

The concept of establishing the National Council for the improvement of legal regulation of business and investment activities in Russia ¹

1. International background

Government regulation has changed dramatically over the last decade. 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 (collaborative) public policy.

Upgrade of the better regulation agenda to the ideology of smart regulation means a decisive step towards the so-called "open government". So effective RIA also presupposes other tools to improve the legislative drafting quality and calculation methods (such as public consultations, business web-panels, plain legal writing, sunset legislation, law termination, evaluation clauses, standard cost model) and the recognition of open government principles (such as freedom of information, open government data, open public spending). Some OECD countries there have appointed external oversight bodies nested in the centre of government – such *Actal* in the Netherlands, the *Normenkontrollrat* in Germany or the *COFEMER* in Mexico, with the role consultant and/or gatekeeper; they have sometimes a more specific mandate.

Countries in transition (such Russia) face a number of known limitations while attempting to implement the RIA mechanisms in its public administration. Therefore, "open government" for them is a long-term aspiration rather than an immediate reality. Governments with the expert support are trying to formulate road maps of implementation to meet national peculiarities and not to destroy the existing system of decision-making.

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 of these countries is not interested in changing the rules of the game and openness, and therefore gradually reduces "open government" procedures to interdepartmental coordination (even if it is electronic). In this case regulatory impact assessments are reduced to "formal" paperwork (so called "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 which are based on up-to-date expert, network and information technologies.

¹ More information about Russian BR Council's concept see - <http://ria-center.hse.ru/en/news/50501906.html>. Any questions or proposals are welcomed, please contact Dr. Daniel Tsygankov, Center for RIA at the Higher School of Economics (Moscow), dtsygankov@hse.ru

2. Problem description

Currently in Russia there are a number of tools for conducting legal expertise of drafts and existing regulatory legal acts (hereinafter - regulations). This kind of expertise is aimed at formal legal analysis of the project. At the same time complex system of regulatory impact assessment is still in the process of formation.

Russian Ministry of Economic Development introduced in 2010 Regulatory impact assessment (RIA) that is still limited and aimed at preventing excessive burdens for business and investment activities, as well 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 Russian Government, nor for draft regulations in many areas of legal regulation of business and investment activities which do not fall in a fairly narrow limits outlined when this system was introduced at the "ministerial" level (control & oversight, technical regulation).

The announced expansion of RIA mechanism, plans for greater involvement of regulators in preparation of impact assessments and conducting public consultations, as well as gradual involvement of regions in carrying out impact assessment, partly reflect positive perception of RIA by the political leadership. On the other hand, more and more large-scale coverage causes a risk of diluting scarce resources, including staffing constraints, and thus - the gradual formalization of RIA and its mimicry to regular interdepartmental coordination.

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

Therefore it is proposed to establish a specialized body that is not built into the system of interdepartmental coordination and accountable only to the President of the Russian Federation - *the National Council for the improvement of legal regulation of business and investment activities*.

The point of this idea is to create conditions for carrying out a centralized, but independent expertise of the most important for the economy drafts and existing regulations, based on close interaction of independent experts, government agencies and business community.

This body would not replace the existing system of regulatory impact assessment, but provide additional - more in-depth and independent (not "flow line") - examination of the above mentioned most significant regulations in the field of business and investment activities, as well

as attract the attention of political leaders to the problems of their impact which are most significant for business, government agencies and citizens.

3 Goals and functions of the National Council

The main goals of the National Council for the improvement of legal regulation of business and investment activities (hereinafter - the National Council, the Council) 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.

Functions of the National Council are expected to include:

- analysis of all federal legislation drafts (above all - federal laws) to determine their impact on business climate, incentives for business and investment activities, development of market institutions, level of competition in the economy, excessive administrative barriers and other conditions for carrying out business and investment activities;
- Identification and expert evaluation of existing regulations that worsen substantially the institutional conditions for business and investment activities;
- Development of proposals for better regulation;
- Scientific and methodological support for the development of a complex "smart regulation" system and RIA as its core in Russia.

4. Characteristic features of the expertise at the National Council

Drafts and existing regulations are to be assessed by the National Council on the basis of a preliminary analysis of the magnitude of their possible impact on the conditions for carrying out business and investment activities. The Council decides to begin examination of draft laws and existing regulations if the majority of its members agree that this regulation is of paramount importance for achieving the goals of National Council. This selectivity allows to focus on the most important and significant regulations.

Assessment of the draft law or the existing regulation can be suggested by government agencies, non-governmental organizations, individual entrepreneurs, members of the National Council who carry out an ongoing monitoring of normative regulation and others. Final decision on whether or not to carry out an expertise is made by the Council's collegial body.

Upon examining the regulation the National Council has the right to recommend relevant government authorities not to adopt the examined draft regulation or change it, to amend or abolish the existing legal act. In order to implement its findings, the National Council has the right to propose the President of the Russian Federation and other competent federal authorities

to initiate the necessary regulations.

To fulfill its mission the National Council has the right to request all statistical and other relevant information necessary for the impact assessment from the relevant government authorities and other stakeholders.

5. The National Council's structure and work arrangement

The members of the National Council are suggested by the Chairman of the National Council and approved by the President of the Russian Federation. The Council is formed on the basis of scientific and expert reputation of its members and is composed of nine leading independent experts in the field of economics and law. The experts who are recognized in the scientific and expert communities form the Board of the National Council. The National Council's members are not delegated by business associations or government agencies, but selected solely *on the basis of qualifications and reputation*, thus allowing formation of a truly independent and competent body.

The National Council's working expenses are covered by the federal budget.

The work of the National Council's members is paid and the salary level ensures that leading experts join the National Council. The National Council can establish standing commissions and working groups for different fields of legal regulation or impact assessment of certain acts.

Analytical, organizational and technical support of the National Council is provided by a Secretariat consisting of analysts and technical staff. For particularly complex industrial regulations external expertise can be carried out.

The work of the National Council is transparent to the maximum extent. Information about ongoing examinations, public consultations and opinions of the Council is to be posted on the National Council's website.

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