

# “Regulatory Guillotine”: expectations vs. first outcomes



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*As envisaged by the List No. PR-294 of February 16, 2019 of the Instructions that were given by the President of the Russian Federation in the beginning of the year 2019 in the context of his Address to the Federal Assembly, the Government of the Russian Federation has started the radical overhaul called “Regulatory Guillotine” in the field of all the regulatory and oversight activities. The reform has been meant to function as a leverage in large-scale reconsidering and canceling if necessary the normative legal regulation acts that are thought to adversely affect the business climate.*

## **The universally accepted practice and its Russian version**

Term "Regulatory Guillotine" has been launched out into the wide usage by International Consultancy “Jacobs, Cordova & Associates” that has also developed the term’s underlying concept. Since then the concept has turned out instrumental for the governments of the Great Britain, Croatia, Mexico, Vietnam, and a few others. “Relying heavily on the evidence-based regulation approach, Regulatory Guillotine is to eliminate various entanglement points in the legislation”, - Center for Strategic Research (CSR), a high-profile Russian think-tank, once coined out in a report. CSR has also suggested that those practices should be extended to Russia. The core idea underlying the Regulatory Guillotine concept is to overhaul radically all the regulating systems functioning in the field of the regulatory and oversight activities so as to simplify within the time period of one or two years the said systems and cancel all the obsolete norms.

It is also worth remembering in this connection the deregulation initiatives declared by former US President Donald Trump four years ago when he was delivering his inaugural speech. In attempting to exercise his aforesaid initiative Mr. Trump ordered that the obligatory precondition for any new restriction's coming into the legal force should involve the cancellation of not less than 22 old ones. That has resulted in that there were cancelled altogether or weakened considerably more than 1000 restrictive pieces of legislation, which have both influenced positively the business climate in the US and resulted in the extension in business activities of numerous kinds.

There are currently 44 governmental bodies in the Russian Federation that are performing the regulatory and supervisory functions there. There also exist more than 180 specific forms of the state control (supervision) in the Russian Federation. The statutory and regulatory acts numbering in excess of nine thousand have given birth to more than two million mandatory requirements the compliance with which can be theoretically checked up in the course of the state control-and-supervisory activities.

The average business expenses incurred by the necessity for the business to comply with the aforementioned mandatory requirements amount to the 20 – 30% share of the overall production expenditures.

As follows from the so called “roadmap” for implementing the “Regulatory Guillotine” basic principles Ministry for Economic Development had been put to develop at the first stage of that implementation two foundational Federal Laws. The Ministry has already fulfilled that task. Here the Laws are:

1. “On the Mandatory Requirements in the Russian Federation” No. 247 FZ of July 31, 2020;
2. “On the State Control (Supervision) and Municipal Control in the Russian Federation” No. 248-FZ of July 31, 2020.

The first one of the two abovesaid Laws has been meant to outline both the institutional and legal framework for both establishment of the requirements imposed by the current relevant legislation on the business community and assessment of the results of the enforcement of those requirements. Assessment of the compliance with those requirements is in its turn meant to be conducted in the course of the state control (supervision) bodies' activities.

The other foundational Federal Law, i. e., "On the State Control (Supervision) ..." has been meant to outline both the general structure of the control (supervision) actions and formal procedure to be observed in conducting them in such a way as to lessen the burden imposed on the business entities by those actions.

The President of the Russian Federation has set all the branches of power in the Russian Federation a task of not only developing and codifying by law in a very short time in the framework of the “Regulatory Guillotine” the new principles of the regulatory control and supervision over the execution but revising and redeveloping if necessary a few thousand pieces’ worth of the binding codes and standards so that their both number and burden potential should be reduced considerably. The task should be carried out with consideration for the **targeting** vector so that all the direct requirements and orders such that they allow usage of only particular “chosen” engineering decisions should be cancelled wherever possible.

What is even more to that there has been initially planned there to separate in the course of implementation of “Regulatory Guillotine” the process of creating the new pieces of legislation from the process of controlling the compliance with them, which effectively means that the rulemaking activity should be performed by both the industry-specific governmental bodies and business community rather than the regulator as it used to be.

As the participants in the “Regulatory Guillotine” project the Government of the Russian Federation has co-opted 40 its ministries and departments so that they should develop the draft new statutory-and-regulatory acts. There have been created 43 industry-specific ad-hoc working groups so as them to both assess the draft normative legal acts (NLA) and develop suggestions on the acts’ follow-up.

There has been established a State Commission for carrying out the Administrative Reform and Reconciliation of Differences.

Most production facilities and organizations of the chemical industry include and / or operate such object whose substance hazard category falls within from 1 to 4. These both facilities and organizations are periodically applying for the license to operate their hazardous production units and liable to supervisory missions carried out by the corresponding bodies of the main regulator i. e., Federal Service for Ecological, Technological, and Nuclear Supervision of the Russian Federation (ROSTEKHNADZOR).

This is why of all the 43 above mentioned ad-hoc working groups the one dubbed “Industrial Safety” is most important. Messrs Alexeij Aleshin of ROSTEKHNADZOR and Alexander Dyukov of PJSC “Gazprom Neft” have been appointed the co-Chairmen of the group.

The following representatives of the chemical industry have been co-opted among others into the membership in the group: President of the Russian Chemists Union (RCU) Viktor Ivanov (a member in the group) and Executive Director, Vice President of RCU Boris Yagud (an expert at the group).

The following issues had turned out pivoting in composing the agendas for the sessions that had been regularly held by the group within the years 2019 and 2020:

- consideration and approval of the list of the statutory and regulatory acts earmarked for cancellation in the field of the industrial safety;
- devising the suggestions concerning a new regulation structure in the field of industrial safety;
- consideration and approval of the scheduled plans for development of the new statutory and regulatory acts and prepared draft documents.

It is worth saying a few words here on the “target setting” principle adherence to which has been presumed from the very beginning in development of the brand new regulatory legal acts. The principle is not a novelty though as it has been applied to for quite a time in the normative legal regulation in the economically developed countries. The thesis can be illustrated with German Federal Law “On Protection against Harmful Exposures” that is analogous to Russian Federal Law “On the Industrial Safety” in status and purposes.

The point is though that contrary to its Russian analog this law’s statutory provisions involve only the generalized purposes and requirements such as , for example, the following ones are: “... to block and suppress the proliferation of accidents, avoid fires and explosions, take the risk sources into consideration, take the precaution measures aimed at keeping the accidents scale at the lowest possible level”. One can see here how the “targeting” requirements such as “keep out of accidents”, “provide for hermeticity, robustness, stability, timely issuance of the emergency warning, effective containment, and mitigation of the consequences of accidents” are applied.

As to the applicable regulatory requirements established for the technical both devices and techniques to be presumably used in design engineering, construction works, production run, and supervision over the hazardous production facilities, in case of Germany the said requirements are almost entirely formulated in the recommendatory documents such as the German standards (DIN), normative documents issued by the European Committee on Standardization (CEP), and industry-specific technical recommendations both national and international.

Let us consider, for example the chlor-alkali sub-industry of the European chemical industry. We shall easily see that the European chlor-alkali industry including, of course, the German one is widely leaning on the Euro Chlor technical recommendations in the facilities’ strife for the compliance with the requirements imposed by the current legislation. Let us also remember in this connection that Euro Chlor is formally a trade association, the NGO that unites under its aegis literally all the manufacturers of chlorine all over Europe. Since its establishment in 1956 Euro Chlor has issued the technical recommendations in excess of 100 titles aimed to be instrumental in providing for high robustness, processability, and safety performance parameters of both the equipment and technologies used at all the stages of the production.

The analogous systems have been installed in some other countries for providing for the technical regulation function. For instance, the American association of the chlor-alkali industry (the US Chlorine Institute) while having been established as long ago as in 1934 and uniting nowadays 185 member-companies has been both developing and bettering the technical recommendations on handling chlorine for quite a number of years. Naturally, these recommendations scrutinize all the requirements imposed on the technical devices and techniques by the current American legislation.

Let us therefore ask ourselves: “What are the undisputable advantages of such a system of the technical regulation?” The answer would in the first place name the following ones:

1. All the laws that are being introduced into the legal force are of the “target setting”, framework character, which relieves one of any necessity whatsoever to put into the motion the long and cumbersome proceedings aimed to adopt some necessary amendments to Law “On the Technical Safety...” every time when some new technical solutions or organizational decisions emerge in the endless strife for the sustainability and safety in regard to hazardous production facilities.

*The President of the Russian Federation has set the Government a task of not only developing and codifying by law in a very short time the new principles of the regulatory control and supervision over the execution but revising and redeveloping if necessary a few thousand pieces’ worth of the binding codes and standards as well.*

*Owing to the efforts of ad-hoc working group “Industrial Safety” there have been cancelled 219 old pieces of legislation and developed 80 draft brand new ones. 13 of the latter have been duly approved so that the remainder should be approved before the end of the year.*

2. All the technical recommendations (guidelines for compliance with the requirements imposed by the legislation) are of recommendatory character and being developed by the professional communities, i. e., NGOs such as, for example, associations of the mechanical, chemical, or material engineers etc.

Such a regulatory structure makes it possible while leaving the basic “target setting” requirements unchanged in the legislation to update regularly all the recommendatory regulatory framework in cooperation with the business community. In carrying out the methodic recommendations within the regulatory framework both the engineering companies and production facilities always can take the optimal, up-to-

date, and safe engineering decisions for their projects.

It is also worth noticing in this connection that notwithstanding the recommendatory status of the aforementioned technical recommendations, guidelines and manuals the compliance of the production process with these is at the very least taken into consideration by the competent bodies in most developed countries in both exercising the state supervision function and investigating the accidents.

As of now the chemical industry as well as all the linked industries are still governed in the Russian federation by Federal Law No. 116-FZ of July 21, 1997 “On Industrial Safety of Hazardous Production Facilities” and Federal Rules and Regulations for Industrial Safety. There are thoroughly, comprehensively, and exhaustively stipulated the particular requirements imposed by the aforesaid legislation on both the equipment and technological processes in the current regulations. 2. All the technical recommendations (guidelines for compliance with the requirements imposed by the legislation) are of recommendatory character and being developed by the professional communities, i. e., NGOs such as, for example, associations of the mechanical, chemical, or material engineers etc.

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1. Reform “Regulatory Guillotine” has been started out of the objectives that can be called groundbreaking without exaggeration to any extent. Just think of that the work involved the necessity first to analyze thoroughly and cancel if necessary a thousands of items’ worth of the normative legal acts in a very short time (a year and a half, actually), then to either update wherever possible or develop anew based on the principle of “target setting” a helluva lot of the statutory and regulatory documents, then to get all those duly approved! It is only natural that in doing so one couldn’t avoid making the mistakes, introducing corrections into plans and schedules, and defining the tasks more accurately.

2. The two foundational for the reform background (procedural) Federal Laws of the Russian Federation, namely, the one No. 247-FZ of July 31, 2020 “On the Mandatory Requirements in the Russian Federation” and the other No. 248-FZ of July 31, 2020 “On the State Control (Supervision) and Municipal Control in the Russian Federation” were consequentially adopted by the Russian Parliament (the State Duma) and signed by the President only in the middle of the year 2020, which were a little late because by that time the prepared draft new pieces of legislation had been mostly considered already.

3. When considering draft Law “On the Mandatory Requirements...” the State Duma has stroked out of the draft paragraph 4 of article 3 which stipulated that “... the Federal Executive Body that is obliged to exercise the State Control (Supervision) function does not have any right to issue such legal normative acts that involve any such mandatory requirements that compliance with them can be enforced, controlled, or verified by the same Executive Body that has issued these”.

4. There have been invoked not to the maximal possible extent in the course of exercising the rulemaking activities the relevant Departments of Ministry of Industry and Trade of the Russian Federation, Trade Associations, Science and Engineering Boards of the biggest Holdings or groups of companies, Project Institutes, and Engineering Centres.

The most load linked to the reprocessing the Federal legislation including all the Federal Regulations has been beard by ROSTEKHNADZOR. The history of the implementation of the reform of "Regulatory Guillotine has convincingly shown that only a fraction of the industries' trade associations, engineering communities, unions, and other relevant NGOs turned out ready to commit themselves to development of those “target setting” Codes and Standards that adherence to which if it were made a reality, would have provided for the necessary and enough level of safety subject to lessening the financial burden beard by the business.

5. Two thirds of its entire working time ad-hoc working group “Industrial Safety” has spent on consideration of draft Federal Law "On the Industrial Safety". The draft law had been prepared rather long before the "Regulatory Guillotine" began. It follows then that in the preparation work nobody had taken to any extent any peculiar features of the reform. Therefore, it had taken the developers and implementors of the reform almost a year first to consider clause-by-clause the foundational regulatory standard in the field of the industrial safety and then to make corrections to numerous requirements in such a way as to reconcile them with the concept of the reform.

As I have mentioned it before, the whole reform has been initially scheduled to be performed within as short a time as just a year and a half. It follows then that the aforesaid developers had been given only a six-month time for development of all the subordinate legislation linked to the Federal Law being considered. It further follows then that all the draft pieces of legislation making up the draft Federal Rules and Regulations for Industrial Safety (i. e., the aforesaid subordinate legislation) that could not be in principle considered in proper details had been adopted “on the whole”.

6. Nevertheless, all the commercial enterprises and Non-Commercial Partnerships, Unions, Associations, and other NGOs that had joined the implementers of the reform at the very beginning of “Regulatory Guillotine” (i. e., those who have been participating in it since the first quarter of the year 2019) have managed to prepare on time their either suggestions on or even whole draft new pieces of legislation or both so that those should be considered by the ad-hoc working groups in cooperation with the regulatory authorities. There were such names among the firstcomers’ ones as PJSC “Gazprom Neft”, PJSC “INTER RAO UES”, National industrial Russian Steel Association, and Association “RusChlor”. In so doing, Association “RusChlor” organized within its organizational structure a taskforce for development of a draft new Federal Regulations for the chlor-alkali production facilities. RusChlor did that as early as in 2019 immediately after the start of the reform had been officially declared. Specialists out of not only the RusChlor’s permanent staff but all the member-companies as well have been co-opted onto the taskforce so as to participate in its efforts. All in all, there had been gathered in excess of a 200 suggestions which were than consequentially analyzed, generalized, and considered by a panel of the Science and Engineering Board of ROSTEKHNADZOR. Draft new Safety Rules to be presumably observed in handling chlorine had been prepared by the day scheduled for its consideration by the ad-hoc working group “Industrial Safety”. The document has not been changed considerably afterwards even in going through all the stages of agreement of it by the government’s ministries and departments.

#### **Just the beginning of a big work**

In summary it is worth underlying that the reform of “Regulatory Guillotine” of the regulatory and oversight activities was not completed on January 01, 2021 with the introduction into the legal force newly developed "Federal Regulations".

The so called “risk-based approach” under which the format, frequency, and length of all the regulatory-and-oversight actions have been decided to be determined depending on the level of the potential risk immanent to the given hazardous production facility will be further continuously bettered. In so doing there is planned to not only drastically cut back on the number of



the Routine Inspection events but to change even the approach to fulfillment of the inspections as well. There is also planned to put the primary focus on checks into both presence and effectiveness of the safety system at the site including inspections carried out on the facilities’ operational monitoring services that are supposed to be charged with the tasks of thorough supervision over observance of the requirements, regulations, and safety standards.

According to a legislative draft aimed at making the amendments to the now in force version of Federal Law “On the Industrial Safety of the Hazardous Production Facilities” there should be cancelled since July 01, 2021 the whole establishment for making up the examinations on the technical devices as well as plant and equipment. The

operating entities will be therefore entitled to assess the condition into which their buildings and technical devices are on their own.

Having set initially rather tough time-lines for the development of the new pieces of legislation followed by first consideration of them by the ad-hoc working groups and second agreement of them by the ministries and departments the reform doers have run into necessity to create at least partially those new pieces of legislation by simply modernizing slightly

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the then in force codes and standards. Therefore, the work on these “conditionally new” pieces of legislation such that they should be firmly based on the “target setting” principle rather than fixed technical specifications is still to be done.

It is also worth noticing here that out of the general purpose to guarantee the success of the introduction into practice of the new applicable regulatory requirements the state regulatory authorities are planning the development of the so called “Guidelines on the procedure of implementation of the requirements imposed...” or something like this. It follows obviously, that, if the business takes a proactive attitude to development of those “Guidelines...”, there is still a hope that the industry will have in not-so-distant-future a decent, modern system of technical regulation, which in turn let them cut corners on the numerous costly Expert Examinations and Safety Assessment Reports in the case of the facility’s getting into a whatever complex modernization project.