



CENTER
FOR STRATEGIC
RESEARCH

**INSTITUTIONS
AND SOCIETY**

REGULATORY POLICY IN RUSSIA:

KEY TRENDS AND THE
ARCHITECTURE OF THE FUTURE



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FOREWORD

This report is a result of the long-standing research on regulatory policy carried out by the Center for Strategic Research (CSR), the Higher School of Economics and the expert and business community. From December 2016 to April 2018, we discussed promising tools of regulatory policy as well as new comprehensive proposals that became the basis for Chapter 3 of this report. In an abridged form some of these proposals were included in the recommendations presented by the Center for Strategic Research to the Russia's development strategy up to 2024, which the Center prepared under the instructions of the President of the Russian Federation.

This report represents continues a series of reports prepared by CSR as it was working on a set of proposals to modernize the public administration system in Russia.

For CSR, changing the regulatory policy along with introducing modern managerial approaches to public administration, personnel policy and large-scale digital transformation,¹ is a priority in carrying out the structural reforms that are necessary for the Russia's successful development, the achievement of above-average economic growth rates and the implementation of the new Presidential Decree issued in May 2018.

CSR's proposals for creating a modern regulatory policy attracted great interest from the business community. Over the course of eighteen months, we received over one hundred suggestions both specific and conceptual in nature from experts, representatives of the business community and government agencies in Moscow and the Russian regions. Many of these suggestions were made during regular seminars and public discussions that we organized and influenced the final set of measures proposed by the CSR in the proposals for the 2018–2024.

I hope that systematizing the problems and evaluating the existing regulatory policy tools will allow us to gain a better understanding of the comprehensive set of proposals that we have come up with, and that the proposals themselves will be used by the executive and legislative authorities.

I would like to thank all the experts and representatives of the business communities and regions of the Russian Federation who worked with us on this project. I would also like to express special gratitude to the Department for Regulatory Impact Assessment of the Ministry of Economic Development of the Russian Federation and its director, Vadim Zhivulin, for their tremendous work in implementing the key regulatory tools.

Maria Shklyaruk,
Vice-President of the Center for Strategic Research

¹See the Report by the Center for Strategic Research (April 2018): The State as a Platform: A (Cyber)state for the Digital Economy. Moscow, 2018: URL: https://www.csr.ru/wp-content/uploads/2018/05/GOSUDARSTVO-KAK-PLATFORMA_internet.pdf

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TEXT

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The authors would like to thank the experts and representatives of the business community who read and critically assessed the first drafts of this Report and (or) provided examples of regulation in various spheres.

LIST OF ACRONYMS USED IN THIS REPORT

ACE – Anti-corruption Expertise

PEO – Presidential Executive Office (Administration of the President of the Russian Federation)

SD – State Duma of the Federal Assembly of the Russian Federation

DC – Deregulation Committee

NPO – Non-profit organization

RLA – Regulatory legal act

NTI – National Technological Initiative

GA – Government authority

RIA – Regulatory Impact Assessment

EPE – Ex-Post Evaluation

OECD – Organisation for Economic Co-operation and Development

Government Resolution No. 1050 on Project Activities – Resolution No. 1050 of the Government of the Russian Federation “On Organizing Project Activities in the Government of the Russian Federation” dated 15.10.2016

Government Resolution No. 1318 on RIA Procedure – Resolution No. 1318 of the Government of the Russian Federation “On the Procedure for Carrying Out Regulatory Impact Assessments by the Federal Executive Authorities of Regulatory Legal Acts, Draft Amendments to Federal Bills and Draft Decisions of the Eurasian Economic Commission, and on the Introduction of Amendments to Certain Acts of the Government of the Russian Federation” dated 17.12.2012

Government Resolution No. 83 on Conducting EPEs – Resolution No. 83 of the Government of the Russian Federation “On Conducting Ex-Post Evaluation of Regulatory Legal Acts, and on the Introduction of Amendments to Certain Acts of the Government of the Russian Federation” dated 30.01.2015

FZ – Federal Law (Federalny Zakon)

FEA – Federal Executive Authorities

FFS – financial feasibility study

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INTRODUCTION

Regulatory policy comprises a wide range of forms of state regulation of entrepreneurial activity, including market access, requirements and standards for products and processes, control and supervisory procedures, prohibitions, restrictions, trade preferences, etc².

Regulatory policy tools include various procedures for assessing the impact of regulatory acts (or bills, acts whose validity is expiring, existing regulatory legal acts) on the intended recipients of regulation (entrepreneurs, citizens, government agencies, subordinate organizations, NPOs). Regulatory Impact Assessment (RIA) is the most well-known and widespread type of regulatory policy instrument (including in Russia) and is essentially the core of regulatory policy. **Other key components of regulatory policy** that foster successful implementation of the complete regulatory cycle and its assessment include:

- Administrative burdens reduction;
- Technical and legal tools, including legal experiments, regulatory sandboxes, common commencement dates, plain legal writing;
- Holding public consultations using IT-platform solutions;
- Creating platforms and databases to monetize the effects for different groups of stakeholders;
- Using behavioural regulation approaches (nudging)
- Collaboration of stakeholders, including state (government, parliament, government agencies, the Accounts Chamber, and better regulation councils / RIA units), as well as non-state (businesses, NPOs, citizen groups) actors.

The Organisation for Economic Co-operation and Development (OECD) regards regulatory policy, along with monetary and budgetary policy, as one of the main **drivers of economic growth**, which when carried out effectively can increase GDP by 1.5–2.5% per year. In addition, regulatory policy can help boost employment, labour productivity and innovation and significantly increase the FDI (Foreign Direct Investment) inflow.

² Work on the Introduction included the use of materials from the Regulatory Policy section of the OECD website (<http://www.oecd.org/gov/regulatory-policy>) and the HSE project Regulatory Policy 3.0 (<https://regulatory-policy.hse.ru>).

These conclusions are supported by a number of econometric studies that demonstrate a statistically significant positive correlation between changes in regulatory policy and the key economic indicators. In particular, these studies demonstrated the following relationships:³

- Inefficient regulation negatively affects GDP per capita and increases GDP volatility (Loayza et al., 2004).
- Burdensome business regulation impacts adversely economic growth, increasing enterprises' costs and leading to a misallocation of resources, as well as slowing down the rate of technological progress (Djankov et al., 2006).
- Regulation has a significant impact on market dynamics, which in turn causes changes in labour productivity and affects economic growth (Jacobzone et al., 2010).
- The economic growth rate in heavily-regulated economies (estimated according to the Fraser Institute's Economic Freedom Index – see Appendix 1) can be 2–3% lower than in economies that have a welcoming regulatory framework for businesses (Gorgens et al., 2003).

Real-life examples of how effective regulatory policy can be good for the economy revolve primarily around reducing administrative burdens. These include so-called regulatory guillotine projects, programmes of administrative burdens reduction and deregulation plans.

According to the authors of the **Regulatory Guillotine** concept (the company Jacobs, Cordova & Associates)⁴, businesses in Croatia reduced costs by an estimated \$65.6 million (0.13% of GDP) in the nine months of the regulatory guillotine project implementation in 2006–2007. Moreover, World Bank estimates from 2009 suggest that these measures helped increase GDP in the country by 0.2–0.3%.

The Korea Institute for Industrial Economics and Trade estimated that the deregulation project carried out in the country in the eleven months of 1998 led to an 18.7-trillion-won reduction in administrative costs over the course of ten years (4.4% of GDP) and the creation of one million new jobs.

In Australia, the deregulation programme (2008–2013) allowed the country to cut administrative costs by 5.5% of GDP and resulted in national GDP increase by 1.3%.

The European Commission also carried out a large-scale Action programme for reducing administrative burdens (2007–2012), which resulted in administrative burdens being cut by 27% compared to 2005 (equivalent to 33.4 billion euros per year) and additional medium-term GDP growth by 1.4%.

³Parker D., Kirkpatrick C. Measuring Regulatory Performance. The Economic Impact of Regulatory Policy: A Literature Review of Quantitative Evidence / OECD Expert Paper No 3. August 2012. URL: https://www.oecd.org/gov/regulatory-policy/3_Kirkpatrick%20Parker%20web.pdf.

⁴<http://regulatoryreform.com>.

Among the non-quantifiable results of introducing an integrated regulatory policy, experts note the growing openness of the rule-making process and the gradual increase in confidence in the country's legal system as more ways for stakeholders appear to be involved in crafting new regulation, the digitization of the process and overall growth in its transparency.

In addition, being the core of regulatory policy, regulatory impact assessment (RIA) can be important to inclusive growth – an emerging approach to assessing economic development. Unlike in the classic paradigm, this approach does not consider GDP per capita as a key indicator of economic growth. It instead focuses on indicators related to quality of life and equitable distribution of wealth among social groups. In this sense, RIA is gradually transforming into a strategic instrument for analysing the influence of specific policy choices on various components of inclusive growth, such as the poverty rate, the distribution of impacts, gender inequality, the state of special social groups, employment and the environment.

In recent decades, OECD countries have experienced a gradual move from the idea of less regulation to the a comprehensive better regulation and, finally, smart regulation. In March 2012, the OECD Council issued its Recommendations on Regulatory Policy and Governance, which included twelve principles of sound regulatory policy:

- 1.** The development of an explicit whole-of-government policy for regulatory quality at the highest political level.
- 2.** Transparency and participation in the regulatory process for those interested in and affected by regulation.
- 3.** The creation of mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy.
- 4.** The integration of RIA into the early stages of the development of new regulatory proposals.
- 5.** Systematic programme reviews of the stock of regulations.
- 6.** Regular publication of reports on the performance of regulatory policy and reform programmes.
- 7.** Monitoring of the role and functions of regulatory agencies.
- 8.** Verification of the effectiveness of control and supervisory activities.
- 9.** The application of risk assessment and risk management strategies to the design and implementation of regulations.
- 10.** The promotion of regulatory coherence between the supranational, national and sub-national levels of government.

11. The development of a regulatory policy at the sub-national level of government.

12. Consideration to international norms and standards when developing regulatory measures and to their likely effects on parties outside the jurisdiction.

By the end of 2015, at least 33 of the 34 OECD member countries had implemented a regulatory policy to some degree that at the very least assesses the effectiveness of regulation and provides for holding public discussions on draft regulations. Alongside this, the governments of 29 member countries had appointed ministers to some extent furthering regulatory reform. International cooperation on regulatory policy is developing gradually towards establishing global rules and standards, and a third of the OECD members countries have already stated their unequivocal support for such cooperation.

In November 2005, the OECD published a report as part of its series of country reviews of regulatory reform and regulatory policy analysing the results of the Russian Federation's transition to a market economy and assessing the state of regulatory policy in the country⁵. The authors of the review concluded that a comprehensive and consistent strategy of regulatory reform was needed in Russia (Russia had already taken a number of steps to reduce administrative barriers by that time, but the first attempts at implementing RIA were met with staunch resistance from Federal Executive Authorities (FEA) staff). The report stated that excessive state control, instability and rapid changes in the legal environment along with corrupt law enforcement created an extremely unfavourable environment in which companies could never be sure that their actions were legal. The authors stressed the need to further strengthen backbone institutions and the legal foundations of the market economy, support the rule of law, improve the situation with property rights, increase transparency and accountability, fight corruption and reduce the administrative burden.

As the regulatory policy of the Russian Federation has not undergone a comprehensive analysis since 2005, it can be partially assessed by looking at the country's positions in the relevant international ratings (both those that are focused on the conditions of doing business in general, and those that specifically address regulatory environment indicators):

- The Doing Business⁶ index produced by the World Bank (hereinafter DB);
- The Global Competitiveness Index⁷ published by the World Economic Forum (hereinafter GCI);
- The Regulatory Quality Ranking – one of the six Worldwide Governance Indicators calculated by the World Bank every year (hereinafter WGI RQ)⁸;
- Area 5C. Business Regulations / Economic Freedom of the World published by the Fraser Institute in Canada (hereinafter EW 5C)⁹.

⁵URL: <http://www.oecd.org/russia/russiabuildingrulesforthemarket-oecdreviewsofregulatoryreform.htm>.

⁶<http://www.doingbusiness.org>.

⁷<http://reports.weforum.org/global-competitiveness-index-2017-2018>.

⁸<http://info.worldbank.org/governance/wgi>.

⁹<https://www.fraserinstitute.org/studies/economic-freedom-of-the-world-2017-annual-report>.

An analysis of Russia's positions in these four ratings reveals uneven dynamics in the long term: while the Doing Business (DB) and Global Competitiveness Index (GCI) ratings indicate more or less significant growth, the other specialized metrics demonstrate an overall trend in the past 5–10 years towards decline and/or stagnation. Note that the first two indicators – Doing Business and Global Competitiveness – have been included in the KPI of federal executive authorities since 2012 but their - in many ways formal – upswing did not help overcome the negative trend in the regulatory environment (a more detailed comparison between Russia and a host of other countries can be found in Appendix 1 to this Report).

The authors of this Report believe that the current system of the legal regulation is one of the key barriers to Russia's socioeconomic development. Just like eight years ago, when RIA was introduced, the system is excessive and is characterized by constant growth in the number and scope of demands established by regulatory legal acts, the lack of effective mechanisms for monitoring the regulatory activities of government and local authorities, as well as the dearth of the systematic assessment of the effectiveness of regulation itself, which could limit the growth of the regulatory load and actually reduce it significantly.

The purpose of this Report is not only to discuss the key problems of the regulatory environment and policy in Russia, but also to present proposals for its improvement in 2018–2024, with due account of the latest research and the best global practices that have proved their effectiveness, as well as the specifics of how government bodies interact with the objects of regulation.

Chapter 1 of the Report highlights some observable trends in Russia' regulatory policy, how regulatory policy affects investment (the regulatory environment as a factor in the competitiveness of jurisdictions) and alternatives that can improve how institutions contribute to economic growth. This chapter also highlights the existing mechanisms for managing the quality of regulatory policy in Russia, as well as its advantages and disadvantages.

Chapter 2 of the Report analyses specific examples of the development of legislation in individual sectors, highlighting the most significant shortcomings of Russian regulatory practice, such as the departmental approach to lawmaking, the inconsistency of the rules of the game, giving laws retroactive force, using the law as an instrument for creating a market of administrative rent, the lack of a coherent system, the willingness to take deliberately impractical decisions, etc. The authors try to answer the question of why the existing restraints for increasing regulatory pressure do not work.

To form an integrated regulatory policy, we propose a set of measures based on international practice as well as on mechanisms that already exist in Russia. These proposals are grouped into three areas and are examined in detail in **Chapter 3** of the Report.

The first area includes proposals on setting up a special mechanism for eliminating excessive and ineffective regulation, including the creation of a central deregulation committee, the content of its powers, and the procedure for implementing a regulatory guillotine.

The second area concerns systematizing existing legal acts and regulation that is already in place, as well the implementation of the latest advanced tools of regulatory policy and the transition to full-cycle regulatory assessment.

The third area describes proposed measures for the methodological, organizational and analytical support for the creation of a comprehensive regulatory policy.

In the conclusion, we examine possible scenarios for the implementation of the proposed measures.



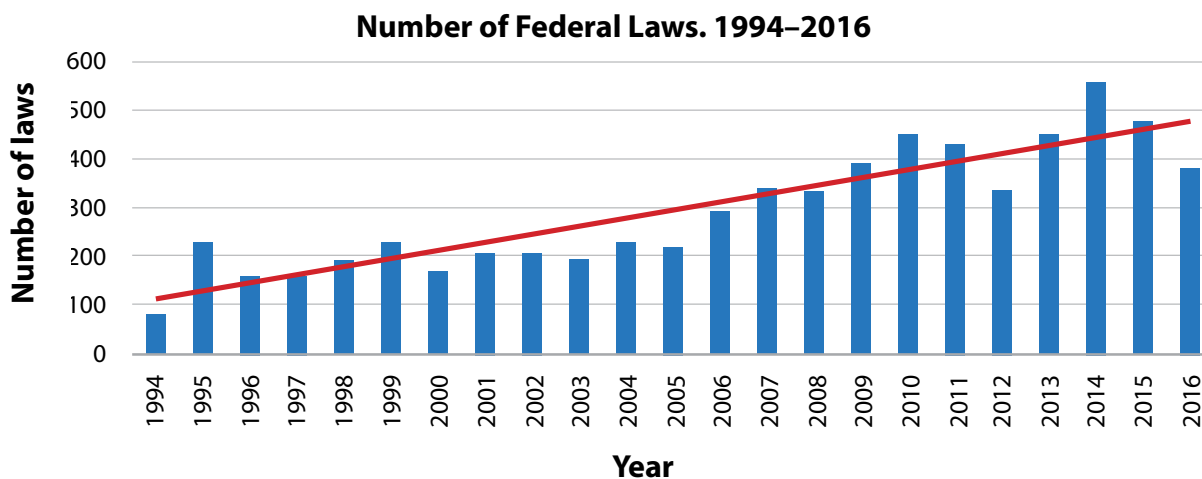
CHAPTER 1.

**THE RUSSIAN
ECONOMY
THROUGH
A REGULATORY
LENS**

§ 1.1. AN APPROACH TO THE ORGANIZATION OF REGULATORY DEVELOPMENT

Approximately 20,000 regulatory legal acts are adopted in Russia every year, several thousand of which directly concern conducting business activities. A statistical analysis of the regulation implemented from the mid-1990s to the end of 2016 demonstrates a steady trend towards an increase in the number of laws adopted: see Diagram 1, taken from the Statistical Analysis of Federal Legislation in Russia report (February 2017).¹⁰

Diagram 1



What is more, the poor quality of laws (including due to the speed with which they are issued) entails an exponential increase in the number of bylaws. It has become a sort of tradition to develop ‘unfinished’ regulation. A single law among some of those adopted in recent years could contain several dozen reference and blanket norms, delegating more and more powers to the executive authorities.

¹⁰ Tkachenko, N. Statistical Analysis of Federal Legislation in Russia. Moscow: Center for Strategic Research, 2017. URL: https://csr.ru/wp-content/uploads/2017/02/Issledovanie_TSSR_statistika-po-zakonoproektam.pdf. The study was commissioned by the Center for Strategic Research and carried out by experts at the company Garant.

This trend towards creating new and amending existing regulation at such a scale can be explained by the fact that developing formal rules has become the main way for the state authorities to respond to any kind of socioeconomic problem. The adoption of a federal law, act of the Government of the Russian Federation, departmental regulatory legal act, or commonly nothing more than a plan for the implementation of given measures (of a primarily regulatory nature) is positioned as an integral and often final stage in the execution of the functions of a government body at any level. Thus, amending legislation becomes the principle element of the accountability of government institutions to superior power structures, and acts as a substitute for the accountability of the state to society. At the same time, subsequent implementation of decisions, and the assessment of whether or not the stated goals of regulation have actually been achieved (which are rarely specified in the form of indicators) and, most importantly, whether they have brought any benefit to society, do not become a public product and are not reflected in the government's agenda.

Setting the Agenda

Anyone interested can learn of the problems with implementing any regulatory measures - as conceived by the authorized agencies or regulatory authorities - either by way of a scant explanatory note attached to the draft regulation that allows for the further amendment of a previously adopted decision, or from the instructions of leading public officials on the preparation of the draft regulatory legal act.

Resolving law implementation issues, eliminating discrepancies between the observed state of affairs and the prescriptions of regulatory legal acts almost always comes in the form of 'improving legislation,' which, as a rule, comes down to adopting a regulatory legal act that increases liability or tightens existing requirements, including in cases where there is a simple case of non-compliance with previously established rules.

It has become commonplace for government authorities to react to severe and sometimes catastrophic events (that are nevertheless considered 'everyday' from the legal point of view) by adopting a federal law or other regulatory act. As a rule, these acts have already been drawn up before the results of the official investigation into the case in question have been made available, and the time allocated for drafting the bill is the lesser, the higher the public interest in the event.

One such example is Federal Law No. 171-FZ "On the Introduction of Amendments to the Code of the Russian Federation on Administrative Offenses" and Federal Law "On the Industrial Safety of Production Facilities" dated 23.07.2010 adopted following the explosion at Rospadskaya coal mine in May 2010 that killed 91 people. The law gave the industrial safety supervisory body the right, independently and out of court, to prescribe administrative punishment in the form of suspension of the industrial enterprise for 90 days. This allowed the supervisory authorities to use these discretionary powers without any kind of institutional checks and controls that would harmonize and link issues of safety, economic efficiency and the social protection of employees at the enterprise, and also gave the authority new room for power abuse.

Such reactive law-making carries significant institutional risks. It does not allow for the proper planning of economic reforms. Moreover, it leads to the clogging up of legislation with poorly elaborated, mutually contradictory and unbalanced regulatory norms and distorts incentives for the executive authorities, whose focus of attention shifts from determining the true causes of an event and choosing the best way to respond to it to the timely implementation of a previously adopted mandate.

It is of fundamental importance to note that this approach to regulatory development is characteristic not only of draft regulatory decisions, which are prepared in response to emergency situations, including in politicized circumstances, but also of systematic work in general. Even the estimates of the Russian Ministry of Economic Development suggest that a significant proportion of the regulatory initiatives put forward by the Government are not a part of the state's economic policy or sectoral strategies and legislative plans developed in accordance with these strategies and do not represent detailed concepts for reforming societal relations as a whole, but are rather conditioned by the presence of relevant mandates from the President or the Government or the minutes of meetings held by various advisory bodies.¹¹ Because the agenda rarely makes it possible to cover all elements of the regulatory field that are related to the issue under discussion equally or assess the actual need for government intervention and reliably verify the existence of the problem itself, work to improve legislation in the form of executing mandates is not systematic, and is often carried out in mutually exclusive areas.

Nevertheless, a significant proportion of the mandates issued as a result of discussions of certain issues of law enforcement practice consist precisely in developing draft regulatory legal acts and, less frequently, in discussing the need for additional regulation. They are almost never concerned with whether particular regulatory acts are still needed at all, that is, a key element of deregulation policy.

In turn, the deadlines for implementing mandates are generally not enough to broach the subject of developing a concept for regulatory acts, consider the possible alternatives of regulatory intervention and ensure that a proper public discussion of the proposed approach is held with interested parties, providing only for the possibility for the requirements established by the Regulation of the Government of the Russian Federation on the development of draft laws and the implementation of the relevant procedures to be formally observed, and nothing more. The fundamental disagreements, the poorly developed individual provisions, the uncertain consequences of adopting a proposed regulation – none of this is a barrier to the adoption of a draft law, but they are all transformed into blanket norms that shift the problem of regulating certain issues, including extremely important ones, to a lower level and a later date. In most cases, when confronted with a choice in regulation, legal experiments are not conducted: norms are adopted 'forever,' which in any case does not make them immune to amendment in the future.

¹¹ Review of the Regulatory Impact Assessment Work of the Ministry of Economic Development of the Russian Federation in 2014, dated 30.12.2014. URL: <http://economy.gov.ru/minec/about/structure/depregulatinginfluence/201412304>.

Instability of Norms as the Basic Characteristic of Legislation

The approach to the development of state economic policy described above in no way facilitates the creation of systemic and balanced legislation. On the contrary, it leads to an uncontrolled increase in the number of regulatory legal acts stacked one on top another, which in the absence of a coherent strategy for developing relations between the state and business and general coordination of the regulatory process makes newly adopted acts a source of problems requiring further government intervention. Legislation thus becomes a patchwork of new incidents, unjustified exceptions or, conversely, attempts to apply uniform norms and requirements to wildly different situations, all of these appearing out of error or to the benefit of individual interest groups. Attempts to apply these norms in practice result in new problems, and the vicious cycle starts over.

As a result, even backbone legislative acts lose all stability. For example, since 2012 there were:

- 69 amendments to the City Planning Code of the Russian Federation;
- 218 amendments (formalized by separate federal laws) to Part 2 of the Tax Code of the Russian Federation;
- 343 amendments to the Code of the Russian Federation on Administrative Offenses¹².

The abovementioned statistical study conducted by Garant produced similar numbers for the key legislative codes: the period of stability of the Code of the Russian Federation on Administrative Offenses works out at around 10 days; 14 days for parts 1 and 2 of the Tax Code; 22 days for the Forest Code, etc.

The following examples can be cited to illustrate the quality and depth of individual regulatory decisions:

- The date on which the requirements for the creation and use of local water supply and wastewater treatment facilities by users under Federal Law No. 416-FZ "On Water Supply and Sanitation" dated 07.12.2011 was repeatedly postponed from 01.01.2013 to 01.01.2014, then to 01.01.2015 and 01.07.2015. Finally, in July 2015, the relevant regulation was suspended until 01.01.2019¹³, after which the requirement to use local wastewater treatment facilities for sewage treatment before discharge into the centralized system was repealed in December 2015.

¹² The authors' own calculations have been used here and throughout this section.

¹³ See Article 14 of Federal Law No. 221-FZ "On the Specifics of the Regulation of Certain Legal Relations Arising in Connection with the Construction and Reconstruction of Transport Infrastructure Facilities of Federal and Regional Significance Intended for the Provision of Transport Links between the Taman and Kerch Peninsulas and Engineering Construction Facilities of Federal and Regional Significance on the Taman and Kerch Peninsulas and on the Introduction of Amendments to Individual Legislative Acts of the Russian Federation" dated 13.07.2015.

- The main provisions of Federal Law No. 219-FZ “On the Introduction of Amendments to the Federal Law ‘On Environmental Protection’ and Other Legislative Acts of the Russian Federation” dated 21.07.2014 were supposed to come into force on 01.01.2019; however, four additional amendments were introduced to the Law in the period 2014–2017. At least five more bills at various stages of completeness were under consideration by the State Duma of the Russian Federation and the federal executive authorities as of April 2018. These draft laws entail amendments both to existing provisions of this law, as well as to provisions that have not yet entered into force, including, among other things, the need to adopt over 30 bylaws by the time it is adopted.
- Federal Law No. 218-FZ “On the State Registration of Real Estate” dated 13.07.2015 is currently subject to 21 amendments introduced by other federal laws. At the same time, the federal executive authorities are considering a bill that would introduce amendments to 52 of the 72 articles contained in the law. The March 2018 conclusion of the Russian Presidential Council for Codification and Enhancement of Civil Legislation regarding the draft law “On the Introduction of Amendments to the Federal Law ‘On the State Registration of Real Estate and other Legislative Acts of the Russian Federation” states that such frequent and large-scale amendments to existing provisions inflicts “severe damage to legislation and to the justice system in general.”

Regulation without Due Evidence

The orientation of the public administration system towards the reproduction of regulatory legal acts, the lack of long-term planning in regulatory policy and a working system of checks and balances in the system of government agencies, and the existing culture of institutional engineering lead to the fact that the institutions borrowed from successful legal systems, such as openness, public discussion, regulatory impact assessment and open source data, find it hard to take root in Russia.

The practice of proving the need for regulatory intervention has not been properly developed. For example, the mechanism introduced in 2012 regarding notification about the preparation of a draft regulatory legal act has thus far failed to become a first-level filter for the unfounded state regulation of economic life.

The procedures for proving the need for regulatory intervention and RIA in particular are de facto tightly integrated in Russia: the right to make a decision on the need to introduce regulation as such is given to the agency developing the regulation, and the grounds for adopting it should be assessed (proven) at a later date, in the course of the consideration of the chosen regulation method (that is, the draft RLA) by the federal executive authority authorized to prepare RIA conclusion.

When agencies notify that a bill is being developed, the information provided is not enough to form an understanding of the proposed regulatory measures, nor even to evaluate the reliability of the description of the problem that the proposed regulation is intended to solve, or merely identify it. This, in turn, leads to a lack of even a modicum of interest on the part of those affected by regulation in the notification part of the process – it is simply unclear how to work with it.

Consequently, the existence of a problem and the need for regulatory intervention are only assessed on the RIA stage, when the draft regulation has already been prepared. It is often the case that comments regarding the “insufficient justification of the existence of a problem and the choice of method for regulation,” along with other comments directly concerning the text of a bill, appear in items submitted by participants in public consultations and/or in RIA conclusions. However, under no circumstances do the agencies developing the regulation see these comments as being blocking in nature – that is, as something that would compel them to cease further work on the development of the bill – and thus continue their work in accordance with certain comments and individual articles of the regulatory decision.

In practice, notification that new regulation is being drafted is reduced to the submission of such information by qualified individuals working in the GR divisions of major corporations; the bill is posted along with an explanatory note on the regulation.gov.ru website at least 15 days after such information is received.

In such circumstances, it seems perfectly logical that the federal executive authorities view the task of proving the need for regulatory intervention and the instrument of regulatory impact assessment as a burdensome bureaucratic formality, which raises the question of how to abandon the recently adopted rule-making filters (make them voluntary for regulators) or make public consultations with business and other interested parties a merely formal exercise.

Indicative in this sense are the decisions adopted over the past two years that consistently exempted draft acts prepared as part of priority projects (programmes), draft acts prepared as part of the Digital Economy of the Russian Federation programme and draft acts prepared in accordance with action plans (roadmaps) on improving legislation and removing administrative barriers to the implementation of the National Technological Initiative of Russia from RIA. A more detailed discussion of the RIA mechanism can be found in Part 1.3 of this Chapter.

This approach clearly illustrates the place that evidentiary regulation and improving the quality of decisions occupy in the current discourse of regulators, and it only emphasizes the preservation of the trend towards ‘manual operation’” including in the development and adoption of regulatory legal acts that appear to be aimed at accelerating the growth of the Russian economy and expanding its innovative potential. At the same time, a series of federal laws which are now being criticized by the business community and are already undergoing further revision were developed in accordance with action plans (roadmaps) of the National Business Initiative which were aimed at reducing the number of administrative burdens in certain areas of economic activity and creating a favourable investment climate in the country.¹⁴

¹⁴ For example, Federal Law No. 219-FZ “On the Introduction of Amendments to the Federal Law “On Environmental Protection and Other Legislative Acts of the Russian Federation” dated 21.07.2014, which was subsequently changed three times (most recently on 28.12.2017).

The rules for carrying out regulatory impact assessments established by by Resolution No. 1318 of the Government of the Russian Federation “On the Procedure for Carrying Out Regulatory Impact Assessments by the Federal Executive Authorities of Regulatory Legal Acts, Draft Amendments to Draft Federal Act and Draft Decisions of the Eurasian Economic Commission, and on the Introduction of Amendments to Certain Acts of the Government of the Russian Federation” dated 17.12.2012 (hereinafter referred to as Government Resolution No. 1318 on RIA Procedure) contains a more general rule that assessments are not to be carried out with respect to draft acts that are being prepared at the instruction or mandate of the President or at the instruction of the Government and which contain a direct indication on the need to develop such bills within a short timeframe (no more than ten days). This demonstrates once again the leniency of the executive authorities towards the establishment of urgency as a priority in respect to the quality on decisions being taken.

The lack of an existing culture of preparing draft regulatory legal acts that meet the needs of the market economy, provide guarantees that the opinions of those affected by regulation are taken into account and ensure transparency at all stages of the development of draft acts and the steady increase of such acts despite the current policy of carrying out staff reductions in the public authorities (that is, reducing the real amount of time available for individual employees to prepare or review a draft act) lead to a sharp drop-off in the quality of the documents being prepared and a waning of interest on the part of the business community in participating in discussions on them, especially in cases where the primary solution does not meet the interests of business and only a few of its details are up for discussion.

The result is “raw and poorly enforced laws that are reactions to recent events. This creates instability in the rules of the game and fertile ground for extracting illicit income and thus gives rise to contempt for the law both on the part of the population and on the part of those whose job it is to protect the law.”¹⁵

§ 1.2.

IMPLEMENTING NORMS:

THE IMPACT ON COSTS AND COMPETITIVENESS

The range of problems described in the previous section have a significant impact on the country’s economic growth and its investment climate. Along with a steady trend that has formed in recent years towards the regulatory and supervisory authorities increasing pressure on the business community and expanding the grounds for imposing administrative penalties on individual businesses (the 300-plus additions made to the Code of the Russian Federation on Administrative Offenses that we mentioned above were not of a purely legal or technical nature), increasing the number of mandatory or conditionally mandatory payments to the budgets of various levels

¹⁵ Printer Failure / Editor’s Note // Vedomosti. 27.02.2014. URL: <http://www.vedomosti.ru/newspaper/article/632491/sboj-printera>.

and the general complication of administration pushes entrepreneurs towards shorter planning horizons, reducing incentives to invest and innovate.

The recently introduced practice of making direct payments into budgets or organizations established for these purposes (for example, environmental charges, recycling fees, tolls for heavy-goods vehicles on highways, copyright fee), including payments into extrabudgetary funds, has turned out to be quite painful for a number of sectors of the economy. In addition to implementing direct charges, some of these – for example, environmental charges or the long-standing fines for causing damage to the environment – involve rather complex and opaque administrative and reporting schemes which themselves are costly for businesses.

An additional negative effect is related to the effective use of the fees collected: increasing fees does not lead to a noticeable improvement in the quality of public services, is not reflected in solutions to the accumulated environmental issues and is not accompanied by the development of the legal system and law enforcement institutions or guarantees of individual property rights and security. Thus, in the eyes of entrepreneurs, the system that has been set up is not inclusive – i.e. it does not allow stakeholders, through their joint efforts, to solve large-scale public tasks – rather, it is extractive in that it sucks resources out of the manufacturing sector to be redistributed within parasitic superstructures that suppress economic and social development.¹⁶

In spite of expectations and declared goals, the development of information and other new technologies does not bring about an automatic reduction in costs for businesses for interacting with state structures. On the contrary, state bodies often see emerging technological opportunities as a basis for expanding their own spheres of influence, reducing the task of transitioning to a remote mode of interacting with those entities that are subject to supervisory control to increasing the intensity of state control measures in relation to them.

For example, the transition to electronic veterinary certification launched in 2014 by the Ministry of Agriculture of the Russian Federation and the Federal Service for Veterinary and Phytosanitary Surveillance led to a significant expansion of the range of products that are now subject to the supervisory control of the agency, which was due to the inclusion of products that had undergone thermal treatment and are safe from veterinary perspective.

The reform on the transition to environmental regulation on the basis of the best available techniques contained a provision on equipping the most environmentally dangerous enterprises with automated emission control systems that was supposed to come into force on 01.01.2018. However, the proposal was made to extend this provision to include over 5000 facilities,¹⁷ regardless of their actual state, and the only visible result of their implementation was supposed to be the possibility of imposing administrative penalties in the form of a fine based on the amount of emissions recorded in excess of the permissible limits set for the enterprise without executing a proces-verbal – similar to handing out fines for exceeding the speed limit based on speed camera recordings.¹⁸

¹⁶ Acemoglu, D., Robinson, J. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. New York: Crown Business, 2012.

¹⁷ With the minimum cost of one detector starting at several million roubles, not including the costs of installing, commissioning and carrying out all the necessary expert analyses in connection with the changes made to the design features of the emission sources and the technological processes.

¹⁸ See, for example, Federal Service for Supervision of Natural Resources (Rosprirodnadzor) Letter No. AC-09-01-29/23807 dated 25.10.2017.

The federal executive authorities in charge of overseeing industrial and fire safety are also discussing the use of proprietary online monitoring systems in order to ensure the continuous supervision of technological processes and the safety status of production facilities. The problems associated with using a single state-run automatic information system on the alcoholic beverages market or making a universal transition to the use of online cash registers has been covered extensively by the media and at economic forums.¹⁹ However, these objections do not seem to have made a significant impact on those in support of digitalizing these regulatory chaos .

In addition to the direct costs associated with purchasing additional equipment and integrating existing solutions into the resource management systems of enterprises, representatives of the business community point to the problem of inadequate efforts made by government bodies to create truly efficient information systems. As a result, businesses are often forced to hastily connect to unfinished systems that are not powerful enough to process the required volume of information, and subsequently bear the costs associated with the need to further adjust their own accounting systems as a consequence of the party receiving the information having to tailor their information systems on a regular basis. In these conditions, the potential benefits of transitioning to paperless modes of interaction are offset by the costs that arise in connection with the decision being taken in haste and with the suboptimal solution that was chosen. In certain cases, the imputation of such duties to business entities is not, in principle, accompanied by government investments into developing the infrastructure of the receiving party. That is, it would seem that the need to introduce new technological solutions to facilities that are subject to regulation is already prescribed, and the government bodies de facto do not have the ability to make use of the results of introducing these solutions.

A significant portion of the costs for complying with the mandatory requirements is made up by indirect or conditional costs that arise when, for the purposes of obtaining a free, in the formal sense, public service or services that cost a nominal fee (for example, the cost of a state duty), the company has almost no alternative but to purchase a number of 'related' services. For example, a company that wishes to carry out design work on a number of capital construction projects will need to engage the services of specialized institution to provide scientific support. Furthermore, a permit for the construction of a manufacturing facility can only be issued after an expert evaluation of the design documentation has been carried out and, after 01.01.2019 (with regard to almost every single large facility), after an expert environmental evaluation has been concluded as well. Deviations from outdated norms in the project design require special technical conditions to be developed and approved; the retrofitting and upgrading of existing equipment and the installation of new equipment require an industrial safety inspection; obtaining an atmospheric pollutant emission permit involves the calculation of permissible limits, which is difficult to do without engaging the services of a company that specializes in such work, as well as a sanitary and epidemiological inspection report; the establishment of a sanitary protection zone requires a public health risk assessment to be performed, etc. Most of these services are provided on a competitive market-like

¹⁹ EGAIS – the Unified State Automated Information System, the purpose of which is to enforce state control over the turnover and production volume of ethyl alcohol and alcohol-containing products.

basis by experts or research (consultancy) firms, and it is the relevant supervisory authority that is responsible for granting them access to this market. The prices charged for each of these services might range from tens of thousands to tens of millions of roubles.

The excessive regulation of everyday business and technological process, the complex administration and the legislatively conditioned necessity to interact with a wide range of third-party expert and research organizations which, as a rule, bear no real responsibility for the results of their work, leads to the emergence of excessive unproductivity among employees at enterprises, with the main part of their duties being reduced to interacting with the supervisory authorities.

Opportunism as the Only Acceptable Form of Responding to the Changes

Adding constant change of the established rules of the game to the general imperfection of Russian business legislation described above – makes the picture even less promising. In addition to the significant amounts of money spent on simply adapting to requirements that are constantly being updated, elaborated and supplemented, permanent reforms also have a fundamental, long-term negative effect.

For example, the case involving the review of mandatory requirements related to water supply and wastewater disposal described above does have an obvious practical result (in addition to creation of a general mess, that is): while the provisions on the use of local water and wastewater treatment facilities for the purposes of sewage treatment before discharging the wastewater into the centralized sewage system were still in effect, certain business entities began construction of such facilities, as the law considered it to be the only possible solution. The repeal of this requirement led to these business entities, being, formally speaking, the most law-abiding targets of the law, losing out, since, by virtue of the direct orders of the regulator that were in effect when the decision was taken, they chose a suboptimal strategy, spending money that could have been used more effectively, and losing time needed to implement other projects – projects that, as far as the enterprises were concerned, were more important.

The case described above is not an exception to the rule. The revision of norms on the basis or with due account of which business entities have made their own investment decisions is almost never accompanied by the establishment of detailed transitional provisions for entities that have invested on the basis of the norms that were in effect at the time and (or) the facilities created as a result of these investments. Such cases can be found in the most diverse spheres of regulation.

Take city planning, for example, where it often happens that a building constructed before an amendment to the provisions of the relevant legislative and engineering regulations is adopted ceases to comply with the requirements, and reconstruction is prohibited because of this non-compliance. And waste management, when amendments to the rules for establishing diminishers for the payment of waste disposal services leads to the proprietary waste management facilities built by companies losing out on the benefits to which they had previously been entitled, and

any investments pumped into their construction will be rendered meaningless. A similar situation can also be found in the legislation regulating the rules for the creation and functioning of special economic zones, as well as in several other areas. In many Western countries, the benefits lost as a result of the unpredictable actions of the authorities perpetrated in connection with the revision of the established rules of the game is cause for filing a lawsuit against the government. This is not the case in Russia, however.

The constantly changing established norms, coupled with the impossibility of complying with them or even predicting what changes will be made in the medium term leads to a complete crisis in confidence in the actions of the executive and legislative branches of power, scepticism about the possibility of successfully challenging these actions (or inaction) in a court of law, a lack of incentives to invest, overestimation of risks connected with doing business in the country and, of course, the growing trend towards capital flight. As a result, the belief is fostered and cultivated within the business community that the only real way to respond to significant regulatory intervention is through opportunistic behaviour. Reducing the regulatory burden is perceived as a short-term measure and is treated with suspicion.”

Meanwhile, state regulatory policy will become increasingly important as a competitiveness factor in the fight to attract investment the role of international trade grows, borders open up, costs of transportation and logistics decreases and the information technologies progress. Therefore, issues related to creating a favourable institutional environment and introducing economic legislation that responds to real needs and reflects the level of complexity of a market economy, stimulates the development of private initiatives and promotes the sustainable improvement of the business and investment climate in Russia will acquire greater importance. The observable trend towards increasing the fiscal burden on the economy against the backdrop of the stagnation of global commodities prices, the intensification of international sanctions, the continued growth of tariffs of natural monopolies and other macroeconomic problems leaves a sharp decline in the costs associated with regulation, one of the few available methods of increasing entrepreneurial activity and restarting economic growth.

§1.3.

CURRENT MECHANISMS OF QUALITY CONTROL OF REGULATORY POLICY

An analysis of Russia’s regulatory policy should take into account the fact that there is no clear and universally accepted notion of regulatory policy as such or its place in the state political system in Russian scholarship and the practice of the legal regulation. It is for this reason that the quality control mechanisms for regulatory policy are of a fragmentary nature, often paralleling each other, or even competing with one another (reflecting the competition between the respective agencies), as well as with other legal tools.

A number of tools are involved in the preparation stages of regulatory legal acts, including a large pool of expert analyses and assessments.

Pages 28-29 of this Report contain a diagram of the current state of the main elements involved in the process of developing regulations at the federal level in the Russian Federation, as well as proposals for improving the situation (which will be dealt with in detail in Chapter 3).

At the same time, the diagram covers the most salient stages in the process of developing regulations at the federal level in terms of adopting economically significant regulatory legal acts. It does not look at initiatives that may have been put forward by other entities with regard to regulatory development (for instance, draft federal laws developed on the basis of proposals within the context of the Russian Public Initiative introduced by the legislative bodies of the regions of the Russian Federation, judicial authorities, etc.).

A number of attempts were made during the most recently completed political cycle (May 2012–March 2018) to improve the approach to assessing the quality of the process of developing regulations, including:²⁰

- developing an RIA procedure for draft regulatory legal acts and, from 2016, attempts to launch an ex-post evaluation (EPE) procedure for existing regulatory legal acts at the federal level (envisioned as an upgrade to the expert evaluation of existing regulatory legal acts, a very narrow retrospective assessment of departmental regulatory legal acts applied with varying degrees of success from late 2010 to 2015);
- extending RIA to the level of the regions of the Russian Federation and some municipalities;
- specifying the requirements for financial feasibility studies (FFS) of draft regulatory legal acts developed by the federal executive authorities;
- developing the practice of the Government Expert Council preparing conclusions on draft regulatory legal acts;
- attempts to introduce quasi-RIAs in the legislative process in the State Duma of the Russian Federation (in parallel with existing formal FFS);
- normative consolidation of a light version of RIA in the Central Bank of the Russian Federation.

²⁰ This Report does not describe the strengths and weaknesses of RIA in the Eurasian Economic Commission (the phasing in of the mechanism has been ongoing since 2014). However, it is obvious that the regulatory problems that exist in Russia have a direct influence on the mechanisms of smart regulation in other member states of Eurasian the Eurasian Economic Union (EAEU) member countries.

Development of RIA and EPE at the Federal Level

A key element of improving regulatory policy in 2012–2017 was the development of regulatory institutionalization and RIA practice at the federal level within the framework of the areas set by Decree No. 601 of the President of the Russian Federation “On the Main Areas of Improving the Public Administration System”:

- Expansion of the scope of RIA on the federal level.
- Legislative consolidation of RIA and expert analyses of existing regulatory legal acts (the predecessors of ex-post evaluation of legislation) at the regional and municipal levels.
- The attempt to include RIA in the State Duma of the Russian Federation before the second reading of a bill.

Regarding the first area, the regulatory basis for RIA underwent significant changes (Government Resolution No. 1318 on RIA Procedure and the orders of the Ministry of Economic Development of the Russian Federation on approving the RIA methodology, public consultations and forms of consolidated reports and conclusions). In addition, the Federal Portal for Draft Regulatory Legal Acts²¹ and the RIA Information Portal were launched.²²

Work in the second area included amendments to federal laws on the general principles of organizing government agencies of the regions of the Russian Federation and local government bodies defining the legislative framework of regional and municipal RIA and expert analyses. This was followed by the adoption of regional laws, procedures and methods for carrying out RIA and expert analyses.

However, by the end of 2015, it had become clear that it was not feasible to implement RIA at the municipal level in every town. In this connection, the regions of Russia were afforded the right to determine the municipalities in which RIA and expert analyses could be carried out (with the exception of the capital of the region), and those where implementing such measures would not make sense.

In general, the picture of the development of RIA and expert analyses at the regional level turned out to be reasonably diverse, which can be explained by the socioeconomic and political differences between the Russian regions and the quality of the management teams in the regional and municipal authorities. The diversity of the picture is clearly visible in the most recent rating of the development of RIA in the Russian regions for 2017 (see Fig. 1).²³

²¹ <http://regulation.gov.ru>.

²² <http://orv.gov.ru>.

²³ RIA: Regional Rating 2017 // RIA Information Portal. URL: <http://orv.gov.ru/Content/Item?n=27489><http://orv.gov.ru/Content/Item?n=27489>.

Results of the Monitoring of the Quality of RIA in the Russian Regions

Figure 1

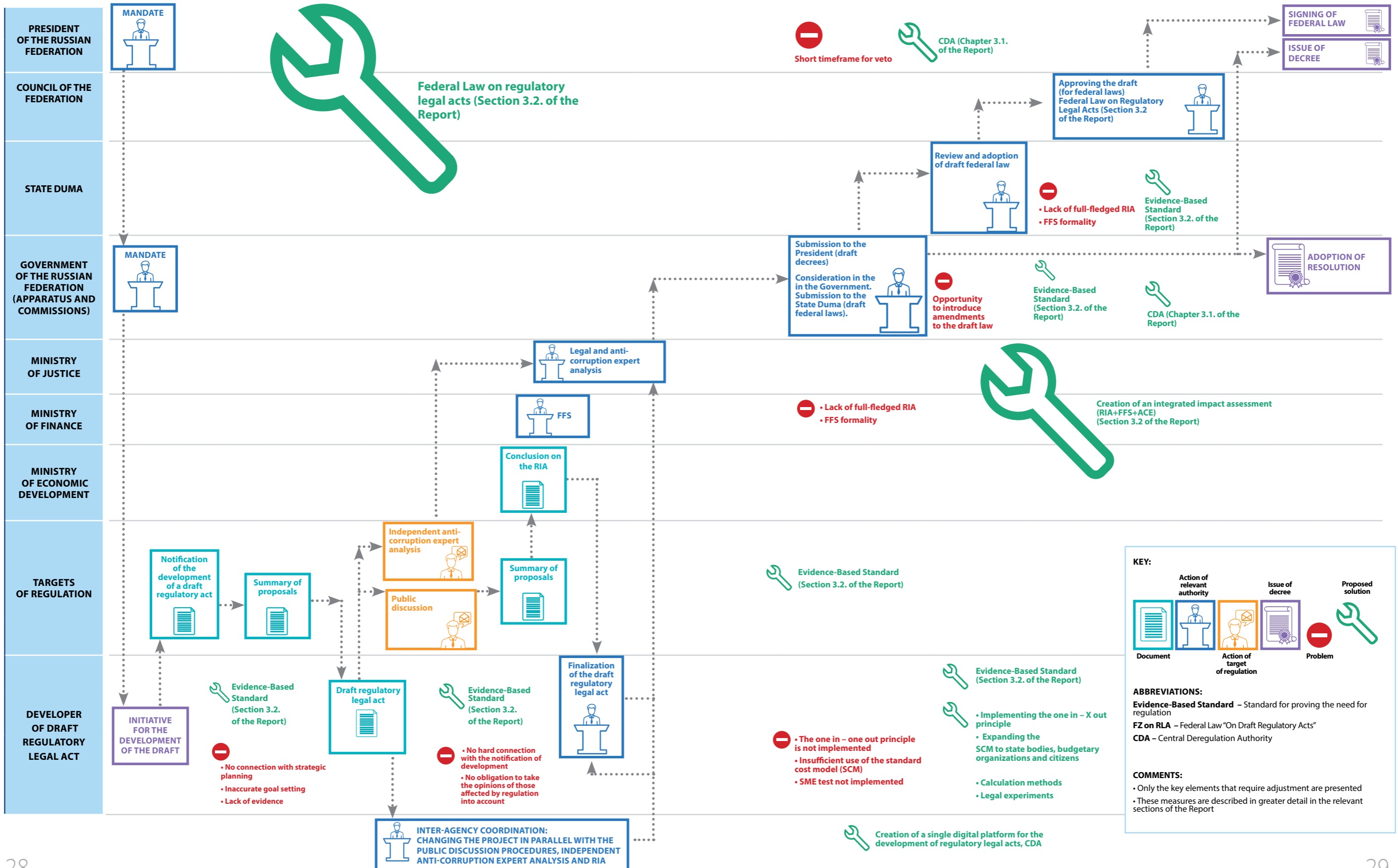


The key, and thus far unresolved, problems of the effectiveness of the “Russian version” of the RIA mechanism during these years were, in full or in part:

- its positioning at the ministerial (departmental) level, which, against the background of bureaucratic competition, creates extensive opportunities for the apparatus to circumvent this particular procedure;
- the fragmentation of the political system and legal regulation of regulatory development itself, which makes it possible to bypass and ignore the conclusions drawn by the Ministry of Economic Development following the review of draft regulatory legal acts within the apparatus of the Government of the Russian Federation, or circumvent the system by introducing bills in the State Duma (thus bypassing the Government itself);
- the fragmented nature of the databases in terms of carrying out reasonable (evidence-based) calculations;
- the low level of involvement of those affected by regulation, despite the growth in their activity and the increased number of public consultations organized through regulation.gov.ru compared to 2012.

CURRENT STATE OF THE MAIN ELEMENTS OF THE PROCESS OF DEVELOPING REGULATIONS IN RUSSIA AND PROPOSALS FOR IMPROVING THE SITUATION.

Process Flow Diagram



These problems (in particular the resistance within the government apparatus) led to RIA introduced by the Resolution No. 83 of the Government of the Russian Federation “On Conducting Actual Impact Assessments of Regulatory Legal Acts, and on the Introduction of Amendments to Certain Acts of the Government of the Russian Federation” dated 30.01.2015 (hereinafter Government Resolution No. 83 on Conducting EPEs), as well as the one in – one out principle and the standard cost model, the application of which was also provided for by this resolution, essentially being blocked. The so-called “SME Test,” an analysis of the socioeconomic impact of carrying out RIAs on the activity of small and medium-sized enterprises introduced in 2016 was similarly ignored.

What is more, the RIA domain has been on the decline since late 2015: first at the regional and municipal levels (which can be explained by the low number of economically significant regulatory powers at these levels of government and the hit or miss international experience of “subnational” RIA) and then, since 2016, at the federal level (consistently excluding regulatory legal acts developed as part of priority projects, the National Technological Initiative of Russia and the “Digital Economy of the Russian Federation” programme).²⁴

Project Office of the Government of the Russian Federation

The Presidential Council for Strategic Development and Priority Projects was established in 2016 in accordance with Decree No. 306 of the President of the Russian Federation dated 30.06.2016 (amended on 02.01.2017) in order to improve activities aimed at the strategic development of the Russian Federation and implementing priority projects.²⁵

Resolution No. 1050 of the Government of the Russian Federation “On Organizing Project Activities in the Government of the Russian Federation” dated 15.10.2016 (hereinafter Government Resolution No. 1050 on Project Activities) approved the Regulation on the Organization of Project Activities in the Government, as well as the functional structure of the project management system in the Government.

²⁴ See, respectively, Resolution No. 1050 of the Government of the Russian Federation “On Organizing Project Activities in the Government of the Russian Federation” dated 15.10.2016; Resolution No. 1030 of the Government of the Russian Federation “On the System for Managing the Implementation of the ‘Digital Economy of the Russian Federation’ programme” dated 28.08.2017; Resolution No. 1184 of the Government of the Russian Federation “On the Procedure for Developing and Implementing Action Plans (‘Road Maps’) for Improving Legislation and Removing Administrative Burdens in Order to Ensure the Implementation of the National Technological Initiative and the Introduction of Amendments to Certain Acts of the Government of the Russian Federation” dated 29.09.2017.

²⁵ Decree No. 306 of the President of the Russian Federation (amended on 02.01.2017) “On the Presidential Council for Strategic Development and Priority Projects.” URL: <http://ivo.garant.ru/#/document/71431892/paragraph/1:2>.

Over the course of 2016, the Government approved datasheets for 18 priority projects and two priority programmes on the basis of meetings of the presidium of the Presidential Council for Strategic Development and Priority Projects.

At the same time, the erosion of the RIA and EPE institutions due to resistance within the government apparatus was clear to see during the development and implementation of priority projects and programmes.

First, it was seen in the exclusion of draft regulatory legal acts developed within the framework of priority programmes and projects from the domain of regulatory impact assessment in Russia. In accordance with Government Resolution No. 1050 on Project Activities, draft regulatory legal acts prepared as part of the implementation of priority projects (programmes) are excluded from the list of draft regulatory legal acts that are subject to RIA (the relevant amendment was introduced by Government Resolution No. 1318 on RIA Procedure).

Second, adopted regulatory legal acts that were developed as part of the implementation of priority projects and programmes are also excluded from the domain of regulatory impact assessment, as, in accordance with the Rules for Carrying out an Actual Impact Assessment of regulatory legal acts established by Government Resolution No. 83 on Conducting EPEs, it is conducted with regard to regulatory legal acts that have already undergone regulatory impact assessment at the draft stage.

Third, the level of transparency in the development, assessment and monitoring of the implementation of priority projects and programmes is quite low. In accordance with Government Resolution No. 1050 on Project Activities, draft regulatory legal acts prepared as part of the implementation of priority projects (programmes) are excluded from the list of draft regulatory legal acts that are subject to public discussion (the amendments made to the Rules of Disclosure by the Federal Executive Authorities of Information on the Preparation of Draft Regulatory Legal Acts and the Results of Public Discussions on Them were approved by Resolution No. 851 of the Government of the Russian Federation "On the Procedure for the Disclosure by the Federal Executive Authorities of Information on the Preparation of Draft Regulatory Legal Acts and the Results of Public Discussions on Them" dated 25.08.2012). In addition, the Regulation on the Organization of Project Activities in the Government of the Russian Federation approved by Government Resolution No. 1050 on Project Activities itself provides for the publication of information about the implementation of priority programmes in just two sections (paragraphs 55 and 56):

- The official in charge of the priority project (programme) prepares an annual progress report within the timeframes specified in the composite plan of the priority project (programme). After the report is approved by the project committee, it is published by the end customer of the priority project (programme).
- The Project Office prepares an annual summary report on the implementation of the portfolio of priority projects (programmes), which is published upon its approval by the Presidium of the Council.

It should also be noted that, in April 2018, as part of the implementation of the priority project “Systematizing, Reducing the Number of and Updating Mandatory Requirements,” which is part of the main area of strategic development “Reform of Monitoring and Supervisory Activities,” the project committee approved the project Quality Standard of Legal Regulation of Mandatory Requirements. The standard covers the establishment of new and revision of mandatory requirements – that is, conditions, restrictions and prohibitions – compliance with which is checked within the framework of state and municipal control and supervision. It also determines a number of principles of legal regulation, including: systematicity, internal coherence, legal certainty, the inadmissibility of arbitrarily restricting the rights and freedoms of citizens, the selectivity of regulation, risk orientation, coordination and consolidation and the relevance of regulation. In addition, the standard outlines quality criteria of mandatory requirements: the clarity of the wording of the mandatory requirement, its justification and relevance. While it is true that the draft standard does have its merits, concerns remain about its coherence with the existing mechanism of regulatory development, as well as about the application of its provisions to any legal norms that are being developed or revised, and not just the mandatory requirements that are being monitored.

FormalFFS in the Ministry of Finance and the State Duma of the Russian Federation

A traditional aspect of the Russian regulatory development process is the performance of a financial feasibility study of draft regulatory legal acts. The budget message of the President of the Russian Federation delivered on 28.06.2012 noted the “low level of financial feasibility studies in the decision-making process.” As a result, a number of steps were taken in 2013–2015 to refine the requirements for the use of this instrument, both through the introduction of amendments to the relevant Regulation of the Government of the Russian Federation, and through the adoption of a separate Order of the Ministry of Finance of the Russian Federation (No. 42n dated 19.03.2015). A financial feasibility study of a draft federal law that envisions the adoption of a number of Government acts as part of its implementation, should include, among other things, calculations of the costs associated with carrying out the decisions provided for by these draft Government acts, except for in a number of cases.

However, according to expert estimates, the current financial feasibility study process involves much red tape. For example, in 2015, a total of 90% of all economic bills and almost 72% of projects funded by the budget turned out to “not lead to additional expenditures for budgets.”²⁶ The situation for other years is not fundamentally different, and it looks like the problem is here to stay. According to the FBK audit and consulting firm, back in 2004, only 21% of the financial feasibility studies of draft laws were rated “high-quality,” while 38% were assessed as substandard, 19% were assessed as perfunctory, and 21% did not go through an FFS at all.²⁷

²⁶Kalinin, A. M. and Dupan, A. S. Financial Feasibility Studies of Draft Laws: The Current Situation and Options for Improvement // Issues of State and Municipal Management. 2016, No. 3, p. 125.

²⁷Nikolaev, I. A. and Shulga, I. E. Economic Costs of Lawmaking: Analytical Report. Moscow, 2004. URL: http://www.fbk.ru/upload/images/Econom_izdergki_zakonotv.pdf.

Box 1

In accordance with the Regulation of the Government of the Russian Federation, financial feasibility studies for decisions proposed for adoption by a draft act describe the economic effect of the implementation of a draft act on the basis of a financial, economic and/or statistical analysis of the current situation with regard to decisions proposed for adoption by the draft act, make projections about the economic and other consequences of implementing such decisions and contain an assessment of the impact (including the indirect impact) of implementing the draft act on the revenues and expenditures of the corresponding budget of the budgetary system of the Russian Federation, legal entities and individuals.

At the same time, attempts to improve the quality of FFS at the sub-legislative level (Regulation of the Government of the Russian Federation, Order No. 42n of the Ministry of Finance of the Russian Federation dated 19.03.2015) are extremely limited by the position adopted by the Constitutional Court of the Russian Federation in 2006 on the inconsistency between the principle of the separation of powers and the elaboration of the requirements by an act other than the State Duma Regulation:²⁸ “in any case, the stated requirements cannot be introduced by a regulatory legal act that establishes the rules of the internal activities of the Government of the Russian Federation in exercising its powers (Part 1, Paragraph 1 of the Regulation of the Government of the Russian Federation) and which, accordingly, by its own nature and purpose, is incapable of serving in accordance with the Constitution of the Russian Federation as a legal form of elaborating the constitutional right of the legal initiative, as well as the conditions and procedure of its implementation.”

Thus, despite the attempts made to improve the content of the FFS mechanism, it remains for the most part a formality and is limited in nature. This makes the proposed integration of FFS into a single impact assessment instrument promising.

Discussions at the Government Expert Council

Another instrument of the 2012–2017 political cycle that is aimed, among other things, at improving the quality of regulatory development solutions is the expert opinions provided by the Government Expert Council. In accordance with Resolution No. 774 of the Government of the Russian Federation “On the Government Expert Council” dated 26.07.2012 (amended on 25.07.2015), the Council prepares conclusions on draft federal laws drawn up by the federal executive authorities, bills presented by the President of the Russian Federation and the Government of the Russian Federation, and government programmes and other documents that it has helped to prepare.

²⁸ Resolution No. 9-P of the Constitutional Court of the Russian Federation dated 29.11.2006 on the Case to Verify the Constitutionality of Paragraph 100 of the Regulation of the Government of the Russian Federation.

Decisions of the Government Expert Council can also be registered officially in the form of conclusions on draft acts signed by the Chairperson (or Vice Chairperson) of the Council, members of the Board of the Council, or the heads of the working groups that took part in the preparation of the given conclusion.

Conclusions to draft acts contain the following information:

- a) the date on which the conclusion was drawn up and its registration number;
- b) the grounds for drawing the conclusion;
- c) information on the draft act submitted for expert review;
- d) content and results of the research;
- e) conclusions and their underlying rationale;
- f) names of the documents attached to the conclusion.

These requirements regarding the content of expert opinions were introduced by Resolution No. 758 of the Government of the Russian Federation dated 25.07.2015.

The Government Expert Council published nine conclusions on its website in 2015–2017.

On the whole, these expert opinions are recommendatory in nature. There is no information in open sources about their inclusion as part of further projects, although representatives of the business community sometimes use this platform to improve their positions during administrative bargaining on issues of regulation that affect them.

Quasi-RIA in the State Duma

Decree No. 601 of the President of the Russian Federation “On the Main Areas of Improving the Public Administration System” dated 07.05.2012 provides for the introduction of regulatory impact assessment of bills regulating relations in entrepreneurial and investment activities submitted to the State Duma of the Federal Assembly of the Russian Federation for consideration in the second reading.

However, in practice this was only implemented in relation to draft amendments of the Government of the Russian Federation to draft federal laws introduced by the Government itself (Clause 104 of the Regulation of the Government of the Russian Federation, Section V of the Rules for the Federal Executive Authorities Carrying Out Regulatory Impact Assessments of Draft Regulatory Acts, Draft Amendments to Draft Federal Laws and Draft Decisions of the Eurasian Economic Commission approved by Government Resolution No. 1318 on RIA Procedure – hereinafter the Rules for Carrying out RIAs).

As of early 2017, approximately 100 RIA procedures on draft amendments had been carried out. That is, the number of conclusions issued by the Department for Regulatory Impact Assessment on these tracks, even at its peak, never exceeded 5% of the total number of conclusions issued per year. The previous State Duma of the Russian Federation only took advantage of the right to appeal to the Government of the Russian Federation with a request to carry out an RIA of amendments (or draft laws) introduced by members of parliament on one occasion, in the autumn of 2016 (regarding amendments to the Law on Trade). With the exception of this isolated instance, as well as the discussion of amendments to the so-called “fourth antimonopoly package,” this mechanism de facto did not affect economically significant (high-profile) regulations.

After the political decision was taken in February–March 2017, the necessary amendments were made to the Regulations on the State Duma (Resolution No. 1371-7 GD of the State Duma of the Russian Federation dated 14.04.2017) and the Regulation of the Government of the Russian Federation (Resolution No. 813 of the Government of the Russian Federation dated 10.07.2017).

Thus, at present:

- 1) The State Duma Council sends the draft federal law on RIA to the Government at the proposal of the responsible committee of the State Duma.
- 2) The practice of the Government to carry out regulatory impact assessments of amendments of the draft federal laws introduced by the Government has been abolished; when preparing such amendments, only the position of the Federal Executive Authorities (regulators) who have conducted a preliminary RIA of the original project is requested.
- 3) According to the amendments introduced by Government Resolution No. 1318 on RIA Procedure on 07.10.2017, the Ministry of Economic Development holds a public discussion on the draft law adopted in the second reading and posts information about it on its official website. The timeframe for public discussions on draft laws adopted in the second reading cannot be shorter than seven working days after they have been posted on the website. The conclusion is prepared within seven working days of the public discussion on the draft law adopted in the second reading and is sent to the relevant federal executive authority for the positions on the conclusion to be presented. The federal executive authorities must submit their positions within five days of receiving the conclusion.

This mechanism is not particularly effective, as the implementation of RIA depends on the decision of the relevant committee and then the State Duma Council, and the timeframe for carrying out the RIA is significantly reduced in comparison to draft laws being prepared by the Government of the Russian Federation.

Box 2

The RIA Domain in Accordance with the Procedures Set Forth in the Regulations on the State Duma includes:

- relations in the organization and implementation of state control (supervision);
- relations on the establishment, introduction and recovery of taxes, fees and insurance contributions in the Russian Federation;
- relations arising in the process of carrying out tax control, filing a complaint against regulatory acts passed by the tax authorities or the actions (inaction) of tax authority officials;
- relations in the creation, reorganization and liquidation of legal entities and the performance of their activities;
- relations in the field of establishing order and the rules for regulating customs procedures in the Russian Federation;
- *relations in the procurement of goods, work and services by individual legal entities in accordance with Federal Law No. 223-FZ "On the Procurement of Goods, Work and Services by Individual Legal Entities";*

Light RIA in the Central Bank

In 2015–2017, regulatory impact assessments of draft regulatory acts of the Central Bank of the Russian Federation were conducted in accordance with Bank of Russia Order No. OD-3716 "On the Procedure for Carrying Out Regulatory Impact Assessments of Draft Regulatory Acts of the Bank of Russia" dated 27.12.2014. The purpose of RIAs, according to the Procedure, was to determine the possible positive and negative consequences of applying the regulatory acts of the Bank of Russia, including in order to identify provisions that introduce excessive obligations, prohibitions and restrictions that entail unreasonable expenses for persons to whom the regulation of the Bank of Russia will extend.

The procedure excluded a number of acts from the domain of RIA, and also defined the stages involved in RIA:

- Posting the project for public discussion on the official website of the Bank of Russia on the internet;
- Performing an analysis and evaluation of suggestions and comments on the project, including from affiliated branches (if any);

- Drawing up and approving a conclusion on the regulatory impact assessment.

Given that only the texts of bills, acts, explanatory notes and email addresses for submitting proposals are posted on the Bank of Russia website, and that no reports of any kind on RIAs conducted by the Bank of Russia are made public, it is impossible to evaluate the quality of these RIAs at present.

The action plan (roadmap) entitled “The Main Activities for Developing the Financial Market of the Russian Federation in the Period 2016–2018”²⁹ provided for “improving the practice of applying regulatory impact assessment procedures of regulatory acts of the Bank of Russia at the development stage and implementing the practice of applying actual impact assessment procedures of regulatory acts of the Bank of Russia a specified amount of time after they have entered into force” (Item 6.5), including introducing the respective amendments to the regulatory acts of the Bank of Russia.

The provisions on RIA have been integrated into Regulation No. 602-P of the Bank of Russia “On the Rules for Preparing Regulatory Acts of the Bank of Russia” dated 22.09.2017; however, despite the roadmap mentioned above, the Regulation does not contain standards on RIA. According to the Regulation, regulatory impact assessment of projects is carried out with a view to defining and evaluating the possible positive and negative consequences of issuing regulatory acts of the Bank of Russia, identifying provisions in them that introduce excessive obligations, prohibitions and restrictions or which facilitate their implementation for persons who will be affected by the regulatory acts, as well as provisions that contribute to the emergence of unreasonable costs for these individuals.

Regulatory impact assessments are conducted in relation to projects that, if they are signed, will be subject to official registration with the Ministry of Justice of the Russian Federation in accordance with Article 7 of Federal Law No. 86-FZ “On the Central Bank of the Russian Federation (Bank of Russia).”

The following projects are not subject to regulatory impact assessment:

- Projects containing information that constitutes a state secret or other restricted information.
- Projects aimed at the implementation of monetary policy.
- Regulatory procedures governing interaction between the Bank of Russia and the federal executive authorities.
- Projects establishing the technology of transferring information provided for by the legislation of the Russian Federation to the federal executive authorities.
- Projects establishing, for the purposes of combatting corruption, restrictions, prohibitions and requirements (obligations) in the Bank of Russia, lists of Bank of Russia positions to which these restrictions, prohibitions and requirements apply:

.....

²⁹ http://www.cbr.ru/content/document/file/44189/main_events.pdf

- prepared in connection with organizational and staffing activities within the Bank of Russia (related to the creation [liquidation], renaming and distribution of the functions of Bank of Russia divisions [and their branches], as well as changes to the names of positions of Bank of Russia employees);
- do not establish and (or) change obligations, prohibitions and restrictions previously established by the regulatory acts of the Bank of Russia for persons that they will affect.

As we have noted above, only draft acts, explanatory notes and email addresses for submitting proposals are posted on the Bank of Russia website. Information on submitted proposals, as well as the registration and rejection of such proposals and conclusions on completed RIAs are not made publicly available.



CHAPTER **2.**
**OVERVIEW
OF REGULATORY
PRACTICE IN RUSSIA
IN RECENT YEARS**

The past decade in Russia has been marked by the adoption at the government level of a wide range of planning and administrative documents on cutting red tape and reducing government intervention in the activities of business entities, borrowing well-established regulatory practices from OECD countries and generally increasing the effectiveness of state regulation. By design, these efforts were to be aimed at creating additional mechanisms for improving the quality of normative work, which we discussed in Chapter 1 of this Report.

To illustrate, in 2009–2011, the Government of the Russian Federation adopted 19 sectoral plans for optimizing control and supervisory activities and removing administrative burdens which thus proposed a large-scale revision of existing legislation in the more wide-reaching spheres of regulation: legislation in such areas as industrial safety, environmental protection, construction, veterinary and phytosanitary controls was to be subjected to systemic revision. In 2012–2016, a total of 12 National Business Initiative roadmaps aimed at improving the investment climate in Russia (simplifying business procedures and making them cheaper and faster) were implemented with the support of the Agency for Strategic Initiatives to Promote New Projects. In 2014, a reform of control and supervisory activities was launched, which envisioned a transition to a risk-based approach when carrying out inspections of business entities.

The “Reform of Control and Supervisory Activities” priority project, which has been implemented since December 2016, provides for developing mechanisms for the systematic assessment and analysis of the effectiveness of mandatory requirements to subsequently optimize. Over a dozen working groups have been set up within the authorized agencies to work alongside representatives of the business community to prepare proposals on the abolition of excessive, ineffective and outdated mandatory requirements.

At the same time, the general decision-making centre for regulatory issues has been lost. On the one hand, the economic arm of the Government of the Russian Federation talks about the value of reducing the administrative burden on businesses. On the other hand (to a large degree under the pressure of the authorities that are, broadly speaking, responsible for security), new restrictive regulations are constantly being introduced. The mission to further reduce the administrative burden primarily continues in compromise spheres: the transition to electronic interaction, increasing the term of validity for permits and eliminating obsolete norms that are not used in practice. However, this work is not carried out in a systematic fashion.

The priority of deregulation has not been clearly articulated at the government level. The formal recognition of most regulatory tasks as achieved and the steady growth of the country’s position on the World Bank’s Doing Business ranking correlates poorly with the low level of investments, the decline in business activity and the ongoing trend towards the nationalization of the economy. The extensive capability of government departments to generate new regulatory decisions, which are prepared primarily in an extraordinary manner, including on the basis of instructions issued by vice prime ministers in charge of specific activities, coupled with the mass of regulatory legal acts that have accumulated and are currently being worked on, effectively nullify any initiatives to reduce the administrative burden on businesses.

Without claiming to be an exhaustive list of the shortcomings of Russian economic legislation, this section is structured on the basis of case studies of problem issues, that is, around practical examples that illustrate how unbalanced regulation can put a brake on economic regulation, rather than on the basis of specific sectors.

Appendix 2 of this Report provides a detailed overview of the regulatory practices of individual areas of public administration, including: combatting terrorism and money laundering, construction, industrial safety, environmental protection and waste management, ensuring the sanitary and epidemiological welfare of the population, and veterinary and phytosanitary legislation.

The materials used in the preparation of these cases were presented by the participants in seminars on regulatory policy held in 2016–2018 at the Center for Strategic Research and the National Research University Higher School of Economics³⁰. In addition, from September 15 to November 15, 2017, the Center for Strategic Research and the Garant.ru legal information portal conducted an online survey in which respondents were asked to identify sticking points in the law that they thought needed to be eliminated in order to ensure that the final objectives of those affected by regulation would be resolved in the most effective manner and to propose a mechanism for achieving this or correcting the existing provisions. The results of the survey can be found in Appendix 3.³¹

§ 2.1.

THE PREDOMINANCE OF A NARROW-DEPARTMENTAL APPROACH HINDERS THE GROWTH OF INVESTMENTS

Lawmaking in Russia is currently marked by a narrow-departmental approach. There are a number of reasons for this:

- As a result of the discussion of specific sectoral practices, the tasks of changing the existing norms are formulated in an extremely condensed fashion and almost never go beyond the competences of the agency defined in the corresponding instruction as a lead executor, even if the proposed changes could affect social relations in many other areas.
- Co-authors from other federal executive authorities are included in the process in order to prevent collisions from arising between the separate areas of legislation, although this is insufficient in terms of developing the most effective solutions. Departments see their tasks in the process of coordinating draft acts merely in the context of eliminating basic contradictions between the existing and the proposed norms and preventing ‘incursions into their territory’ – that is, maintaining the scope of their powers in relation to the activities that they are supervising or regulating.

In current conditions, large-scale reforms in Russia that have sufficient political support rarely end with the creation of fundamentally new management schemes, but rather with the addition of new elements to the existing regulatory systems and the expansion of the powers of the departments responsible for implementing the reforms.

One of the recent reforms of environmental protection may serve as a practical example of such addition of new elements to existing legislation. This reform resulted in the abandonment of one of the most significant achievements of the City Planning Code of the Russian Federation – the consolidation of the powers relating to reviewing and approving design documentation for construction projects in a single body.

For example, at present, the section in the design documentation that is dedicated to environmental decisions and measures is being reviewed as part of the expert evaluation of the design documentation being carried out for almost all major industrial facilities by Glavgosexpertiza of Russia, which was named a one-stop shop for such services in 2007 and to which investors wishing to obtain the necessary approvals for a project would apply. The existing work regulation of this institution does not rule out the possibility of hiring specialists on a part-time basis, for example, when full-time staff are not available.

Box 3

The only publicly voiced argument in favour of this approach boils down to pointing out the incompetency and (or) corrupt nature of other participants involved; in this case, the bodies that carry out the government expert evaluation of the design documentation. However, if the problem was really a lack of competences or negligence on the part of individual government officials, that is, if it was a personnel issue, then the state should have resolved this problem through staffing, administrative and other available means, rather than shifting the solution to businesses, forcing them to spend their own time and resources on additional expert evaluations and bureaucratic procedures. The state should have no problem staffing one of its bodies with additional competent experts, arranging for all the necessary specialists from the relevant agencies or state-funded organizations to participate in a given audit or expert evaluation, if this allows for saving time and resources for business entities – the consumers of the respective state services – and, accordingly, for the government itself and taxpayers.

The ability to solve such seemingly primitive administrative and economic problems conceals a huge potential, as the integration of procedures and the creation of conditions in which the agencies will have to coordinate their interests among themselves, rather than make individual decisions without looking at the actions of other agencies at different stages of the project's life cycle, will greatly reduce risks and increase predictability for businesses.

Despite this, according to the provisions of the City Planning Code of the Russian Federation that will come into effect on January 1, 2019, the evaluation of the compliance of design documentation for the construction or reconstruction of facilities that belong, in accordance with the legislation on environmental protection, to the first category – that is, facilities that present the greatest danger to the environment – with environmental requirements is turned into a separate administrative procedure that is implemented in the form of a state environmental impact assessment.

Thus, once again, we see an attempt to implement large-scale reform by strengthening the departmental nature of regulation. Unlike the OECD countries, where the general approach is to include the maximum number of resolutions available within a single procedure, in Russia, legislators and the executive authorities prefer to study the issue of a given facility's safety separately – as a capital construction project, a hazardous industrial facility, a facility that has an effect on the environment, etc. What is more, at the first convenient opportunity, the authorities attempt to develop an approach in which every single licensing authority acquires the right to a final decision regarding the specific and 'supervised' properties and characteristics of a particular complex facility.

As a result of the decision, authorization procedures for businesses are modified once again, although not towards being simpler and more understandable: **from January 1, 2019,³² businesses will have to abandon the familiar practice of submitting design documentation at a one-stop shop and relearn how to interact with several bodies that carry out expert evaluations at once, which will clearly do nothing to simplify the process of implementing investment projects.** The need to have design documentation continuously reviewed in various instances (public hearings before the government environmental impact assessment, the government environmental impact assessment itself, and then the government expert evaluation of the design documentation) increases the time spent on administrative procedures before a construction permit can be obtained by 6 to 18 months, depending on the nature and scope of the project in question, the number of changes needed, and the procedure for working with the local environmental protection authorities. Given that the newly adopted law does not contain any indication of the possibility of initiating arbitration proceedings and does not require the authorities responsible for conducting individual expert evaluations to coordinate their actions in any way, the introduction of these changes makes it possible to delay the decision on whether or not to issue the relevant permit for as long as the authorities see fit. In addition, the absence of any kind of explanation on the part of the competent authorities regarding the operational procedure of this 'distributed' system of carrying out expert evaluations of project documentation is likely to develop into an investment pause in industry that will last for between one year and eighteen months to allow for the state bodies themselves to adapt to the new requirements.

³²The relevant amendments were introduced by Federal Law No. 219-FZ "On the Introduction of Amendments to the Federal Law 'On Environmental Protection' and Certain Legislative Acts of the Russian Federation."

§ 2.2.

FORCING COMPANIES TO PAY FOR EXPERT ANALYSES, PROLIFERATION OF ADMINISTRATIVE RENT MARKETS

Despite the fact that Federal Law No. 384-FZ “Technical Regulations on the Safety of Buildings and Structures” dated 30.12.2009 abolished the principle of the voluntary application of standardization documents that had been declared in the legislation on technical regulation, it still affords the opportunity to deviate from the established ‘mandatory’ requirements through the development and coordination of special technical specifications with the authorized bodies – that is, tailor-made ‘mandatory’ requirements that differ from the existing ones can be worked out with regard to a specific facility. This scheme clearly leads to the formation of a niche market for compulsory services. And the main players on this market are interested in maintaining the status quo: ensuring that the supposedly mandatory regulatory and technical framework is kept in an irrelevant and inoperative state. Even if the requirements of the existing standards for a specific facility are insufficient, or there are, strictly speaking, no requirements at all (that is, the state has merely declared the mandatory requirements, yet de facto has not actually implemented them), the development of special technical conditions will also be a forced necessity, or at the very least it will be dictated by the authorities that carry out expert evaluations of design documentation and do not want to take on additional responsibilities connected with the coordination of design decisions that are not reflected in the existing technical rules and regulations.

Work on the development of special technical conditions that create the possibility to use architectural and design decisions, including those that have long since become standard, is a source of permanent income for the respective specialized organizations. The provisions of the Technical Regulations concerning the fact that the special technical conditions agreed upon in accordance with the established procedure could be the basis for including the requirements on buildings and structures contained therein, as well as on the design (including surveying work), construction and installation processes that are associated with buildings and structures into national standards and codes of practice, the application of which ensures compliance with its requirements, are almost never used. As a result, every new applicant proposing to implement design and technical solutions that have been used countless times before spends a significant amount of time and money developing ‘individual’ standards and requirements for their projects.³³

³³ See, for example: Proposals for Adjusting Existing and Developing New Regulatory Documents for Buildings and Structures Developed on the Basis of the Analysis of the Content of Special Technical Conditions for Such Facilities Agreed by the Ministry of Regional Development of the Russian Federation and the Ministry of Construction Industry, Housing and Utilities Sector of the Russian Federation in 2011–2015. On the topic “Research and Development Work on the Analysis of Regulatory-Technical Documents and Regulatory Legal Acts on Construction with Respect to the Inadequacy of the Reliability and Safety and Requirements Contained Therein and with the Purpose of Making the Respective Changes to Regulatory-Technical Documents in Order to Reduce the Number of Special Technical Conditions,” see: Report on Research and Development Work, Joint Stock Company Center of the Regulation and Standardization Methodology in Construction. URL: http://nopriz.ru/upload/iblock/e2d/analiz_stu.pdf.

These kinds of markets of administrative rent are typical of almost every branch of regulation today and, as a rule, participation in them on the part of business entities is prescribed by the relevant regulatory acts. As a result, investors today are forced to incur additional costs, which could amount to several dozen million roubles, when designing and building an industrial facility on signing agreements with the relevant research organizations for services that do not have any practical meaning, and the liability for which is not regulated by law. Artificial markets for 'assessing compliance' are tightly integrated into the modern institutional environment in Russia. The business model based on the legislatively prescribed massive scale of the services market, the complicated and excessively detailed mandatory requirements that the average economic entity is unable to understand by itself, the obsolete and inconsistent norms (the deviation from which is a best and long-established practice, although, according to the established rules, it does require special justification or coordination each time) and, typically, the undefined level of responsibility of those who provide such services, is characterized by a high degree of stability and, in the supportive environment, is replicated in all new areas of regulation.

Box 4

Most major industrial enterprises conduct up to several thousand 'industrial safety expert evaluations' of technical equipment at their sites every year – equipment for which the technical regulations do not specify any other methods of confirming compliance or which require an extension of their service life.

Industrial safety expert evaluations are a paid service that is rendered by commercial companies licensed by Rostekhnadzor (the Federal Service for Ecological, Technological and Nuclear Supervision), and representatives of the business community estimate that the costs associated with these activities for the economy as a whole run into tens of billions of roubles per year. Similarly, the preparation of supporting materials for the purposes of obtaining environmental permits is typically carried out using the services of specialist consulting firms. Major companies fork out tens of millions of roubles to engage the services of experts in order to catalogue emission sources, calculate pollutant distribution, determine permissible emissions and discharges at least once every five years. Specialized consulting firms are also involved in the development of draft regulations on waste generation and disposal. Given that the average cost of these services is in the region of 100,000 roubles and that around 500,000 business entities are obliged to develop such a document, a conservative estimate of the 'market volume' is ten billion roubles per year.

Legislatively imposed paid services exist in other areas of regulation as well: the coordination of special technical conditions and fire risk assessments are an inalienable element of the fire safety licensing system; the approval of permissible emissions and discharges mentioned above and establishment of a sanitary protection zone for companies are accompanied by sanitary and epidemiological examinations and public health risk assessments, which cost major enterprises from several million to tens of million roubles; and a special assessment of working conditions affects every single Russian company to some degree.

Organizations that carry out various types of expert evaluation, conduct research and provide supporting materials for obtaining permits are generally affiliated with the relevant licensing and supervisory authorities, and their cooperation turns out to be mutually beneficial in all senses of the word: every decision taken by the authorized bodies entails a document confirming its validity, and the artificially created requirement for such documents ensures the necessary monetary and client flow for the expert organizations to function successfully.

§ 2.3.

UPDATING THE SOVIET REGULATORY LEGACY FOR MODERN USE

A significant number of regulatory practices in Russia, and even directly applicable standards, **have been inherited from the USSR**. Thus, in the part pertaining to both the legislation on town planning activities and the legislation on industrial safety, the existing regulatory and legal framework for the design, construction and operation of industrial production facilities prescribes the mandatory requirements for business entities with regard to the organizational and technical parameters of production that establish a system of provisions and restrictions. Historically, these requirements are conditioned by the specifics of creating industry through the import of production and technologies and effectively represent step-by-step instructions for design engineers and personnel working in hazardous facilities. At the same time, if in the planned economy the state established the requirements for itself, thus keeping the door open to improving or abandoning them, then at present, design and operation tasks are assigned to enterprises, **which separated instructive and prescriptive regulation from the interests of production and turned it into a brake for modernization and technological renewal**.

Due to these circumstances, design engineers today are unable to modify the parameters and reduce the risk of accidents, by combining the old and new security systems and applying the most effective and economic solutions. The result of this is excessive spending to the tune of over 1 trillion roubles per year (around 30% of the gross value of all investment projects being implemented).

What is more, the prescriptive model of state regulation also gives rise to an excessive model of state control and supervisory operations. According to formal legal logic, every established rule needs to be verified and checked for compliance, which in practice creates a loophole allowing an unlimited number of inspections to be carried out, numerous violations to be detected, expert evaluations to be ordered and demands for approvals and permits to be made – in other words, under the established law, it is possible to impose any number of administrative and other restrictions on business entities.

This problem is clearly visible in other areas of legislation. For example, according to the report presented by Rostrud (the Federal Service for Labour and Employment) at an event organized at the

Box 5

The installation of isomerization at an oil refinery: in accordance with international practice, the area occupied by the installation should be 10,600m². In Russia, the same installation would require 21,700m² under Russian industrial safety standard requirements – that is, the area needs to be almost doubled in size, which leads to a 20% increase in construction costs at the design documentation stage.

Reconstruction of gas treatment systems for the ferrous metal industry: implementing the established norms costs 24.6 million euros, compared to 13.91 million euros in other countries. In other words, this amounts to an excess of 10.69 million euros (1.8 times more).

Implementing the requirement to install back-up valves to disconnect individual sections of the gas pipeline at a metallurgical plant leads to increased expenditures of 120 million roubles compared to foreign countries.

Installation of polypropylene production facilities: the required area for such a facility, taking the industrial safety requirements into account, is 42,000m² (or 52,000m² if in strict compliance with Russian standards), compared to 26,000m² in other countries.

Analytical Center for the Government of the Russian Federation on the initial results of the programme to introduce checklists in early 2018, the average time taken by the agency to carry out an inspection of business entities that had introduced the mechanism has been cut by one day, while the number of violations identified has increased fourfold.

The use of the checklist, which was conceived as a means of reducing the excessive administrative pressure on business entities, has, due to the prescriptive nature of the requirements, as well as their multiplicity and the lack of the legally substantiated possibility of dividing them into 'significant' and 'insignificant' categories, in fact had the opposite effect: standardizing the process to a certain degree has shortened its duration; however, including all the mandatory requirements in the check list has led to an increase in the number of violations identified – including by verifying compliance with those standards that previously, due to their insignificance, remained at the discretion of the inspector.

The problem of preserving the prescriptive and mandatory nature of the requirements has a number of negative consequences. Chief among them **is the blocking of innovative solutions and the creation of obstacles to the development of new engineering solutions at enterprises**, as the clear feeling formed over the years that any technical solution that is not described meticulously in the rules and regulations will lead to it being rejected by the regulatory authorities creates the desire to stick to the established practice and minimize movement beyond the limits outlined by the requirements of the legislation. Practice confirms this (see Box below).

Another example of this problem is environmental protection legislation based on the zero impact concept, which assumes the standardization of industrial emissions for the widest possible range of pollutants on the basis of extremely stringent and often simply unachievable sanitary, epidemiological and fisheries legislation, which can also trace their roots to the Soviet era.

In accordance with current requirements, users of natural resources are obliged to develop standards on the permissible levels of emissions and discharges of all substances involved in the production processes or generated during these processes. For this purpose, at least once every five years, enterprises should carry out a detailed inventory of emission sources, draw up lists of substances present in emissions and discharges for all sources, conduct dispersion or dilution calculations in bodies of water and develop drafts of the specified standards. Carrying out every point listed involves significant financial costs, which often exceed the corresponding amounts of pollution charges that the enterprise pays every year. The requirement to develop standards of permissible emissions and discharges extends to virtually all business entities, regardless of the nature and scale of their production activities and their actual environmental impact.

Box 6

During the inspection of a Russian nonferrous metals enterprise for the purposes of commissioning an electrolysis plant designed by Finnish engineers on the basis of similar enterprises already operating in the European Union, Rostekhnadzor identified around 90 industrial safety violations.

One of these violations, according to the inspectors, was the absence of an evacuation hatch on the overhead crane above the electrolysis tanks. This requirement does exist in regulatory legal acts on industrial safety, but in this case the crane is a fully automated piece of equipment – a robot that does not require the operator to be physically present there. Nevertheless, without additional expert evaluation of industrial safety with regard to the crane, the plant cannot be put into operation.

Box 7

The practice of including substances whose contents cannot be measured in the natural environment or whose emissions are negligible and within a statistical error in draft standards is well known, despite the fact that such emissions cannot have any significant impact on the environment.³⁴ It was often the case that standards for different nomenclature of pollutants were established for similar production facilities located in different regions, and their number could differ by an order of magnitude: in each specific case, this depended solely on the approaches used by the developers of the draft standards and the regulatory authorities coordinating these projects.

The number of substances for which specific users of natural resources are required to establish values for standards of emissions and discharges may reach one hundred. At the same time, this total control does nothing to solve the pollution problem, but merely erodes the attention of businesses and regulators, as ten or so substances account for over 90% of the mass emissions of pollutants, and the need to determine standards for all identifiable substances only leads to the manifold increase of costs for businesses and the state.

The current practice is such that, today, surface storm and drainage water, which are similar in composition to natural waters and are removed from the territories of facilities in order to avoid flooding of production areas and the contamination of such waters with substances that are present at the industrial site, are also subject to standardization. That is, environmental protection is effectively subject to regulation, and fees are charged for causing 'negative environmental impact' as a result of discharging water that is drained away from industrial enterprises into bodies of water. Water discharged by enterprises into natural bodies of water is standardized according to substances that are not characteristic for their technological processes. And it is standard practice, for example, to establish emission standards for enterprises that produce dairy products with regard to heavy metals, the content of which is dependent upon the chemical composition of the water supplied by the local water services companies. In the same vein, water discharged to the same body of water from which it was taken, and whose chemical composition has not changed, is also subject to environmental regulation – for example, in cases where such water has been used for cooling production machinery in cooling towers and has not come into contact with any industrial equipment. By way of an analogy with the approaches to regulating emissions into the air and bodies of water, legislation in the field of waste management requires legal entities and sole proprietors to draw up draft standards on waste generation and waste disposal limits.

Despite the fact that waste generation regulation is a technological parameter that sets out a specific production process and determines the raw material used, meaning that its coordination, approval and authorization is deprived of any practical meaning, this remnant of the Soviet planning system aimed at the 'rational' use of resources that are, de facto, free (and primarily to track the misuse of materials or, put simply, stealing such materials) is used for regulatory purposes to this day.

In addition to the regulations on waste production, the limits for waste disposal have also been approved – the maximum volume of waste that enterprises can send to accommodation facilities throughout the year. When developing this draft, which has been approved for five years, enterprises are required to account for any potential changes in the field of waste management in advance, for example, increasing waste production, disposal and (or) processing amounts, which can occur as a result of a change in the quality of the raw materials, during cleaning of waste-water treatment or other environmental facilities, when modernizing the production facilities, carrying out unscheduled repairs, etc. Even environmental protection measures (for example, the commissioning of a waste processing plant to prevent waste disposal or a gas treatment facility, which would make the dust that had previously been present in the emissions a waste category of its own) de jure cannot be utilized without a draft document of this type being developed first.

The natural result of presenting such obviously unattainable and impractical requirements is that the Federal Executive Authorities do not have reliable information on issues of waste generation and disposal in order to develop a state environmental policy. In conditions where any change in the production process or a deviation from previously agreed parameters, including as a result of circumstances beyond the control of the enterprise, presents the enterprise with a choice – either launch a new and costly cycle of developing and approving the necessary permits, or be charged with violation of environmental legislation. Enterprises try to artificially overestimate projected waste generation volumes when drafting standards on waste generation and disposal limits.

Thus, instead of drawing the attention of the supervisory authorities to waste disposal facilities and the environmental technologies used there, as well as on compliance with waste disposal requirements, **the legislation has developed a model for regulating the ‘virtual’ negative impact of waste on the environment in those areas where it is generated.** This ‘virtual’ regulation, however, results in very real sanctions.

³⁴Based on materials prepared by NPMP CIHT CONCEPT in 2017 at the request of the Committee on Ecology and Environment Management of the Russian Union of Industrialists and Entrepreneurs.

Box 8

The nonferrous metals industry operates on two types of raw commodities: concentrate which is obtained from process plants themselves and which contains approximately 20% of the useful component; and nonferrous scrap metal purchased from third-party suppliers on market terms. Due to the shortage of scrap in the market, the enterprise is forced to load its production capacities with concentrate, which leads to a corresponding increase in the amount of waste generated (smelter slags). This waste is sent to a waste disposal facility that belongs to the enterprise and is intended specifically for these purposes, although the annual waste disposal limit is exceeded. Despite the fact that the landfill capacities are not exhausted and that huge amounts of waste can be placed there, the enterprise is regarded as having violated environmental legislation and is subject to an administrative fine. When determining the payment base for calculating fees for causing harm to the environment, the amount of waste above the established limits will be factored with a coefficient of 5.

In other words, even if it cannot be established that the enterprise is causing a negative effect on the environment (since the waste is placed in a specially designated place within the established limits), sanctions will nevertheless be applied.

§ 2.4.

ABSURD, EXCESSIVE AND UNNECESSARILY DETAILED REQUIREMENTS IN OTHER SPHERES

The excessively detailed requirements in a number of industries that are not directly related to preventing damage being caused to the state, society or the environment impose excessive burdens on enterprises in terms of compliance, costing money that could otherwise be spent on development.

For example, waste legislation prescribes the need to divide production and consumption waste into five hazard classes and establishes the requirements for drawing up data sheets – special documents certifying that the waste belongs to the relevant category and containing information on their composition. The document is intended, in particular, to confirm the inclusion of specific waste in the Federal Classification Catalogue of Waste in the composition of the respective waste type.

The paradox of the current system is that the ‘types of waste’ are prescribed by the subordinate acts to be drawn up by the business entities themselves, whereas such a procedure can only be implemented from a single centre, as waste type is a set of wastes that demonstrate general classification criteria.

Another inalienable element of the current regulatory system on waste management is equally paradoxical, namely, assigning certain 'hazard classes' to wastes.

Unlike the approach set out in Directive No. 2008/98/EC, which categorizes any waste in which at least one of the 15 specific properties listed in the directive have been found as hazardous, the Russian methodology proposes a calculation method for assigning waste³⁷ to one of the five hazard classes. This method involves performing certain mathematical operations with regard to accessible yet absolutely heterogeneous numerical values of the sanitary, toxicological and physical characteristics of substances that constitute waste. These characteristics are translated into points, which are then averaged, and then the average points are subsequently turned into completely abstract quantities that have no physical meaning whatsoever and are multiplied by the concentration of components, added up and finally converted into 'hazard classes.'³⁸ This kind of mathematical mixture of various quantities cannot have any scientific meaning, although the complexity of the mathematical operations performed, the incomprehensibility of the names and designations, and the initial data used may create the impression that the methodology being used is, in fact, scientific.

Needlessly complicating the method for hazardous waste classification makes it almost impossible to perform the calculation without specialized computer software, which leads to the creation of a market for consulting services, and these services are not cheap, with the costs of preparing materials for justifying the hazard class of a particular type of waste starting at 5000 roubles. This has already resulted in businesses forking out tens of billions of roubles determining types of waste, assessing their hazard classes and drawing up data sheets, as well as in the still incomplete Federal Classification Catalogue of Waste.

The only practical way to apply the current waste classification system is to use hazard classes to determine the fees for causing harm to the environment during the disposal of waste: while Resolution No. 913 of the Government of the Russian Federation "On Rates of Payment for Causing Harm to the Environment and on Additional Coefficients" dated 13.09.2016 establishes rates for the 159 different harmful substances identified with regard to emissions into the atmosphere and discharges into bodies of water, it sets just seven rates for waste (one each for classes I–IV and three for the different groups that make up Class V). In other words, **business entities spend significant amounts of money only to confirm the legitimacy of using certain rates with regard to a particular type of waste and thus to determine how much it actually needs to pay to the budget.**

Another example of excessive regulation can be found in the legislation on plant quarantine, which obliges all business entities to immediately notify the federal executive authorities (the Federal Service for Veterinary and Phytosanitary Surveillance) of the delivery of products and facilities that are subject to quarantine. Products that are subject to quarantine under the law include: plants,

³⁷And also provides for the inclusion of calculations of such abstract indicators as information security evaluation in the model.

³⁸For more detail, see: Order No. 536 of the Ministry of Natural Resources and the Environment of the Russian Federation "On Approving the Criteria for Classifying Wastes of Hazard Classes I–V by the Degree of their Negative Impact on the Environment" dated 04.12.2014.

plant products, containers, packaging (including packaging materials), freight, soil and organisms or materials that may be carrying quarantinable objects and (or) facilitate the circulation thereof and in relation to which phytosanitary measures are required.

Box 10

In addition to live insects for scientific purposes, these include everyday products, such as: cut flowers, fresh potatoes, cabbage, carrots, onions, tomatoes and other vegetables; and also nuts and fruit: bananas, apples, citrus fruit, grapes, etc. Other products subject to quarantine include grains, flour and cereals. Additionally, coffee, tea and cocoa beans carry a phytosanitary risk. Finally, certain kinds of packaging are also subject to quarantine: corrugated paper and corrugated cardboard boxes and cases; wooden boxes, cases, crates and baskets; barrels and similar wooden containers; and wooden pallets, trays and other loading panels.³⁹

The concept of 'quarantinable objects' should not be misconstrued here – its legal definition is rather broad and includes "land plots of any purpose, buildings, constructions, facilities, storage tanks, warehousing areas (premises), equipment, vehicles, containers, and other objects that can be sources of penetration into the Russian Federation and (or) the distribution of quarantinable objects in the country."

Such clearly excessive interference of the supervisory authorities in everyday business processes on the basis of an extremely long list of grounds is hardly capable of producing a tangible result in terms of improving the security or effectiveness of state regulation, if only because it is impossible for the staff of the authorized agency to effectively process and analyse such a large volume of information. Hundreds of thousands of companies across Russia fall under the sole requirement to notify the authorities about the delivery of quarantinable products and facilities: all food retail, flower shops, bakeries, confectionary manufacturers, public eating establishments, wholesale stores, construction supplies and materials stores, etc. And these organizations receive dozens and even hundreds of batches of such products on a daily basis. Nevertheless, these business entities continue to receive fines for failing to perform the corresponding duties. Information and reference systems allow us to identify very exotic cases of bringing business entities to administrative responsibility for violating the established requirements, for example, fines levied on mining-and-metallurgical integrated works or metallurgical works.⁴⁰

³⁹Razumova, I. On Establishing Regular Correspondence with the Federal Service for Veterinary and Phytosanitary Surveillance. Specially for the GARANT system, March 2016. Accessible on the Garant website: <http://base.garant>.

⁴⁰See Decision No. A42-8658/2015 of the Arbitration Court of the Murmansk Region dated 28.01.2016 and Resolution No. 15AP-18870/14 of the Fifteenth Arbitration Appeal Court dated 27.11.2014.

The existence of such requirements provides nothing, except for the possibility to **arbitrarily apply administrative responsibility to a wide range of business entities**. Notifying the authorized authorities about the delivery of quarantinable products and facilities is not sufficient grounds for a check of the company in question to be carried out, and the information contained in the notice itself is not enough to make any managerial decisions. Nevertheless, this violation is the primary one mentioned in the reports on the results of the control and supervisory activities carried out by a significant number of the Federal Service for Veterinary and Phytosanitary Surveillance's territorial divisions, accounting for up to 80% of the total number of violations identified during scheduled and unscheduled inspections.

Provisions that generate excessive unproductive expenses for business entities are present in many branches of the legislation and are in one way or another related to countering terrorism and other criminal acts. For example, according to Paragraph 1 of Article 7 of Federal Law No. 115-FZ "On Countering the Legalization (Laundering) of Proceeds from Crime and the Financing of Terrorism" dated 07.08.2001, organizations that carry out operations with cash or other property are obliged to carry out an identity check on the client, a representative of the client and (or) beneficiary before providing the service in question.

Bank of Russia requirements include the provision to carry out, before providing the service in question, an identity check on the legal entity for which the credit organization provides services on a one-time basis, or which engages the services of a company on an ongoing basis, as well as to update information received as a result of checking the identity of the legal entity, its representatives, beneficiaries and owners within the terms established by the legislation. In particular, this means that, when a credit institution decides, on the basis of its own internal risk assessment procedures, to open a correspondent account for a different bank, the latter is subject to the same identification procedures as any other business entities and in accordance with the same requirements.

Despite the fact that banks operate on the basis of licenses issued by the Bank of Russia, information on which is publicly available, and which under the supervision of the regulator fulfil the requirements regarding the public disclosure of information, the bank must:

- when opening a correspondent account, collect an average of between 19 and 25 documents from the other bank (including the charter documents, copies of licenses, accounting reports, etc.);
- in future, update the identification information on an annual basis, including by collecting evidence of the facts of the bank's business activities, etc.

As paper copies of documents (the vast majority of which are available in the public domain) need to be collected more than once and updated annually, this work can only be performed 'by hand,' which **leads to banks having entire subdivisions dedicated to copying, transferring and recording these documents**.

The Federal Law "On Countering the Legalization (Laundering) of Proceeds from Crime and the Financing of Terrorism" mentioned above creates similar problems for telecommunications operators,

which also have a number of specific features compared to the activities of other entities that are affected by the law.

Box 11

In accordance with the requirements of the legislation on countering the legalization (laundering) of proceeds from crime and the financing of terrorism, telecommunications operators are obliged to perform a full identification check of their subscribers, not at the time of the provision of financial services, but immediately upon the signing of the contract for the provision of services before any services have actually been provided. With regard to natural persons, telecommunications operators are obliged to establish the name, surname and patronymic, nationality, date of birth, identity document details, details of the document confirming the right of a foreign national or stateless person to stay (reside) in the Russian Federation, residence address (registration) or place of stay, tax payer identification number (if one exists). In addition, it is also necessary for natural persons to establish a relation with one of the following categories: a foreign public official, a Russian public official or an official of a public international organization.

Due to the public nature of the contract for the provision of services, there is no real possibility to refuse to conclude it with a person who has expressed the intention to do so, including if the subscriber is unwilling to provide the information necessary to perform a full identity check. A refusal to conclude a contract is in violation of the rights of the persons who do not use the financial services – mobile commerce operations in the manner established by Article 13 of Federal Law No. 161-FZ “On the National Payment System” dated 27.06.2011.

Considering the number of active subscribers (50–70 million for each major telecommunications operator), which is incommensurate with the number of clients serviced by even the largest credit organizations, as well as the fact that they are located across the entire country, the established requirements on performing a full identity check of subscribers and annually updating information about them is practically impossible.

§ 2.5. DIGITALIZATION OF CONTROL AND SUPERVISORY OPERATIONS IN ITS CURRENT FORM DOES NOT REDUCE COSTS

The development and introduction of information technologies today does not justify the hopes that have been placed on them for the de-bureaucratization of relations between business entities and executive bodies and the transition to paperless and remote forms of interaction.

In particular, despite the fact that an expert examination⁴¹ of Order No. 422 of the Russian Ministry of Agriculture “On the Approval of the Rules for Organizing Work on the Issuance of Supporting Veterinary Documents” dated 16.11.2006 resulted in some of its provisions being found to unreasonably hamper entrepreneurial activities and the formulation of instructions on the need to revise its established requirements in order to avoid any excessive administrative burden on business,⁴² legal regulation in this regard has tended to develop in the opposite direction since 2014.

The departmental acts of the Russian Ministry of Agriculture adopted since this time, in particular, entail extending the requirements for veterinary certification to a significant portion of finished (processed) food products containing raw materials of animal origin that have undergone heat treatment and been packaged in hermetically sealed consumer packaging, including products that had not previously been subject to compulsory or voluntary veterinary certification as part of their circulation on the territory of the Russian Federation due to the lack of any veterinary risks.

⁴¹ This expert examination was carried out in the first quarter of 2012 in accordance with the requirements of Resolution No. 633 of the Government of the Russian Federation “On the Expert Examination of the Regulatory Legal Acts of the Federal Executive Authorities in Order to Identify Provisions Therein that Unreasonably Hamper Entrepreneurial and Investment activities and Amendments to Certain Acts of the Government of the Russian Federation” dated 29.07.2011.

⁴² As part of the expert examination of this order of the Russian Ministry of Agriculture, it was established that the expenses of a single business entity working in the food products retail sector on the preparation of supporting veterinary documents exceed RUB 430 million a year, while the cost of preparing supporting veterinary documents amounts to as much as 5% of the value of certain goods.

⁴³ Taking into account the provisions of Article 4 of Federal Law No. 243-FZ “On Amendments to the Law of the Russian Federation ‘On Veterinary Medicine’ and Certain Legislative Acts of the Russian Federation” dated 13.07.2015.

⁴⁴ It should be noted that this date has been repeatedly postponed both due to the total unreadiness of almost all industries that manufacture finished food products and also due to the lack of capacity by the public information system (Mercury Information System) to sufficiently process a volume of transactions comparable to market demand.

In accordance with Orders No. 589 of the Russian Ministry of Agriculture “On the Approval of the Veterinary Rules for Organizing Work to Issue Supporting Veterinary Documents, the Procedure for the Issue of Supporting Veterinary Documents in Electronic Form, and the Procedure for the Issue of Hard Copy Supporting Veterinary Documents” dated 27.12.2016 and No. 648 “On the Approval of the List of Controlled Goods Subject to Supporting Veterinary Documents” dated 18.12.2015,⁴³ the requirements on the need to prepare Supporting Veterinary Documents (hereinafter SVD) in electronic form for such finished (processed) food products as dairy products, ice cream, soups and broths, dairy-based baby food products, pasta with filling, etc. shall take effect starting from 1 July 2018.⁴⁴

The traceability system proposed by Rosselkhoznadzor is redundant due to the fact that given the change in ownership the traceability of all goods (including products of animal origin) has already been ensured as part of the preparation of commodity and shipping documents. The traceability of products at a single enterprise that manufactures food products is ensured through the implementation of Hazard Analysis and Critical Control Points (HACCP) principles. Ensuring traceability is also a prerequisite in accordance with sub-clause 12, clause 3 of Article 10 of the Technical Regulation of the Customs Union “On Food Safety” (TR TS 021/2011). The current traceability mechanism in the ‘step forward – step backward’ format, in which each of the participants in the product distribution chain can identify its suppliers and buyers, is consistent with the generally accepted worldwide standards in this regard.

In addition, ensuring the real-time traceability for a significant portion of finished products within the electronic veterinary certification system is impossible in principle due to continuous flow production that involves the mixing of numerous batches of raw materials to manufacture a wide range of products. In these conditions, it is impossible to link a specific batch of raw materials with a specific batch of finished products.

Thus, the initial idea to reduce the administrative burden on business entities by transitioning to the use of a paperless form of supporting documents for food products in the process of its workup **was transformed into a proposal to repeatedly expand the powers of the supervisory authority and create an information system that resembles the Unified State Automated Information System for food products and has no parallels in global practice.** Despite the lack of convincing arguments in favour of introducing the electronic veterinary certification system for finished (processed) food products, this issue has been on the agenda for four years already – only the deadline for entry into force of the relevant requirements is subject to review, however the risk of entry into force of the requirements that generate a very significant amount of non-production expenditures continues to put a strain on the food production industry and related industries such as retail. According to the calculations of one food company, annual operating expenses for a modernized warehouse and its employees, which will ensure compliance with the new standards, alone will amount to 11.6 million roubles per month or 139 million roubles per year. Capital expenditures will amount to about 16 million roubles. At the same time, for large companies, costs increase in proportion to the volume of transactions.

There are certain questions about the quality and opportunities for the beneficial use of departmental information systems created by the supervisory authorities. For example, the incorporation into environmental legislation of the requirement for the state registration of all existing enterprises despite its direct contradiction of the requirements of Federal Law No. 210-FZ dated 27 July 2010 “On Organizing the Provision of State and Municipal Services”, which prohibits demanding that an applicant submit documents and information that are at the disposal of the state authorities, local government bodies, and budgetary organizations that are subordinate to said bodies, led to employees of individual large enterprises spending up to one working week on the submission of all the necessary information to the relevant state system in electronic form (for physical data entry).

Nevertheless, the information base that was created remains closed and apparently is not even used by authorized agencies when preparing the list of the 300 largest polluters of the country, which the Russian Ministry of Natural Resources was tasked with compiling by Law No. 219-FZ. Less than 9 months prior to the expiration of the period set for the entry into force of the law (and thus for preparing enterprises for the transition to new regulatory principles and new rules for obtaining permits), this list had not been issued. The versions of the list presented at different times for public discussion were invariably questioned regarding the approach to its formation with references to specific mistakes concerning the incorrect indication of names, addresses as well as organizational and legal forms of the enterprises, the incorrect use of criteria for classifying objects as category I facilities that have a negative effect on the environment, the inclusion in the list of enterprises whose contributions to gross pollution in the relevant regions of the Russian Federation amount to hundredths of a percent, the re-inclusion of the same enterprises under different names, etc. Essentially, the enormous labour costs of tens of thousands of enterprises were only spent on formally registering them in accordance with the requirements of the law and assigning a category to the facilities in question, although the information that is required and sufficient for these purposes is available to almost any oversight agency.

Summary

This list of shortcomings in Russian economic legislation is nowhere near exhaustive and could be further expounded upon without difficulty. The examples given above of ineffective, unbalanced, and simply paradoxical norms that have a direct impact on the daily practice of economic activities are more or less typical for virtually any sphere of domestic regulation based on the principles of large-scale prescriptive state intervention in any economic processes.

These are the problems that were among the key factors in economic growth grinding to a halt back in 2013, and after the economy adapted to volatile changes on global energy markets, they are preventing the economy from even approaching average world rates. The administrative burden that has built up amidst a significant decline in export earnings can no longer be effectively absorbed by the economy.

The existence of a substantial amount of unsystematized, inconsistent, and excessive legislative requirements entails the risk of being a disrupter in any situation regardless of the efforts that are undertaken. The prescriptive nature of norms and their incompatibility with modern realities stifle investment by companies, forcing them to use obsolete technical solutions, substantiate approaches that have been repeatedly tested in practice, and spend unnecessary funds on the 'virtual' provision of security. Excessive administrative requirements generate excessive unproductive employment at companies, which is complemented by the virtual 'privatization' of certain supervisory and licensing functions in the form of numerous expert examinations, studies, and other types of compliance assessment performed by third parties on a commercial basis. Constantly changing the rules of the game deprives business entities of the ability to even conduct medium-term forecasting, pushes companies into zones with a short planning horizon, and significantly contributes to increasing the country's overall risks, making opportunistic behaviour strategies increasingly attractive.

Overcoming these problems requires a large-scale revision of approaches to the regulation of economic activities based on the principles of rationally minimizing government intervention in economic processes, encouraging innovative solutions, substantiating regulation, and correlating its scope with the level of risk inherent in specific things, and cleansing legislation of obsolete and excessive requirements.



CHAPTER 3.

**A COMPREHENSIVE
REGULATORY POLICY
FOR RUSSIA**

§ 3.1.

A SPECIAL MECHANISM FOR ELIMINATING EXCESSIVE AND INEFFICIENT REGULATION (DEREGULATION)

In order to implement the proposed system of measures to eliminate excess and inefficient legal regulation and transition to modern regulatory policy (smart regulation), a number of significant institutional solutions must be implemented.

The need for institutional design is due to the existing features of the Russian system for the legal regulation of public relations, primarily economic relations. In the expert community, rather detailed consideration has been given **to the concept of points of stagnation**, which refer to such elements of legal regulation that interfere with actions that aim to resolve life situations as simply and conveniently as possible, develop and enhance private goods, and, consequently, enhance public goods. These can be norms, gaps, and administrative burdens.

However, points of stagnation are not always directly expressed in a regulatory manner: sometimes administrative and judicial practice based on outwardly harmless, non-stagnatory norms creates a retarding effect, which also means there are points of stagnation present in legal regulation. As shown in Chapter 1, the effectiveness of existing RIA and EPE institutions as well as anti-corruption expertise (ACE) and enforcement monitoring is also limited.

The judiciary establishment also has limits in its efficiency in terms of overcoming points of stagnation. The Constitutional Court of the Russian Federation is authorized to examine laws based on complaints from citizens and their associations (including legal entities) for violations of their constitutional rights, including restrictions on their existence. However, in this case

1) a point of stagnation (an obstacle to development) is not identical to the notion of “restriction on the right” in the sense that it can be eliminated through constitutional justice. In a number of its decisions when describing the regulatory impact on rights and freedoms, the Constitutional Court uses such a formulation as “the establishment of conditions for the realization (exercising) of rights and freedoms” without equating them with restrictions. It is precisely when the conditions for the exercising of rights are established that the points of stagnation most often arise. There are actually more points of stagnation associated with conditions for the realization of rights than restrictions. Accordingly, not all points of stagnation fall under the criteria of “restrictions on the right”;

- 2) restriction in itself may be acceptable in terms of the balance of constitutional values, i.e. it may be realized within the discretion of the relevant rule-making body, but at the same time be defective in terms of the interests of accelerated, breakthrough socioeconomic development;
- 3) a substantial number of the points of stagnation is reflected in regulatory legal acts that may not be the subject of constitutional justice.

As for the possibility of eliminating points of stagnation in the procedure of regulatory control in other courts, except for the Constitutional Court, there are even fewer opportunities. Despite the development of administrative court proceedings and the adoption of the relevant Code, courts are bound in their decision-making to the hierarchy of regulatory acts, and if an act of lesser legal force, even if it contains a point of stagnation, does not conflict with norms of greater legal force, it is virtually impossible to eliminate it within judicial regulatory control.

An analysis of the (only emerging) judicial practice on matters concerning the assessment of the regulatory impact and anti-corruption expertise shows that courts usually clarify the formal aspects of these procedures only, without giving an assessment of the actual existence of points of stagnation in disputed RLA (draft RLA).

In these conditions, based on the experience of administrative tribunals in Canada and regulatory control in the Council of State of France, a possible model was substantiated for **a special institution of deregulation** for Russia. Thus, the main transition when establishing a modern regulatory policy in Russia may be the creation of **a central deregulation authority** at the presidential or governmental level, which may be called **the Presidential or Governmental Deregulation Committee** (hereinafter DC).⁴⁵

⁴⁵ In the rule-making process, this Report uses a more general name/abbreviation: CDA – central deregulation authority.

Box 12

The Council of State in France (Conseil d'état) is a special state body that acts as the Supreme administrative court and at the same time the "legal adviser" to the French government.

The administrative divisions of the Council of State issue their opinions on draft regulatory legal acts, as well as expertise in response to specific requests.

The Council of State necessarily prepares conclusions for the following draft acts:

- *government bills drafted for submission to Parliament, as well as statutory rules and orders (ordinances);*
- *draft bylaws;*
- *drafts and proposed EU legislation initiated by France.*

The recommendations of the Council of State following consideration of draft acts are not legally binding but the French authorities, understanding the high credibility and expertise of the Council, almost always follow its conclusions (in 98% of cases).

3.1.1. SCENARIOS FOR POSITIONING THE DC AT THE PRESIDENTIAL LEVEL

When considering the scenario for positioning DC at the presidential level, its members may include 9 individuals who hold public positions in accordance with the federal law that is to be adopted on DC⁴⁶ or in accordance with a special presidential decree (in this case the status of the individuals on the DC will be similar to other consultative and advisory bodies under the President).

With this positioning option, all economically significant RLA are included within the purview of the DC, including federal laws, the RLA of the President, acts of the Central Bank, and non-regulatory legal acts.

⁴⁶The status of the Central Election Commission of the Russian Federation, for example, is determined in a similar manner (Article 21 of the Federal Law No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" dated 12.06.2002 (amended on 05.02.2018) and Decree No. 32 of the President of the Russian Federation "On Public Positions of the Russian Federation" dated 11.01.1995).

The key risk of this option is that the result is dependent on the ability of the executive secretary of the DC for staff positioning within the structure of the Presidential Executive Office since the DC secretary will be in an extremely competitive field given the specifics of the Russian political system, fighting for positioning and authority simultaneously with other authorities and sectoral interest groups that emerge in specific areas of existing regulation.

Support for the activities of the DC at the presidential level is to be provided through a secretariat in the form of a subdivision of the Presidential Executive Office (the Expert Office or another specially created unit). The Aide to the President (who is also Chief of Office/Directorate) will serve as its executive secretary.

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Procedure for the formation and functioning of the DC at the presidential level

This positioning option involves the adoption of a federal law that specifies the status and powers of this body, the procedure for its functioning, and the status of its members. The optimal size is nine members (public office holders) plus one executive secretary (Aide to the President who is also Chief of Office/Directorate).

The status of members of the DC at the presidential level is based on the fact that they are public office holders in accordance with federal law, appointed by the President for a term of 3 (5) years, and have certain guarantees for their independence, including a high salary and prohibitions on paid activities (except for scientific, teaching, and creative activities). Under this positioning option, the status of the DC and its members may also be determined by a presidential decree. In this case, however, the status of individuals on the DC will be similar to other consultative and advisory bodies under the President.

The powers of the DC at the presidential level should include the following blocks:

1) Deregulation powers of the DC (regulatory guillotine):⁴⁷

- the right to recognize specific norms, regulatory legal acts (RLA), legal institutions as a whole, including RLA and non-regulatory acts of the federal executive authorities,⁴⁸ acts of the Central Bank,⁴⁹ and federal laws (with respect to those adopted by the State Duma and approved by the Federation Council – a recommendation to the President on using a veto, with respect to existing laws – a recommendation to the President on the relevant legislative initiative) as impractical and subject to cancellation (revision);
- review of the lists of RLA that are drawn up by agencies within their purview and are subject to revision and/or cancellation, and coordinating the need to carry out an EPE with respect to the RLA that have been submitted;
- interaction with stakeholders and targets of regulation (business associations, entrepreneurs, citizens, NPOs, and the authorities) in order to collect proposals on legal norms, RLA, or legal institutions in need of cancellation or revision;
- review of appeals for the elimination of points of stagnation in regulation and dispute resolution between agencies and targets on the elimination of points of stagnation, meaning the adoption by the DC of a final decision in a dispute in the event of agencies refuse to consider such appeals;
- preparation of Annual Reports on the process of deregulation and periodic overviews of individual regulatory areas (use of individual tools).

2) At the stage of the Smart Regulation Council:

2.1. Mixed (transitional) powers (as regards regulatory policy):⁵⁰

- conducting a preliminary expert examination of draft strategic planning documents as regards the adoption, modification, or cancellation of regulatory legal acts envisaged by such documents;
- conducting an EPE of the most resonant and complex regulations (of legal institutions);
- ensuring the implementation of the one in – X out principle, including on the basis of the expanded standard cost model;

⁴⁷ These powers will later be transformed (modified, prolonged) for the functionality of the smart regulation body.

⁴⁸ After the decision of the DC, these acts have been suspended until they are amended or cancelled in accordance with the recommendation of the DC.

⁴⁹ The DC sends the Central Bank a recommendation (statement), which is subject to mandatory review (similar to the requirements of the Prosecutor's Office for the Federal Law on ACE).

⁵⁰ May also be performed in part or in full during this period by the Department of Deregulation and AIA and the Impact Assessment Department of the relevant ministry.

3.1.2. SCENARIOS FOR POSITIONING THE DC AT THE GOVERNMENT LEVEL

As part of the consideration of the scenario for establishing and positioning the DC at the governmental level, in accordance with the Regulation on the DC, the committee is formed from individuals approved by a resolution of the Government.⁵¹ Under this positioning option, only the RLA of the Government and the federal executive authorities as well as non-regulatory legal acts fall within the purview of the DC. In the course of exercising its powers, the DC may recommend that the Government make amendments and additions to the existing federal laws (by exercising the right to a legislative initiative) as well as amendments to federal laws considered by the State Duma.

The key risk of this option is the possible staff circumvention of the decisions of the DC through the Presidential Executive Office, which could lead to the rapid erosion of the DC's functions within the current Russian semi-presidential political system in which the Cabinet of Ministers has greater institutional weakness compared with the President's office.

The activities of the DC at the governmental level may be supported by the secretariat – the Department of Deregulation and the EPE of the competent ministry, while the Deputy Minister in charge of this Department will serve as Executive Secretary of the DC. This structure can be used for the presidential model as well, but in this case there are serious increases in the staff risks of administrative weakness regarding the State Legal Directorate of the President.

Procedure for the formation and functioning of the DC at the government level

This positioning option involves the adoption of a resolution of the Government that specifies the status and powers of this body and the procedure for its functioning. The experience of determining the status of the Governmental Commission for Administrative Reform should be used.⁵²

The status of members of the DC at the governmental level is similar to the status of members of other government commissions.

The powers of the DC at the governmental level include blocks similar to the presidential level, while the scope of powers may be reduced due to its purview (only the RLA of the Government and the federal executive authorities as well as non-regulatory legal acts).

⁵¹ Similar to Resolution No. 451 of the Government of the Russian Federation "On the Governmental Commission for Administrative Reform" dated 31.07.2003 (as amended on 23.11.2016).

⁵² Resolution No. 451 of the Government of the Russian Federation "On the Governmental Commission for Administrative Reform" dated 31.07.2003 (as amended on 23.11.2016).

Box 13

In 2006–2007, the HITROREZ regulatory guillotine project was implemented in Croatia. The Croatian government established a special working group to implement it. The project consisted of a manager and 12 employees (legal and economic analysts and business administrators). As part of its activity, the working group conducted an inventory of all national regulations, screened and analyzed existing regulations for the purpose of identifying barriers, and developed measures to simplify or eliminate them in order to support business development.

As a result of the project, 40% of all regulations, including 55% of the regulations governing business, were recommended for repeal or review.

3.1.3. TRANSITION TO A COUNCIL ON SMART REGULATION

During the initial period (up to 3-4 years), the primary functions of the DC will pertain to deregulation (the regulatory guillotine), though the period following that (up to 10-15 years) should see the DC focus more attention on the development of a system of smart regulation (with a possible merger of the DC, secretariat, and other units into a single National Smart Regulation Council).

It has been suggested that, in accordance with international ratings (see Appendix 1), the authority to conduct a systematic assessment of the quality of the regulatory environment will be assigned to the DC and then to the National Council.

Box 14

Transforming deregulation authorities into smart regulation units (Croatia, United Kingdom, Mexico)

In many countries that have carried out large-scale projects on deregulation (the regulatory guillotine), the specialized units created to implement these projects have been transformed upon completion into central authorities for RIA or smart regulation. In Croatia, for example, the Ad Hoc Working Group for the HITROREZ project, which lasted 9 months, was subsequently integrated into the newly established RIA Management Coordination Office, which was to continue regulatory reform following preparation of the legal environment. In the UK, the Department for Deregulation, which was established in 1986 (as part of the Cabinet Office and then in 1990 as part of the Employment Department), was reorganized in 1997 into the Regulatory Improvement Department (in the Cabinet of Ministers), which, in addition to implementing measures for deregulation was also responsible for ensuring rule-making compliance with the principles of “better regulation”. In Mexico, the Economic Deregulation Department, which was established in 1989 and implemented the regulatory guillotine project, was reformed in 2000 into the Federal Commission for the Improvement of Regulation (COFEMER).

§ 3.2.

SYSTEMATIZATION OF ACTIVE REGULATION AND INTRODUCTION OF ADVANCED POLICY TOOLS AND A COMPLETE REGULATORY

Concept for Systematizing and Developing Legislation

In order to ensure the systematization of existing regulatory legal acts, including the systematic elimination of points of stagnation, conflicts, and gaps in legal regulation, it would be advisable to implement measures for the integrated analysis and processing of all regulatory legal acts (in addition to the above-mentioned priority sectors). To this end, the Government of the Russian Federation needs to prepare a Concept for Systematizing and Developing Russian Legislation with the participation of leading scientific and analytical centres of legal and economic science and representatives of the public and business.

In addition, measures to systematize and construct an algorithm for the entire regulatory framework of the Russian Federation should be provided for **as part of the development of a separate Federal Law “On Regulatory Legal Acts”**. The following measures should be carried out:

- a system of regulatory legal acts, their hierarchy, and ways to resolve conflicts should be determined,
- instruments of deregulation should be introduced to lawmaking and existing ones should be codified,
- conditions for carrying out a legal experiment and other issues related to development, adoption, and general principles of the application of regulatory legal acts (with the reduction of redundant and duplicative examinations and discussions) should be determined.

Systematization of legislation should proceed from the need to transfer the provisions of regulatory legal acts into the form of computer-readable algorithms for further use in the administration of these algorithms along with the traditional form of regulatory legal acts.

To organize the systematization and creation of an algorithm for legal regulation, we suggest creating a special Working Group for the re-established Economic Council under the President. The Group, in cooperation with the Ministry of Justice and the legal departments of federal public authorities, would work on an ongoing basis to systematize and create an algorithm for legal regulation and make use of expert analysis of international experience in removing barriers business and investment, to identify best practices, and explore opportunities for their adaptation in Russia.

Evidence-based regulation

Evidence-based regulation must also serve as an important area of development in regulatory policy. For this purpose, it would be expedient to compel the Russian Government, in cooperation with business representatives and leading expert organizations, to develop and implement **an Evidence-based Standard for proving the need for regulation** in terms of modern approaches to smart regulation and to establish the necessary evidence of regulation in accordance with this Standard, including of the success of legal experiments and the fact that the conditions for conducting business and investment activities have not worsened.

The necessity of a evidence procedure to accompany the introduction, alteration, and preservation of state regulation is determined by the objective characteristics of participants in the decision-making process and the particularities of the rule-making process itself, including possible opportunistic behaviour on the part of regulators and targets of regulation, which may manifest itself in an effort to maximize individual interests (benefits) without taking into account the interests of the other parties involved. In addition, in the course of daily decision-making, department staff are subject to “cognitive errors”, which is to say they may act quickly, automatically, and without thinking. The political task of the Government, as represented by the parent body for regulatory policy, is to reduce the number of cognitive errors made, which includes slowing down the decision-making process for departmental staff to make it more conscious, reliable, and fact-based, the result of quantitative models and arguments, and to reduce costs in the future.

The Standard must contain requirements for procedures (algorithms) of evidence that are implemented in the process of substantiating the need to introduce, alter, cancel, or continue with regulation. The Standard presupposes development for parties involved in the regulatory process and possessing conflicting interests and positions established in the course of public consultations. The requirements are created separately for three main groups of participants of the evidence process: regulators, the targets of regulation, and the regulatory policy parent body responsible for making the final decisions.

Box 15

Evidence-based regulation in the European Commission

The European Commission sets great importance upon proving the validity of regulatory intervention. The relevant provisions are reflected in the Quality Management Manual (Annex - Better Regulation "Toolbox", section 2 "Evidence-based regulation").

The manual emphasizes that quality regulation should be based on the best available evidence, including scientific and expert data. It points to the expediency of employing foresight and other forecasting methods at the preliminary stage of RIA to determine the various alternatives and prospects for their implementation, the analysis of developments by foresight organizations or consulting companies, and the use of Big Data. To ensure data reliability and the transparency of evidence, a detailed description of the methodology as well as data sources in impact assessment reports is recommended along with an indication of the results of their verification and possible uncertainties. It would be desirable to employ the "triangle" method – using two or more other sources – to verify data sources.

When conducting public consultations, it is necessary to ensure the appropriateness and reliability of the methods employed, and to carefully describe and analyse the arguments of the participants, including those in opposing positions, when analysing the results, and also to reflect how the data from the various sources reinforce or contradict one another.

The Manual also provides links to sites containing reliable data sets for key regulatory areas.⁵³

Improving the RIA mechanism

It would also be advisable to implement a number of measures aimed at improving the existing RIA system, including:

a) Obliging the Government, in cooperation with business representatives and leading expert organizations, to develop and introduce amendments to the Regulations of the Government that do not allow for the possibility of introducing changes that lead to a worsening of the business environment in draft resolutions of the Government, presidential decrees, and federal draft laws developed by federal executive authorities, and which have already passed regulatory impact assessment (integrated impact assessment). At the same time, it must be established that in case of the necessity of introducing significant changes, the draft must be returned from the office of the Government of the Russian Federation and once again passed through the RIA procedure. Control over the implementation of these provisions should be entrusted to the Legal Department of the Office of the Government of the Russian Federation.

b) Tasking the Department of Deregulation and Impact Assessment with conducting a medium-term systematic impact assessment, which will include a regulatory impact assessment (RIA), ex-post evaluation of legislation (EPE), an assessment of the technological impact as well as integrated procedures of a financial feasibility study (FFS) and anti-corruption expert analysis (ACE). The number of other mandatory examinations and reviews (currently not carried out in fact or carried out formally) must be reduced.

c) Ensuring the introduction of a full-fledged parliamentary RIA in the State Duma before 1 January 2020 and an EPE by 1 January 2021; establishing a mandatory EPE of federal laws regulating economically significant relations (determined on the basis of quantitative thresholds) as well as the subordinate acts adopted in the course of their execution at least once every three years, bearing in mind that the evaluation of the law and related subordinate acts should be implemented in a comprehensive manner (as a whole), and ensuring a retrospective EPE of economically significant laws adopted in the last 3–5 years.

d) Recommending that the Central Bank ensure the improvement of the implementation of draft normative legal acts of the Central Bank by 1 January 2020 and ensure the conduct of an EPE of economically significant normative acts issued by the Central Bank over the last three years (starting from 1 March 2015).

⁵³ Including Eurostat (<http://ec.europa.eu/eurostat/web/main/home>), monitoring of the Eurobarometer (http://ec.europa.eu/public_opinion/index_en.htm), the Joint Research Center of the European Commission, The EU Open Data Portal (<http://data.europa.eu/euodp/en/data>) and the websites of international organizations such as the United Nations (<http://data.un.org>), OECD (<http://stats.oecd.org>), the International Energy Agency (www.iea.org), the WTO (www.wto.org), the World Bank (<http://data.worldbank.org>), and the IMF (www.imf.org).

Box 16

In 2011, the Directorate for Impact Assessment and Added European Value was established by the European Parliament. The Directorate performs the following tasks:

- *regularly conducts an initial appraisal of all impact assessment reports and draft legislation submitted by the European Commission and assesses their methodological aspects and compliance with the established quality criteria;*

- *at the request of European Parliament committees, the Directorate may:*
 - *carry out additional extended assessments of the quality or degree of independence of the impact assessment documents of individual draft regulatory acts prepared by the European Commission;*

 - *conduct their own additional or alternative assessments to examine issues that have not been adequately reflected or have been omitted from the Commission's submissions;*

Box 17

Regulatory impact assessment is one of the regulatory processes carried out by the Reserve Bank of New Zealand. In accordance with the New Zealand Reserve Bank Act (article 162 AB), the Bank is required to assess the projected effects of proposed regulations, with the exception of projects that make technical adjustments to the regulation or have no significant effect, as well as the RIAs of existing regulations in the established areas of regulation. The materials for public discussions can be found in the relevant section of the Bank's website.

Smart regulation tools and approaches

Box 18

Reducing the regulatory load for a fixed period (South Korea)

*The Temporary Regulatory Relief mechanism was introduced in South Korea during the post-crisis period (following the global financial crisis of 2008–2009) as an instrument for improving the regulatory environment as quickly as possible. The mechanism was aimed at stimulating entrepreneurial activity and private investment during the period of economic recovery. It provided for the elimination or simplification for a **limited period (1–2 years)** of certain regulatory requirements that pose a significant burden to business, including:*

- *Allowing a number of manufacturing enterprises to expand their sites to 40% of current volume without obtaining construction permits;*
- *Reducing the frequency of checks and inspections;*

It would also be possible to see to the creation of **special territorial zones** to test deregulation measures or reduce administrative costs (on the basis of Japanese experience), and to see that the results of the “preliminary implementation” of certain measures aimed at simplifying the regulatory environment were taken into account when deciding whether to implement similar measures at the national level.

e) Recommending that the State Duma and the legislative (representative) bodies of the regions of the Russian Federation establish common commencement dates (1 April and 1 October annually); compelling the Government and the federal bodies of executive power also to introduce their normative acts into effect precisely on these dates. It would be advisable to publish acts that worsen business conditions and the situation of individuals not less than 90 days before this date (otherwise they would come into force at the next fixed date) and oblige the Ministry of Justice to enter it to the pravo.gov.ru portal section with information on acts coming into force from each respective date, updated immediately upon adoption of the act, and on acts ceasing as a part of legal experiments.

In order to further strengthen the effect of this measure, we recommend to make it possible to enact laws only if all subordinate acts specified in these laws have been developed and entered into force simultaneously.

Box 19

Programme for creating “special zones” to test tools of regulatory reform (Japan)

A law “On Special Zones Related to Structural Reforms” was passed in Japan in 2003. It established a legal basis for the creation of so-called “special zones” – territories within which preliminary testing of certain measures for deregulation and the simplification of business conditions was carried out. Proposals for such legal experiments could be made by local authorities, private companies, or citizens. An Evaluation Committee was created for the purpose of managing the activities carried out within the territory of the “special zones” and met once a year to decide on the further fate of measures implemented in the zones. Upon completion of preliminary testing, a decision could be made to expand the measures tested to the national level, to contain them within a limited area, or to stop their implementation.

f) encouraging the Russian Government to provide an opportunity to conduct **pilot projects in regions of the Russian Federation** that express a desire to improve the business climate (in addition to the mechanisms of target models and ratings of the Agency for Strategic Initiatives) through mass “revision” of the regulatory legal base on the regional and municipal level with the use of feedback from the business community and public dissemination of the results of such pilot projects.

g) Recommending that the Eurasian Economic Commission develop and adopt the **Concept of General Principles of Regulatory Policy** in the Member States of the Eurasian Economic Union, including for the systematization of the principles of regulation reflected in the concepts for creating common markets for certain sectors of the EEU.

§ 3.3. METHODOLOGICAL, ORGANIZATIONAL AND ANALYTICAL SUPPORT

Reducing the number of discussions and examinations

First of all, simultaneously with the creation of the DC and the introduction of a full-fledged RIA and AIA in the Russian Parliament, it would be useful to reconsider existing procedures for public discussion of draft normative legal acts with a view to systematizing and eliminating those that are duplicate or redundant, including 'zero readings' in the Public Chamber, discussions in working groups of the Expert Council under the Russian Government, and so forth.

Upon completion of this process, it is proposed to create **a specialized unit within the Government Office responsible for the introduction of behavioural regulation tools** (so-called 'push') aimed at achieving public good with lower total costs.

Quantative methods

In addition, it is recommended that the Department of Deregulation and Impact Assessment and the DC jointly develop **Recommendations for calculating cost reimbursement to businesses and citizens against illegal actions (inaction) of state and municipal authorities** and subordinate organizations and introduce them in the Russian judicial system before 1 January 2020.

At the same time, the Department of Deregulation and Impact Assessment and the Administrative Tribunal should work together with interested departments and extra-budgetary foundations (including the Ministry of Health, the Federal Labour and Employment Service, Emercom, and Social Insurance Fund among others) and business representatives to **develop a model for evaluating life**, including an assessment of quality years of life and disability in order to properly compare the effects of regulation on the safety and health of citizens as well as business climate.

It would also seem advisable to analyse foreign practices and extend the model of standard business costs to include the measurement of the administrative costs of public authorities, affiliated budgetary organizations, and private citizens. At the same time, it is necessary to establish target values for reducing administrative and substantive costs for businesses, authorities, affiliated organizations, and private citizens for the period leading up to 2024 and to determine the overall scope of optimization of normative regulation.

From "one in – one out" to "one in – X out"

In addition, it is recommended to reform the existing one in – one out mechanism, which provides for the abolition of commensurate requirements in the same area of legal regulation in the relevant field of entrepreneurial or other economic activity when new requirements are introduced with a view to moving away from curbing the growth of administrative burdens imposed by regulation on entrepreneurial entities, to a multiple reduction of such volumes (one in – two out and one in – X out mechanisms).

Box 20

In the United Kingdom, the One-in, One-out mechanism first evolved into One-in, Two-out and then a one in – three out system. Unlike the approaches of most other countries, the approach adopted by the United Kingdom allows for a creation of a Savings Bank for administrative costs. That is, if the adopted act reduces business costs by \$10 and increases by \$1 then the remaining \$7 can be used to balance effects of other regulatory norms.

In late January 2017, the United States also announced the adoption of the One-in, Two-out rule, which, according to the Memorandum of the Office of Management and Budget, should be applied to economically significant regulations (entailing costs of more than \$100 million per year).

Box 21

In international practice, both quantitative and qualitative criteria are used to determine the significance of projects of RLAs. Thus, in the United States, an act is considered economically significant if the potential costs or benefits of their introduction are, according to preliminary estimates, more than \$100 million in the United States, C\$50 million in Canada (until 2008), and 10 billion won (annually) in South Korea. In South Korea, a quantitative criterion is also established to assess the number of subjects of regulation: acts affecting more than one million people are considered significant.

Qualitative criteria can be used in combination with quantitative criteria.

Subject area of impact assessment

In conclusion, it would be expedient to make changes in the approaches to defining the RIA subject area, including:

- Rejecting the current approach for determining the degree of the regulatory impact of RLA projects on the criterion of norm novelty.

- Developing criteria for determining the significance of RLA projects depending on the scale of their impact on business conditions (improvement – deterioration of the business situation, threshold values of emerging costs, regulatory objectives); concurrently refining an analogous Small Business Test procedure by defining the key criteria for determining the significance of the draft RLA for small business, micro business, and the self-employed.
- Extending the RIA procedure to all regulatory spheres and eliminating unjustified withdrawals from the RIA of draft regulatory legal acts adopted as part of the implementation of priority programmes (projects), action plans, and roadmaps for the development of the digital economy and the implementation of the National Technological Initiative.
- Excluding acts that do not have a significant impact on the conduct of entrepreneurial and investment activities from the subject area of the RIA, identifying specific types of such acts, for example, projects that introduce technical and legal changes into existing acts; draft decisions of an organizational nature, and so forth.

Box 22

Many countries establish a number of exemptions from to the subject area of RIA. In some countries, the RIA procedure excludes acts of independent agencies, internal departmental acts, acts that make technical amendments to the legislation, as well as acts requiring urgent adoption. In some cases, certain areas of regulation that are not subject to RIA may be established as exceptions in order to safeguard national interests or to deal with emergencies (e.g. tax, budgeting, criminal law, law enforcement).

In the new European Commission Guidelines adopted in May 2015, there are no exceptions, and all filters are replaced by the principle of proportionality, according to which RIA is not carried out for initiatives of the European Commission that do not have a significant impact, and in the development of which the European Commission has no authority to choose regulatory alternatives.

§ 3.4.

SCENARIOS FOR IMPLEMENTATION

Since there is no consensus at the moment among the Russian political elite regarding the need for an integrated regulatory policy, two main scenarios for implementing the measures proposed above can be foreseen for 2018–2024.

Scenario 1 (proactive)

Inclusion of a number of measures that allow for a key switch of regulatory reform, the launch of deregulation, in the Presidential Decree on the reform of public administration in the Russian Federation (in the case of its publication). Such measures could include:

- **(before 1 September 2018)** submitting proposals for the creation of a central body for deregulation and determining its place within the system of government authorities of the Russian Federation, taking into account the binding nature of its decisions for executive bodies and the leading methodological role it would play in conducting deregulation and the reform of control and supervisory activities;
- **(before 1 July 2019)** analysing the existing regulatory legal acts in priority areas of legal regulation (implementing national socio-economic development goals), determining the principles and criteria for the redundancy of requirements established by these legal acts, determining the list of regulatory legal acts, which, on the basis of the criteria developed, must be abolished or to which amendments and additions must be made;
- **(before 31 December 2018)** drafting and submitting to the State Duma of the Federal Assembly a federal draft law "On Regulatory Legal Acts" that defines the system of RLAs, their hierarchy, ways of resolving conflicts, and introduces modern regulatory policy tools into lawmaking, including implementing codification of existing tools and considering the possibility of creating an integrated impact assessment;
- **(before 1 October 2018)** developing and introducing amendments to the Regulations of the Government of the Russian Federation and the Rules for the Development of Regulatory Legal Acts of the Federal Executive Authorities that establish that regulatory legal acts that worsen the conditions for the implementation of entrepreneurial and investment activities should be published no less than 180 days before their entry into force at fixed dates of entry into force of the regulatory legal acts; eliminating the possibility of introducing changes in projects of departmental RLAs, resolutions of the Russian Government, presidential decrees, and drafts of federal laws developed by federal executive bodies that have undergone regulatory assessment and which lead to a worsening in the conditions for carrying out entrepreneurial and investment activities following the assessment;
- **(from 1 January 2019)** extending the model of standard business costs to measure the administrative costs of public authorities, affiliated budgetary organizations, and private citizens;
- **(from 1 January 2019) putting into effect the Standard for proving the need for regulation.**

It has been suggested that the indicators of this Decree include growth in the Russian Federation in terms of the quality of regulation as part of the World Bank's Quality Management Index (WGI RQ) from -0.42 in 2016 to +1.0 in 2024. Measures to achieve this goal will require efforts to improve positions in 12 different indexes and ratings, of which currently only the Global Competitiveness

Index of the World Economic Forum is included in the KPI of federal government bodies (see Appendix 4)⁵⁴. The very diversity of these indicators essentially precludes their being increased artificially and will require a consistent regulatory policy. As a result, by 2024, Russia will be able to advance in relation to the WGI RQ indicator to join those former Soviet bloc countries that have already successfully carried out regulatory reforms (such as Poland, Georgia, and the Baltic countries).

If this scenario materializes, the Commission on Deregulation that is to be created by 1 October 2018 could take on further coordination of the remaining measures that were not included in the first regulatory package, thus driving any further changes.

Scenario 2 (inertia)

Preparation of the draft Presidential Decree “On Measures to Improve Regulatory Policy in the Russian Federation” (that is, the issuance of a ‘sectoral’ decree similar to the Presidential Decree No. 618 “On the Main Areas of State policy for the Development of Competition” dated 21.12.2017) by concerned departments, the business community, and related experts by the end of 2018.

This Decree proposes comparing all the measures outlined in Chapter 3 with specific executors and terms (adjusted with an eye to the terms of issuance of the Decree) as well as offering more detailed performance indicators, including:

- by 2024, all draft RLAs (developed in the executive body of the state authority and introduced by any entities of the legislative initiative) that have an aggregate impact on business and society of more than 500 million roubles must pass mandatory preliminary impact assessment and, in case of a negative conclusion, shall be returned to the developer (initiator);
- growth of the Russian Federation in terms of the quality of regulation as part of the World Bank’s Quality Management Index (WGI RQ) from 0.42 in 2016 to +1.0 in 2024 (corresponding to the positions of countries in transition and already members of the OECD) is ensured.

The main risk in the implementation of this scenario is that the preparation of a comprehensive Decree and the entire package of changes in legislation, the development of guidelines, etc., without a central regulating body, will run into staff-based resistance and objections from private interest groups in such a way that it will not be released during the window of opportunity following the formation of the new government (6–12 months).

⁵⁴ Appendix 4 is only available in the Russian version of this Report, pp. 178–181, https://www.csr.ru/wp-content/uploads/2018/05/REGULYATORNAYA-POLITIKA-V-ROSSII_INTERNET.pdf



APPENDIX **1.**

INTERNATIONAL
INDICATORS OF
THE QUALITY OF
THE REGULATORY
ENVIRONMENT

While working on this Report we analyzed four international rankings of the quality of regulatory environment for doing business:

- Ease of Doing Business — from 0 до 100 points (hereinafter DB)⁵⁵;
- The Global Competitiveness Index of the World Economic Forum — from +1 to 7 points (hereinafter GCI)⁵⁶;
- Regulatory Quality Ranking — one of the six indicators of the Worldwide Governance Indicators prepared annually by the World Bank — from '-2,5' to '+2,5' points (hereinafter WGI RQ)⁵⁷;
- Area 5C. Business Regulations / Economic Freedom of the World of the Canadian Fraser Institute — from 0 до 10 points (hereinafter EW 5C)⁵⁸.

To compare the position of the Russian Federation in these rankings with the positions of other countries, the values of the indicators (not positions in the rankings) were standardized to a single scale, from 0 to 1. Retrospective data sets placed on the websites of the corresponding rankings (indices) were used as sources.

The following diagrams reflect the dynamics of the quality indicators of the regulatory environment in Russia, as well as in selected countries (both developed and countries in transition with different legal systems): the USA, the Netherlands, Singapore, Poland, Mexico, and Kazakhstan.

⁵⁵ <http://www.doingbusiness.org>

⁵⁶ <http://reports.weforum.org/global-competitiveness-index-2017-2018>

⁵⁷ <http://info.worldbank.org/governance/wgi>

⁵⁸ <https://www.fraserinstitute.org/studies/economic-freedom-of-the-world-2017-annual-report>

REGULATORY POLICY IN RUSSIA: :
KEY TRENDS AND THE ARCHITECTURE OF THE FUTURE

Figure 1. Russia

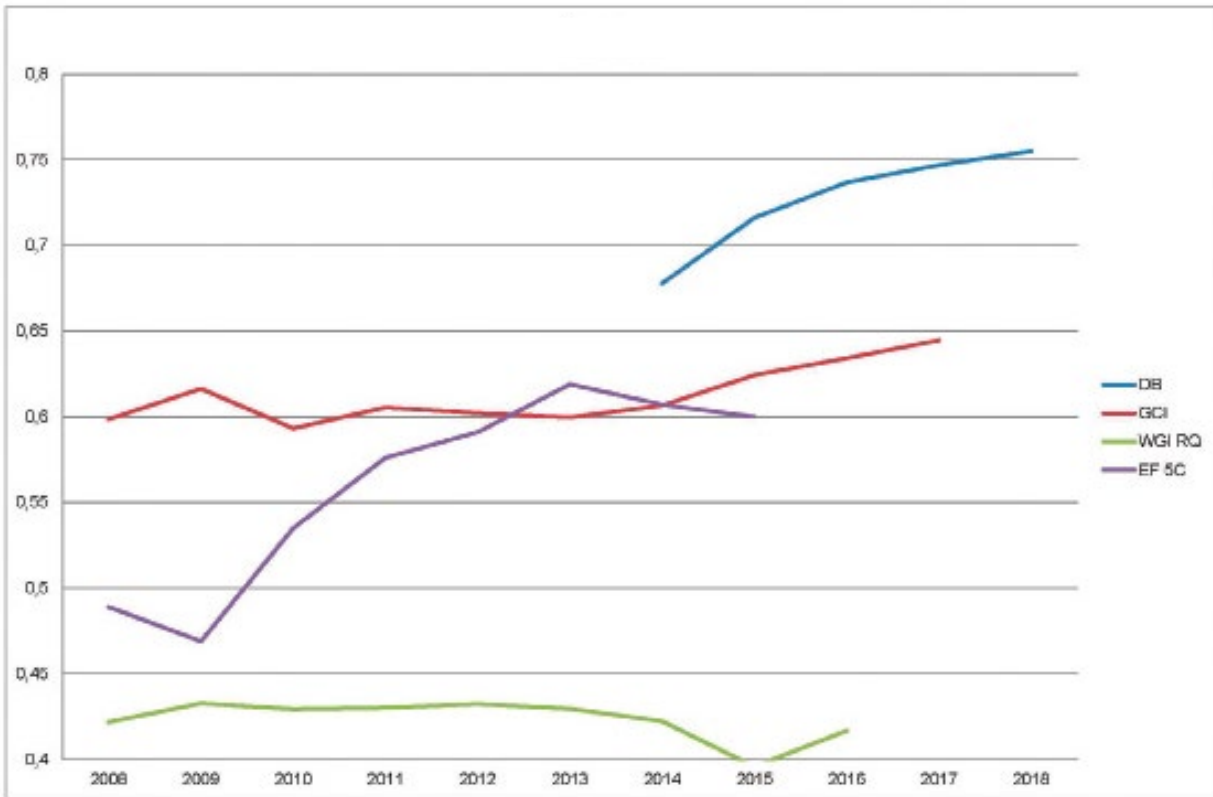


Figure 2. USA

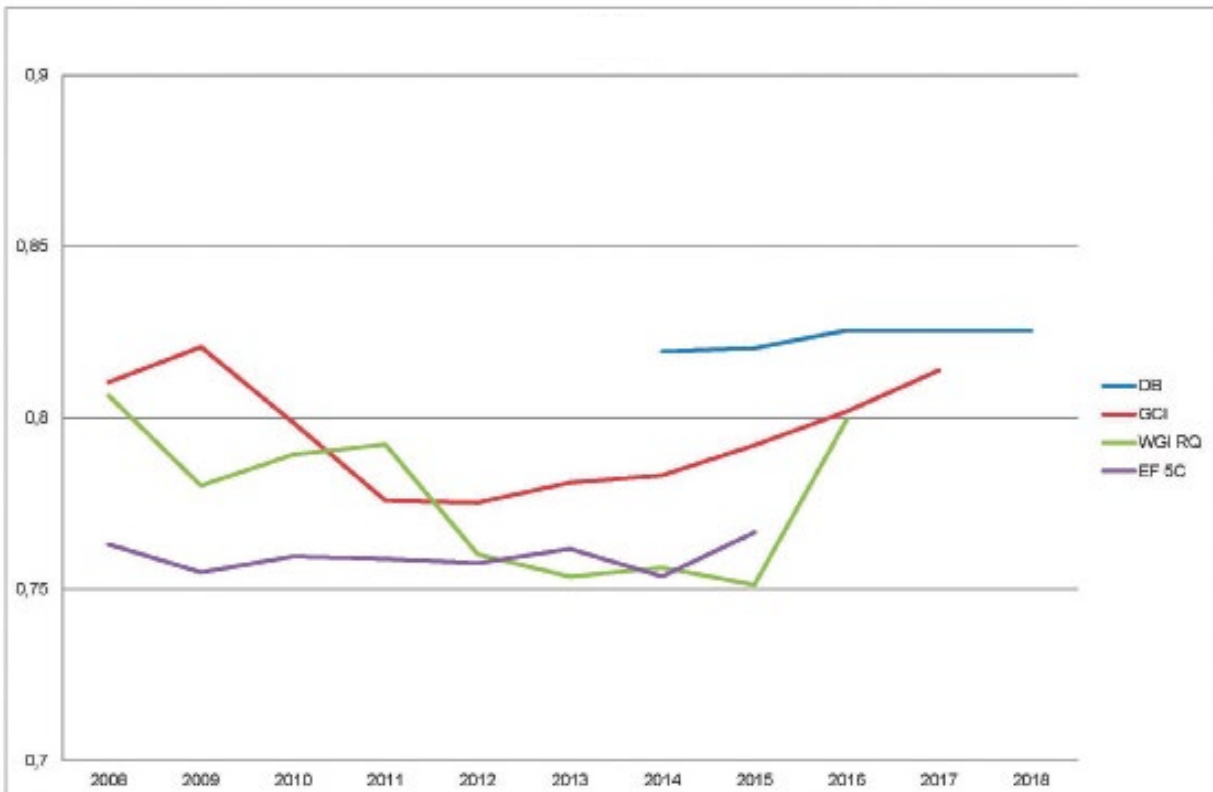


Figure 3. The Netherlands

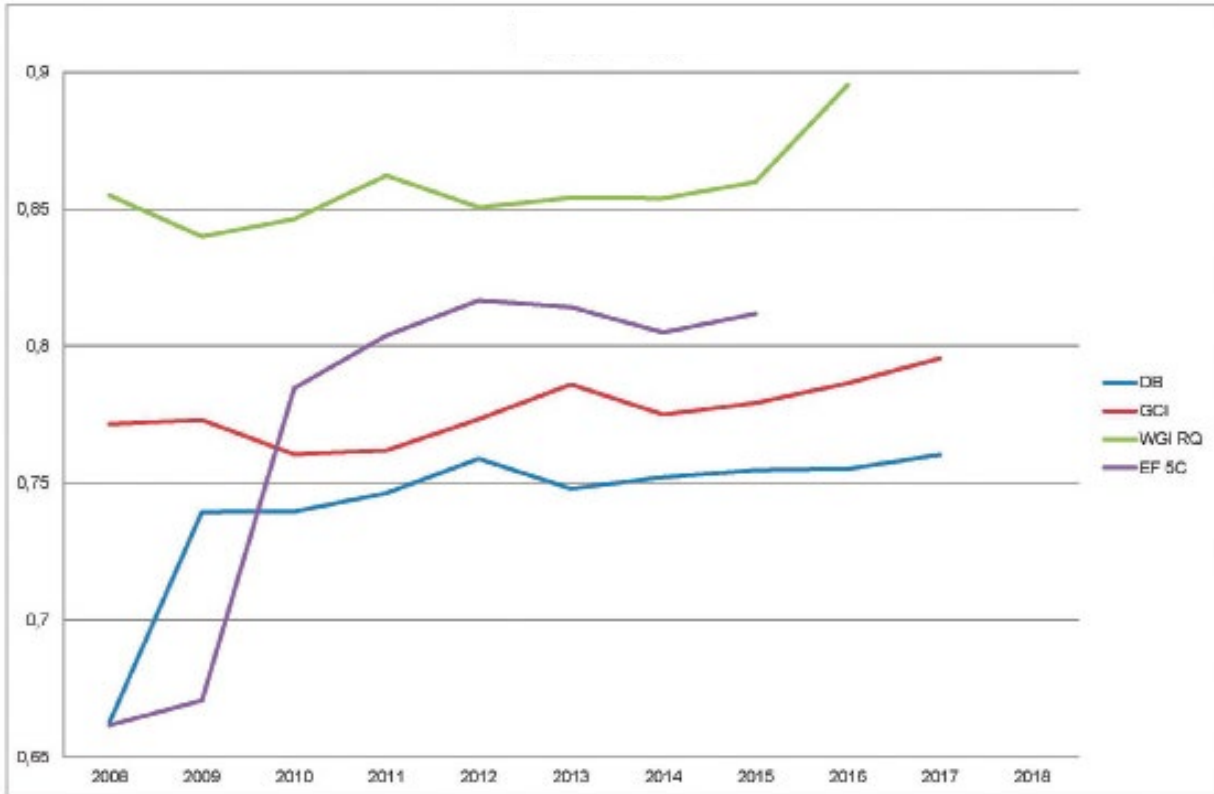
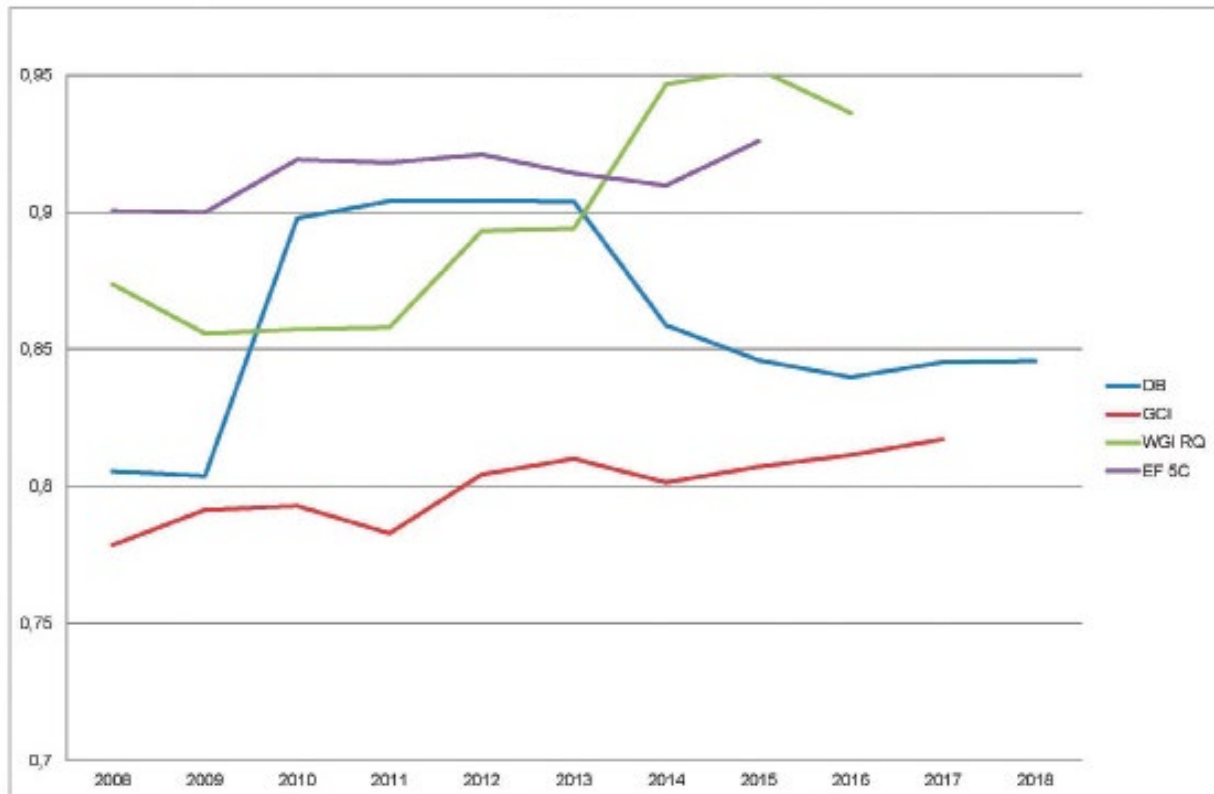


Figure 4. Singapore



REGULATORY POLICY IN RUSSIA: :
KEY TRENDS AND THE ARCHITECTURE OF THE FUTURE

Figure 5. Poland

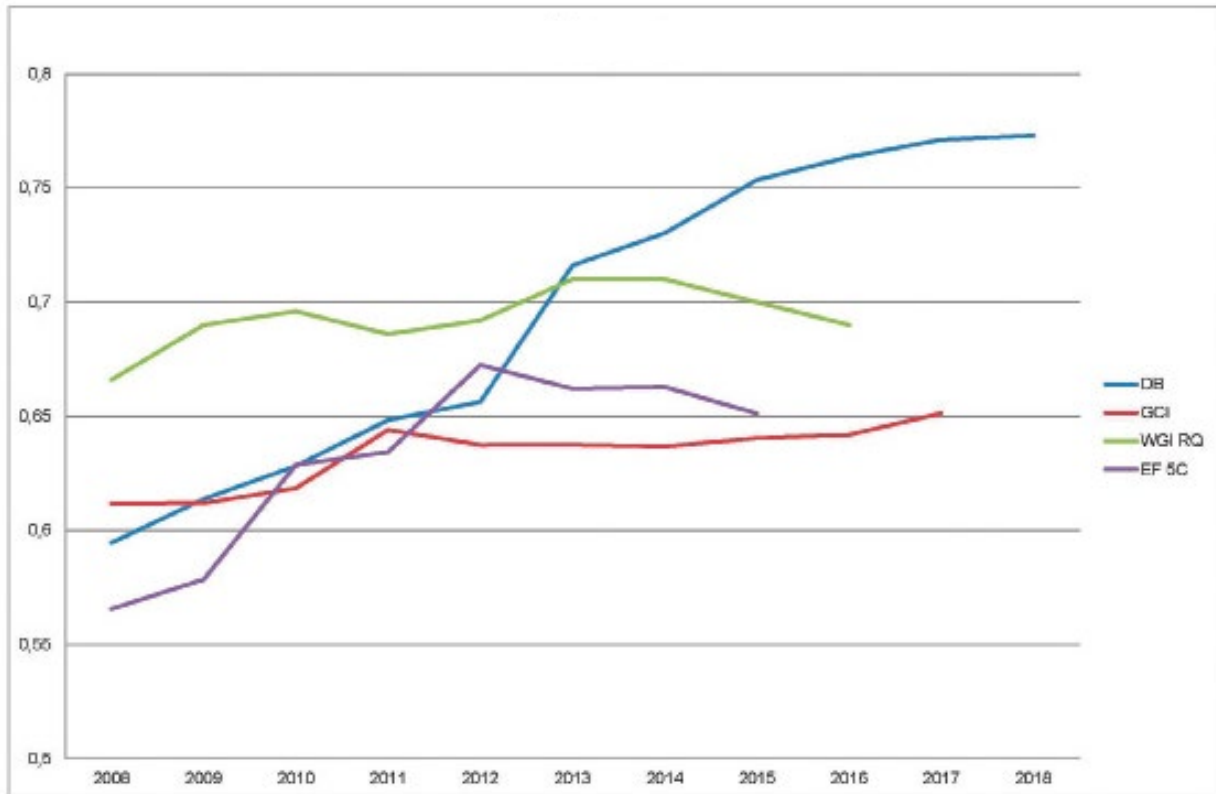
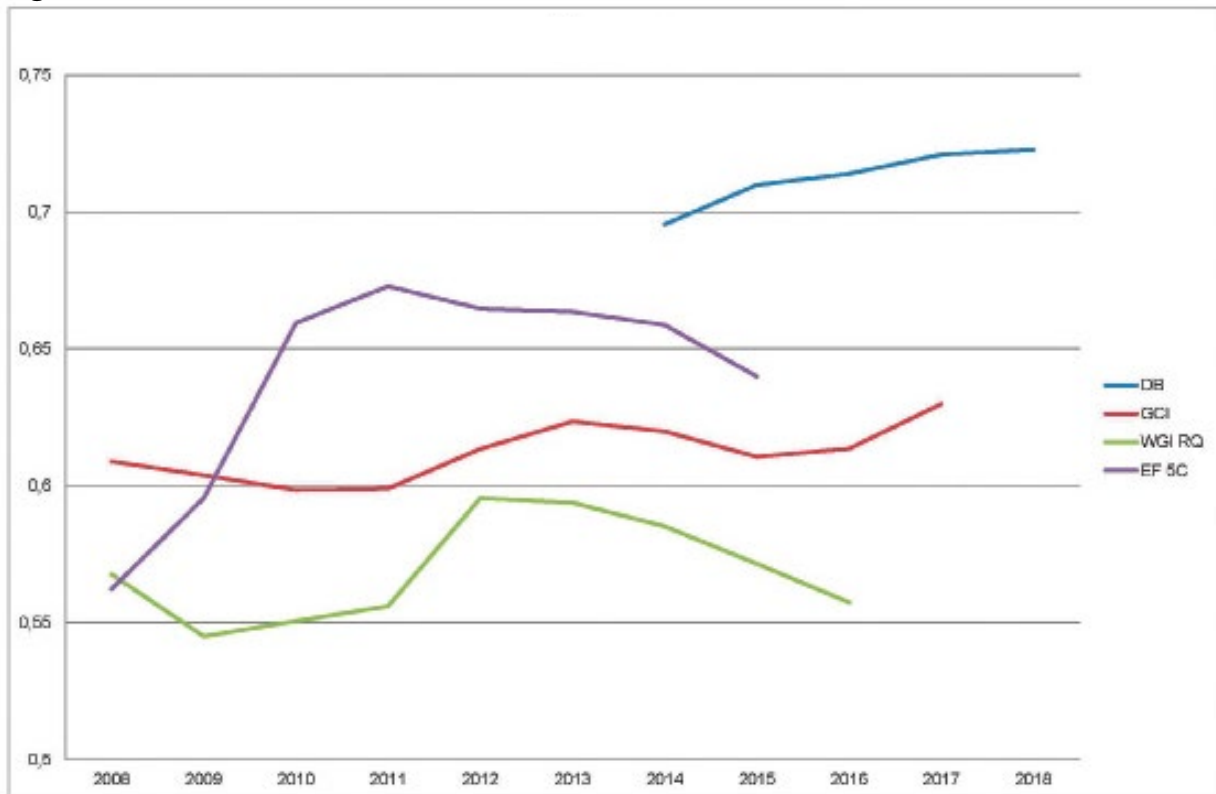


Figure 4. Mexico





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