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REGULATORY REFORM IN RUSSIA

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ANALYSIS

Regulatory Policy in Russia—Smart Suggestions, But Poor Implementation

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Abstract
Russia's economy suffers from excessive regulation. Even though local experts have developed promising plans to address the problem, the government lacks the political will to implement the necessary policies required for change. In effect, reform has been postponed until the next political opening.

New Proposals for Economic Reform
In May 2018, at the beginning of the St. Petersburg International Economic Forum, the Center for Strategic Research and the Higher School of Economics released a new report, "Regulatory Policy in Russia: Main Tendencies and an Architecture for the Future" (hereinafter—Report). It is the first work on this topic since the publication of *Russia: Building Rules for the Market—OECD Reviews of Regulatory Reform* in November 2005.

In terms of their ambitions, the policy proposals in the document assumed that Center for Strategic Research Director Aleksei Kudrin would become either a new assistant to the president for the economy or first deputy prime minister in a new government. Unfortunately, neither transpired.

The secondary purpose behind the regulatory reforms proposed was to encourage Russia to launch simultaneous transformations of the judicial and law enforcement systems. Before turning to the main ideas of the document, we will examine the political and economic contexts in which this document was conceived, discussed, and drafted.

"System Liberals"
During Putin's third presidential term (2012–18), the so-called liberal faction, consisting of a few high-level bureaucrats and a wide range of experts from the Higher School of Economics, the Russian Presidential Academy of National Economy and Public Administration, the Committee for Civic Initiatives, and the Agency of Strategic Initiatives, tried as best they could to push forward the agenda of "improving the investment climate," promoting open government, increasing the rationality and transparency of adopted regulations, and raising Russia's position in such international ratings as the World Bank's Ease of Doing Business and the World Economic Forum's Global Competitiveness Index.

The slogan of reducing administrative barriers first appeared in Russia in 2002, but after ten not very successful years fighting these barriers, the Russian government chose to focus on a comprehensive regulatory impact analysis (RIA). Beginning in the Fall of 2010, the state strengthened its ability to implement policies at the federal level (the executive branch and, to some extent, the State Duma and Central Bank) and then at the regional and municipal levels (with undisputed effectiveness), as well as the supranational level (the Commission of the Eurasian Economic Union, where Russia is the most powerful economy). Moreover, there were few best practices from the regulatory policies of the OECD countries that Russian experts and bureaucrats did not discuss and some of them were even adopted at the end of 2016. The 2012 opening of a portal for posting regulations and laws called <regulation.gov.ru> obviously took as an example resources provided by the American government, such as <www.regulations.gov> and <www.federalregister.gov>.

Despite the introduction of these new instruments, the quality of the regulations in 2015–16 continued to deteriorate. The confrontation between Russia and the West made it difficult for the system liberals to argue that Russia should follow the European example as early as the middle of 2014.

Nevertheless, in the conditions of an "ideal storm" at the beginning of 2016—with the price of oil falling to $25–27 a barrel and the likely prospect of Hillary Clinton winning the U.S. presidential elections in November 2016—the Russian leadership ordered the liberal faction to elaborate a Development Strategy for the country through 2024. The Center for Strategic Research, under Aleksei Kudrin's leadership since March 2016, became the headquarters for writing the Strategy, which included, for the first time in the Russian history of writing strategic documents, a regulatory policy as one of the key reforms of public management.

The Main Ideas of the Regulatory Policy Strategy
The Strategy's section on regulatory policy (and the entire Report) were prepared in maximum contact with the business and expert communities. Since December 2016, the Center for Strategic Research and the Higher School of Economics hosted 12 seminars focused on various aspects of regulatory policy. The preliminary results

were discussed at the Krasnoyarsk Economic Forum and during the St. Petersburg Economic Forum. During the fall of 2017, the Center for Strategic Research and the legal database Garant launched a special project to collect proposals suggesting which administrative barriers should be removed.

The Strategy for the first time formulated reasonably tough efforts for actually adopting instruments for improving government regulation, including regulatory impact analysis, open government, financial feasibility studies, and others. The regulators did not consider it necessary to demonstrate the necessity for the regulations in the first place or examine alternatives. Significant and burdensome laws for business are frequently adopted without any evaluation of the impact, or if there is such an evaluation, it is done formally. The financial and economic feasibility study for laws in the last 10 years has usually ended up simply consisting of the phrase "additional budgetary financing is not required."

Secondly, the Strategy demonstrated the absurdities in the current system of regulation: "in addition to the problem of the general imperfections in the legislation regulating entrepreneurial activities in Russia, and the overall situation, with the constant changing of the rules of the game, makes the picture even more disappointing. In addition to the significant losses incurred in simply trying to adapt to the new regulations, with their detailed and additional demands, the permanent 'reforms' have a long-term negative impact (Report, p. 27)." Nearly half of the Report highlights examples of ineffective, unbalanced, and simply paradoxical norms, which exert a direct influence on the daily practice of business activity. Currently, to a greater or lesser degree, norms "prescribing" state intervention into all economic processes are characteristic practically for any sphere of Russian regulation.

The profit lost as a result of the regulator changing the rules of the game in many Western countries is a cause for businesses to bring lawsuits against state agencies. In Russia to date, such practices are the exception and the number of victories for businesses in similar cases can be counted on the fingers of one hand. The authors of the Report stress that "the result of revising the existing norms, the impossibility of observing them, and even predictions for the short term have led to a crisis of confidence in the actions of the executive and legislative branches, a lack of trust in the possibility of successfully challenging their actions (or lack of action) in court, a low desire to invest, a reevaluation of the risks associated with opening up businesses in the country, and the naturally strengthening trend for capital to flee. As a result, the business community has developed a stable sense that opportunistic behavior is the only possible answer to any significant regulatory intervention and even reductions in the regulatory burden are seen as short-term and "suspicious (Report, p. 28)." In response to the opportunism, Russian government agencies increasing do not see the sense of significantly simplifying the conditions for conducting business and the vicious circle continues.

The authors of the Strategy propose three basic directions for shifting toward "smart regulation." First is decisive deregulation. During the next six months it is necessary to create a Commission for Deregulation at the level of the president or government, as demonstrated by successful examples of eliminating barriers in countries such as Mexico, South Korea, Croatia, and the UK. After carrying out its functions, in five years the Commission could be transformed into a National Council on Smart Regulation.

Second, it is necessary over the long-term to defend the existing instruments of smart regulation. Now, for example, in order to completely immobilize the mechanism for regulatory impact assessment, one need only introduce several amendments into a government regulation and the assessment becomes "optional." Therefore, it is necessary to develop and adopt a "law on laws." This new constitution of qualitative norm-making would include contemporary regulatory tools. Full regulatory impact assessment (prospective and retrospective analysis) should become part of the work of the State Duma and the Bank of Russia, after which the assessment loop should finally close and block any irrational regulation. This process would gradually overcome the regulatory chaos that has been growing in Russia for the last 15 years.

Third, these instruments and methods should be developed and encoded into law. State agencies and expert participants in public hearings would move accounting methods toward reasoned communication, the use of empirical data, and expertise developed by consultants. Legal experiments and regulatory sandboxes (areas with reduced regulatory burdens) would help choose the best design for new, completely unknown spheres of regulation, which frequently foster points of growth for innovation. The use of nudging would not only be the field of Nobel Prize winner Richard Taylor, but make it possible to overcome the cognitive mistakes of bureaucrats.

Smart Regulation Disappears from the New Agenda of the Government and President

It is indicative that Putin's decree issued after his inauguration for a fourth term in May 2018 practically had no room for questions of reforming the public sector or pushing forward even the most harmless for bureaucrats instruments for regulation proposed by the Center for Strategic Research and the Higher School of Economics.

This was a significant difference from the presidential decrees of May 2012, when an entire decree was devoted to state administration and introduced public consultations and a new scope for regulatory impact analysis.

On the other hand, the presidential decree ordered the government to revise the so-called "Basic Directions of Activity for the Government," in which it is possible theoretically to anticipate specific measures for improving regulations. Unfortunately, in the final version of this document signed on 1 October 2018 these measures were watered down to simply "transforming the business climate," a set of policies put forward by the new Minister of the Economy Maksim Oreshkin's team, which did little more than call for the on-going collection of proposals about administrative barriers and two in-person sessions a year in the offices of the ministry during 2018–2024 in which to discuss these proposals.

So far, the effort to "transform the business climate" mechanism does not impose the necessary structural changes: The Ministry of Economic Development chose passable measures which should not elicit serious bureaucratic opposition. But even these partial measures provoked displeasure and opposition from other agencies. For example, how important is it for entrepreneurs if the authorities ban the opening of administrative cases during the course of inspections? Not very. As is well known, administrative cases do not destroy businesses; rather businesses are wrecked by criminal investigations, when the authorities seize documents and equipment and send the entrepreneurs to jail. Another example of a half-measure is increasing the period of time required for a new form of tax accounting to come into force from one to three months in order to allow businesses to adapt. For comparison, as recent as 2014, the Ministry of Economic Development, drawing on the experience of the UK (so called common commencement dates), proposed that regulations only take affect on 1 April and 1 October each year so that there would not be constant changes; under this system regulations could only take effect at least six months after they were adopted. But even a three month wait seemed too long to the Russian Ministry of Finance and at the last minute it rejected this mini-transformation!

Somewhat politically ironically, ten days before the adoption of the Basic Directions of Activity for the Government, the World Bank published its annual World Governance Indicators. The regulatory environment for business in Russia deteriorated. The indicator for 2017 stayed in negative territory and was -0.48 compared to -0.42 a year earlier. The indicator of the quality of regulation measures the ability of the government to "develop and implement effective regulation, facilitating the development of the private sector" and can vary from a low of -2.5 to a high of 2.5. The quality of the regulatory environment in Russia consistently was worse than average since the index was first introduced in 1996. Russia reached its peak in 2004 with a score of -0.12. By comparison, Kazakhstan in 2017 crossed into positive territory for the first time with a score of 0.12. The post-Soviet countries of eastern Europe have long been in the positive zone. Singapore has led the index for many years.

Conclusions

As this analysis demonstrates, the task of conducting regulatory reform in Russia has been postponed until there is a new political opening. Some consolation can be found in the fact that finally a regulatory program has been prepared and is available to all experts and stakeholders (and was discussed with their participation in 2016–18). It can be implemented within six months if the necessary political will is found in Russia.

The authors of the Strategy point to regulation as an additional driver of growth for the Russian economy (increasing it 1.5–2%) even though the reliance on state capitalism does not make it possible to achieve "above average" GDP growth as the presidential degree demands. The Report authors do not think that it makes sense to blame Russia's current stagnation only on the sanctions. Rather they argue that the regulatory problems were "one of the key factors hindering economic growth even in 2013 and they, along with the economy's adjustment to the changing conditions in world energy markets, do not allow it to reach global-average tempos of growth. The economy cannot effectively absorb the accumulated mass of administrative burdens when there is a significant drop in export revenues (Report, p. 70)." Only private investment and deregulation can lead to stable economic growth. It is necessary to first cleanse existing legislation of out-dated and loss-producing demands and then conduct a largescale reexamination of the approaches to regulating economic activity, which in the future should be based on the rational minimization of state intervention into economic processes, expanding innovative decisions, and finding a balance between regulation and the resulting accumulation of regulations with the level of risk to specific parties.

About the Author

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See overleaf for Recommended Reading

Recommended Reading

- Center for Strategic Research (Aleksei Kudrin), Research Reports: <https://www.csr.ru/issledovaniya/>
- Golodnikova F., Yefremov A., Sobol D., Shklyaruk M., Tsygankov D. Regulatory policy in Russia: Main tendencies and architecture of the future (analytical report). Moscow: Center for Strategic Research, 2018. 192p. Interactive version [RU]: <http://ivo.garant.ru/#/document/77580500/>
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