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# **Risk-Based Approach to Investigating Economic Entities and the New Role of State Regulatory Agencies**

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# Constitution of the Republic of Lithuania, Article 46 (3)

The State shall regulate economic activity so that it serves the general welfare of the Nation.

The principle of minimal and proportionate supervisory burden on economic entities – LoPA Art.30 (1) (1)

**Paradigmatic shift - from enforcers to advisors.**

# Risk-based approach

**Legal risk** is understood as **a combination of the probability that something will occur and the consequences or damage that may arise.**

**Risk assessment** is defined as "a part of the risk management process that includes the identification of quantitative and qualitative indicators related to a specific situation and the recognized threat"

# Risk-based approach

Developing this risk-based approach in the supervision and investigation of business, first of all the influence of **EU law is significant**. Let me mention the research of 2020 did by **F. Blanco and M. Faure's *Smart Enforcement in the EU***, which revealed that in the **food safety** sector and in the **environmental protection** sector EU legislation mandates the application of **risk-based assessment**. EU law has had a **significant impact** on national member states in transposing **EU requirements**. However, in areas where the **EU has not established mandatory risk-based approaches**, member states must decide **how to implement this new trend in their national legislation**. To be honest, during yesterday's discussions, it became clear that **providing a universal definition of risk or to classify the several types of risks is quite challenging**, as **economic sectors are highly individual** due to their specific characteristics. Similarly, in **European administrative law doctrine**, the prevailing view is that there is **no universal legal definition of risk** in legal scholarship. As a rule, **legal risk** is understood as **a combination of the probability that something will occur and the consequences or damage that may arise**. Meanwhile, **risk assessment** is defined as **"a part of the risk management process that includes the identification of quantitative and qualitative indicators related to a specific situation and the recognized threat"** (Balkevičius, 2017, p. 77).

# LoPA - legal principle of „risk assessment“ since 2015

The actions of supervisory authorities are primarily directed at eliminating the highest-risk cases, linking risk to the probability of harm to legally protected values, as well as the scale and extent of such harm. (Art.30 (1) (7) LoPA).

General duty - each **supervisory authority** is required to **determine the risk level** of an economic entity (Art. 31(3)(3) LoPA).

**Broad definition of risk assessment** as a legal principle, which means that a risk-based approach must be applied to all forms of supervision:

**monitoring – consultations – inspections/investigations - enforcement measures.**

# LoPA - legal principle of „risk assessment“ since 2015

In Lithuania, this approach has evolved into an independent legal principle —the principle of risk assessment. This principle means that “the actions of supervisory authorities are primarily directed at eliminating the highest-risk cases, linking risk to the probability of harm to legally protected values, as well as the scale and extent of such harm.”

Since January 1, 2015, the provisions of the Law on Public Administration (VAĮ) have been in effect, introducing the application of the risk assessment principle in business supervision (Article 30(1)(7) of the VAĮ). The law establishes a broad definition of risk assessment as a legal principle, which means that a risk-based approach must be applied to all forms of supervision—starting from monitoring, consultations, inspections, and enforcement measures. And currently, each supervisory authority is required to determine the risk level of an economic entity (Article 31(3)(3) of the Law on Public Administration (VAĮ)).

# **2024 Scoreboard data**

**Bank of Lithuania,  
Communications Regulatory Authority,  
Gambling Supervisory Authority,  
State Labour Inspectorate (VDI),  
State Document Technological Security Service,  
State Nuclear Power Safety Inspectorate,  
State Tax Inspectorate (VMI),  
State Territorial Planning and Construction Inspectorate**

# Praxis of legal principle of „risk assessment“

However, the **level of risk assessment** across supervisory authorities **varies significantly**—both in terms of **the quality of the risk assessment process descriptions** and in **the accuracy of definition for risk assessment criteria**.

The next stage is **the inspection's planning stage**, where institutions must establish **criteria** to determine **which economic entities will be inspected**. The main rule is, that all **scheduled inspections of an economic entity must be based on its risk level"** (Article 33(5) of the Law on Public Administration (VAI)). In case of **unscheduled inspections the risk based approach is not so clear regulated**. **Various types of reports** (inc.an **anonymous complaint**) are enough to start an unscheduled inspection; however, it is not specified the duty for the supervisory authority - the **extent of damage** or the **values at risk** need to be considered. As a result, institutions like the **Competition Council**, which primarily conduct unscheduled inspections, are not required to conduct a **risk assessment before starting unscheduled inspection**. However, **court practice** has considered this regulation.



# Praxis of legal principle of „risk assessment“

The **Competition Council** refused to initiate an investigation into a potential violation if it does not align with the Council's annual priorities (**Article 24(4)(8) of the Competition Law**).

The **Supreme Administrative Court of Lithuania (LVAT)** has clarified that the **Competition Law** aims to enable the **Competition Council** to prioritize its investigations, without conducting an unnecessarily broad or specific analysis of legal and factual circumstances in each case. Additionally, **EU law** emphasizes that **competition authorities** should be able to set priorities in their procedures to effectively use their resources, focusing on **preventing and halting anti-competitive behavior** that distorts competition in the internal market. This allows them to dismiss complaints if they are not a priority.

An authority can consider investigations as a priority if intervention can significantly contribute to **effective competition protection**, as well as ensure the **greatest possible consumer welfare** (LVAT ruling of December 22, 2021, in administrative case No. eA-2016-822/2021). It can be assessed that when the **Competition Council** sets its priorities in its annual **work strategy**, it is addressing **risk factors**.

## Conclusion and recommendation

**Business supervision reform**, which granted for **risk assessment** the status of a legal principle - significant changed the functions of supervisory authorities.

Although **risk-based inspections** help achieve better outcomes and avoid excessive administrative burdens, **risk assessment** should be applied not only when planning inspections but also to other supervisory functions, such as **unscheduled inspections** or **consultations or monitoring**.