OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN RUSSIA

GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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AND DEVELOPMENT

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GOVERNMENT CAPACITY TO PRODUCE HIGH QUALITY REGULATION IN RUSSIA

Introduction

Russia stands at a crossroads on its path to economic change. If it implements reform vigorously, the country can increase its growth rates, improve its social welfare and take a leading role in the global economy. In some areas, its performance could converge with that of OECD countries. But if Russia ignores the factors that have dogged it in the past, the future could bring only modest growth and continued marginalisation in the world economy.

In July 2001, the government began to implement its "Medium Term Programme of Social and Economic Development for 2002-to-2004," the document that underlay all its subsequent reform efforts. Until the launch of this programme, the notion of regulatory reform in Russia was fragmented and undefined. In the 1990s, the government had embarked on several reform initiatives under such headings as "deregulation" and "debureaucratisation." They had uneven impact and at times created more problems than they solved.

The medium-term programme set out the fundamental principles for regulatory reform and a timetable for its implementation. It defined a scenario that combines a measure of state oversight with economic liberalisation. State intervention was to occur only in cases where market forces could not do the job. The role envisioned for government was to reduce barriers to growth and to create a favourable entrepreneurship and investment climate. The model prescribed in the programme was based on an implicit social contract between the state and its economic subjects; the state was to provide an appropriate institutional and regulatory framework, while the economic subjects were to comply with the rule of law.

The government's has gone a long way toward carrying out the principles laid out in the programme. But the state's withdrawal from the economy is still far from complete. It remains an important player in the market. This continues to breed *ad hoc* policy making and arbitrariness, and it has the potential seriously to distort markets. Rather than rely on law or regulation, the state continues to exert direct control over assets and to wield market power. This may have been a reasonable strategy for the early years of transition. But the time has now come for improving regulatory quality and promoting administrative and regulatory practices within the rule of law.

The regulatory environment

The Russian regulatory system presents a number of strongly-marked characteristics. It is essentially prescriptive: it seeks to determine and control economic activity down to the smallest details. This stems from an underlying conviction by Russian regulators that the responsibility for ensuring regulatory compliance should reside with them. One problem with such a prescriptive approach is that it becomes easily outdated as technology or industry practices change. The costs of maintaining detailed prescriptive regulations that keep up with current practice are likely to be excessive. Prescriptive regulations also tend to stifle innovation, as they do not provide the flexibility that businesses need to use new technologies and practices.

The system can be inconsistent. The development of implementing regulations (secondary legislation) has been slower and even more inconsistent than the adoption of framework acts. Many Soviet regulatory documents are still in force. As a consequence, it is not always clear which regulations apply in a specific case, creating confusion for regulators and the regulated community alike.

It demands a high degree of information. Russian regulatory standards require those starting businesses or launching new business projects to provide regulators with a great deal of information. Under the current approval procedure, whenever design changes are made, project documentation must be resubmitted, and then has to be re-reviewed and re-endorsed all over again.

The Russian system is highly sequential. The requirement that one approval must be obtained before the request for another approval can be submitted adds considerably to the time it takes to secure all necessary approvals for a project. The sequential nature of the approvals process places a heavy financial burden on the investor and the state and increases the potential for costly delays. It can also be duplicative as regulatory bodies often duplicate each other's efforts by reviewing documents that are essentially the same.

Russia's complex regulatory framework is further complicated by weak enforcement and spotty compliance. A popular Russian saying holds that the severity of Russian laws is tempered only by their lack of enforcement, and the dictum could well be applied to the regulatory system of today. No one really knows which laws and regulations are implemented and observed, although it is clear that many are not implemented at all, or only partially.

This difficult situation stems from a number of causes, first among them a historical lack of respect for the rule of law. Administrative and judicial bodies are weak in both moral authority and financial resources. Moreover, the penalties and sanctions for failure to comply with regulations are not applied in a rational way. Some public officials engage in corruption through the discretionary enforcement of regulatory policy.

The government's approach to the regulatory process is changing. Under a new scheme described below, officials proposing legislation are required to take into account alternatives to regulation. A lead ministry is appointed to supervise each legislative initiative through the law-making process. It is obliged to consult with other government departments before a draft law is considered by the government. This practice is still new, but it is clearly a positive step toward better-quality regulation. Until this procedure was put in place, ministries had substantial freedom in taking regulatory initiatives, and there was a lack of co-ordination among ministries.

The regulatory environment in Russia, though improving, remains poor. New investments and economic diversification will remain limited unless significant bottlenecks are removed. The remaining reform agenda is extensive, particularly at the regional and local levels.

The administrative environment

Implementing a comprehensive regulatory reform agenda will depend crucially on the quality of Russia's public administration, especially at the regional level. Russia's public administration has not, in general, been up to such key tasks as increasing economic growth, reducing poverty and enabling the country to compete effectively in the global economy. It has not provided the Russian population with the service it has a right to expect.

Three key problems haunt the current system.

- The federal government is a product both of its Soviet past and of the tumultuous early years of Russia's transition. It is made up of competing and overlapping structures with unclear accountability. These structures include the government itself, with its ministries, agencies and services; the government *apparat* (attached to the prime minister's office and fulfilling functions similar to those of the cabinet office in the UK), and the President's administration (which

resembles *pari passu* the White House staff in Washington. The Administration and the *apparat* often parallel and duplicate the policy-making role of line ministries. The parallel structures fragment decision making. This has led to the proliferation of inter-ministerial commissions to resolve inter-agency issues, a trend which has increased transaction costs and undermined the transparency of decision making.

- The quality of the public administration and the civil service is low. Civil-service salaries are not competitive with those in the private sector. It is hard to recruit and retain top staff, and low pay can encourage some officials to accept bribes

- The fallout from federalism is a major problem for regulatory reform in Russia. The federal government has moved ahead rapidly in legislating reforms in many areas, but the implementation of most of them requires detailed action at the regional level. While some regions have actively implemented reforms, progress across the Federation has been very uneven. Constant vigilance will be needed to ensure that actions taken by the federal government are not countermanded or sabotaged at sub-national level.

The government has begun a major reform of the state and its public administration. Three sets of complementary and inter-linked reforms are being developed and implemented.

- The first reform concerns *the state administration*. On 9 March 2004, President Vladimir Putin initiated a radical plan to reorganise and streamline the federal government. It defined the different types of government bodies and their respective roles. The reform also sought to keep control of decision making and policy management at the centre and to improve overall government performance.

- Second, the *civil service* is being reformed. A Presidential decree to guide this reform over the period 2003-to-2005 calls for large pay hikes for civil servants. A code of conduct for the service has already been approved. A major aim of the reform is full transparency in the operation of the civil service. A new law on the state service system has been drafted, as has a law on the civil service, which emphasises the merit principle. Administrative processes are to be computerised to increase efficiency and to discourage corruption. Eventually, each of Russia's regions will have to be persuaded to reform its own civil service.

- Reform of the federal system was one of President Putin's early priorities. The aim was to strengthen the authority of the federal government and resume much of the power that the regions had grabbed during the 1990s.

Recent initiatives to improve the quality of public administration

By the end of the 1990s, the Russian authorities and many outside observers had come to regard the reform of the state institutions themselves as the most important item on the country's reform agenda. In recent years, attention has focused on reforming the courts, the civil service and the major regulatory institutions, and on recasting relations between the federal centre and the sub-national governments. But progress in rebuilding state's administrative capacities has been very uneven.

Public administration reform

A much-anticipated reorganisation of federal executive bodies was undertaken in March 2004, after several years of debate. The federal executive is divided into three types of institution, each with a specific role:

- Federal *ministries* are policy-making bodies. They conduct the analysis, development and evaluation of policies in their respective domains and they draft new legislation. They co-ordinate and monitor the activities of federal services and agencies within their jurisdictions. The reform reduced the number of ministries from 23 to 15.

- Federal *services* are supervisory and regulatory bodies. Funded from the state budget, they can issue individual regulations but not normative legal acts.

- Federal *agencies* are direct providers of public services to the state and private sectors. Their funding can come in part from charges and fees paid by their "customers".

Before the recent restructuring, the government *apparat* mirrored the structure of the government itself. It was widely criticised for unnecessary duplication and for weakening the role and status of line ministries. And the *apparat*'s active involvement in legislative and regulatory activities limited its time for focusing on more strategic issues. The recent reform radically restructured the *apparat.* Its staff was cut by 20%, from about 1,000 to about 800. The number of its departments will be cut from 23 to 12. Some will be merged, others handed over to the relevant ministries.

Under the reorganisation of federal executive bodies, the President retains a major role in managing the federal government. All five of the so-called "power ministries" (Interior, Emergency Situations, Foreign Affairs, Defence and Justice.) report directly to him. Seven services and two agencies are also under the direct Presidential purview. The President's Administration (his Kremlin staff) sets and develops the main directions of reform.

The reorganisation appears to reflect the desire to separate the functions of policy making, service provision and regulation. In principle, such a separation would increase the efficiency of executive bodies while reducing the conflicts of interest that arise when these functions are combined. Unfortunately, there is little evidence that the reorganisation has achieved either aim. It disrupted the work of many government bodies for much of 2004, as officials concentrated on setting up the new structures and sorting out their respective roles. In many cases, regulators continue to be subordinate to the ministries they regulate. The Russian authorities have not yet demonstrated that they are committed to creating regulatory organs that are genuinely independent and properly shielded from outside pressure. The subordination of the new Federal Antimonopoly Service to the cabinet is a particularly striking instance, as this service is required to evaluate many of the government's own acts.

Civil service reform

Reform of the bureaucracy has been actively discussed for several years, but the strategic direction of reform is still far from clear. The government's 2001 programme enunciates a number of worthy goals, including greater openness and accountability, a higher level of professionalism, the eradication of corruption and clearer legal definitions of the rights, duties and competences of civil servants. But the programme is thin on specifics and says little about how these ends are to be achieved. It is hard to find a clear model either in the programme or in the decrees and statutes adopted over the last few years.

Whatever overall orientation is ultimately chosen, the Russian authorities face a number of specific choices on civil-service reform, including:

- *The degree of unity or diversity to be achieved.* Historically, Russian ministries and other agencies have operated according to rules, organisational cultures and career paths specific to each of them. The question of whether, or to what extent, Russia will maintain separate arrangements for each major group of officials continues to be contested.

- *The vertical integration of state administrative bodies.* One issue here concerns the relations between federal institutions and the sub-national authorities. Civil service rules for the federal, regional and municipal bureaucracies are just beginning to be standardised. A second issue, concerns officials working for the branches of federal ministries and agencies in the regions in such fields as law enforcement. Such "territorial" federal officials are often heavily influenced, or even co-opted, by regional authorities.

- *Recruitment and promotion.* The legislation adopted in 2003 and 2004 establishes a basis for competitive recruitment, though it allows many exceptions. It envisages the recruitment into the initial grades of individuals who will become career civil servants. But questions remain as to whether, and under what circumstances, individuals might be recruited into the service at higher grades. Nor is it yet clear that there will be promotion procedures that are transparent, efficient and fair.

- *Civil service pay*. It is widely agreed that raising civil servants' pay is a necessary – though by no means a sufficient – precondition for curbing corruption. Corruption will be hard to root out so long as public officials on very low salaries are called upon to take decisions affecting the interests of wealthy and powerful companies. The recent move to reduce the size of the federal administration while significantly increasing officials' salaries is to be commended. But, there is still no consensus on how large the pay differentials within the service should be or on who should set pay scales. Nor is there agreement yet on the use of merit-based pay and similar incentives or on reducing the share of officials' remuneration that is provided in kind rather than in cash.

Changes in the broader institutional environment

Civil-service reform in the narrow sense of reorganising structures and redefining roles will achieve little on its own. Its effects will depend on the wider institutional environment. Indeed, changes in that environment may matter more than the specific model of administrative reform. Whatever the ultimate shape of Russia's reformed public administration; there are a number of basic issues that will have to be addressed if reform is not merely to reproduce the old pathologies in new configurations. These include:

- *Strengthening the rule of law*. The courts will have to be better protected from pressure or interference by state bodies and private parties. State bodies will have to become more willing to be bound by the law and to follow through on their legal undertakings. There have been several episodes recently in which the state has unilaterally withdrawn from legal agreements or prosecuted individuals for actions it had previously acknowledged, implicitly or explicitly, as legal.

- *Increasing the transparency of state institutions*. Real bureaucratic accountability – to ordinary citizens or elected political leaders – will require greater access to officials and better information about what they are doing. This will not come easily. Legal requirements for openness, while important, will probably not suffice to generate real transparency. Equally important will be the vigilance exercised by executive and judicial bodies, by the legislature, by the Accounting Chamber and by the press. A more independent press would enhance both transparency and accountability.

- *Strengthening the institutions of civil society*. The state administration does not operate in a political or sociological vacuum. The extent to which it can be made accountable to the public is partly a function of the wider relationship between state and society. There is abundant evidence that corruption is less prevalent in countries that follow the rule of law and possess a highly developed civil society.[1] Civil-service reform would benefit not only from a stronger judicial system, but also from steps to foster the development of civil society and a freer press.

- *Reducing opportunities for corruption*. The laws and rules that bureaucrats administer can be made more corruption-resistant. Rules should be simple, transparent and standardised, with few exceptions and as little reliance as possible on bureaucratic discretion. Where discretion is required, the criteria that determine officials' choices should be explicitly set out. Their actions should be subject to some form of administrative or judicial review.

- *Strengthening enforcement*. While corruption-resistant legislation is important, it will not on its own reduce corruption so long as crimes go unpunished. Those who try unduly to influence the decision making of judicial or administrative institutions must be brought to account. This will require a good deal of political will, because big offenders are often wealthy private citizens or high-ranking officials.

Co-ordination between levels of government

Co-ordination between levels of government is a key issue for regulatory reform. The federal authorities have laid down the principal features of that co-ordination, but the actual implementation of those principles reform will be critically dependent on the attitudes and actions of sub-federal administrations. And history is not particularly promising. During the first decade of Russia's transition, relations between the federal authorities and those in the regions were often contentious.

The Russian Federation is divided into 89 federal subjects: twenty-one republics, six *krai* (territories), forty-nine *oblasti* (regions), one autonomous *oblast* and ten autonomous *okruga* (districts), as well as the cities of Moscow and St. Petersburg. For the purpose of this report, the term "region" will be used to refer to any of the above-mentioned federal subjects.

According to the Constitution, all 89 regions are equal in their relation with the federal government.[2] The basic framework of federal-regional relations is defined in the Federation Treaty of 1992 and in a number of articles of the 1993 Constitution. Articles 71 and 72 of the treaty broadly define the division of authority between the federal government and the regions.[3] Where federal laws are lacking or are unspecific, as was the case in many regulatory areas during the earlier years of transition, regional legislation and the exercise of regional regulatory authority filled in the gaps.

Most of Russia's regions have signed separate bilateral agreements and treaties with the federal authorities. These are tailored to the needs of each region, and so they vary widely in content. Some regions negotiated individual taxation packages, while others gained additional rights over the extraction and distribution of natural resources. The treaty process was intended to provide some coherence and predictability to federal relations with the regions. In fact, however, the coherence of the central state's policies came under daily attack throughout the 1990s from almost all the regions of Russia – including, of course, those that had signed power-sharing treaties with the centre.

The devolution of central authority in the 1990s

During the 1990s, a persistent theme in the relationship between the national government and the regions was the non-compliance by regional government with federal authority – particularly concerning regulation of the national market. In those years, the federal authorities were unable to create the conditions for a nascent federal system.[4] Instead, Russia experienced a rapid decentralisation that left the Kremlin unable to carry out its policies on the periphery. The abuses of devolution can perhaps be traced back to President Boris Yeltsin's now infamous exhortation to regional leaders within Russia to "take as much autonomy as you can swallow."

Violations of the two relevant articles of the Constitution negatively affected economic policy at the regional level and the central government's ability to influence the development and regulation of markets. Many violations involved the ownership, use and distribution of natural resources, with the regions claiming ownership despite the fact that the federal government had legal jurisdiction. Some regions introduced unconstitutional laws on the administration and distribution of federal property located on their territories. Others imposed their own financial, credit and-hard currency regulations – exercising a prerogative theoretically reserved exclusively to the federal government. Some regions even legislated on the organisation and activities of the branches of federal ministries located on their territories.[5]

Regulatory capture of regional governments

Meanwhile, the rapid privatisation of Russian industry in the early 1990s was creating a new class of private owners. These early beneficiaries from the transition had little interest in promoting effective regulatory policy. To consolidate their initial acquisition of state assets, they set out to capture parts of the state – particularly at the regional level – for their personal financial advantage. As a result, regional governments in Russia passed legislation that often contradicted the federal Constitution in ways that affected competition and market development. Illegal tariffs and non-tariff regulations were imposed on inter-regional trade as a way of favouring local products over those from outside the region. The residence-permit system that persisted in many regions was used to restrict freedom of movement and limit labour mobility. Regional claims to the ownership of natural resources and violations of federal privatisation policies were used by regional governments to benefit local economic interests. Local courts were restructured so that ownership disputes might be resolved in favour of regional interests.

Publications by the World Bank support the view that regional governments and businesses insiders had a vested interest in maintaining the *status quo* and actively worked to undermine federal policies and regulation.[6] The Bank's studies characterise the situation as a "high-capture" economy. Both old and new firms engaged in attempts to influence and "capture" the state. They sought to limit competition and the entry of new firms into the market, to preserve rent-seeking opportunities and to limit federal oversight.

Regional governments willingly participated in the process of state capture. They sought to maintain their involvement in, and sometimes control over, key regional enterprises.[7] In the end, a system of intimate interdependence developed between regional business and local governments.[8]

Regional non-compliance with federal policies and regulations resulted in a deep erosion of central state authority. The government effectively lost the ability to maintain a common market and establish a single, federation-wide economic space. The country failed to reap the rewards associated with decentralised development. Efficient decentralisation requires more than just constraints on the central state. It also requires a central government that is strong enough to control its regions. In the absence of a central state strong enough to ensure capital and labour mobility, to eliminate internal trade barriers and to protect property rights, decentralisation during the 1990s proved to be market-stalling rather than market promoting.

Reform of the federal system under President Putin

One of President Putin's early priorities was to strengthen the authority of the federal government and resume much of the power that the regions had grabbed during the 1990s.[9] His reform of the federal system aimed to bring regional laws into line with federal legislation; to co-ordinate the operations of the regional branches of federal agencies; to improve the investment climate, especially for small and medium-sized businesses in the regions; to demarcate clearly the powers and competencies of federal, regional and local authorities; and to step up the war on corruption.

The main points of the programme, announced shortly after Putin's inauguration in May 2000, were:

- Restructure the Presidential Administration, replacing more than 80 presidential representatives to the 89 regions with seven envoys to greatly expanded federal territories.

- Change the composition of the Federation Council (the upper house of the Federal Assembly) so that regional governors and heads of regional legislatures no longer automatically hold seats in it.

- Enable the President to dismiss regional governors and legislatures when the courts rule that they have passed laws or decrees in violation of federal laws or the Constitution.

Four years on, the reform has weakened some of the institutions that flourished in the 1990s, notably the office of regional governor. They have sharply limited the role that regional elites played at the national level, particularly by removing the governors from the Federation Council. Federal authorities have gained greater control over the state budget. Financial transactions have been made more transparent through greater use of the federal treasury system. The reforms have also reduced the importance of political bargaining between the federal and regional governments.

Despite these gains, there are clear limits to what the reforms have been able do. Russia's governors remain powerful, especially within their home regions. The reform creating the seven federal districts lacked a clear definition of the functions that the envoys to them would perform, and the envoys were given few resources to carry out their duties. They do not have real executive powers. Their position within the federal executive branch is ambiguous and do not have the clout to influence federal bureaucrats or regional leaders. They have small staffs, usually numbering about 100. They have no say in the process of spending federal money, a task which is handled by the Finance Ministry. Governors and regional legislatures – not the envoys – are responsible for defining and executing regional budgets. Moreover, the envoys do not implement laws or prosecute legal violations, since other institutions already exist for these purposes. Unlike governors, the envoys are not elected by popular vote. Unlike the government ministries which they are supposed to co-ordinate, the envoys do not have responsibilities defined in the Constitution. The impression is gaining ground that these presidential representatives are but another layer of state bureaucracy with poorly defined powers.

Russia's ability to make new high-quality regulation

Administrative transparency and predictability

Transparency is essential for regulatory quality. It encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. Improved transparency will be particularly helpful to the Russian government in speeding up reforms, as it will weaken the resistance of insider groups. Transparency helps create a virtuous circle in the market. Consumers and investors trust competition more when they see that special interests have less power to manipulate government and markets. Transparency is also a sharp sword in the war against corruption.

The Russian Federation is a civil law jurisdiction with a written Constitution that lays down the fundamentals of its government and regulatory framework. The Constitution sets out the general procedures to be followed in promulgating federal laws and regulations.[10] Regulations can be initiated by the President, by either chamber of parliament or by the government.[11] Federal laws and regulations take effect only after they are signed by the President and published in a number of official publications.

In the past few years, several initiatives have been taken to formalise the system for making new regulations. The first was a resolution outlining new administrative procedure for the drafting of laws by federal executive authorities.[12] It stipulates that government plans for law-making must comply with the Medium Term Programme. While there has been slippage in the enactment of some parts of the programme, it is encouraging that the legislative framework outlined more than four years ago is largely being followed.

The resolution specifies that a federal agency drafting new regulations must:

1. Co-ordinate with other relevant federal agencies;

2. Report progress to the government *apparat* and submit proposals to it on issues that require specific resolution;

3. Set up working groups with representatives of public, academic and other relevant organisations to contribute to the drafting effort.

These procedures introduce a greater degree of transparency both within the government and for the public at large. Moreover, the resolution makes the head of the responsible federal agency personally responsible for ensuring the contents and the timely preparation of draft laws.

The Justice Ministry has laid out the following stages for law-drafting:

- Developing the concept of the draft law;
- Preparing the text of the draft law;
- Co-ordinating the draft's text with the federal executive authorities concerned;
- Obtaining a legal opinion from the Ministry of Justice on the draft's constitutionality)
- Revising the draft and accompanying documents, if necessary;
- Preparing explanatory notes, and financial and economic justifications, of the draft law;
- Sending the draft to the government;
- Supporting and explaining the draft law when it is deliberated by the Federal Assembly;
- Preparing and submitting to the government draft opinions, official comments and amendments for draft laws deliberated by the Federal Assembly;
- Collecting, recording and organising background and analytical materials related to the law drafting.

A second major initiative covers the drafting and introduction to parliament of bylaws that support the enforcement of federal laws.[13] It requires each federal body to name the unit responsible for compiling a list of bylaws as well as a timetable for their adoption. An efficient and effective mechanism for developing bylaws following the adoption of federal laws has been lacking for some time. As a result, many federal laws, once passed and promulgated, could not take effect at the planned date. It will be necessary to develop procedures to keep the regional authorities throughout Russia advised well in advance about what bylaws are being developed. This would avoid conflicts between bills written by a federal ministry or agency and bylaws written by regional authorities.

A third initiative is a new law on technical regulations,[14] which provides a system for the development, adoption, and application of technical standards and requirements. The law also creates procedures for the certification of such standards and the evaluation of compliance with them. The procedural element of this law could be just as important as its substantive component. It is an important attempt toward defining a new and improved regulatory process. The law will have far-reaching effects. All requirements and standards applicable to goods under other laws and regulations will be subject to compliance with it. Specific technical requirements and standards will be introduced by means of 'technical statutes'.

Transparency in decision criteria: proportionality

OECD member countries agree that regulations should be based on explicit quality criteria that identify when they are needed. Some governments stick strictly to the principle that benefits should justify costs. Others have adopted more general criteria based on proportionality. Those applying proportionality criteria ask whether the magnitude of the problem at hand is sufficient to justify action and, if so, whether the action proposed is the lowest-cost option available. Examining the issue of proportionality can act as a check the overuse of regulation. It can also help to ensure that standards of regulatory quality, such as its interfering as little as possible with trade, are protected.

Russian legislation requires that the government explain and defend its draft regulatory proposals. But there are no clear-cut guidelines for preparing the notes that accompany draft regulations along their path to adoption by the government or the Duma. Nevertheless, some consideration is given to proportionality at several stages of the law-making process and by different participants in the process.

The government's law-making plans are now formed within a broad legislative and economic framework. Moreover, the Ministry of Justice has the authority to reject regulatory proposals if it considers them unjustified or improperly substantiated. Secondary legislation must also be justified. The government's draft resolutions and directives need to be accompanied by explanatory notes justifying the regulatory actions they entail and projecting the economic and other effects of their implementation.

The Audit Chamber participates importantly in the vetting of legislation. It conducts its own assessments of income and expenditure items in the draft federal budget. It also analyses draft laws and other acts of the federal authorities that entail costs to be covered by the federal budget.

The Law on Technical Regulation stipulates that draft technical regulations submitted to the Duma be accompanied by a justifying note. The documentation should indicate any provisions that differ from international standards or from requirements currently in effect in Russia. It should also contain a cost-benefit analysis of the proposed regulation.

Requirements for the justification of proposed legislation are set by the Federation Council.[15] A draft submitted for the council's adoption must be accompanied by:

- A note justifying the regulatory action, including a detailed description of the draft, its objectives and key provisions,
- An explanation of the draft law's place in the system of legislation,
- A cost-benefit analysis (if the law entails new costs),
- A forecast of the political and economic effects of the law.[16]

The Ministry of Economic Development and Trade has proposed a law requiring that draft regulations be submitted to independent critiques based on a presumption of inexpediency. The need to regulate would have to be substantiated by the regulation's proponent.

Transparency through dialogue with affected groups

Consultations with the public give interested parties a chance actively to influence regulatory decisions. They may take place at every stage of the development of regulations, from the initial identification of a problem to the evaluation of regulations already in force. Consultation may be a one-time event or a continuing dialogue.

In Russia, the idea of public consultations has been receiving more and more attention in Russia, and some steps have been taken toward refining procedures for them. The general procedures on the matter of consultation for regulatory decision making are largely handled by individual ministries and agencies. More and more consultations with the public are taking place, especially with respect to major reform programs. But such consultations largely remain voluntary. Moreover, these efforts may not be sufficiently ambitious to assure the kind of open and systematic dialogue that would lead to a shared "ownership" of reforms.

Current law makes the lead author of a regulation responsible for organising working groups to contribute to the drafting process and to prepare background material. It is up to the author whether to consult academic or other non-governmental bodies. He is obliged, however, to consult with regional governments when a draft law is in the joint domain of federal and regional authorities.

It is possible to set up permanent advisory boards including representatives of government agencies and of public associations and businesses. Several such boards have already been established, including the Advisory Board of the Russian State Customs Committee and an advisory board on foreign investments in Russia. These groups discuss draft regulations and reform programs, offer opinions or make their own regulatory proposals. (On the other hand, a proliferation of "consultative commissions" is reported to have little real impact.)

The Law on Technical Regulation stipulates that the start of the drafting process for any technical regulation should be announced in the official press in printed as well as in electronic form. The procedures it establishes for developing new proposals for technical regulation will serve as a "pilot" for the use of consultation in regulatory decision making.

A recent government decision, on securing access to information, may pave the way to much greater use of consultation.[17] It specifies what information the government must publish, including on the Internet, and it makes the authorities responsible for ensuring public access to information about their activities. At the same time, the Presidential Administration has launched the E-Russia programme to provide information in electronic form about the activities of the executive and legislative branches, the judiciary and regional governments, including regulatory proposals and draft laws.[18] The public can e-mail its comments and suggestions on draft regulatory proposals to the site.

A new draft law on access to information has been prepared by the Ministry of Economic Development in Trade and was submitted to the government on 25 January 2005. This draft law describes the procedures and general conditions for citizens and organisations to access information about activities of government institutions. Consultation procedures will be greatly strengthened once the law is adopted and enforces.

In moving forward, a very flexible approach is needed in promoting transparency through dialogue with affected groups. Regulatory issues differ greatly in their impact and importance and in the number of groups they affect. The OECD has recommended that minimum standards for handling consultations are needed across the whole government to provide consistency and confidence. A consistent process is a key quality-control mechanism.

Box 2.1. OECD member countries use several major approaches to public consultation

Informal consultation includes all forms of discretionary, *ad hoc* and non-scheduled contacts between regulators and interest groups. It takes many forms, from phone calls to letters to private meetings. This kind of consultation is carried out in virtually all OECD countries, but its acceptability varies tremendously. It can conceivably lead to "capture" and corruption, and it risks locking out important interests that are not a part of the ministry's network of contacts.

Circulation of regulatory proposals for public comment. A straightforward way to consult is to send regulatory proposals directly to affected parties and invite their comments. It is more systematic, structured and routine than are informal contacts. Groups on the circulation list expect to receive drafts of important regulations. Responses are usually in written form, but regulators may also accept oral statements. Circulation-for-comment is a widely used and fairly inexpensive way to solicit views from the public. Because the groups approached are selected in advance, it usually calls forth a good deal of relevant information. Its main weakness is that the lists of those to be solicited for comment are not always complete. This procedure is less satisfactory in situations where there are new and shifting interest groups.

Public notice-and-comment. The publication of draft legal texts for public scrutiny and comment is a more open and inclusive approach. Publication permits all interested parties to be aware of the regulatory proposal. Notice-and-comment was first adopted in the United States in 1946. By 1998, nineteen OECD countries were using the approach in some form. Policymakers who use the notice-and-comment method can be confident that most significant views have been heard. However, many countries have found that participation can be low when this approach is used. Participation depends on the breadth of publication, the time allowed for comment, the quality of the information provided in the published notice and the attitudes and responsiveness of regulators.

Public hearings. A hearing is a public meeting on for interested groups. A hearing usually supplements other consultation procedures. By 1998, sixteen OECD countries were using public meetings. Hearings are, in principle, open to the general public, but attendance depends on how widely the invitations are circulated, where and when the meeting is held and the size of the meeting room. Public meetings provide face-to-face contact in which a dialogue can take place. One disadvantage is that hearings are often one-off events, which some groups may be unable to attend.

Advisory bodies. The use of advisory bodies to give expert advice and information to regulators is the most widespread approach to public consultation in OECD countries. Advisory bodies are involved at all stages of the regulatory process, but they are typically called in early to define positions and options. There are many different types of advisory bodies – councils, committees, commissions and working parties. Their include members from outside the government. Their functions can vary from merely reacting to a regulator's proposals to acting as a full rulemaking body. Advisory bodies may carry out extensive consultative processes involving hearings or other methods.

Most countries combine different consultation tools throughout the regulatory process. Informal consultation and circulation-for-comment approaches are often used to test the views of a limited number of key players at an early stage, while an *ad hoc* group of experts may be created to gather reliable data before the process moves on to notice-and-comment or public hearings that allow wide input from the public.

Communication

Transparency requires that the administration communicate the existence and content of all regulations to the public, and that enforcement policies be clear and equitable. Russian legal acts can be divided into: international treaties, laws, normative acts of the Government, normative acts of the President, normative acts of the judiciary, and normative acts of the constituent regions of the Russian Federation.

- *International treaties* are published when they enter into force (together with the federal law ratifying them) in the Code of Laws of the Russian Federation and the Bulletin of International Treaties, as well as in the official journals of the ministries whose areas of authority are covered by the treaty.

- *Federal laws* are published within seven days after they are signed by the President in *Parlamentskaya gazeta* (the parliamentary journal), in *Rossiiskaya gazeta* or in the Code of Laws of the Russian Federation. Federal laws are also entered into Sistema, a database run by the Science and Technology Centre of Legal Information.

- *Acts of the Federal Assembly* are published within ten days after their adoption in *Parlamentskaya gazeta, Rossiiskaya gazeta* or the Code of Laws of the Russian Federation.

- *Resolutions of the government*, unless they contain secret or confidential information[19], are published within fifteen days after they are approved.

- *Acts of the President and acts of the government* are published in *Rossiiskaya gazeta* and in the Codes of Laws of the Russian Federation within ten days after they are signed.

- *Normative acts by ministries and departments* that bear on the rights, freedoms and interests of citizens must be registered with the Ministry of Justice. Official publication of ministerial normative acts should take place within ten days of such registration.

Regulations are now being made available on the Internet. The creation of an official government site[20] has facilitated this process. Laws signed by the President are published on the Duma site. Several commercial portals offer information about legislation; among the most popular are "Garant" and "Konsultant."

Throughout the OECD, concerns are being heard about the growing complexity of regulations; their fragmentation, inconsistency and unreadability; and the difficulty of finding the relevant regulation. As in Russia, the usual OECD response to these problems has been to publish new laws and regulations in official journals, while requiring ministries and parliaments to keep copies of current regulations available for public inspection. These mechanisms, while useful, have come to be seen inadequate. The increasing volume of regulation has increased the urgency of new efforts to make the complete set of regulatory requirements quickly available to the public.

Box 2.2. Communication regulations in OECD countries

OECD countries use six main tools to make regulations easier to find and understand:

- *Codification*. The rationalisation and clarification of complex legal regimes that have accumulated haphazardly over the years often require comprehensive legal codification.

- *Centralised regulatory registers.* The counting and registering of regulations can serve as useful tools for internal management by improving the flow of information within the public administration. In most countries that have established central regulatory registers, the rule of "positive security" has been adopted. This means that only regulations that appear on the register can be enforced. For the user, this rule provides the certainty that, if he has complied with all regulations on the register, he has fully complied with the law.

- *Plain-language drafting*. Legal texts must be understandable by non-experts. Several OECD countries have had plain-language drafting policies in force for many years, and most of these provide training in this area.

- *Publication of future plans to regulate.* This is another strategy for improving transparency. Some twenty OECD countries currently have publicly accessible registers of forthcoming regulations.

- *Electronic dissemination of regulatory documents.* Advances in information technology, including improved data storage and the rapid development of the Internet, provide opportunities to improve the dissemination of regulatory material. One problem is that relevant information may be spread over different databases due to inadequate co-ordination between different levels of government. In some cases, "information overload" may actually diminish transparency. The fact that access to the Internet is not quite universal is also a limiting factor.

- *One-stop shops and regulatory streamlining.* The "one-stop shop" concept should be accompanied by a determined effort to eliminate unneeded and costly approvals, licenses, and permissions, of which there are many in Russia. The one-stop shop usually focuses on licenses, approvals and permits and provides a list of such requirements. It can also supply application forms and contact details.

Enforcement and compliance

Perhaps the greatest shortcoming of regulatory policy in Russia is the widespread uncertainty about which laws and regulations are implemented and observed. Improving regulatory enforcement is a multi-faceted, long-term task that goes beyond regulatory reforms to the consolidation of the rule of law. Nevertheless, useful progress could be made by certain legal and institutional reforms.

In addition to such larger issues as accountability and the role of special interest groups, which this paper does not address in detail, there are many transitional and structural reasons for unpredictable enforcement in Russia:

- Multiple layers of administration. Russia's regulatory enforcement system is highly decentralised and poses formidable problems of co-ordination and consistency. The degree of decentralisation in regulatory enforcement in Russia is, in fact, greater than that in any federal country in the OECD. Russia's *central* government is quite small by OECD standards. Almost all officials who inspect and enforce regulations are employed at the regional level, with little accountability to federal ministries.

- Regional governments have regulatory and enforcement powers in most policy areas, including the approval of investment projects, safety standards, tax compliance, labour codes and environmental regulations. Many local inspectorates are funded locally, and this fact further diminishes control from the centre. Even customs posts are financed by local governments or self-financed from fees. The flow of information between the levels of government is insufficient. Federal ministries usually do not know how vigorously the laws are being enforced, and have little authority to monitor or take corrective action. Local governments that do not implement the laws face few penalties.

- Local protectionism and "capture" of the enforcement process. Powerful, sometimes corrupt, local interests can have a strong influence on regulatory enforcement decisions taken against their competitors.

- Inadequate checks and balances on enforcement actions. One major problem is that regional and municipal administrations exercise very broad discretionary powers in the interpretation of regulatory requirements. Russia's administrative-procedure laws do not require that the legal interpretations underlying regulatory decisions be disclosed in advance or that the decisions themselves be explained publicly.

- Inadequate judicial supervision. Despite recent reforms, judicial review of administrative actions is still very limited in Russia compared to that in OECD countries. Moreover, most Russian courts are subject to considerable pressure by regional governments. Judges are not tenured. They are usually appointed, promoted, compensated and removed by regional government officials. They often give more weight to local interests than to legal requirements. Sanctions can be risibly low compared to the profits to be made by violating the law and many court decisions are not enforced promptly – or at all.

- Intrusive and excessive regulation. Inspectors often intervene unduly in business decisions. Business licenses, for example, are given for very short periods, usually six months to a year. The frequent use of permissions and approvals rather than of general regulations exacerbates enforcement problems. The rapid expansion of regulation in the 1990s made the problem worse. Contrary to what might be expected, more detailed regulations do not reduce the exercise of broad discretionary powers by regulators. On the contrary: it has been observed in OECD countries that an accumulation of procedures actually *increases* the arbitrary nature of administration. It becomes impossible to know or comply with all requirements; so administrators are left to decide which rules to enforce, and how. Paradoxically, the Russian legal system is characterised both by too much detail and by too much individual discretion.

A determined programme to eliminate unneeded and costly approvals, licenses, and permissions would go a long way toward resolving many enforcement problems. But eliminating the interlocked institutional and structural weaknesses that undermine enforcement will require reforms that go well beyond the scope of this paper. The experience of newer OECD countries which have overhauled their judicial systems and developed procedures for the independent review of administrative practices might be of interest to Russia at this juncture.

One tool that the Russian government might consider to control excessive administrative discretion is the revision of its laws on administrative procedure. Administrative-procedure acts are flexible tools. They can include requirements for:

- *Making regulation*: Requirements for consultation at various stages of the development of a regulation, for regulatory impact assessments; for consideration of alternative instruments; for publication; for setting dates of a regulation's entry into effect; for its duration (including automatic "sunsetting") and disallowance.

- *Implementation and enforcement*: Accessibility of regulations; rules on incorporated material, such as standards; general rules on the extent and exercise of administrative discretion, including the publication of the objective criteria for judging applications; time-limits for decision making; publication requirements for administrative decisions; and the obligation to give reasons for rejecting applications.

- *Revision and amendment*: Application of general procedural rules to amendments of existing regulation; rules on the updating of incorporated material, such as international standards.

- *Appeals and due process.* Procedures on hearings for disciplinary actions in the case of violation; the rights of regulated entities to appeal rules and administrative actions such as sanctions.

Many OECD countries are adopting or amending administrative-procedure laws to improve the orderliness of their administrative decision making, to define the rights of their citizens more clearly and to define standard procedures for making, implementing, enforcing and revising regulations. When they are adopted in legislative form, these procedures become "rights" that the public can assert. By strengthening citizens' rights and controlling arbitrary regulatory actions, these reforms are fundamentally changing the relationship between the public administration and the citizen. Their effectiveness in improving predictability and reducing the perception of regulatory risk, while enhancing administrative accountability, can hardly be over-estimated.

Public redress and judicial review

The Russian Federation's judicial system consists of several types of courts, including the Constitutional Court, the civil courts or "courts of general jurisdiction" and the arbitration courts. Which court has jurisdiction over a particular dispute depends in part on the nature of the dispute. As a rule, economic and commercial disputes among legal entities or individual entrepreneurs, foreign or Russian, are handled by arbitration courts. The civil courts hear non-commercial disputes among individuals and legal entities.

Overall, the judiciary's involvement in the law-making process is rather passive. The separation of powers in Russia drastically limits the judges' power to affect lawmaking directly. But these limits carry some disadvantages. They may well result in the under-utilisation of valuable information. Judges who apply the law every day are well placed to know where laws conflict, where they are inadequate and where they are unfair. Yet, the only way a court can seek to quash regulation is to submit a law that has already been challenged to the Constitutional Court for a ruling on its constitutionality.

Other considerations limit the courts' ability to exercise regulatory oversight. Russia does not have enough judges, and those it does have are overworked. They do not have time even to meet the deadlines in their pending cases. Most civil cases last over a year, and some take two, three or even five years. Few judges want to see more delays in the process, and delays inevitably occur when a submission is made to the slow-moving Constitutional Court. Even if courts were allowed a more authority in overseeing law-making, few judges would be likely to exercise it.

The major remaining challenge in the field of judicial reform is to rid the courts of corruption and political influence – to eliminate the so-called "shadow justice" that President Putin decried in his 2001 message to the Federal Assembly. Some steps have been taken to strengthen judicial independence, including a new law on the status of judges which raises judicial pay and creates new mechanisms for punishing judicial malfeasance.[21] But it will be hard to implement the latter provision effectively and consistently. The federal government has also sought to improve the financing of the entire judicial system, so as to reduce the dependence of judges on regional authorities. More important will be the creation of a new tier of arbitration courts. They will be called arbitration appeals courts, and each of them will encompass a number of jurisdictions. Until now, appeals against arbitration-court decisions have been heard in the court of first instance, often with the judge who issued the contested decision presiding. By creating a higher-level tier of courts to hear appeals, the authorities hope to enhance the chances for a fair hearing for the appellant and to reduce the ability of regional bosses to meddle in judicial decision making.[22]

Regulatory Impact Analysis

A good regulator must be able to assess the probable impact of a regulation on the market before the regulation before it is adopted. RIA is a decision tool. It systematically examines the potential effects of a government action and communicates the information to decision makers.[23] The ability to assess the likely effects of regulation on markets is particularly relevant in Russia. In the current phase, when market needs are changing quickly and the regulatory reform agenda is particularly heavy, the risk of making bad regulatory decisions is high.

The Russian government has already acquired some mechanisms to assess potential regulatory impacts. Its rules on law-drafting call for the developing of skills in evaluating the effects of new laws and regulations. Its Technical Regulation Law requires cost-benefit analysis of proposed technical regulations. The Audit Chamber may prepare financial analyses of draft federal laws and other normative acts that entail budgetary costs. Draft laws must be vetted by the government and notably by the Ministry of Finance if they incur costs. A new initiative of the Ministry of Economic Development and Trade requires independent evaluation of draft regulations.

While this is a good starting point, Russia is still some way from making regulatory impact assessment a formal requirement. Russian policymakers are not yet in a position to base their decisions on a clear assessment of the costs and benefits of proposed regulations, such as their impact on economic activity. The Russian government should investigate implementing a more systematic approach to RIA.

But implementing a fully functioning RIA system is a long-term task, involving the progressive development and dissemination of much expertise and the refinement of implementation and control mechanisms. In Russia, it will also require a cultural change in the public administration, the political class and many groups outside government. On the other hand, the OECD has developed an extensive database of country experiences and good practices that Russia can consult.

Box 2.3. **Methods used in regulatory impact analysis**

Benefit-cost analysis (BCA) is highly effective in dealing with efficiency issues preferences, and in comparing alternatives. Because it is usually the most expensive approach, BCA is often reserved for major regulations with large economic effects.

Cost effectiveness (or cost-output) analysis is a partial version of BCA. It does not attempt to convert benefits into monetary terms, but evaluates them using other measures, such as the degree of risk reduction or the number of lives saved. BCA is a less-than-ideal tool in judging a policy that may produce a number of different benefits, since it does not permit the analyst to make a cumulative evaluation. CEA is also of limited usefulness in answering the recurring "threshold" question: Is a given regulation necessary or desirable?

Compliance cost analysis is narrower still in scope; it does not attempt to quantify benefits at all. Rather, it focuses on costs, which are generally easier to estimate. Compliance-cost approaches are of particular value where the overriding concern is whether the cost of a proposed regulation is feasible or proportionate or reduced to the minimum.

Business (or small-business) impact analysis is a partial variant of compliance-cost analysis. It focuses on the costs to business generally or to small and medium-sized enterprises in particular. By far the largest cost of much regulation is borne by the business sector. This kind of analysis will identify most direct costs, but it will not capture costs to consumers, governments or other non-business groups.

Fiscal or budget analysis is still another variant of compliance-cost analysis. It considers only the budgetary implications of the regulatory proposal for government, which is usually a very small part of total costs. This form of analysis can yield quite precise results. It may be particularly useful where a potentially high-cost strategy for compliance and enforcement is a key element of a proposal, or where different levels of government will share the costs.

Risk assessment attempts to quantify risks. This method is helpful in answering the "threshold" question of whether or not to regulate. It can be tricky to use because of the differences between "real risk" and "perceived risk," and because of society's complex reactions to risks of different kinds.

Risk-risk analysis considers risks as explicit trade-offs. It asks whether offsetting risk increases occur as an indirect result of a policy choice and whether these are significant to its effectiveness. This approach takes a wide view of consequences, but it requires a lot of data and very sophisticated analysis.

Building regulatory agencies

Russia has given high priority to restructuring a number of its infrastructure industries – electricity, the railways and telecommunications.[24] Substantial improvements in efficiency and service are possible in all these industries. But the fate of these reforms will be largely determined by the quality of the regulatory institutions set up to guide the reform process.

The regulatory structure being proposed for the Russian infrastructure industries is very complicated, especially for electricity and the railways. Institutionally, it is to consist of a web of government agencies at both national and regional level. Division of responsibility is further complicated by the fact that the different agencies involved will report to different parts of the government.

On top of the array of regulatory institutions concerned with economic and service issues, environmental, safety and technical issues will generate still another layer of regulatory institutions. This mass of different institutions and jurisdictions is complex and loaded with the potential for contentious bureaucratic wrangling. It is not yet clear where some critical responsibilities will fall.

Infrastructure industries are inherently complicated. They require of the regulator a carefully calibrated mix of restraint and intervention. The regulatory regime needs to be simple, responsive, coherent, consistent, and transparent. This blend of characteristics is hard to achieve within a single institution. To assemble it in Russia, with its multiplicity of bureaucratic institutions, will be especially difficult.

It is a basic principle in most OECD countries that regulatory decisions in infrastructure industries should be taken on the basis of clear and transparent criteria, by entities which are fully independent of political influence and of private economic interests. Politics and private economic interests are always difficult to fully exclude from consideration. But if they are allowed to influence regulatory decisions, especially if they do so in a non-transparent manner, the result will be a loss of confidence for both consumers and investors.

Russian regulatory agencies appear to derive their authority from a variety of laws. These laws generally delegate power to the government, rather than directly to the regulator. While regulatory agencies in most OECD countries are empowered directly by law, those in Russia derive their authority by sub-delegation from the government. Powers that the government grants the government can also take away. This situation opens the door to political manipulation of the regulatory process. It also helps explains why the government appears to have the power to dictate methodology and to rescind regulatory decisions.[25] Direct vesting by law would give the regulatory authority more permanence and independence.

An extraordinary amount of work needs to be done in a very short time to prepare Russia's regulatory system for the new markets in the railway and electricity sectors. It will take very great efforts by the regulators and by officials at all levels of government. It will require radical changes and will call for voluminous research and robust negotiation. It will need much consulting, learning and writing. Russia would commit a costly error if it went forward half-prepared in the hope that mistakes or uncertainties could be remedied along the way. Reform programs in too many OECD countries have faltered or failed due to poorly designed regulatory systems.

But designing independent regulatory agencies is very hard. As many countries have discovered to their chagrin, there is no singular institutional model for the independent regulator. Even the most independent, if they are under-equipped and unsupported, will be unable to carry out their assigned task. Governments have tended to rely too much on regulatory agencies that are underpaid and understaffed to carry out tasks that are beyond their capacities.

The design of regulatory agencies must fit the institutional and historical context, and that context is unique to each country. Since a regulatory regime is an interdependent system, redesigning it requires a systemic approach. The task of establishing a market-oriented regulatory regime should involve all institutions with significant influence on policy design and implementation. This will help avoid unhealthy focus on single components of the system, to the exclusion of others.

The Russian authorities will need to consider the concept that independence flows from a well-designed mix of incentives, authorities, and procedures involving a range of actors. The key question is whether the checks and balances built into the system are sufficient to prevent capture and ensure competitive neutrality.

Conclusions and recommendations for reform

Three main issues need to be addressed if Russia's regulatory environment is to be transformed:

- An improved and strengthened regulatory-policy agenda must be adopted at the highest political level. It must contain explicit and measurable standards for regulatory performance. It must provide permanent institutions and procedures for regulatory management.

- Public-sector institutions will have to be revamped. Competing and overlapping structures will have to be eliminated. Internal and external accountability should be a top priority.

- Regulatory policy continues to be implemented inconsistently across the Russian regions. The federal reform strategy should create a rational and consistent regulatory environment throughout the country.

Outlined below are recommendations for improving regulation in Russia. They are based on an in-depth analysis of the Russian situation, on the concrete experience of OECD countries and on the recommendations of the 1997 OECD Report to Ministers on Regulatory Reform.

Adopt a clear policy on regulatory reform that establishes objectives, accountability and a framework for implementation.

A clear reform policy, adopted at the highest level of government, should integrate the various reform efforts now underway and establish a uniform set of quality standards. It should spell out the principle that regulations will be imposed only if its costs are justified by its benefits. A system needs to be developed to evaluate the impact of regulations once they are in place. Successful regulatory policy will require unambiguous accountability. Regulatory reform should be co-ordinated with competition policy, with efforts to ensure market openness and with the reform of the public administration

Experience in OECD member countries has shown that the adoption of regulatory policy at a high political level lends it authority that it would not otherwise enjoy.[26]

Strengthen the principles of competition and market openness government-wide, perhaps through revised mission statements.

A sustained effort is needed to embed good regulatory practices into the culture of the public administration. The government should explicitly mandate all government bodies to support the principles of competition and market openness. All ministries should work to eliminate constraints on competition within their jurisdictions, to respect the principle of market openness and to reduce anti-competitive behaviour by the state itself. Ministries should co-ordinate regularly with the Federal Antimonopoly Service. That service's annual report should assess the consistency of ministerial actions with the principles of competition and market openness.

Russia's aspirations to enter the World Trade Organisation should catalyse the reform process. Sectors that fear being exposed to foreign competition will undoubtedly seek to remain protected by unduly prolonging the WTO transition periods. Experience in OECD countries, however, shows that adjustment is inevitable and that it should be pursued intentionally and early rather than be forced during times of crisis.

Restructure the government apparat to strengthen its capacity for strategic policy management.

The government *apparat* (the staff of the prime minister's office) will have to be reformed. The administrative reform plan foresees that the *apparat* will focus increasingly on government-wide strategic planning, policy evaluation and monitoring the implementation of the overall government programme. To prepare for those tasks, the *apparat* should eliminate its sectoral departments. It could transfer some policy responsibilities, and possibly staff, to sectoral ministries.

In most OECD countries, the main job of the cabinet office is to co-ordinate the diverse activities of individual ministries and agencies. Similarly, the new Russian *appara*t could:

- Co-ordinate preparation for meetings of the Council of Ministers, set the agenda and distribute background material to participants;
- Co-ordinate efforts to ensure that draft laws conform with the Constitution and with existing law;
- Co-ordinate preparation and approval of the government's strategic priorities and work programme, and ensure their budgetary back-up;
- Co-ordinate the preparation of proposals for decision by the Council of Ministers, oversee their development by individual ministries and groups of ministries and see to it that proposals fit with each other and with the government's priorities;
- Co-ordinate the government's communications;
- Co-ordinate the monitoring of the government's performance and ensure that keeps its promises to the public;
- Co-ordinate relations between the government and other parts of the state, including the president and parliament;
- Co-ordinate work on strategic priorities involving several ministries – such as the reform of the public administration, regulatory reform and the government's relations with the regions.

Establish unit to promote regulatory quality and guide regulatory reform.

Reviews of OECD countries shows that having a specific institution located as close as possible to the centre of government can be a valuable asset to promote regulatory quality and guide regulatory reform. The concept of regulatory quality needs to be integrated into the central policy making machinery of Russian government. The main aim of the new unit would be to ensure that government regulations contribute to the country's economic and social development. While individual ministries should adhere to regulatory-quality principles in their areas of competence, overall regulatory oversight should remain at the centre of government.

The new unit should have:

- The authority to make recommendations to the centre of government;
- The ability to collect information and to co-ordinate regulatory reform programmes government-wide;

- The resources and analytical expertise to provide an independent opinion on regulatory matters.

In the short run, the unit could assess the regulatory-impact assessments submitted by ministries and prepare periodic public reports on ministries' progress in improving regulatory quality. Eventually, the unit could develop and advocate specific reforms. Within two years, it should be in a position to set performance targets, timelines and evaluation requirements. It should review regulatory proposals from ministries on the basis of quality principles. It should advise the centre of government on reform proposals from regulatory ministries.

Most OECD countries that have an effective regulatory policy also have a central oversight unit.[27] It would seem that a centrally located unit does more than simply improve co-ordination between existing agencies but is essential to ensure that regulatory-quality principles are successfully applied. Such units serve as advocates for reform, as critics (when they review regulatory-impact analyses) and as a source of practical and technical support for the use of regulatory tools.

Refine the tools used by the ministries and agencies for regulatory impact analysis, improve law-drafting and promote the use of free-market alternatives to regulation. Public servants need training in how to use these tools.

- Require that a regulatory-impact assessment be systematically undertaken and published for each new regulation. An RIA can be a powerful tool, especially if it is accompanied by effective consultations with the public. RIAs can increase transparency and accountability across the administration. They could help the Russian government effectively manage increasingly complex regulatory policies, much as it now manages budget policy.

- Train public-sector employees in how better to conduct regulatory impact analyses. Skill levels are low; quantification and data analysis remain poor. A "notice-and- comment" procedure open to the broadest possible range of interests would allow the collection of better information. Regulatory impact analysis should be fully integrated with notice-and-comment procedures.

- Promote the adoption of alternatives to traditional regulation. Various alternatives to traditional command-and-control regulation can increase effectiveness and lower costs. Regulators should look for alternatives, and design them where possible. This will require strong encouragement from the government, supported by training and expert assistance. Where rigid laws and an outdated legal culture inhibit innovation and experimentation, broader legal reforms may be necessary.

- Improve the clarity and simplicity of regulations through better and plainer drafting. The complexity of the existing regulatory regime and the incomprehensibility of regulatory texts are serious problems.

Fight corruption by improving transparency in applying regulations.

Russia has done better at producing laws than at applying and enforcing them. While it is difficult to quantify corruption, it is patently widespread, particularly in connection with enforcement and compliance. Several OECD countries have sought to reduce corruption in the application of regulations and administrative formalities. Mexico conducted a thorough review of its administrative formalities and procedures, particularly licenses, permits and concessions. In the light of this review, the Mexican government simplified, re-engineered or eliminated certain procedures. It thereby reduced the potential for abuse and contributed to a more transparent and efficient environment for businesses. Russia could follow Mexico's example by creating a single authoritative source for administrative procedures. Alternatively,

the government could harmonise the official forms ministries, services and agencies uses for administrative procedures. An official registry of forms and procedures would significantly enhance transparency for users. The registry should be made available through the Internet.

Enhance the status of regulatory quality within sub-national government bodies, focusing on accountability, transparency and free-market orientation.

Russia has had only mixed success in transferring policy-making powers away from the central government to the regions. Such decentralisation can improve governmental responsiveness and local accountability, but experiences in several other countries indicate that devolution must be accompanied by adequate safeguards. Very rapid devolution, like what happened in Russia in the 1990s, can impair the quality of governance. Regional governments may simply not be up to creating and administering good regulations.

In Russia, the safeguards needed to accompany devolution are not yet fully in place. Unless regulatory skills are improved in regional and local governments, further decentralisation could roll back the progress in regulatory quality that has been achieved so far at the national level. To date, it has been the courts that have sanctioned abusive regulatory practices after an action by a federal ministry or the competition authority. But even though the courts are becoming more efficient and responsive, recourse to them is still too costly for individuals and small businesses. The central authorities should accompany after-the-fact controls with accountability and transparency measures. Regional governments should be obliged to publish proposals for new regulations and hold consultations on them before they are adopted. This technique could reduce regulatory overlap and the exercise of undue political influence by special interest groups. Indirectly, it could discourage constraints on competition and even corruption. At a minimum, regional governments should be expected to apply the 1995 OECD Recommendation for Improving the Quality of Government Regulation and its accompanying checklist. Publishing benchmarks of regulatory performance, such as the number and quality of business licenses granted, could also highlight best practices and shame laggards.

Continue to advance judicial reform.

Although it has figured only marginally in these recommendations, the Russian judiciary is a vital factor in the future of regulatory reform. It could well be the missing link in the overall structure of interlocking institutions that together can establish the incentives and pressures for high-quality regulation. In most OECD countries, the ultimate check on administrative abuses is the potential for review and reversal by the courts. But such deterrence has to be credible to be effective. It is particularly important in Russia that there be available an effective and practical infrastructure for dispute settlement. Once direct intervention by the government recedes, the role of the objective arbiter will become crucial.

Notes

1. Brunetti and Weder (1999); Ahrend (2002).

2. This provision is somewhat awkward in the case of complex federal subjects like Truman and Krasnoyarsk, where one or more federal subjects exist inside another.

3. Article 71 of the Russian Constitution grants the federal government exclusive jurisdiction over important areas of economic policy, including establishment of the legal foundations of the market system; regulation of financial, currency, credit and customs matters; foreign policy and international treaties; and foreign economic relations. Article 72 lists matters under the joint jurisdiction of the central government and the regions, including the ownership and use of land, mineral resources, water and other natural resources; the delimitation of state property; environmental protection; public health; and taxation.

4. See North and Weingast (1989) and Weingast (1995).

5. Stoner-Weiss (2001) provides detailed examples of regions' legislating in direct opposition to federal law and the Constitution. In 1996, the Ministry of Justice reported that, of 44,000 regional legal acts it had reviewed, nearly half did not correspond with the Constitution.

6. See Desai and Goldberg (2000); Hellman, Jones, and Kaufmann, (2000) and Hellman, Jones, Kaufmann, and Schankerman (2000).

7. Stoner-Weiss (2001).

8. Desai and Goldberg (2000) report that in certain regions the interdependence between government officials and business managers gave the latter quasi-governmental powers, including influence over the law-enforcing apparatus.

9. See Orttung (2002).

10. In the hierarchy of federal legislation, a federal law is the highest form. Next come "normative acts," a catch-all Russian term which includes acts of the President and statutory acts issued by the government and governmental agencies. These acts specify more detailed rules and regulations than do federal laws. A federal law must be promulgated before the normative acts supporting it can be developed.

11. The Constitutional Court, Higher Commercial Court, and the Supreme Court of General Jurisdiction also have the right to initiate legislation in specific areas.

12. Government Resolution # 347, On improving law-drafting activities of the Government of the Russian Federation, 15 April 2000.

13. Regulation 803 "On Better Organisation of Enforcement of Federal Laws".

14. Law 184-FZ of 27 December 2002, On technical regulation.

15. Curiously, there is no such requirement for draft laws submitted to the Duma.

16. The description of the draft law, its objectives and key provisions should contain an extensive characterisation of the law, including a description of its structure, legal terminology, objectives and anticipated effects, as well as extracts of the draft regulation that clearly represent its purpose and concept. Plain-language drafting is required.

17. Government Decision 98, "On securing access to the information about the work of the Government of the Russian Federation and federal executive authorities," 12 February 2003.

18. See www.government.gov.ru. Another programme run by the President's Administration – the Reform Line –will provide an interactive platform for public dialogue on issues pertaining to state supervision. No data on implementation are yet available on the Reform Line. Nor is much information on implementation is available on E-Russia, which is still fairly new.

19. Presidential Decree 188, of 6 March 1997, detailed the types of confidential information that are not subject to official publication and need not be promulgated to the general public.

20. *www.government.ru*, set up under the Electronic Russia program

21. 'O statuse' (2001).

22. 'Ob arbitrazhnykh sudakh' (2003).

23. Good RIA practices and case studies are available in OECD (1997), *Regulatory Impact Analysis: Best Practices in OECD Countries*, Paris.

24. The reform of the natural gas sector has been postponed repeatedly. It is not clear that any substantial reform will be undertaken in the foreseeable future, see OECD 2004.

25. For instance, under the recent government restructuring, the Economic Development and Trade Ministry can now order FTS to follow procedures and methodologies of the ministry's own making.

26. The following OECD countries have adopted government-wide regulatory quality policies: United States – 1981; United Kingdom – 1985; Canada – 1986; Denmark – 1993; Netherlands – 1994; Mexico – 1995; Hungary, Ireland, Finland – 1996; Italy – 1999; Japan, Korea – 1998; Czech Republic, Greece, Poland – 2000. See the Background reports on "Government Capacity to Assure High Quality Regulation" are available at *www.oecd.org/regref*/

27. Twenty of 22 OECD countries which have such units locate them either in the prime minister's department or the office of the president or else the budgeting agency. Fewer than half of the countries with dedicated reform bodies in 1996 did so. This rapid shift suggests an increasing recognition that the effectiveness of these bodies is enhanced by their being directly linked to the centers of political and administrative authority.