

International Association of Legislation (IAL)

17

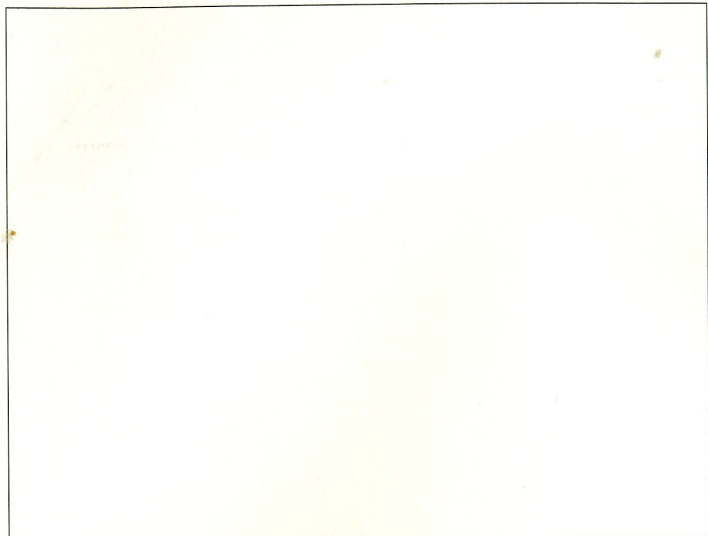
Luzius Mader/Sergey Kabyshev (eds.)

Regulatory Reforms Implementation and Compliance

Proceedings of the Tenth Congress of the International
Association of Legislation (IAL) in Veliky Novgorod,
June 28th – 29th, 2012



Nomos



International Association of Legislation (IAL)

Band 17

Prof. Dr. Luzius Mader/Sergey Kabyshev (eds.)

Regulatory Reforms Implementation and Compliance

Proceedings of the Tenth Congress of the International
Association of Legislation (IAL) in Veliky Novgorod,
June 28th - 29th, 2012



Nomos

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

Die Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the Internet at <http://dnb.d-nb.de>.

ISBN 978-3-8329-7979-9

1. Auflage 2014

© Nomos Verlagsgesellschaft, Baden-Baden 2014. Printed in Germany. Alle Rechte, auch die des Nachdrucks von Auszügen, der fotomechanischen Wiedergabe und der Übersetzung, vorbehalten. Gedruckt auf alterungsbeständigem Papier.

This work is subject to copyright. All rights are reserved, whether the whole or part of the material is concerned, specifically those of translation, reprinting, re-use of illustrations, broadcasting, reproduction by photocopying machine or similar means, and storage in data banks. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to »Verwertungsgesellschaft Wort«, Munich.

Preface

In 2008, the European Association of Legislation (EAL) decided to change its name and to become the International Association of Legislation (IAL), taking in this way into account that a considerable number of its members were coming from non European countries. For the same reason, it's only natural that the biannual congresses of the IAL should not be held exclusively in Europe. By deciding to organize its 10th congress in 2012 in Russia, the International Association of Legislation wanted to express its ambition to develop a broader approach to legislative or regulatory questions, an approach that isn't exclusively European any more. Russia is a country deeply rooted in Europe – and also in European legistic traditions – but it is not limited to Europe.

The breakdown of the Soviet Union led to fundamental changes in Russia in various fields and in many respects (institutional, economic, territorial, etc.). All these changes were, of course, important and difficult challenges for far-reaching legislative and regulatory reforms. The topic chosen for the 10th congress of the IAL ("Regulatory Reforms – Implementation and compliance") reflects this particular situation and permitted to address the general issues related to legislative and regulatory reforms with a special view on the specificities and the exceptional circumstances of such reforms in Russia. Special emphasis was given to the problems of implementation and compliance.

After the plenary session outlining the main general aspects of regulatory reforms from different perspectives (Russia, continental legal systems, common law), four panels addressed selected fields or questions: Panel 1 dealt with reforms in the field of social legislation; panel 3 was dedicated to the field of economy; panel 2 highlighted some reforms in the practical working of the administration (e-government); and panel 4 encompassed three different sub-topics concerning the preparation of legislation (regulatory impact assessment, anti-corruption review and public consultation). For all these elements an effort was made to combine Russian views and experiences with views and experiences from other countries.

The congress was organized by the Russian Law-making Society and hosted in particular by the Yaroslav-the-Wise Novgorod State University in Veliky Novgorod. We express our gratitude to the authorities and to the University of Veliky Novgorod who offered the participants a very warm

Table of Contents

Constitutional Reforms: a Comparative Analysis <i>Sergey Kabyshev</i>	97
CALC: The Commonwealth Association of Legislative Counsel <i>David Noble</i>	109
The Problems of Democratic Reforms of the Lawmaking in Modern Russia <i>Vladimir Baranov</i>	115
The Regulatory Reform Agenda and Modern Innovations in Drafting Style <i>Helen Xanthaki</i>	128
Panel 1 Reform of Legal Regulation in Social Legislation	
A Latin America Perspective <i>Lorena Ossio Bustillos</i>	145
About Some Lawmaking Tendencies in Social Legislation of Russia <i>Natalia Putilio</i>	158
Conclusions Panel 1 – Reform of Legal Regulation in Social Legislation <i>Marta Tavares de Almeida</i>	167

Table of Contents

Panel 2 Reform of Legal Regulation in Online Government	
Modernization of the Normative Acts Form in the Electronic Environment <i>Vladimir Isakov</i>	175
e-Government of Korea – Successful Experiences and e-Government Acts <i>Soon-ki Han</i>	180
The Efficiency of the Legislation on Transparency of the Public Power: A Social Context and the Quality of Laws <i>Olga Afanasieva</i>	195
Panel 3 Reform of Legal Regulation in Economics	
Dynamics of the Constitutional Model of Economic Relationship Regulation in Russia <i>Vladimir Mazaev</i>	207
Legislating on Corporate Social Responsibility in Transnational Law: A Viable Path? <i>Mauro Zamboni</i>	216
Conclusions Panel 3 – Reform of Legal Regulation in Economics Conditions of a Better Balance between Necessary Adaptations to Changes and Interest of Operators for Legal Certainty <i>Jean-Pierre Duprat</i>	228

Modernization of the Normative Acts Form in the Electronic Environment¹

Vladimir Isakov

It is hardly a subject of debate that the technical-legal form of a normative act is one of the achievements of the world legal culture. This form did not emerge overnight: it directly reflects the specifics of development of society, state, and law, of the “legal stylistics” of the time period.

From the point of view of the development of the law-making technique the modern form of normative acts is undoubtedly a step forward. At the same time, the current technical-legal form of a normative act emerged in the era of a traditional hard-copy record keeping and does not reflect the realities of the coming “digital” era. It is becoming more and more evident that the “traditional” normative acts have inherent shortcomings that obstruct their processing and storage in electronic information systems, efficient search and use by the users. The most serious shortcomings include:

1. *Multi-subject nature.*

Quite often normative acts cover not just one but several different issues. An example of the latter may be the Federal Law dated 8 December, 2011 № 423-FZ “Concerning the Procedure of a Compensation-Free Transfer of the Ownership of the Military Real Estate to the Constituent Regions of the Russian Federation – Cities of Federal Significance – Moscow and Saint-Petersburg, to Municipalities, and Concerning Amendments to Certain Normative Acts of the Russian Federation”.² This Federal Law defines the procedure of compensation-free transferring of the ownership of the military real estate to the constituent Regions of the Russian Federation and munic-

¹ The article further develops and elaborates on the provisions of the author’s monograph “Official Electronic Publishing: History. Approaches. Problems”. M.: Formula Prava. 2012.

² “Sobranie Zakonodatelstva Rossiiskoy Federazii”, 12 December, 2011 № 50 – p. 7365.

ipalities and simultaneously introduces amendments to four other Federal Laws. In one of the cases the amendments are not to the original (framework) act but to the law that amends it which represents a breach of the law-making technique (for the avoidance of collisions all the amendments shall be introduced not into the laws concerning amendments but into the original core normative act).

2. *Poor ergonomics.*

The current law-making practice completely ignores the fact that the modern methods of handling the legal information imply reading of legislative texts from the computer screen without printing out a hard copy. There was a situation in the author's practice related to the need of introducing an amendment to Paragraph 92 of a bulky financial document. Finding the Paragraph on the computer screen turned out to be a labor-intensive task. After a few futile attempts it became necessary to number the paragraphs manually in order to definitely and unmistakably identify Paragraph 92 among them.

Quite often legislative texts are structures in such a way that interrelated semantic content elements happen to be "dispersed" across various parts of the normative act. In particular, this is characteristic of the Russian electoral legislation where one article takes a few pages of the text. It is very tiresome to handle such texts as one has to scroll through them while remembering certain elements.

Of course, it is not possible to avoid dealing with "large" legal texts. Moreover, development and adoption of a lengthy codified normative act is for a good reason considered to be an achievement of the legislative technique as they result in reducing the number of normative acts, improving the system of legislation, structuring the legal terminology, developing of ingenious juridical constructions, etc. However, the relationship between the "large" codified legal texts and the "current" law-making shall be significantly optimized. At the present stage of developing the Russian legal system the on-going law-making shall be performed predominantly in the form of laws concerning amendments to the "framework" codified normative acts. It is inadmissible to substitute amending of a codified normative act with adoption of an independent permanent law concerning the same subject: such a practice results in unjustified "ballooning" of the legislation, complication of the system of legislation, undermining the influence and authority of the large codified normative acts. It is inadmissible when the ter-

minology of the Federal Law in force is in conflict with the terminological system of the framework codified normative act (the Federal Law "Concerning Joint-Stock Companies" and the Civil Code of the Russian Federation). Adoption of laws of "mixed" nature that have their own permanent content while being amendment laws ("Concerning Organization and Conducting the XXII Olympic Games and XI Paralympic Games in Sochi, Development of Sochi as an Alpine Resort and Amending Certain Normative Acts of the Russian Federation") is highly undesirable.

3. *Lack of necessary credentials.*

Normative acts in their traditional "hard-copy" form lack a number of credentials necessary for their proper understanding and application. This will concern, first of all, the date of publication and the date of coming into force of the normative act (and also the date of ceasing to be in force). Under the conditions where, for example, a Federal Law can be published by four independent official sources ("Rossiiskaya Gazeta", "Parlamentskaya Gazeta", "Sobranie Zakonodatelstva Rossiiskoy Federazii", and the Official Internet-Portal of Legal Information) tracking of the source of the first official publishing for defining the date of the law coming into force is an uphill task. An incorrect definition of the date of the law coming into force in its turn entails making a groundless law-enforcement decision and consequently, its eventual revocation.

Uncertainty with respect to the dates of publication and coming into force of normative acts is partially eliminated with availability of official and non-official legal information data bases that carefully track and fix the source of the first official publication and, in this way, make it possible to correctly define the date of coming into force of the normative act. However, the question arises of what shall be done by those who for a number of reasons have no access to the information data bases or do not know how to use them.

4. *Lack of standard codification processing.*

Until now, the normative acts distributed across the country as hard-copies are subject to a decentralized processing by departmental information and codification services. Filing cabinets, card machines, maintaining of in-house "check copies" of normative acts are used for the purpose. Until re-

cently, one of the popular codification techniques were “paste-ins and deletions” when amendments were pasted-in to the hard copy of a normative acts while parts that ceased to be in force were deleted. Currently, of course electronic methods are used to maintain “check texts”.

The above examples demonstrate that the existing technical-legal form of hard-copy normative acts has its shortcomings that become still more prominent under the present conditions. How should a normative act look to conform to the electronic environment? Three constituent parts can be singled out in its content – *the introductory part, the text part, and the passport part.*

Introductory part

1. Name and electronic passport of the government authority that adopted the normative act;
2. Type of the normative act;
3. Heading/title of the normative act;
4. Status of the normative act (effective or of no effect).

Text part

5. Text of the normative act;
6. Electronic signature of the authorized person;

Passport part

7. Address of the permanent storage in the official database;
8. Source of the first official publishing in a hard-copy form (for normative acts first published in a hard-copy form);
9. Date (or conditions of coming into force of the normative act (as a whole; by parts; automatically following a certain event, etc.);
10. Date of ceasing to be in force of the normative act (for the normative acts that ceased to be in force);
11. Date of adoption of the normative act (law) by the State Duma (Parliament);
12. Date of approval of the normative act (law) by the Council of Federation;
13. Date of signing of the normative act (law) by the President of the Russian Federation;
14. Date of publishing of the normative act in the official database (by the official printed source of legal information);
15. Amendments are introduced to ... (for the acts that introduce amendments);
16. Existing wordings of the normative act (each amendment forms a new wording);

17. Correspondents;
18. Respondents;
19. List of key words (search credentials);
20. Indexes by the Classifier of Normative Acts (a search credential);
21. Note of registration by the Ministry of Justice (or an electronic visa by the Ministry of Justice);
22. Time marker (for obtaining official copies);
23. Electronic signature of the official database (for obtaining official copies).

In conclusion, let us return to the main idea. The current transition to the electronic forms of the official and business communications will inevitably affect the technical-legal form of normative acts. The traditional long-established form of normative acts and the law-making procedures cry for modernization. It is necessary to build a modern “legal infrastructure” that would make it possible for the normative acts to function successfully in the electronic environment producing a positive regulatory impact on further development of the social relations.

List of Authors

Afanasieva Olga, PhD in Law, Vice Dean, National Research University – Higher School of Economics, Russia

Arzamasov Yuriy, Doctor in Law, Prof., National Research University – Higher School of Economics, Russia

Avtonomov Alexey, LLD, Doc.hab., Prof., National Research University – Higher School of Economics; Institute of State and Law of the Russian Academy of Sciences, Russia

Baranov Vladimir, Doctor in Law, Prof., Research Center for Applied Science of Nizhny Novgorod “Legal Technique”; Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, Russia

Carrillo Yoel, Doctor in Law, Universidad de Oriente, Cuba

Chuchelina Nadezhda, PhD in Law, Partnership Director of the Russian Law-making Society, Russia

Drinoczi Timea, PhD in Law, Faculty of Law, University of Pécs, Hungary

Duprat Jean-Pierre, PhD in Law, Université Bordeaux, France

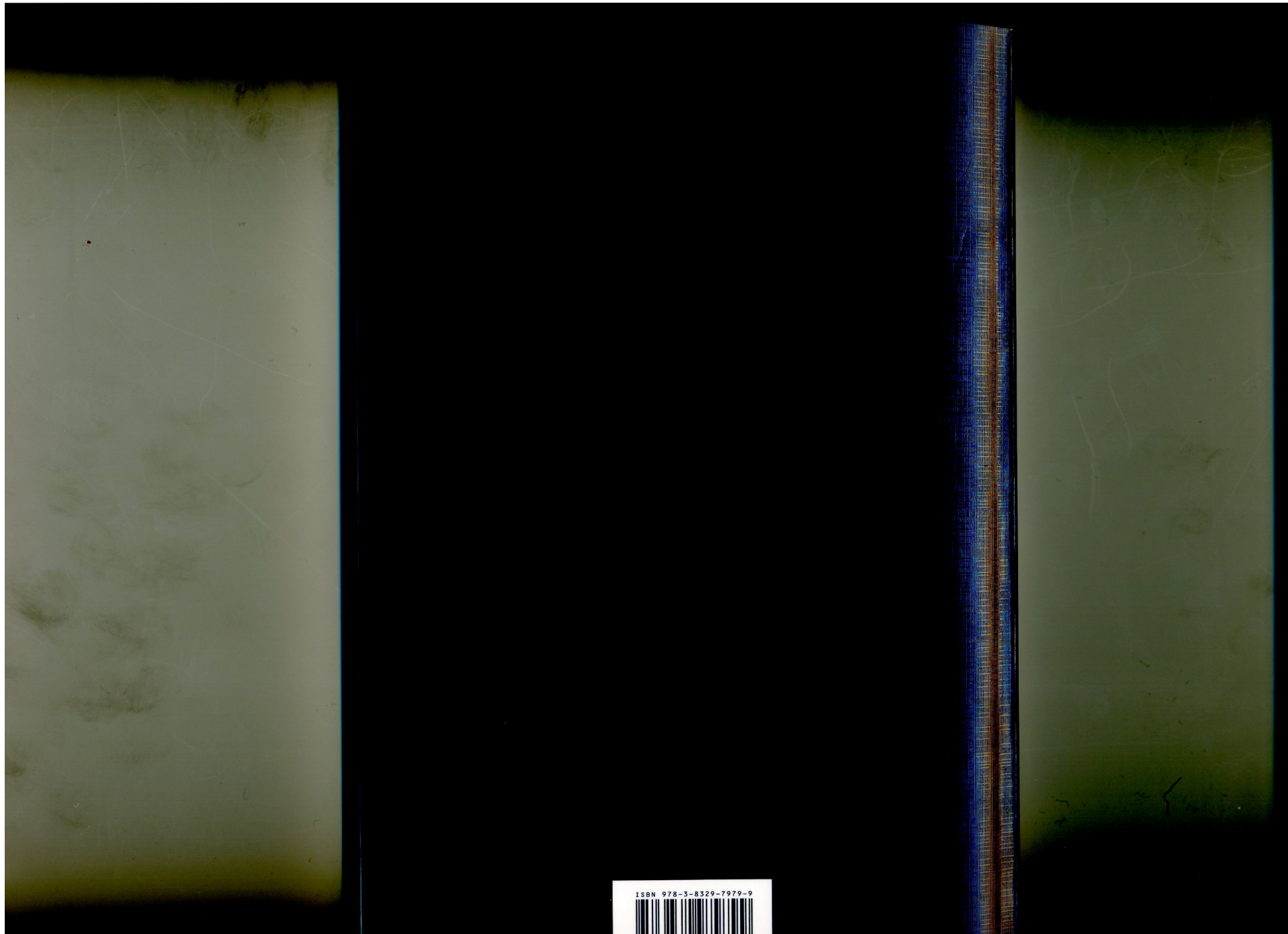
Fabrichniy Sergey, Doctor in Law, Prof., Deputy of the State Duma of the Federal Assembly of the Russian Federation, Russia

Han Soon-ki, Director, Ministry of Public Administration and Security, South Korea

Isakov Vladimir, Doctor in Law, Prof., Department Head, National Research University – Higher School of Economics; Honoured Jurist of the Russian Federation, Russia

Kabyshev Sergey, PhD in Law, Prof., Kutafin Moscow State Law Academy; Chairman of the Russian Law-making Society, Russia

Karpen Ulrich, PhD in Law, University of Hamburg, Germany



ISBN 978-3-8329-7979-9

