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REGULATORY POLICY WITH INVOLVED STAKEHOLDERS AND PERCEIVED FAIRNESS

Abstract

The regulatory reform is one of the preconditions for improvement of economic performances and quality legal surrounding. Quality regulation is one that when being passed includes the stakeholders, is transparent, strengthens the trust, makes the institutions open and, citizens accept and respect it more easily. Despite the significant amount of positive changes, there is still long way to go to change the culture and to overcome all obstacles on the way toward effective engagement of the stakeholders. In many cases, the scope of the regulatory policy limited to minimizing the administrative costs of the business. The tools for regulatory policy- consultations, regulatory impact assessment and initiatives for reducing the overload - are at great extent used in procedural manner after the regulatory policies and decisions are already made. But, high quality regulation on its own, is not enough. Even the best prepared regulation is poor tool for management if implemented through consistent supervision and retributions. Even in the countries with relatively solid regulation, citizens often feel they are not treated well in the interactions with the institutions. The perceptions for fair and unfair treatments have shown to have significant impact on whether or not the citizens believe in their government, accept and obey the regulations and whether they feel included in the society or not. For society, the expenses can be higher when citizens feel to be treated unjustly. There has to be improvement on both the objective quality of regulation and the impressions for fair treatment encouraged by the personal experience of the citizens with

the regulation. Number of studies identify three key factors that run the perceived fairness, which are: voice, respect and explanation.

Keywords: regulatory reform, trust, quality of regulation; regulatory impact assessment, compliance, participation of stakeholders

INTRODUCTION

In 1995 OECD adopted the first document for regulatory principles which are common for all member-countries – “Recommendation on Improving the Quality of Government Regulation”. Based on these principles, in 2005 the Council of OECD adopted “APEC-OECD Integrated Checklist on Regulatory Reform” and new set of “Guiding principles on Regulatory Quality and Performance” (OECD 2005a). In 2012 OECD adopted the “Recommendation of the Council of OECD on Regulatory Policy and Governance”. This recommendation is the first international instrument for solving the regulatory policy and governance. The recommendation sets out the measures the governments can and should take to support the implementation and promotion of the systematic regulatory reform. “OECD Regulatory Policy in Perspective 2015” is the first interstate analysis, based on evidence, on the progress made by the OECD countries for improving the manner of regulation, based on the results from “OECD Regulatory Indicators Survey” 2014.

It is of a high importance that the regulations are prepared and administered on objectively fair, economically efficient and politically effective manner. However, it is very obvious that solely high quality of regulation is not enough. Even the best prepared regulation is poor tool for management if implemented through consistent supervision and retributions. There is noticeable spread between the progress of the quality of regulations and the perceptions of the citizens for those regulations.

Studies show that when citizens feel they are treated justly in their communication with the government institutions, there is greater probability that they would accept and obey the regulatory rules and decisions, feel included in society and believe the government. In this sense it is best to seek improvement of both factors: the objective quality of regulation as well as the impressions for fair treatment encouraged by the personal experience of the citizens with the regulation.

TOWARDS QUALITY AND “SMART” REGULATION

In 2006, the European Commission adopted Better Regulation Strategy which is first global strategy for improving the quality of regulatory processes in EU. The Better Regulation Program became an important segment of the EU reform and led to significant changes in the way the Commission creates policy and suggests regulation. The consultations with the stakeholders and RIA are significant part of the process. The Commission took an important step by passing the decision that the better regulation has to become a “smart” one and become part of the working culture of the European Commission. The Commission adopted “Smart Regulation Strategy” in 2010 in order to further improve the quality and relevance of the EU legislation.

The Regulation Impact Assessment (RIA) is key tool, component of the “smart” regulation. Relatively, key challenges to overcome during its implementation are the following: too much focus on economic indicators, unpredictability of process, political influence and the spread between theory and practice. Regarding the public, despite the

OECD recommendations, many of the countries don't publish RIA at the earliest stage. Some publish it even after all the consultations are over while others don't publish it at all. The critiques regarding the regulatory reform refer to the failure to generate greater economy and efficiency of the public administration in the application of RIA. Especially the emphasis is on the overassessment in the expenses evaluation and criticized as routine form fill-out instead of a real effort to learn from empiric data. In this sense, it happens that the assessment becomes new kind of bureaucratic obstacle, which only role is to weaken the quantity of the new regulation.

Despite the progress made in the adoption of principles and practices of the regulatory policy, countries still face many challenges in establishing the conditions for delivering their agenda for regulatory quality as set out in the "Recommendation of the Council on Regulatory Policy and Governance" (OECD, 2012c). There is lack of strategic approach, too much focus on the processes and not the impact on the regulatory quality. According to Lodge (2015) "the regulation is in crisis". If it's not direct crisis, then it faces many challenges because of the technological innovations and globalization. The findings of this author, the various works of OECD, including the data collected through the Regulatory Indicators Survey, show identification of four "deficits". First of all, there is supervision deficit related to the lack of consistency and continuity in the regulation. The second deficit refers to the involvement of the stakeholders in the regulatory process, which leads to lack of representativeness and brings the legitimacy of the regulation into question. Usually the involvement comes later in the process and, to a great extent, still is being used for transparency rather than for collection of evidence (Alemano, 2015). The deficit in the efficiency of regulation is related to its normative nature that fails to cause the expected reaction with the citizens and the public. In this sense, the consideration of alternatives in regulations still remains to be poor tool in the RIA process. And at the end, this is the deficit of evaluation that brings into question the efficiency of regulation; at the same time the ex post assessment falls behind compared to the other segments of the regulatory policy.

When it comes to Republic of Macedonia, experience and numbers show that the regulation changes without conducting RIA. For example, for 2017 indicators are very poor. Thus, the total number of laws set out by the Government of Republic of Macedonia that are subject to RIA is only 54 laws; for 43 (80%) of which are submitted draft lawful texts to the Government, with Report for RIA, whereas for 45 (83%) laws there are published documents at ENER and, 32 (59%) draft laws are submitted to the Ministry of Information Society and Administration (MISA) for opinion. The Single National Electronic Registry of Regulations of the Republic of Macedonia – ENER is used by the public very often. The damage of adopting laws without proper analyses and consultations is enormous. The implementation of laws is not monitored. Key problem is the lack of political will to involve the wider public in the process, which brings out the conclusion that it is more than necessary to change the culture of behavior among the regulators, the politicians, the groups of interest and the general public.

THE CHALLENGE OF EFFICIENT INVOLVEMENT OF THE STAKEHOLDERS

In 2017 OECD adopted Draft (for public consultations) and Best Practice Principles on Stakeholders Engagement in Regulatory Policy. Pursuant these principles, the governments should set out clear policy that will identify the manner of conducting open and balanced consultations, establish mechanisms and institutions for active supervision over the procedures and goals of regulatory policy. The governments should cooperate with the stakeholders for review of existent and development of new regulations and, should actively engage all relevant stakeholders. Furthermore, they shall maximize the quality of received information and their efficiency. The consultations shall be conducted with all significantly concerned and interested parties at the earliest possible stage, while they develop or review the regulations. They should consult on all aspects of the impact analysis and use the assessments. They are required to regularly evaluate both the political involvement of stakeholders and the activities for individual involvement. And at last, the governments shall have a policy that will seek the regulatory texts be prepared in simple language.

The obstacles for efficient involvement and engagement of the public described by Alemanno (2015) and Bela and Dadly (2015) can generally be grouped in five categories. First, it's the "lack of awareness", for which there is proactive approach by the government for involving wider range of stakeholders. Furthermore, there's the "low participation literacy". Specifically, some stakeholders still do not have enough information as to how they can participate in the process of creating policies. This is partly due to the fact that they do not consider politics issues as an important factor that impacts their life and therefore they are prepared to participate in consultations. Part of it might also be because they do not understand the process of law adoption and the information that the government provides are not clear enough. The third category is "information overload". Providing public consultation on literally every government document can cause exhaustion from consultations and information overload. Then there's the "consultation captivity". That is to say, the public debate is often captivated by well-organized interests and, the smaller players and individuals don't see real opportunity to influence the decisions. And at last, "bad experience as result of past experience"- many interested parties that have tried to participate in public consultations don't see the real influence of the consultation process in the final product. Governments often fail to provide feedback on the received comments and how they were (or not) incorporated.

Meetings and consultations with the citizens must not be conducted only out of formality. A recent survey in the OECD countries showed that the consultations often appear too late in the process of informing on the decision making. Expectations raise but are not always met. It seems that the engagement of stakeholders at great extent is being used for transparency purposes instead of collecting evidence (OECD, 2015a, Alemanno, 2015).

In the Republic of Macedonia, the participation of citizens in the process of creating public policies is guaranteed by the Constitution and regulated through several laws and acts. Nonetheless, the majority of citizens think that the wider public is excluded in the law adoption process (IDSCS and CEA survey on public perception on RIA, October 2017). As high as 77% have not heard about the RIA tool at all. Every other citizen considers that the

laws are adopted without cost evaluation. The citizens want to take part in the law adoption, but don't know the mechanisms for that. They think the consultations with the concerned groups in the laws adoption and amendments in the country is not a common practice. When such consultations are being conducted, mostly the perception is that only the business sector is consulted, rarely the citizens' organizations.

PERCEIVED FAIRNESS OF REGULATION

There are significant studies in the social psychology and sociology on the perceptions related to the "procedural justice". The perceptions on the procedural justice are the courts, ruling on the justice of the process and impressions for fair and unfair interpersonal treatment by the government institutions. The perceptions for unjust treatment are especially strong, since such courts create feeling of exclusion and exploitation. In some cases, the impression that someone is being treated unjustly can create pretty strong and even very emotional, negative reactions (Lind, 2001). Studies in this field have identified few elements in the process and practice which surly affect the perceptions on fair and unfair treatment in the interactions with the government agencies (Lind and Tyler, 1988; Tyler, Gof and MacCoun, 2015; Tyler and Lind, 1992, also see, MacCoun, 2005).

There are three general lines of research that provide the causes for policy makers to participate in the perceived fairness of regulations. First, when people are treated justly by the government institutions, then their reaction immediately lead to easier implementation of regulation. The perceptions for fair process lead to greater acceptance of the decisions of the power, better coordination and cooperation. In the scientific literature these consequences of fair treatment are called "effects of fair process". Practically, if the elements of procedural justice are built in the preparation and implementation of regulation, then regulations will function better, since are accepted easily and obeyed voluntarily. The second finding is related to the general reactions from the citizens' interactions with the government institutions. Experiences that are considered fair, not only make the people more prepared to accept certain decisions and coordination with specific regulations, but also make the behavior toward their government more positive and safe (Lind, 2001; Tyler and Blader, 2003). On one hand, this makes the citizen feel safe and trustworthy toward the country which in return encourages him toward more cooperative behavior, which is even more relevant today when there is general trend of distrust in the institutions. According the third general finding, people feel more positive emotions when treated fair and, negative emotions, and even a real psychological pain, when treated unjustly. The effects of fair conduct can improve legitimacy and trust in government. A recent study from the research carried out in 26 out of the 28 countries included in the European social surrounding, reviewed the relationship between the just procedure assessment of the police and legitimacy measures. In every country subject to the survey, the perceptions of just procedures were the best indicator for legitimacy (Hough, Jackson and Bradford, 2013). Similar survey in USA added questions on the obedience of laws and cooperation with the police (Tyler, 2011). Findings of this research overlap the principles of OECD on the best

practices for regulatory enforcement and inspections (OECD, 2014b), which emphasize the importance of just process. Consultation system evaluations can help identify the areas for improvement, including the aspects related to the perceived fairness. Only seven countries of OECD have evaluated the functioning of their consultation system in practice (OECD, 2014a). For example, in its assessment, Switzerland noted too short deadlines for hearings and irregularities in the publishing of results from the public discussions. The European Commission's evaluation on its consultation practices included recommendations on improvement of clarity of consecutive activities and feedback for the participants.

There are three factors that have especially strong effects on whether citizens feel they are treated fairly. The first of these factors is "voice"- the believe that there is an opportunity to present one's case before the government institutions and that the decision makers take into account presented views. When the everyday treatment of government officers makes citizens and stakeholders feel like they have been heard, then the perceptions for fair treatment increase. In cases when the "voice" is rejected, the entire process and final decision will most likely be considered unfair. The second factor is whether the citizen feels were treated with respect and dignity during the meetings with the government and the administrative officers. When citizens consider they are treated with respect, then they tend to see it as fair process; when they feel they are treated with disrespect, they see the process as unjust. The third main factor is giving explanation to the citizens about the flow of the process and the outcome. When the citizen considers that the process and the decision have been properly explained, then her/his perception of fairness increase; in lack of these explanations, fairness decrease.

CONCLUSION

The evaluation of the practices for engagement of suggest that it is still not strong part of the regulatory policy. It still seems that the demand for effective consultations and engagement is pretty unsatisfactory (OECD, 2009). Despite the fact that almost every government has accepted the principles of open government and better participation in the creating of policies, in some countries, majority of the state officials still cannot see the added value and not feel the engagement of stakeholders as additional burden in the preparation and revision of regulations. This is a challenge for culture changes. It is necessary to change the stereotypes. Instead of public consultations be conducted at the end of the process of regulation adoption, when there is limited space for maneuvers and lack of alertness for significant amendments, they should be done at the beginning, when the regulation is in draft stage.

Even in countries with objectively solid regulations, citizens often feel they are not treated well in the interactions with the institutions. Today, only four out of ten citizens in the OECD countries say they trust their national authorities (OECD, 2015b). Expenses go up when citizens are treated unfairly. The improvements in this area, especially with the complaint procedures, led to decrease of expensive proceedings in some European countries. Their exemption has important political consequences because when they feel

unjustly treated, they are less prepared to obey regulations and trust the government less. Apart from the great effort made to improve efficiency and economic logic of regulations, what's also necessary is an attention in the preparation and implementation of regulations on a way that will make citizens feel they are treated justly in the interactions with government institutions, which at this moment is very low and insignificant. Both the objective regulation quality and the subjective fairness perception should act together. Dedication, innovative engagement in this direction will bring benefits to the regulatory process and maintainable trust in the institutions. Changes in this process must be monitored. On the other hand, the efforts to simulate fairness cause many negative reactions. Successful regulatory policies mean building of mutual trust, open institutions, efficient engagement of stakeholders and just treatment of institutions toward citizens.

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