

## SOME RESULTS OF REGULATORY IMPACT ASSESSMENT (RIA) AT THE FEDERAL LEVEL IN RUSSIA IN THE 2ND HALF OF 2013

On July 1, 2013 the Decree of the Government of the Russian Federation of December 17, 2012 No. 1318 "On procedure for carrying out regulatory impact assessment of draft regulations by federal executive bodies, draft amendments to the draft federal laws and draft decisions of the Board of the Eurasian Economic Commission, as well as amendments to certain acts of the Government of the Russian Federation"<sup>1</sup> entered into force.

The Decree approved the transition to a decentralized model, where federal executive bodies - developers of draft regulations are obliged to carry out preliminary IA, and conduct public consultations. The authorized body (the Ministry of Economic Development of the Russian Federation, MED) examines the quality of results provided by developers, as well as examines compliance with all established assessment procedures by the developers. In addition, the Ministry is a "chief methodologist" in the field of RIA, thus the authorized body approved the form of preliminary IA report (the Order of the Ministry of Economic Development of May 27, 2013 № 290), final IA report form, as well as RIA Methodology.

Another innovation of the Russian Federation Government Decree № 1318 was the introduction of the "early stage" of assessment, which includes public consultations on notification about preparation of draft regulation. Following the results of consultations, the developer can come to a conclusion about absence of the need to adopt the regulation or the need to prepare it with due account of the views received from participants of public consultations.

Besides, "importance marker" of draft regulation has been introduced. Degree of regulatory impact is assigned to each draft regulation: low, medium, high. The impact degree is set on the basis of regulation novelty and change in expenses of subjects of entrepreneurial and investment activity, the degree determines the duration of public consultations.

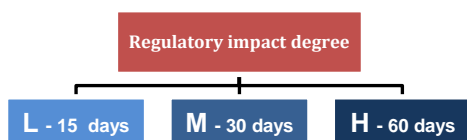


Chart 1. Minimum public consultation timelines, depending on the degree of regulatory impact

The scope of RIA was expanded: now draft regulations on tax and customs administration, amendments to

<sup>1</sup> Introduction of RIA in Russia started in 2010, this Decree has become a milestone in 2013

government draft laws, decisions of the Eurasian Economic Commission Board are subject to RIA.

In case non-observance of RIA procedure by federal executive bodies is revealed during preparation of IA report, the Government Executive Office returns draft regulation within 5 days. Regulatory legal act cannot be registered in the Russian Ministry of Justice without IA if the act is subject to regulatory impact assessment.

Currently the official web portal for publishing information about the preparation of draft legal acts and results of public consultations in Internet is finally approved – regulation.gov.ru.

The abovementioned innovations were aimed at improving RIA quality, but at the same time they carry the following risk: assessment functions were transferred to disinterested persons (developers of regulation), in order to prevent loss of assessment quality it is necessary to control their activities, as well as to provide with necessary resources and train for new activity.

Currently RIA procedure consists of the following steps:

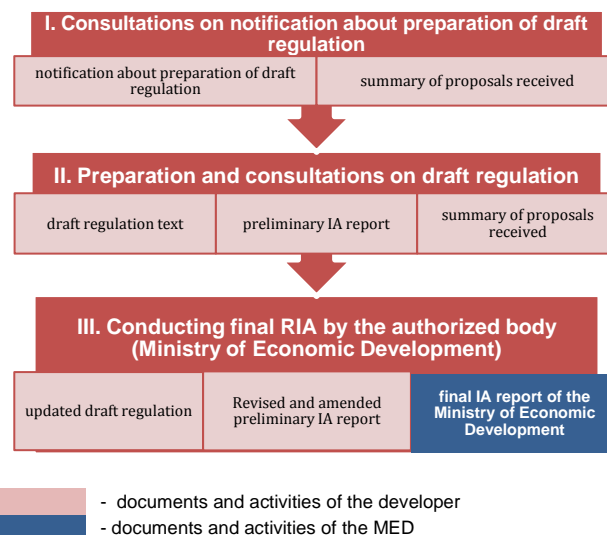


Chart 2. Steps of RIA procedure in Russia according to the Decree of the Government of the Russian Federation of December 17, 2012 No. 1318

### Single portal regulation.gov.ru

Draft regulations and evaluation results shall be published on the single portal within the framework of all four Decrees of the Government of the Russian Federation aimed at the disclosure of information and public participation in the discussion of regulatory initiatives of federal executive bodies: dated December 17, 2012 No. 1318, dated August 25, 2012 No. 851<sup>2</sup>, dated July 29, 2011 No. 633<sup>3</sup>, dated February 26, 2012 No. 96<sup>4</sup>.

<sup>2</sup> "On procedure for disclosing information by federal executive bodies about the preparation of draft regulations and results of public consultations".

<sup>3</sup> "On expertise of regulatory legal acts of federal executive bodies in order to identify provisions unreasonably complicating entrepreneurial and investment activities, and on amendments to certain acts of the Government of the Russian Federation".

<sup>4</sup> "On anti-corruption expertise of regulatory legal acts and draft regulatory legal acts".

Now the portal contains information about more than 8.5 thousand draft regulations, about 25% of them – in the frames of conducting RIA procedure.

The portal provides an opportunity for consultation participants to voice their opinion regarding the draft, to get acquainted with views of other participants as well as with the decision made by the developer on consideration or non-consideration of the proposals with reasons for the proposals neglect if this is the case.

In addition, the portal resources can allow detecting “overlapping initiatives”, i.e. draft regulations aimed at solving one problem, but developed by different bodies. However, the body authorized to manage the portal did not comment on this opportunity, the appropriate mechanisms are neither fixed legislatively nor as a recommendation.

At the same time, the portal allows monitoring of federal executive bodies’ and the authorized body’s work and helps to identify problem areas.

### Monitoring of performance of federal executive bodies – developers according to the single portal

Since July 2013 NISSE conducts monthly monitoring of all draft regulations published on the single portal in pursuance of the “road map” of the Russian Federation Government Decree No. 1318 at the stage of RIA (see Fig. 2). Scope of monitoring includes draft regulation text, as well as preliminary IA report. As part of the monitoring, technical (inability to see the required documents), and the most evident substantive (non-conformity of form and content of preliminary IA report) mistakes are revealed.

NISSE also conducts monitoring of the third stage – “RIA procedure” – based on the data from the single portal. As part of monitoring the following parameters are assessed: quantity of participants of public consultations on draft regulation text, existence of differences between preliminary IA reports published at stages 2 and 3 (in order to correct the most evident shortcomings identified in the monitoring of stage 2); defining conclusion on the draft (positive or negative), argumentation of the Ministry in case of negative final IA report.

### Excessive amount of draft regulations and their volume

In pursuance of the “road map” of the Russian Federation Government Decree № 1318 (i.e. on RIA) about 2.3 thousand acts from September 2010 (the beginning of RIA implementation in Russia) until December 2013 (which is about 700 regulations per year on average) were evaluated. In the second half of 2013, 25 federal executive bodies and 1 public corporation published draft acts on the single portal for conducting RIA, while two bodies (Federal Service on Customers' Rights Protection and Human Well-Being Surveillance of Russia and the Ministry of Transport of Russia) account more than 25% of all regulations subjected to RIA, 10 bodies out of 25 drafted 78% of regulations subjected to RIA.

Agency-level documents dominated in the structure of draft regulations subjected to RIA - 54%. Leaders in the

number of documents of such level are Federal Service on Customers' Rights Protection and Human Well-Being Surveillance of Russia, Russian Federal Environmental, Industrial and Nuclear Supervision Service, Russian Ministry of Transport and Russian Ministry of Labor. Regulations of the higher hierarchy undergoing RIA account for less than 50% (Figure 2).

During the period from July to December 2013, 409 draft regulations were published for RIA.

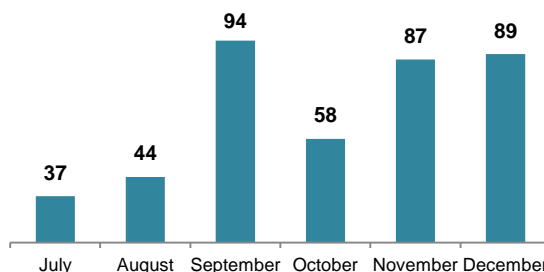


Figure 1. A number of draft regulations published in the frames of RIA in the 2nd half of 2013

The total volumes of produced draft regulations are large. For 6 month federal executive bodies produced and published 6047 pages in the framework of RIA i.e. increase of the regulatory framework for one year are at least 10 thousand pages. These are only draft regulations which undergo RIA procedure.

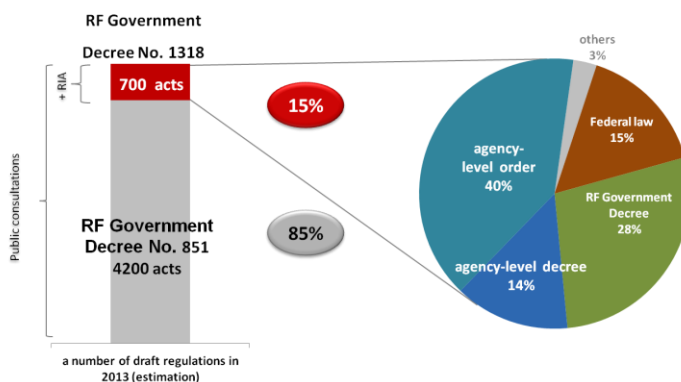


Figure 2. Distribution of draft regulations published on regulation.gov.ru by level of approval, and types of draft regulations requiring RIA

If we also consider draft regulations that do not fall into the scope of RIA, but are published for consultations on the portal (following the “road map” of the RF Government Decree No. 851), the estimated amount will be at least 40 thousand pages of new regulations yearly. Currently the main volume is submitted by the bodies, whose acts relate to security issues (“technical norms and rules”): Federal Environmental, Industrial and Nuclear Supervision Service of Russia (hazardous industrial facilities), Russian Federal Service on Customers' Rights Protection and Human Well-Being Surveillance (sanitary-epidemiological safety for all and for some categories), Russian Ministry of Transport (safety at all modes of transport), Russian Ministry of Labor (health and safety)

## Key findings on the activities of federal executive bodies in the field of RIA of draft regulations based on analyzing data on the single portal

1. The Russian Federation Government Decree No. 1318 approved the decentralized RIA system. The main risk was the transfer of new functions to disinterested persons without proper control adjustment over their activities, necessary resources, training and administrative incentives to conduct RIA properly. The results of the Monitorings show that this risk is actually occurring. Developers are too formal in conducting RIA procedure, and a number of procedures determined in the legislation are not performed systematically.

2. Early stage of RIA introduced by the Russian Federation Government Decree No. 1318 does not perform its role yet. In many cases developers do not regard notification as the notice to start preparation of draft act, in a significant number of cases, the developer already has a finished draft and consultation on notification turns to be a formal procedure. This may be due to the fact that most draft regulations are being prepared on commissions of a higher level of authority and the developer cannot refuse to adopt regulation. Currently there has been no single case of refusal to prepare regulation because of the results of public consultations on notification.

*Consideration of alternatives to government regulation and regulation methods* is possible only at the second stage of evaluation (when draft regulation is published), but developers often do not include them in preliminary IA report (in more than  $\frac{3}{4}$  of cases), and instead of the evidence of the need to adopt this regulation they simply indicate that the problem cannot be solved without government intervention (sometimes adding that a regulation is needed, and it can be adopted by the state). Direct indication of the review and evaluation of each alternative is missing.

*There is no practice of discussing initiatives per se before making a decision about preparation of draft regulation.* A reason for that is virtual absence of legislative provisions regulating development, discussion and evaluation of initiatives.

3. Determining a degree of regulatory impact is often used not as a marker of draft regulation importance. With a very significant amount of draft regulations subjected to RIA, no other markers of importance exist, which complicates public consultations.

Developers often indicate average impact degree, which implies change of obligations and restrictions for business entities, but preliminary IA report states the changes do not occur and expenses are not expected. However, it turned out to be more advantageous for developers to indicate an overestimated degree of regulatory impact since it prolongs the adoption timelines of the regulation for 15 days, while estimated degree of regulatory impact revealed by the authorized body returns the developer to the stage of public consultations, which may delay the adoption of regulation for more than 1.5 months.

4. Major mistakes are produced by the developer at an early stage - the authorized body (Ministry of Economic Development) receives the results with mistakes for assessment. The Ministry of Economic Development pays insufficient attention to ongoing control at an early stage; meanwhile, having established such control, the Ministry could achieve better quality of the developer's final documents.

5. Proportion of received reports with evident shortcomings is constantly growing and is high even on the part of the body authorized in RIA.

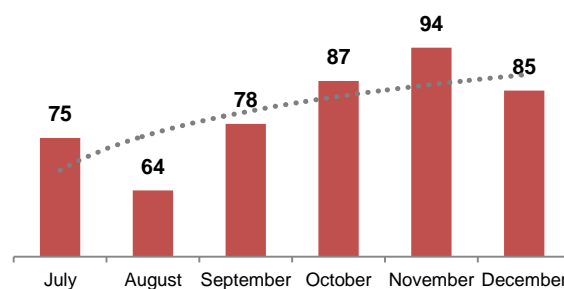


Figure 3. Proportion of preliminary IA reports with mistakes in the 2nd half of 2013 identified during Stage 2, % of the amount published

Proportion of preliminary IA reports, where we have identified evident mistakes was on average 81.7%. *Typical mistakes* are the following:

- Blank sections of the report;
- Incorrect filling of a number of sections. Problems with description of the proposed regulation objective (developers often write that the aim is to adopt the act), description of a problem and the negative consequences of its existence, absence of qualitative indicators, absence of quantitative estimates, lack of indicators to achieve regulatory objectives. As a rule there is no indication of adverse effects or they are reduced to 0, as well as measures to control them, although, the form of preliminary IA report contains such section;
- The degree of regulatory impact is incorrectly specified;
- Drawing up preliminary IA reports by blindly copying information from sections of other reports – and thus having made one template, developers change only the name of draft regulation and the reason for elaboration;
- Drawing up preliminary IA report not according to the form approved by the Ministry of Economic Development.

Developers should finalize their IA reports following the results of public consultations, but 58% of reports published on stages 2 and 3 are completely identical. Only in 27% of cases the developers partially corrected mistakes in the preliminary IA reports.

6. There is a low level of discipline and accuracy of developers and the authorized body in publishing the required documents on the portal. Too often, there are no documents on the portal necessary for participants of public consultations for discussion.

For the second half of 2013 only 311 of draft regulation out of 409 acts published for RIA were accompanied by

preliminary IA report file. Developers uploaded other documents instead of the required preliminary IA report indicated in the link, or report file cannot be viewed or downloaded in common browsers. On average, about 25% were not available for public comment.

7. Russian single portal regulation.gov.ru has a number of shortcomings, the information published is not subject to open data principles, formats of published files are not approved, and no elementary automatic verification of information exists. All this eventually reduces the role of the portal in the discussion of draft regulations. Its analytical and organizational capacities are not used in full.

8. Conducting public consultations, as evidenced by the statistics of their results, should be considered unsatisfactory. There are many proofs associated with improper audience targeting of discussed draft regulations, poor advocacy of consultation results, as well as an excessive amount of drafts directed for consultation, given limited expert resource and inactive importance markers.

Statistics show a very low level of citizens participation in public consultations: average number of participants on notifications – 0,5 people, on draft acts 0,3 people. There were no participants on more than 80% of draft regulations.

In addition to the short time available for public consultations (3-5 times less than, for example, in the European Commission), there are a number of reasons for the low activity of citizens in consultations: low level of information content of notifications; lack of minimum standards of public consultations and methodological guidances; low importance of consultation results; absence of agreements between developers and major business associations, consumers, expert centers; inactive importance markers; neglect of consultation results outside the Internet; absence of explanation regarding the proposals neglect; decline of importance of public consultations' results due to the fact that the regulation will be adopted on commission in any case.

9. Facts of "Monitoring of Stage 3" indicate that the content of the developer's preliminary IA report is rarely taken into account by the Ministry of Economic Development in preparation of final IA report, RIA Methodology approved by the Order of the Ministry of Economic Development No. 290. is not used. There are grounds to believe that there is a selective attitude to developers, and "quality standard" during expertise of the developer's materials for some of them is underrated.

During the analyzed period 54 final IA reports were published on the single portal, 10 others were published on the official website of the Ministry of Economic Development. In 21 case the Ministry did not make conclusive definition, at the same time, it is not always possible to make an unambiguous conclusion about whether it is positive or negative. 12 final IAs out of 64 can be considered negative. They were determined as such in cases of improper execution of procedures and in cases of identification of provisions containing unjustified restrictions for business.

In some cases, positive final IAs were issued on draft regulations with a number of necessary documents missing during the period of public consultations, and preliminary IAs containing evident mistakes (i.e. RIA Guidelines approved by RF Government Decree 1318 were not met). This is evidence that there is a selective approach of the Ministry to the documents from different developers.

10. There is no KPI system for developers and the authorized body, which characterizes the quality of work and results at all stages of RIA. In fact, the work on it started in 2013, but KPI system has not been approved yet. The Ministry of Economic Development did not submit relevant materials for discussion. Without such a system there are no incentives to conduct RIA in a proper way, and the situation with quality of work is likely to worsen.

11. Low information content of the Ministry's reports on the development of RIA institute in Russia. Due to the lack of KPI, reports cannot contain a qualitative assessment of the state bodies' work in this direction. Information concerning the conduct of public consultations is poorly presented; the question of their effectiveness is not raised.

12. Despite the fact that RIA in Russia is being conducted for 3 years, *weak methodological support of the process should be stated in terms of the dissemination of best practices in regulation*. The fact is that currently in Russia there is an expertise of existing regulations (ex-post IA), but it includes only agency-level regulations in very limited quantities (20-25 per year in against several thousand of newly approved each year). There is no comprehensive analysis of existing legislation for compliance with clearly stated objectives in the field of state regulation policy, including consideration of associated costs and benefits in order to maintain its relevance, "payback", cost-efficiency and consistency, as well as usefulness in achieving the abovementioned objectives. Initiatives to introduce evaluation of impact of existing regulatory legal acts and their complexes (ex-post IA) still remain on paper.

There are no RIA libraries and no results in improvement of methodological guidelines and approaches to evaluation based on experience in the field of RIA. It is declared that such work is being done, but the results are not available to the public yet.

13. A common problem for almost all aspects of RIA implementation in Russia is poor resource base. More serious financial resources are needed to reinforce the mechanism (that is now mostly aimed at saving billions of rubles) so it could really be effective in performing its function.

14. Currently an excessive amount of acts regulating entrepreneurial activity is produced and adopted. In Russia there is no set of rules for creating simpler and clearer norms. The problem cannot be solved only by further introduction of RIA – a complex of mechanisms should be established by the Regulatory Policy Concept, which in turn should be elaborated and adopted.

## Recommendations and proposals

1. Elaborate and adopt the Regulatory Policy Concept, which, in addition to RIA, would include a complex of mechanisms to improve the rulemaking process and its results, and would be based on the best practices of the OECD and the European Commission, in particular on the principles and mechanisms of the Smart Regulation Concept.

2. Approve KPI system for developers and the authorized body, characterizing the work quality of federal executive bodies in preparing notifications, preliminary IAs, conducting public consultations, and the authorized body (Ministry of Economic Development) – final IAs, as well as quality control at the early stages (before submission of results to the Ministry). This system should also include indicators designed to limit the volumes of produced texts of regulations, and be closely aligned with the Regulatory Policy Concept.

3. Solve the single portal's technical problems as soon as possible, as well as extend open data rules to the portal. Establish a system of automatic verification of documents published on a single portal, inter alia not allowing developers to upload incomplete or incorrect documents. The system should not allow access to the next stage until the documents package is not complete.

4. Develop and approve methodological base (standards and guidelines for achieving them) for conducting public consultations, and clarify legal and regulatory framework taking into account multi-channel public consultations and diversity of their forms.

5. Finally introduce full-fledged ex-post impact assessment of regulatory legal acts.

6. Solve the problem of methodological support of the process by organizing libraries containing best Russian and international practices.

7. Develop analytical potential of the single portal, including similar Monitorings, rankings of developers, publication of FAQ and teaching materials, conducting surveys among public consultation participants.

8. Define real material base for RIA development both at the federal level and in Russian regions and municipalities. Amount of resources invested in RIA development should be comparable to the expected benefit of this institution; otherwise the expectations will turn into illusion.

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