

# Regulatory Impact Assessment in Russia

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## *1. Introduction*

According to normative definition given by one of the OECD Guidelines (2004), Regulatory Impact Assessment (RIA) is "supposed to help decision-makers to choose better regulations in different ways: by a correct and complete definition of the problem, which should at the same time improve the sensitivity of the regulation to diverse socio-economic needs; by selection, because it should suggest the exclusion of unnecessary or unreasonable regulations, and to take into account voluntary, or self-regulatory, or at least less intrusive, "softer", more indirect options; by the use of scientific and testable techniques, which should be applied both when gathering the best available information and the different opinions through consultation, and when qualifying the effects and quantifying costs and benefits of given options".<sup>1</sup> In short, RIA is understood as a mechanism for systematic identification of the main problems and objectives of the proposed regulation, identification and assessment of the main alternatives to achieve the chosen objectives.

RIA is one of the newest tools to optimize public administration, which is already implemented at the federal level in Russia and now is being gradually extended to the regional level. RIA is probably one of the innovative public administration tools that was adopted by Russian authorities almost at last – after result-oriented budgeting, e-government, anti-corruption expertise and effectiveness analysis of government action programs, although before the newfangled "crowd sourcing". The story of RIA development in Russia starts from XX-XXI centuries when the elements related to various aspects of regulatory policy were vigorously implemented in a number of policies (sometimes it happened overnight, sometimes gradually, by authoritative decision or by initiative). However, let us take a look back.

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<sup>1</sup> A comparative analysis of regulatory impact assessment in ten EU countries: a report prepared for the EU directors of better regulation group. Dublin, 2004. p. 9.



It is known that the idea of legislation improvement is not new and existed hundreds of years ago. In the Russian Empire, more than 100 years from now, the platform for debates on government bills (in certain fields) before bills were introduced into parliament – the Council on the Local Economy – operated for three years. De facto, the Council ensured carrying out public consultations between the high-ranking officials (as a rule lawyers), on the one side, and both the city bourgeoisie and large landowners – on the other; the latter had already possessed considerable management experience at the level of districts and provinces. The murder of Prime Minister Piotr Stolypin in 1911, who supervised the Council's work personally, and the subsequent revolution left rational motives in an "economic" regulation far behind.<sup>2</sup>

In the Soviet period decision-making process becomes a «black box», rationalization of administrative decisions (including a limited import from «the countries of capitalist camp») even if allowed, appears exclusively in the economic sphere, but not in policy decision making. Cost-effectiveness analysis mainly contains in feasibility studies (and therefore more connected with engineering), but the arguments in favor of technical decisions safety, as a rule, weigh more than a cost-benefit analysis. It is worth mentioning that in the 1950-1970s, within Anglo-Saxon tradition, political science approaches to the policy cycle analysis were developed, which have greatly affected the reform of public administration, the waves of program evaluation development, the emergence of regulatory impact assessment.

No wonder, that it is lawyers who question the efficiency of legal regulations in the USSR. In 60s they argued about "optimality", "validity", "expediency" of these regulations, and sometimes attributed optimum purpose achievement to the maximum economy of material resources, human energy and time. Certainly, in a planned economy calculations leading to evidence-based policies seemed almost incredible. Furthermore, only few lawyers were ready (and it still has not changed) to deny the model of «normative idealism», assuming their dominant role in legislation and not considering a forecast of regulation addressees behavior. On the other hand, the distorted planned economy and pro forma economic education couldn't provide any considerable amount of information and analytical tools necessary for the emergence of RIA.

After the transition from planned economy to market, little has changed at first – a mass departure of young economists, sociologists and political scientists to Western universities during the 90s was necessary, so that having returned they introduced modern approaches (at first in the academic training courses, then in the frames of expert and analytical support of the federal ministries, and finally in calculations ordered by big business).

## 2. Two Post-Soviet Decades – Long Path to RIA

### 2.1. Public sector

Sporadic efforts to implement approaches close to evaluation have been made during Boris Yeltsin's presidency (e.g. requirements for the development of federal programs; adoption of several legal acts, indicating a need for cost-benefit analysis, etc.). But only during the Vladimir Putin's first term in office, which was marked by the implementation of the «liberal project» developed in 1999-2000 at the Center for Strategic Research, RIA had a chance to institutionalize around the federal government bodies of economic bloc.

First of all, three laws from the so-called "Deregulation Package" should be mentioned: Federal law No. 134-FZ "On protection of the rights of legal entities and individual entrepreneurs with regards to state control (supervision)", 2001; Federal law No. 128-FZ "On licensing of certain types of activity", 2001; Federal law No. 184-FZ "On technical regulation", 2002. It is interesting to note that in foreign countries deregulation, which gave birth to regulatory impact assessment, initially focused on the costs for the private sector (mostly SMEs) to overcome the administrative barriers.

It is no surprise that researches conducted for the governmental bodies in the beginning of 2000s were mainly about monitoring the administrative barriers reduction (conducted annually by CEFIR (Centre for Economic and Financial Research at New Economic School), occasionally by Information and Consulting Center "Business Thesaurus" and the State University – Higher School of Economics). However, further development did not follow, while in the West the next step was to expand approaches to RIA and its goals. Firstly, they began counting not only costs but also benefits where possible. Secondly, it became clear that regulation is neither bad nor good, but depending on the objectives of certain industrial policy can be better or worse – taking into account complex effects on the economy, social sphere

<sup>2</sup> See in details: Mogilevsky K.I. Stolypin's reforms and the local elite. The Council on the Local Economy (1908-1910). – Moscow: ROSSPEN, 2008.



and environment. Thus, RIA shifted from the idea of "less regulation" to the idea of "better regulation" (it is interesting that only after the beginning of the financial crisis in August 2008 this argument helped to promote regulatory impact assessment in Russia), and in the end of the year 2010 it evolved into a "smart regulation" concept.<sup>3</sup>

We should also mention Impact Assessment of Environmental Effects that was said to be introduced in 2000 quite independently from the development in other sectors (de facto it was equivalent to Environmental Impact Assessment) and supplemented the post-Soviet legal framework for environmental assessment.<sup>4</sup> It should be noted that RIA growth points in different state bodies or adopted legal acts emerged independently from each other and links between them were quite weak.

Presidential Decree No. 314 "On the system and structure of federal executive agencies" dated March 9, 2004 was adopted in line with "The concept of reforming the budget process in the Russian Federation in 2004-2006" and a number of other legal acts. It seemed that this very law marked a transition from expert-theoretical to practical phase of the administrative reform meaning a change in government bodies' structure, transition to results-oriented budgeting<sup>5</sup> and to the program-target methods of planning the national priority projects. Perhaps Reports on the Performance and Results in Key Focus Areas (rus. - DROND) helped a number of senior officials understand that public policy can and should be implemented through programs and their efficiency is to be assessed by formalized procedures.

Medium-Term Strategy of Socio-Economic Development of the Russian Federation (2006-2008) included the development of mechanisms of an independent public expertise and public consultations at the early stages of decision-making process, including consultations of government agencies

<sup>3</sup> See in details: Tsygankov D., *Introducing regulatory impact assessment in the Russian Federation – towards smart regulation?* / Colloquium "Program and Policy Evaluation: Methodology and Implementation": collection of materials, Vol. V // ed. by Daniel Tsygankov. Moscow: Higher School of Economics, 2010. p. 214-237.

<sup>4</sup> The order of Russian Environment Protection Committee No. 372 "On approval of the impact assessment of the planned economic and other activities on the environment in the Russian Federation" dated 16.05.2000.

<sup>5</sup> E.g. the Government Decree № 249 dated May 22, 2004 clearly stated the need to replace the planning of the estimated funding of government agencies by program-targeted, above all through the formation along with the federal target programs, departmental target programs.

and local governments with the public and holding public consultations on matters of public concern.

The Concept of administrative reform for the period of 2006-2010 contained an idea that in order to prevent the emergence of new excessive functions in federal executive bodies, a new public procedure of proving the necessity to introduce a new regulation should be developed and incorporated in law.

Next, we will look in detail at the development of expert knowledge that allowed implementing RIA quite quickly at the federal level in the beginning of 2010.

## 2.2. Expert community: research, publications and conferences devoted to RIA

In the outset of 2009 it was possible to identify several groups purposefully engaged in the development of the topic (including pilot studies).

The first group includes "classical" economic expert circles and is represented by three companies — Foundation "Bureau of Economic Analysis" (hereinafter – BEA), the alliance "National Institute for System Studies of Entrepreneurship" / Information and Consulting Center "Business-Treasury" (hereinafter – NISSE-BT) and the Institute for the Economy in Transition (hereinafter – IET). Since 2000 these companies have actively gone far beyond purely economic issues and carried out projects in the areas close to regulatory impact assessment - deregulation reform, technical regulation and measures conducted in the frames of administrative reform.

BEA has a series of important publications devoted to RIA – they are not only descriptive but also applied – first of all, in corporate law (e.g. – RIA "Increasing the liability of directors and managers")<sup>6</sup> but also in other fields. Their works where our reader for the first time finds a detailed and systematic overview of the approaches to RIA are being reprinted in different collections and distributed at conferences all over Russia and the CIS.<sup>7</sup>

<sup>6</sup> Regulatory impact assessment "Increasing the liability of directors and managers" // [http://www.beafnd.org/common/img/uploaded/Bulletin\\_71.pdf](http://www.beafnd.org/common/img/uploaded/Bulletin_71.pdf).

<sup>7</sup> E.g. see: Regulatory impact assessment system: international practice and introduction background in Uzbekistan. Tashkent, 2008. [http://www.ifc.org/ifcext/uzbeksmc.nsf/AttachmentsByTitle/RIA\\_digest/\\$FILE/RIA\\_digest.pdf](http://www.ifc.org/ifcext/uzbeksmc.nsf/AttachmentsByTitle/RIA_digest/$FILE/RIA_digest.pdf).



The main relevant work of NISSE-BT of that time is the brochure "Improving the quality of decisions in the field of state regulation of entrepreneurial activities. Regulatory Impact Assessment<sup>8</sup> prepared in the framework of the TACIS project "Deregulation of Economy and Administrative Barriers Removal, Russian Federation".

Regulatory impact assessment agenda is better reflected in the brochure of NISSE "Developing procedures for proving the necessity of government or other intervention in the economy and the procedures for periodic evaluation of the regulatory measures effectiveness".<sup>9</sup> Apart from reviewing regulatory impact assessment as a tool for improving the quality of managerial decisions, proposals to create a unified system of entrepreneurial activity regulation, risk assessment system of risks arising from different types of business activities were also discussed along with other questions considering the ratio of conformity forms and risks, and technical regulation system in general. At the same time, a similar draft law has been prepared at the commission of the Russian Federation Ministry of Economic Development, but it also did not have any effect.

In publications mentioned above, experience and logic of regulatory impact assessment embedding into the process of deregulation was reviewed along with foreign countries experience and recommendations on how to use RIA tools. The authors also gave a number of recommendations for the use of assessment procedures in decision-making by government authorities.

Another growth point was the alliance of "The Center for Program and Policy Evaluation" (CPPE) and "The Institute for the industrial and economic policy development" (IIEPD). They deal with the specific type of RIA – Financial-economic assessment. Publications of CPPE and IIEPD are usually based on small studies of different stages in lawmaking. Prospects of RIA implementation in Russia based on regular monitoring were prepared by a senior expert of CPPE Vitaly Kolegov and presented in Russian business newspaper.<sup>10</sup>

<sup>8</sup> Improving the quality of decisions in the field of state regulation of entrepreneurial activities. Regulatory Impact Assessment. [http://nisse.ru/work/projects/publications/publications\\_59.html](http://nisse.ru/work/projects/publications/publications_59.html).

<sup>9</sup> Developing procedures for proving the necessity for government or other intervention in the economy and the procedures for periodic evaluation of the regulatory measures effectiveness. [http://nisse.ru/work/projects/publications/publications\\_48.html](http://nisse.ru/work/projects/publications/publications_48.html).

<sup>10</sup> Assessment evaluated // Russian business newspaper, 26.06.2007, N 23, p. 7.

Considerable attention has been paid to the development of this area in scientific and academic manner in the Higher School of Economics since 2003. In particular, different research grants were funded by "HSE Research Foundation" Program, "evaluation" disciplines were developed and included in curricula of several University departments. Moreover, a number of term and graduation papers, doctoral dissertations on relevant topics have been constantly growing. In August 2010 "The Center for Regulatory Impact Assessment" of the Institute for Public Administration and Municipal Management was established in the Higher School of Economics. The Center's staff partly moved from CPPE and IIEPD.

In 2000s RIA was discussed at various conferences and seminars held in Russia. Among them the following events should be mentioned: International seminar in Ryazan "Evaluation of laws and the effectiveness of their adoption" under the auspices of the State Duma (2002), International Conference "Reforms and program and policy evaluation" held by the international network "Program Evaluation" (2007) and the international academic conferences on economic and social development in Higher School of Economics (2007, 2011 and 2012) where RIA panels were formed, World Bank seminars in Moscow and regions (2007, 2008, 2010, 2011).

### 2.3. Development of approaches to regulatory impact assessment at national and regional level

The first attempt to implement RIA was made in 2003. The first deputy minister of economy of that time Mikhail Dmitriev supported the elaboration of the federal law draft based on the experience of several transforming economies (in particular, Mexican experience). Interestingly, the same year the Ukraine adopted a law that legalized regulatory impact analysis.

In 2005 the Consulting Center "Business-Thesaurus" carried out a project for the Ministry of Industry and Energy of Russia "Development of regulatory impact assessment methods while adopting new and assessing the existing legislative acts in the field of state industrial policy". Regulatory impact assessment methodology and specific tools used in evaluation studies and recommended for use were studied in the frames of this project. A pilot assessment of three laws was also conducted; in particular, a draft of financial and economic justification for technical regulation draft (which was at the stage of discussion) was prepared. The rights to the report on the



draft belong to this Ministry, and the analytical materials on the project are not publicly available.

In addition to studies concerning regulatory impact assessment directly, a number of studies that are methodologically based on the approaches used in assessment of regulatory impact should be mentioned. In particular, joint work of the NISSE and the Center for Strategic Research of Krasnodar region aimed at assessing the administrative reform in Krasnodar region. The main emphasis was made on conducting ex-post and ex-ante analysis of state regulation impact, in particular, on the development of administrative regulations.

In 2011, the alliance NISSE-BT completed two researches in the interests of the Ministry of Economic Development of Russia. The first research is devoted to the development of research methods and processes of quality assessment, which is necessary for establishing classical system of RIA. Results of this work are not publicly available. The approach developed by the Higher School of Economics is presented in the article «Methodological approaches to meta-evaluation of regulatory impact assessments quality». <sup>11</sup> It adapts Western approaches to Russian realities and involves the creation of a quality assessment check-list. The second research is a large-scale work devoted to the development of RIA in almost all aspects, the consortium included both individual well-known experts and the above mentioned companies (CEFC, CEFIR, Moscow State University, Higher School of Economics). <sup>12</sup>

In 2007 IET having won a tender declared by the Ministry of Economic Development of Russia in the frames of the federal program "Electronic Russia (2002-2010)" was to develop the concept of building a complex system of regulatory impact assessment during the preparation of draft legal acts.

The approach proposed by IET aims at two main objectives. Firstly, it is the development of organizational and methodological base for RIA (development of methodology, development of the procedure to conduct RIA, preparation of proposals for the step by step introduction of RIA). Secondly,

it is accounting and analysis of regulatory impact assessments (the possibility to track and analyze emerging regulatory measures, structure information and formalize RIA procedures). <sup>13</sup>

The approach of IET was based on cost-benefit analysis. Considering the object of regulation, the level of significance and specific character of the proposed regulation, the methodology includes (according to the experience of OECD countries) typical blocks (basic steps of cost-benefit analysis, identification of impacts; formula for calculating costs for business, costs and benefits that are difficult to evaluate in monetary terms, issues of equity and distribution, the sources of information (data for analysis, alternatives)).

The authors suggested the following measures in order to introduce the RIA system:

- maximum use of the existing system of regulatory acts adoption (saving the existing time frames of draft acts expertise, formalizing the requirements for the content of the explanatory note, expanding it to "RIA statement");
- limiting the scope of RIA (only federal legislative acts that regulate the relations of individuals engaged in entrepreneurial and other activities or their relations with the state, as well as an impact on the country's macroeconomic indicators);
- the regulators should prepare a RIA statement simultaneously with the draft act; the statement should "accompany" the draft act during all stages of the discussion;
- the Ministry of Economic Development of Russia having received a statement together with the draft act should assesses the quality of the RIA;

In 2005-2008 acting as subcontractors for the Foundation to Support Legislative Initiatives, CPPE and IIEPD conducted a financial-economic assessment study (which is similar to regulatory impact assessment) of technical standards for RAO UES of Russia. The research project was based on the following argument: Given the growth of financial and investment opportunities of economic agents, the question of assessing the impact of such costs becomes more relevant today.. It is quite specific because of a non-profit orientation of investment, the complex calculations of standard eco-

<sup>11</sup> Belyaev A., Derman D., Tsygankov D. Methodological approaches to meta-evaluation of regulatory impact assessments quality / Planning, Monitoring and Evaluation, 2011. No. 1. p. 23-51.

<sup>12</sup> Some of the research results are posted on the Ministry's website, in January 2011. [http://www.economy.gov.ru/minec/activity/sections/ria/main/info/presentations/doc20120116\\_007](http://www.economy.gov.ru/minec/activity/sections/ria/main/info/presentations/doc20120116_007).

<sup>13</sup> Based on presentations of Pavel Kadochnikov (IET) and Konstantin Kosvintsev ("Prognosis") at the international conference on RIA (hosted by CSR and Worldbank, December 4, 2008 in Moscow).



economic indicators and a lack of baseline data for building adequate economic models. During 2006-2008 more than 200 standards for generating and utility distribution companies were prepared. During preparation of the financial studies a universal approach to calculate the effects based on a single standard (based on cost method) was developed and a work was conducted to calculate the effects on groups of standards.

The analysis showed that the effect of the developed standards introduction in terms of costs (i.e. excluding the effects of saving status quo or increasing security) will amount to 8714 billion rubles a year. The experience gained while conducting the financial-economic studies of "RAO UES" standards demonstrates that conducting financial-economic studies simultaneously with the development of regulatory documents is difficult but not impossible. Thus, financial and economic feasibility studies were conducted within three months since the preparation of a standard draft.

Turning to the regional experience of introducing RIA methodology there were only a few examples by the year 2008. Firstly, under the auspices of the World Bank a methodology for administrative regulations assessment in the Republic of North Ossetia-Alania is to be integrated into the system of public administration in the first half of 2009. Secondly, the methods to prepare the Report on impact analysis of public policies and the Framework on policy assessment were prepared in 2006-2007 in Kalmykia Republic with the help of the World Bank specialists (approbation was led by Moscow Financial Consulting CEFC). Thirdly, in the Republic of Tatarstan in 2006-2008 the Parliamentary Commission on assessing the laws effectiveness of the Republic of Tatarstan existed and subsequently it was replaced by a parliamentary working group. Moreover, the experience of Togliatti city in conducting public consultations in the frames of the assessment of social and economic programs of municipalities in 2007-2008 was discussed.

Thus, by 2009 quite a lot of relevant studies devoted to RIA have been accumulated, but most importantly, a growing interest of public authorities to RIA appeared together with an understanding of the need to introduce RIA. On the other hand, applying RIA to specific policies, laws and bills is limited to a few areas (technical regulation, corporate law), and to that moment de facto it has not gone far beyond academic discourse, pilot studies and declaration of some government authorities of the "second tier" (Minister Counselors, Deputy Heads of Departments).

### 3. The long-awaited breakthrough in 2010

By the end of 2008 the majority of Russian experts felt that RIA tools have been shelved. There was the only exception in the end of 2008 – the beginning of 2010 when the project "Implementation of the regulatory impact assessment tools in the Republic of North Ossetia – Alania" was commissioned by the World Bank. In the frames of this project an attempt was made to integrate RIA into decision-making process at the regional level. The project helped to identify the strengths and weaknesses of the approaches (previously discussed by experts) of how to simplify and adapt the OECD best practices to Russian realities. Upon completion of the pilot project, the Regional Ministry of Economy established the RIA Department headed by one of the active participants of the project from Ossetia, guidance materials were prepared and various training and practical seminars were conducted.

However, since February 2010 following the Russian Government's Office order, the Ministry of Economic Development has made urgent efforts to launch RIA at the federal level. Expert works of previous years have been used to achieve the goal.

#### 3.1. Ex-ante assessment (evaluation)

In the beginning of July 2010 the Ministry of Economic Development of Russia established the Regulatory Impact Assessment Department pursuant to the Government Regulation № 336 dated May 15, 2010 "On amendments to some acts of the Russian Federation Government",<sup>14</sup> which brought changes to the Procedure Rules of the Government<sup>15</sup> and gave the Ministry powers to conduct RIA and develop the guidelines. By the Order of the Ministry of Economic Development of Russia № 398 dated August 31, 2010 the Regulation on the procedure of drawing regulatory impact assessments was approved. By July 2012 the Department has analyzed more than 1000 draft acts and one-third of opinions were negative.

<sup>14</sup> Code of Laws of the Russian Federation, 2010, № 21, art. 2602.

<sup>15</sup> Approved by the Russian Federation's Government Regulation dated June 1, 2004 № 260 "On the Procedure Rules of the Government and Regulation on the Government Office of the Russian Federation", "Code of Laws of the Russian Federation", 2004, № 23, art. 2313.



Thus, it is fair to say that regulatory impact assessment in Russia, which still has a limited scope, was introduced at fourth attempt. The Department cannot block the burdensome acts; it can only inform the regulator about the potential administrative barriers that can arise if the act is adopted.

In accordance with paragraph 60 (1) of the Procedure Rules of the Government and paragraph 3 of the Rules of the Legal Acts Preparation, draft acts introduced by the federal bodies of executive power to the government and other draft legal acts and regulations of the federal bodies of executive power are sent to the Ministry of Economic Development for expertise only when they regulate the relations in certain fields:

1. Organization and implementation of state control (supervision);
2. Establishment, implementation and enforcement of mandatory requirements for products or related processes of design (including research), manufacturing, construction, installation, debugging, operation, storage, transportation, sale and utilization;
3. Establishment, implementation and enforcement of mandatory requirements for conduction of works and provision of services;
4. Conformity assessment;
5. Safety of production processes.

The report of the Ministry of Economic Development "The practice of implementation and further development of regulatory impact assessment in the legislative activities of the Government of the Russian Federation and the federal bodies of executive power" prepared for the Government meeting (May 2011) characterizes the methodology of ex-ante evaluation as follows:

"According to the Order mentioned above, in the course of assessment the following should be identified:

- a) The objectives of a draft legal act and their compliance with the principles of legal regulation approved by the President of the Russian Federation and the Government of the Russian Federation; their compliance with the documents where the objectives and priorities of the state policy, the directions for implementing these objectives and the tasks to be solved for their implementation are formulated and justified; their compliance with the requests of President and the Government of the Russian Federation addressed to federal executive bodies.

The proposed regulation is to be found unreasonable if its purpose contradicts the abovementioned documents;

- b) The problem to be solved by a new legal regulation in terms of the rights and obligations of individuals engaged in entrepreneurial and other activities, its impact on the achievement of the objectives of the draft act, and the alternative way to solve it by means of legal, information or organizational

- resources. In this case, the existing experience of solving similar problem by means of legal, information and organizational resources in the Russian Federation or abroad can be taken into account.
- c) The main groups of social relations participants whose interests will be affected by a new legal regulation in terms of the rights and obligations of individuals engaged in entrepreneurial and other activities, the expected costs and benefits following the adoption of the draft regulation.
  - d) The risks of failing to achieve the goals of legal regulation, the possible negative effects on the economic development of the Russian Federation in general or certain sectors of the economy following the adoption of a legal regulation, as well as negative effects on competition, goods and services markets, including the development of small and medium enterprises.
  - e) The budget expenditures from the Russian Federation budget system related to the establishment of the necessary legal, organizational and information conditions to implement the act by public authorities, local governments, as well as its observation by individuals engaged in entrepreneurial and other activities, including the costs for organizations engaged in entrepreneurial and other activities, whose property is owned by the Russian Federation, federal subjects or municipalities."

Further development of RIA mechanism is one of the goals contained the Concept of reducing administrative costs and improving the quality of governance, which was presented by the Ministry of Economic Development of Russia in December 2010 (section 5.4. The introduction of regulatory impact assessment).

### 3.2. Ex-post evaluation (Retrospective analysis)

By the decision of the Government Commission on Administrative Reform (paragraph 5, Section I of the Meeting Protocol № 107 dated September 29, 2010) the Ministry of Economic Development was appointed to make a list of regulations for retrospective analysis, and by the decision of the Government Commission on Administrative Reform (paragraph 2, Section VI of the Meeting Protocol № 110 dated December 7, 2010) the abovementioned list (15 existing legal acts) and a schedule to present results of retrospective evaluation at the Commission's meetings in 2011 were approved.

Since 2011 the retrospective analysis has been replaced by the so-called "Examination of existing legal acts" (introduced by the Government's Order dated July 29, 2011 № 633 "On examination of regulatory legal acts of federal executive bodies in order to identify provisions that create obstacles for business and investment activities, and on amendments to certain acts of the Government of the Russian Federation " and by the Order of The ministry



of Economic Development dated November 9, 2011 № 634 "On approval of the examination of the federal executive bodies regulations in order to identify provisions that create obstacles for business and investment activities").

According to the idea, if "harmful" rules were found in departmental regulations, the Ministry of Economic Development with the help of the Ministry of Justice could initiate their abolition. In the beginning of 2012 a list of 19 existing acts was approved for expertise for the first half of the year, based on proposals submitted by the leading business associations of the country (Russian Union of Industrialists and Entrepreneurs, Business Russia, OPORA Russia, the Chamber of Trade & Commerce, and the Advisory Council for Foreign Investments), for the second half of the year only 9 acts were approved indicating that the Department is overloaded by the inflow of draft acts.<sup>16</sup>

#### 4. Russia is on the way towards "smart regulation"?

Development of the RIA mechanism in the coming years should become a prerequisite for the formation of the so-called "smart regulation" institutions in Russia by the year 2020. In 2010 "smart regulation" approach in OECD countries replaced the neoliberal concept of "better regulation".<sup>17</sup> According to this approach, government regulation of the economy and social sphere is *neither bad nor good*, but it should be related to the objectives of government intervention and the achievement of economic and social benefits.

In the context of financial and economic crisis of 2008-2009, the attitude towards government regulation in OECD countries has changed dramatically. A detailed assessment, scrutiny of alternative regulatory measures and the final choice of a balanced alternative but not deregulation is becoming a trend of modern public policy and its core - Regulatory Impact Assessment. Further development of "smart regulation", the concept born in academic circles in the end of the 90's - beginning of 2000's, was declared. The concept was aimed at bridging the gap between advocates of state control expansion on the one hand, and the proponents of deregulation on the other.

Systematic efforts to build the institutions of "smart regulation" in Russia de facto have not been taken yet. Although the current Long-Term Development Strategy until 2020<sup>18</sup> contains goals that include the development of RIA institutions and "smart regulation", they are quite fragmentary. For instance, in order to create "a highly competitive institutional environment that encourages entrepreneurship and attracts capital to the economy" it is necessary to "reduce the costs related to the obligation to pay taxes" and "to ensure a high quality of public administration in economic sphere."

Experts working on the "Strategy 2020" updating (in 2011-2012) felt it necessary to meet a lot of challenges on the way to "smart regulation" (not all from the list was included in the final report prepared for the Government, but it is important to consider all these arguments in detail). Here is what should be done to meet these challenges:

1. Develop and implement the evidence-based procedure for introducing new regulations. In order to ensure a unified state policy, new regulations should be based on established strategic goals and objectives of social and economic development, while adopting new regulatory acts it is necessary to adjust the strategic documents (strategies, concepts, programs and plans).
2. Create the so-called National Council for the improvement of legal regulation of business and investment activities (there were several alternative names) accountable to the President or the Government in order to improve regulation of entrepreneurial activities, remove excessive administrative barriers and increase the investment attractiveness of the Russian economy.
3. The main goals of the National Council for the improvement of legal regulation of business and investment activities will be providing consistency between the changes in the regulatory and legal framework in the field of economic regulation and the current goals and objectives of economic policy. In particular, the National Council is to assess the compliance of draft and existing regulations to such objectives as the achievement of the balance between costs and benefits of business and investment activities regulation, reduction of unnecessary regulatory costs for

16 By April 2013 the Ministry of Economic Development of Russia plans to launch the full version of the web-site - <http://www.regulation.gov.ru>.

17 Smart Regulation in the European Union (Октябрь 2010). [http://ec.europa.eu/governance/better\\_regulation/key\\_docs\\_en.htm#br](http://ec.europa.eu/governance/better_regulation/key_docs_en.htm#br).

18 The Order of the Government of the Russian Federation № 1662-r dated November 17, 2008 "On the Concept of Socio-Economic Development of the Russian Federation until 2020". <http://www.economy.gov.ru/minec/activity/sections/strategicplanning/concept/doc1248450453794>.



civil society, increasing the stability of legal regulations, the level of competition and the credibility of the Russian market economy institutions, etc.<sup>19</sup>

4. Ensure the participation of stakeholders in the process of decision making; create rules and institutions that establish procedures and conditions to initiate the revision of regulations by entrepreneurs, business associations, public organizations and authorities at different levels.

Thus, it is crucially important to establish mechanisms that allow initiating a review of any regulatory decision based on periodic monitoring of their effectiveness. The establishment of procedures to consider the initiatives in order to review regulatory decisions coming from civil society should include the right of specialized governmental agencies to advocate their regulations.

1. Establish mechanisms that exclude the re-establishment of excessive (previously abolished) forms of regulation in other fields and forms, inter alia introducing judicial appeal procedure to challenge governmental regulations based on violations of established procedures for their adoption (preliminary provision of information, public consultations, regulatory impact assessment, etc.).
2. Taking into account the complex nature of the most regulations' effects, it is necessary *to start assessing sets of legal acts at various levels instead of assessing individual acts*. Along with ex-ante evaluation, there is a need to establish a system of retrospective analysis, which is not reduced to inter-agency coordination (based on the analysis of the extent to which the objectives of relevant regulations comply with the government's strategic objectives and other regulation quality indicators).
3. Allow changing the content of financial-economic assessment in State Duma, in particular, along with an estimate of budget expenditures at different levels include costs and benefits analysis for business and public sector institutions.
4. Introduce a practice of sunset legislation that presupposes a limited life-span of laws, their regular review and/or abolition. It could be a good idea to change the procedure rules of legislative assemblies and to add the requirement either to include an article on regular review, limit the

life-span of laws, or prove why sunset legislation mechanism and/or retrospective analysis has not been used.

For better analysis and decision-making, data bases and panels to collect data are created to ensure the regular (on-going, ex-post) evaluation of the effectiveness of regulations.

1. Introduce plain legal writing in accordance with the requirements of "open government" to make it more comprehensible to all stakeholders. A similar requirement should be applied to information provided by public authorities.
2. Create a user-friendly interface on the websites of public authorities, clear and meaningful reflection of their plans and programs (which are the basis for executive bodies decisions), draft regulations, respective information and analytical materials, the results of a retrospective evaluation ("electronic dossier").
3. Build a unified information-analytical base for conducting impact assessments and for appropriate public reporting. It should contain a centralized mechanism to reveal and analyze the violations of regulation requirements and track if there is an increase in the number of trials (number of initiated cases) around certain types of legal regulations.

## 5. Conclusion

To sum it up, Russian federal authorities have recently faced a growing inflow of proposals to introduce new and modify the existing regulations. Existing mechanisms of interagency coordination do not always provide timely assessment and rejection of initiatives, which are based on departmental or individual and group interests and contradict the objectives of a long-term economic development. Although despite the efforts made by the Government and the President, an unjustified burden on individuals and companies engaged in entrepreneurial activities remains and business climate is not improving (compared to conditions of doing business in countries-competitors of Russia).

Apart from low legal and technical level of draft regulations, the adopted legal acts often pursue the wrong goals, use ineffective regulatory tools and often cause negative side effects. After admitting mistakes, the government often undertakes new efforts to change the situation. These efforts are not often successful. They create an unpredictable and unstable legal environ-

<sup>19</sup> More materials and the Concept of the National Council see on <http://better-regulation-council.ru/>.



ment that is not conducive to the emergence of trust between the stakeholders and the state, and finally create obstacles to economic growth, modernization and diversification of Russian economy.

In this regard, the need to raise the quality of regulations and intensify the use of regulatory impact assessment in law-making at least in key areas of economic development such as business and investment seems obvious.

Currently in Russia there are a number of tools for conducting *legal expertise* of drafts and existing regulatory legal acts (In particular, they are conducted by the Ministry of Justice, the Presidential Council for Codification and Enhancement of Civil Legislation, etc.) aimed at formal legal analysis of legal acts. At the same time, complex system of regulatory impact assessment has yet to be created.

As stated above, Russian Ministry of Economic Development introduced RIA that is still limited and aimed at preventing excessive burdens for individuals and companies engaged in business and investment activities, as well as at identifying and eliminating "bureaucratic costs" in certain types of regulations. At the same time, this mechanism is aimed primarily at the standard-setting activities of the Government and the federal government agencies. Impact assessment is conducted neither for existing federal laws and governmental regulations, nor for the draft federal laws prepared *outside* of the Government, nor for draft regulations in many areas of legal regulation of business and investment activities which do not fall in fairly narrow limits outlined when this system was introduced at the "ministerial" level.

Despite the announced expansion of RIA mechanism on customs regulation and the elements of tax regulation, plans for greater involvement of regulators in preparation of impact assessments and conducting public consultations, as well as gradual involvement of regions and municipalities in preparation of impact assessments, there is still a risk of diluting scarce resources (including staffing constraints) and thus, the gradual formalization of RIA and its mimicry to formal interdepartmental coordination.

International experience shows that 80% of all regulatory burdens are caused by 15-20% of regulations.<sup>20</sup> That is why concentration of resources is necessary for comprehensive and evidence-based expertise that should be supported by political leadership - especially for such large-scale (complex)

<sup>20</sup> See for example: [http://www.normenkontrollrat.bund.de/Webs/NKR/Content/DE/Publikationen/2011-09-20-Jahresbericht\\_%202011.pdf](http://www.normenkontrollrat.bund.de/Webs/NKR/Content/DE/Publikationen/2011-09-20-Jahresbericht_%202011.pdf); <http://www.oecd.org/dataoecd/22/15/49089145.pdf>; <http://www.reginfo.gov/public/do/eoCountsSearch?viewall=y>.

regulations. Successful functioning of Better Regulation Councils in foreign countries shows that eventually it is necessary to establish such body at the level of central government in Russia.<sup>21</sup>

This important task should include a number of fundamental institutional steps, such as expanding interagency RIA, which is conducted by the Ministry of Economic Development; hardening the position of the Russian State Duma concerning draft laws that are not accompanied by proper impact assessments; introducing plain legal writing, etc.

Obviously, the "bureaucratic control", in the short run, promises more rapid progress towards the goal - legislation is amended as a result of RIA, RIA units in ministries are being created, money is allocated for the civil servants retraining. On the other hand, partially corrupt and inefficient rank-and-file bureaucracy is not interested in changing the rules of the game and in openness, and therefore gradually reduces "open government" procedures to interdepartmental coordination (even if it is electronic). In this case impact statements are reduced to "formal papers" (box-ticking effect).

In the long run, slower but more effective way is to build a pluralistic, decentralized "network" of social and bureaucratic forces, supported by the political will of central government and civic initiatives.

<sup>21</sup> See Karpova Polina, Tsygankov Daniel, Better Regulation Councils as an indispensable component of «smart regulation» / Public and Municipal Administration Issues, Moscow, 2012, No. 3, p. 5-34.