opinions on the draft and public consultation over it. Those activities differ from one another. A submitting body conducts them. The body may be a minister, a member of the Council of Ministers, the Head of the Chancellery of the Prime Minister or any other entity that was entitled by the Prime Minister. It is worth highlighting here that a minister may entitle a central body of public administration that is subordinate to or supervised by the minister to work out or conduct arrangement process, public consultations or giving opinions on a governmental document draft, including a normative act draft. Arrangements on a normative act draft are an obligatory action. Only members of the Council of Ministers and the Head of the Chancellery of the Prime Ministers participate in them. A draft of a normative act is also a subject of legal arrangements with the Government Legislation Centre. Arrangements on an act draft should lead to reaching an agreement of the mentioned entities as for the content of the project. In case of the lack of an agreement, there is so called protocol of discrepancies written. Discrepancies concerning the attitudes must be liquidated not later than during the course of examination of the draft by the Council of Ministers. Also giving opinions is of an obligatory character. Public administration bodies and other entities and public institutions, whose range of activity concerns to a particular draft, participate in giving opinions on the draft. A draft, if the EU's law demands so, is transferred to be given opinions to proper EU's bodies and institutions. It is worth mentioning that, in case of normative act drafts of particularly significant legal, social and economic acts, they are transferred to be given opinions by the Legislative Council by the Prime Minister. Giving opinions aims at reaching attitudes or outlooks on the content of a draft from particular public bodies and institutions. Formally, the acquired opinions are of non-binding character.

Public consultations are treated differently. They are only recommended actions. Pursuant to § 36 pos. 1 of the Regulation of the works of the Council of Ministers, public consultations are conducted only

when the content of the drafted normative act and presumed social and economic effects, or a level of its complexity demand it. Then a motioning body may direct the draft to social organizations or other interested bodies or institutions in order to present their attitudes. Also, any citizen may participate in the consultation process thanks to an electronic platform: konsultacje.gov.pl – The Governmental Portal of Public Consultations. Nowadays, the portal is in the beta phase. Thus, not all normative act drafts are published in it. The portal founders assumed that any published comment to a draft on the portal shall be treated as public information. It shall be visible for all users.

Now, in Poland, there are no promised guidelines of the Council of Ministers concerning conducting public consulting. Thus, in public administration, there is so called "The Code of Consulting – Seven Rules of Consulting", "Ministry of Administration and Digitization 2013a), worked out in the years 2012-2013 by the Ministry of Administration and Digitization. Those are as follow:

- GOOD FAITH – conducting consultations in the atmosphere of a civic dialogue. Sides listen to each other, indicating the will to understand various opinions.
- GENERALITY – any person interested in the matter should be able to find out about the consultations and express own opinion.
- TRANSPARENCY – information of the purpose, rules, course and result of the consultation must be commonly available. It must be clear who represent what attitude.
- FEEDBACK – any person who submits an opinion should be given a substantial reply in a reasonable time.
- COORDINATION – consultations should have a host responsible for political and organizational consultations. They should be relatively powered in an administrative structure.
- PRESUMABILITY – consultations should be conducted from the beginning of the works over the amendment and from the beginning of the legislative process. They should be conducted in a planned way and based on comprehendible rules.
- RESPECT TO PUBLIC INTEREST – although individual participants of consultations are entitled to present their personal interest, final decisions undertaken as a result of the performed consultations should represent public interest and common good.

Pursuant to the decree of the minister of Administration and Digitization, the above 7 rules have become a valid standard in consultations conducted by the ministry for all normative act drafts and strategic programs and documents (Ministry of Administration and Digitization 2013b).

Public consultations mainly concern bills and drafts of decrees, as well as drafts of act assumptions. Their basic aim is to widen contemporary knowledge on social economic problems and possible ways of solving them. While conducting consultations, public administration bodies also realize an information purpose. They inform citizens on planning venture and ways of their realization.

At present, public consultations in the phase of working out a normative act acquire particular importance. In § 25 par. 1 of the Regulation on works of the Council of Ministers, the rule of implementing a draft into the list of legislative works of the government has been established. Drafts of assumptions of bills, bills and drafts of decrees are placed into the list, having reached an acceptance by the Council of Ministers. A draft of assumptions of bills overwhelms abbreviated presentation of the purpose of a drafted act, the significance of proposed solutions and the range of presumed regulation and principal matters demanding to be regulated, including dismissing contemporary or appointing new bodies or institutions. A motioning body must complete a form of implementation of a draft into the list of legislative works of the Council of Ministers in order to include a draft in the index. A motioning body must obligatory enclose so called a regulation test into the motion. It was implemented in 2011. It is a form which summarizes, in a cohesive way, results of evaluation of presumed social and economic effects. It is an initial economic, financial and social analysis. The regulation test included in particular:

- identification of the solved problem;

- determining the purpose and significance of the problem;
- information on consultations performed before the beginning of the works over the draft and the range of public consultations and opinions on the draft;
- initial economic, financial and social analysis including estimation of regulation costs;
- comparison to the solutions adopted in other countries.

It is worth mentioning that in the regulation test, information of consultations before preparing the draft must be given. Planning range of public consultation must be indicated, considering the following:

- indicating if there were (and how long) consultations proceeding preparation of a draft (so called public pre-consultations);
- presentation of entities the consultations were conducted with (including experts);
- short summary of the consultation results;
- dates of planned public consultations, entities the project shall be consulted with.

Therefore, public consultations in Poland have been conducted from the beginning of the works over bills, particularly when a bill must be preceded with a draft of its assumptions. Then, they are called pre-consultations. It aims at distinguishing them form consultations that are conducted in a later time.

Next consultations occur when the Council of Ministers adopts assumptions to a bill. Then GLC, together with a motioning body, acting pursuant to § 112 par. 1of the Regulation of the works of the Council of Ministers, prepares a bill. It is transferred to assumptions, opinions and public consultations as a rule. The deadline to take an attitude in such cases is usually 21 days. Shortening the date demands particular explanation.

Having finished consultations, a motioning body works out a report from consultations, pursuant to § 51 of the Regulation of the works of the Council of Ministers. The report overwhelms, first of all, discussing the results from conducted public consultations and opinions. Entities that presented an attitude or an opinion are indicated in it as well as it includes discussions on those attitudes or opinions and reference to them by a motioning body. It is attached to the documents connected with a draft of a normative act and presented during examination of a government paper draft by the Permanent Committee of the Council of Ministers, and later, by the Council of Ministers. In further phases of a legislative process, public consultations as a rule are not conducted.

4. REGULATION IMPACT ASSESSMENT (RIA)

In Poland, there are drafts of normative act worked out, pursuant to the rules of legislative technique, established in the decree of the Prime Minister from June 20th, 2002 on "The principles of legislative technique" (Journal of Laws No 100, pos. 908). Together with a project, a body works out an explanation of the draft. It includes first of all:

- explanation of a need and purpose of issuing an act;
- presenting a factual state in the area that must be regulated;
- indicating the difference between the contemporary and drafted legal state (presumed legal effects of coming the act into force).

Moreover, it should include an announcement of a body concerning the appropriateness of the draft to the EU's law. Pursuant to § 28 of the Regulation of the works of the Council of Ministers, a separate part of the explanation of a normative act draft constitutes RIA effects which presents the results of the evaluation of presumed social and economic effects of a normative act. The results are presented basing on the cost-benefit analysis (CBA). In Poland, RIA includes first of all:

- indicating entities, a drafted normative act reacts to;
- information on consultations conducted before working out a draft as well as on a range of public consultations;
- presentation of analysis effects of an impact of a drafted normative act on entities which it reacts to;
- indicating sources of financing, especially if a draft results in a state or local self-governmental budget expenditures;
- indicating source of given and adopted assumptions to the calculation;
- information enabling comparison to data included in a regulation test.

If RIA of a bill or a draft of a decree is not presented to public consultations, it must include indicating the reason of resigning from conducting them.

The similar situation to a regulation test, RIA is presented on a special form. The assessment is always performed by a motioning body. The GLC works out only a part of the explanation, so called a part concerning presumed legal effects of an act coming into force.

In Poland, RIA, in today's comprehension, appeared in the resolution of the Council of Ministers No 160 from November 23rd, 1987 on the regulations of works of the Council of Ministers and Presidium of Government, where it was clearly claimed the a normative act draft explanation should include a characteristics of presumed social, economic and legal effects. In the explanation, the results of social consultations or public discussions as well as information on presented variants and opinions should be discussed. Since then, there have been further attempts of précising the range of RIA undertaken. The turning point was a dissertation of the Ministry of Economy, and next adopting a document titled "Guidelines to RIA" by the Council of Ministers on October 10th, 2006. The guidelines met with reactions, sometimes extreme ones, both in practice and literature. There were dissertations in which the need of functioning of RIA in Poland was rejected. Some authors considered RIA not an evaluation indeed but a prognosis, and they demanded implementation of another evaluation sometime after functioning of a given legal regulation, so called RIA ex-post (Brzęk 2013, p. 253 – 256). In literature, there were also separate views that RIA in a contemporary form should be rejected and new alternative solutions should be searched for (Brzęk 2014, p. 50).

A part of postulates connected with RIA were realized in the present regulation of the works of the Council of Ministers. First of all, regulations connected with RIA have been précised. RIA ex-post has been implemented to a governmental practice as well in relation to acts in force. The evaluation is worked out by a proper minister in cases when:

- the Council of Ministers or its assistant body applies for its preparation;
- it results from a regulation test of the assumptions to a bill adopted by the Council of Ministers or RIA of a bill adopted by the Council of Ministers.

A minister may prepare RIA ex-post also from own initiative. Such an evaluation includes:

- indicating entities, an act reacts to and the range of a substantial range;
- abbreviated presentation of assumed purposes together with determining the level of their realization so far;
- abbreviated presentation of measures aiming at reaching the purposes of the act, together with an evaluation of its functioning;
- abbreviated comparison of presumed social and economic effects of an act to those occurred indeed in relation to particular groups of its addressees;
- a list of problems connected with functioning of an act, particularly those submitted by its addressees together with an attitude of a member of the a Council of Ministers;

- motions and a recommendation of a minister concerning potential necessity to undertake corrective actions, particularly to amend the act.

CONCLUSION

The Regulation of works of the Council of Ministers that came into force on January 1st, 2014 is a reply to postulates directed to the government from numerous environments, including a scientific environment. It is also a realization of an obligation implemented by the Council of Ministers written and adopted in 2013 in the program title "Better regulations 2015".

The regulation precisely, in details, regulates the proceedings with governmental documents, with particular consideration of normative acts. However, despite many detailed solutions, there is a flexibility of the regulations remained.

Particular impact was put on realization of the principle of performing public consultations of a normative act draft. Previously, it was only a possibility to perform them.

A governmental process of creating the law also respects the principle of openness. Access to any documents connected with the course of the process by any person via an electronic platform "The Governmental Legislation Process".

The Regulation of works of the Council of Ministers précised the demands put to the range of RIA. In that way, the Polish regulations concerning RIA satisfy formal expectations of the OECD and the European Commission. Shall they meet the demands? Time will show. It also refers to RIA ex-post. It is, however, new in the Polish legislation practice.

The process of working out normative acts in the Polish public administration means numerous complicated, work and time consuming procedures. Many different entities, representing not only public administration, are engaged in it. Therefore, there is an idea, realized in practice, to entitle coordination of the process, particularly in the legal and legislative sphere to the Government Legislation Centre. The Regulations of the works of the Council of ministers determines the tasks of the unit in a more detailed way in that matter in relation to the previous legal regulations.

REFERENCES

1. The act from April 2nd, 1997 The Polish Constitution (Journal of Laws No 78, pos. 483 with later amendments).
2. Resolution No 190 of the Council of Ministers from October 29th, 2013 – The Regulation of the works of the Council of Ministers (Polish Monitor pos. 979).
3. Goetz, K & Zubek R 2005, Stanowienie prawa w Polsce - reguły legislacyjne a jakość ustawodawstwa, Warszawa.
4. The act from August 8th, 1996 on the Council of Ministers (i.e. Journal of Laws from 2012, No 392).
5. The Ministry of Administration and Digitization 2013a, The Code of Consultation – seven Rules of Consultations, viewed June 15th, 2014,

   <http: https://mac.gov.pl/projekty/kodeks-konsultacji-i-siedem-zasad-konsultacji/dokumenty>.
6. The Ministry of Administration and Digitization 2013b, The Decree No 5 of the minister of Administration and Digitization from February 12th, 2013 on conducting social consultations on documents worked out in the Ministry of Administration and Digitization (Official Journal MAC from 2013, pos. 5).
7. Brzęk, W 2013, Regulation Impact Assessment (RIA) as an element of the government legislation process, Journal of Modern Science, vol. 1/16/2013, pp. 239 – 258.

8. Brzęk, W 2014, Regulation Impact Assessment (RIA) at Poland and at some EU countries, Procedia - Social and Behavioral Sciences, vol. 109, pp. 45 -50.