CONTROL AND SUPERVISORY ACTIVITIES AS AN INSTITUTE OF ADMINISTRATIVE LAW

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This article discusses the currently relevant direction of the ongoing reform of the "regulatory guillotine." Specifically, the article focuses on the development of new trends in the regulation of control and supervisory activities. The reasons for the reform, its goals and objectives, as well as the results achieved, are analyzed. It is concluded that the key reason for the launch of the "regulatory guillotine" is the problem of redundancy and moral obsolescence of the regulatory framework. Furthermore, the current state of control and supervision activities carried out by the public authorities of the Russian Federation is characterized, trends are analyzed and the results of the ongoing reforms are summarized. One of the main problems in the implementation of the reform is corruption. Excessive bureaucratization of control and supervisory activities is highlighted as a key factor influencing the transition to electronic document management. In connection with the identified problems, the following potential areas for future research have been identified: the introduction and legitimization of electronic document management, the reduction of corruption, the impossibility of withdrawing from the reform of some departments, the identification of all kinds of threats and so on. In evaluating the effectiveness of the activities of control and supervisory bodies in foreign countries, the emphasis has shifted away from assessing the actual number of inspections, violations detected, fines and penalties imposed, open criminal cases, the amounts of illegally spent public funds returned to the budget, etc., and to assessing the "quantity" and the "quality" of the facts revealed and the events prevented in advance, which in one way or another contained a potential threat to the security of the state and society. It was thus implied that there was a risk of not achieving socially significant indicators (results), on

the basis of which society ultimately evaluates the activities of government bodies in general and the activities of control and supervisory bodies in particular.

Keywords: "regulatory guillotine"; reform; control and supervisory activities; electronic document management system; corruption; Russia.

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Introduction

Legislation plays an important role in ensuring the efficient and sustainable functioning of the economy; it is the basis for interaction between businesses, governments and civil society. Its role is to ensure the stable functioning of the economy while taking into account environmental, social and government factors. In fact, legislation is designed to guarantee trust in business and government, as well as mutual trust between the two, thus supporting the functioning of markets.

Legislation helps protect the rights and safety of consumers and citizens and ensures that goods and services are provided in the public interest. Inspections and monitoring of economic activity are, in this context, the main tools that promote the implementation and improvement of compliance with regulations and help ensure that economic activity does not endanger human and environmental safety.

Conducting effective checks also helps to build trust between stakeholders, which is essential for the proper functioning of the market. To this end, inspections and controls of economic activity should be based on adequate principles of risk management and risk mitigation, as well as the proportionality of risks.

The main principles of effective and efficient compliance audits are proper planning and a clear definition of the objects of inspection and control activities, as well as a high level of communication and coordination between the inspection bodies. In addition, a key element of the sustainable functioning of this system is the availability of open and accurate information and guidance for regulated entities (businesses and citizens), since the primary responsibility for compliance with regulatory requirements lies with the regulated entities. These key components of an audit oversight system will aid in the avoidance of illegal practices such as corruption and other dishonest practices. Thus, an adequate system of regulation and supervision will be of maximum benefit to enterprises and society as a whole.

On the contrary, an inadequate system of inspections and control over activities can result in direct and indirect monetary and non-monetary losses for states, enterprises and society. International experience shows that such a system creates unnecessary administrative barriers (and involves unnecessary costs) for enterprises, reduces turnover and investment and leads to corruption and abuse. Thus, an efficient system entails additional costs for its functioning, both on the part of the state (budget expenditures) and on the part of enterprises (compliance costs), while failing to achieve strategic goals and reducing the level of trust of enterprises and the public in government and legislation. Also, inadequate system of inspections and control creates corruption risks in Russia and other states.

1. Russia's Trends in the Development of Control and Supervision Activities Within the Framework of the "Regulatory Guillotine"

According to some estimates, the ongoing reform of control and supervisory activities covers up to two million mandatory requirements and 221 different types of control and supervisory activities. Thus, it follows that the "regulatory guillotine" encompasses nearly all types of control (supervision).[1]

The information provided by the Government of the Russian Federation indicates that there are 46 control and supervision departments that conduct up to 220 types of inspections at the federal level, 50 inspections at the regional level and 16 at the municipal level. More than 2 million requirements, of which more than 9,000 are from

[1] *Мартынов А.В.* Перспективы применения механизма «регуляторной гильотины» при реформировании контрольно-надзорной деятельности // Вестник Нижегородского университета им. Н.И. Лобачевского. 2019. № 5. С. 143–165 [Alexei V. Martynov, *Prospects for the Application of the Mechanism of 'Regulatory Guillotine' in the Reform of Control and Supervision Activities*, 5 Vestnik of Lobachevsky U. of Nizhni Novgorod 143 (2019)].

the Soviet era, contain prescriptions that are mandatory for businesses to follow, making it difficult to do business.[2]

This state of affairs creates a great number of difficulties in the business environment, which then raises the question of streamlining the system of social relations and reducing the number of legal acts that do not correspond to the realities of the world today.

The administrative reform of control and supervisory activities, he so-called "regulatory guillotine," carried out in the context of current world conditions, boils down to the abolition of irrelevant regulations in the field of supervision and control.[3]

The implementation of the reform of control and supervisory activities is based on the program "Reform of Control and Supervisory Activities," which was approved on 21 December 2016 by the Presidium of the Council under the President of the Russian Federation for Strategic Development and Priority Projects (the implementation period is until 2025).[4]

The "regulatory guillotine" mechanism, the first steps towards the launch of which were observed in 2015–2016, began to operate in full in 2019. The use of the regulatory guillotine mechanism became the basis for reforming the control and supervisory activities carried out by the federal executive authorities. The mechanism applies to the activities that are carried out by these bodies, including updating the regulatory framework, simplifying legislation for businesses and creating a more favorable atmosphere for entrepreneurship.

The need for reform of control and oversight was evident after 2010. Thus, in the Book of Complaints and Suggestions of Russian Business for 2014, emphasis was placed on the redundancy of the requirements of by-laws, namely industry and inter-sectoral rules, as well as on the inconsistency of norms and rules with modern technology.[5] In addition, requests to simplify the procedures for inspections and state control of activities were received on a regular basis from entrepreneurs operating in all constituent entities of the Russian Federation.

In his annual messages to the Federal Assembly of the Russian Federation, the President of the Russian Federation regularly focuses on the need to: complete the

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[2] *Овчинникова В.А., Власова Е.Л.* О некоторых вопросах «регуляторной гильотины» в Российской Федерации // Мировая наука. 2021. № 5(50). С. 102–109 [V.A. Ovchinnikova & Elena L. Vlasova, *On Some Issues of the 'Regulatory Guillotine' in the Russian Federation*, 5(50) World Sci. 102 (2021)].

[3] Oleg V. Aleksandrov, *Regulatory Guillotines: International Experience in Removing Barriers to Business and Investment*, 1(17) Trade Pol'y 107, 108–9 (2019).

[4] Утвержден паспорт приоритетной программы «Реформа контрольной и надзорной деятельности» // Правительство России. 29 декабря 2016 г. [*The Passport of the Priority Program "Reform of Control and Supervision Activity" Was Approved*, Government of Russia, 29 December 2016] (Sept. 10, 2022), available at http://government.ru/news/25930.

[5] The Book of Complaints and Suggestions of Russian Business for 2014 is a Report of the Commissioner under the President of the Russian Federation for the Protection of the Rights of Entrepreneurs.

reform of control and supervision activities,[6] terminate from 1 January 2021 the validity of all currently existing regulations in the fields of control, supervision and departmental regional orders, letters and instructions; and, with the participation of the business community, update the regulatory framework, with the exception of only those documents that meet modern requirements, the rest to be handed over to the archive.[7]

The implementation of the tasks set by the President of the Russian Federation can be traced in the gradual invalidation of obsolete acts issued by the government bodies of the Russian Soviet Federative Socialist Republic (RSFSR) and the Union of Soviet Socialist Republics (USSR), as well as their individual provisions.[8] As a result, Russian legislation is being systematized within the framework of the regulatory guillotine mechanism, which, according to D.A. Medvedev, is one of the new emerging strategic long-term institutions and mechanisms of social and economic life.

According to A. Kudrin, the regulatory guillotine is

> not just the abolition of old instructions or their rewriting in new formats, this is the part of the work that needs to be done. The reform of control and oversight activities should have its own KPI: reducing the list of control functions of ministries and departments by half, and not just canceling or rewriting old instructions. In many areas, regulatory authorities should switch to notification analysis and monitoring through databases, that is, without any reporting, licensing procedures should analyze what is happening.[9]

According to A.V. Martynov, the goal of the regulatory guillotine is to "comprehensively update the mandatory requirements adopted before 2010, as well as to analyze the consequences that have occurred after the adoption of a significant set of regulatory legal acts, to achieve the set goals."[10]

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[6] Послание Президента Федеральному Собранию 15 января 2020 г. // Президент России [Message of the President of the Russian Federation to the Federal Assembly of 15 January 2020, President of Russia] (Sept. 10, 2022), available at http://kremlin.ru/events/president/news/62582.

[7] Послание Президента Федеральному Собранию 20 февраля 2019 г. // СПС «КонсультантПлюс» [Message of the President of the Russian Federation to the Federal Assembly of 20 February 2019, SPS "ConsultantPlus"] (Sept. 10, 2022), available at https://www.consultant.ru/document/cons_doc_LAW_318543/.

[8] Свыше 450 актов советских госорганов признаны недействительными // Правительство России. 17 июня 2020 г. [*Over 450 Acts of Soviet Government Agencies Were Declared Invalid*, Government of Russia, 17 June 2020] (Sept. 10, 2022), available at http://government.ru/news/39884.

[9] *Шеншин В.М.* Применение механизма «регуляторной гильотины» при реформировании контрольно-надзорной деятельности Росгвардии // Вестник Нижегородского университета им. Н.И. Лобачевского. 2021. № 1. С. 178–186 [Victor M. Shenshin, *Application of the Mechanism of the 'Regulatory Guillotine' in the Reform of the Control and Supervisory Activities of the National Guard*, 1 Vestnik of Lobachevsky U. of Nizhni Novgorod 178 (2021)].

[10] Martynov 2019, at 144.

An analysis of Russian legislation allows us to conclude that the regulatory guillotine has several main goals. These goals include (a) the reduction of costs aimed at monitoring and eliminating rules that have lost their relevance; (b) holding consultations with interested business entities; (c) searching for the most optimal algorithm that will allow for quality control without violating the law; and (d) the organization and implementation of interdepartmental coordination and cooperation.[11]

The main goal of the regulatory guillotine is to update the regulatory framework in accordance with the realities of the world today. By launching this mechanism, the Government of the Russian Federation has set itself the task of creating a new legislative framework that will ensure the legality of enterprises in all areas of the economy while at the same time not creating artificial barriers and difficulties for the development of entrepreneurship.

The priority tasks carried out in the course of this reform are:

- development of a unified system for assessing the effectiveness and efficiency of control and supervision activities;
- prioritization of the risk-oriented approach in the implementation of state control;
- updating safety rules and quality standards in accordance with modern realities;
- development and implementation of an effective anti-corruption system in the field of state control and supervision;
- automation of control and supervisory activities.

It should be noted that the presence of a significant amount of outdated legal framework is the main reason for the reform of control and supervision activities. The reform of the control and supervisory activities of the Russian Federation was based on the mechanism of the regulatory guillotine because in order to introduce new, more efficient algorithms and rules, it became necessary to abolish outdated by-laws. Until 2019, the Government of the Russian Federation and committees under the various Ministries focused on the adoption of federal laws, losing sight of by-laws. Therefore, the results of the analysis conducted by the members of the working groups demonstrated that in almost all spheres of the economy there were regulatory legal acts that were first adopted in the days of the USSR, and then extended two or more times.

The regulatory framework, which is partly comprised of by-laws enacted prior to 1990, does not meet the needs of the modern economy and acts as an artificial barrier to the development of entrepreneurship. Experts, under the guidance of the Decree of the Government of the Russian Federation of 29 August 2018 No. 1026,[12]

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[11] Official website of the Reform of Control and Supervision Activities (Sept. 10, 2022), available at https://knd.ac.gov.ru/.

[12] Постановление Правительства Российской Федерации от 30 января 2015 г. № 83 «О проведении оценки фактического воздействия нормативных правовых актов, а также о внесении изменений в некоторые акты Правительства Российской Федерации» (вместе с «Правилами проведения оценки фактического воздействия нормативных правовых актов») // СПС «КонсультантПлюс»

identified 3,003 by-laws, including directives, instructions, inter-sectoral and sectoral rules and so forth, as redundant and obsolete.

The main reasons why these documents were deemed no longer relevant are as follows:

• non-suitability of instructions and requirements for technological processes utilizing modern technologies;

• the presence of requirements in by-laws developed in the Soviet era that cannot be fulfilled in light of modern realities;

• the presence of a large number of redundant and duplicative norms and rules in intersectoral and sectoral rules, instructions, etc.;

• the absence in the outdated regulatory framework of a number of norms, rules, and mechanisms that allow for the monitoring of the legality of commercial activities in certain sectors of the economy.[13]

The reform of control and supervisory activities affected 21 legislatures and 33 oversight bodies.[14] According to preliminary conclusions, the transportation sector has experienced the greatest number of large-scale changes. The Ministry of Transport of the Russian Federation repealed 800 obsolete legal acts and 85 new documents came into force to replace them. This decision allowed the management of transportation enterprises to plan operations in accordance with current standards while also saving up to 70 billion rubles.

Changes to the regulatory framework in the field of labor protection are no less significant. Thus, a number of changes to Section X of the Labor Code of the Russian Federation are planned, including updating the requirements for labor protection

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[Decree of the Government of the Russian Federation No. 83 of 30 January 2015. On the Assessment of the Actual Impact of Regulatory Legal Acts, as well as on Amendments to Certain Acts of the Government of the Russian Federation (together with the "Rules for Assessing the Actual Impact of Regulatory Legal Acts"), SPS "ConsultantPlus"] (Sept. 10, 2022), available at https://www.consultant.ru/document/cons_doc_LAW_174824/.

[13] *Подколзина Е.А.* Реформирование контрольно-надзорной деятельности Российской Федерации как правовое решение проблемы избыточности и морального устаревания нормативно-правовой базы // Инновации. Наука. Образование. 2021. № 26. С. 723–727 [Elena A. Podkolzina, *Reforming the Control and Supervision Activities of the Russian Federation as a Legal Solution to the Problem of Redundancy and Moral Obsolescence of the Regulatory Framework*, 26 Innov. Sci. Educ. 723 (2021)].

[14] Перечень федеральных органов исполнительной власти, осуществляющих функции по нормативно-правовому регулированию в сферах осуществления государственного контроля (надзора), и федеральных органов исполнительной власти, осуществляющих контрольно-надзорные функции, участвующих в реализации механизма «регуляторной гильотины», видов федерального государственного контроля (надзора), осуществляемых федеральными органами исполнительной власти, на которые должен быть распространен механизм «регуляторной гильотины» (утв. Председателем Правительства Российской Федерации 4 июля 2019 г.) // Электронный фонд правовой и нормативно-технической документации [List of Federal Executive Bodies to Which the Mechanism of the "Regulatory Guillotine" Should Be Extended, approved by the Chairman of the Government of the Russian Federation on 4 July 2019, Electronic Fund of Legal and Normative-Technical Documentation] (Sept. 10, 2022), available at https://docs.cntd.ru/document/560596119.

specialists and approving a risk-based approach to organizing the safety of employees. The new rules and instructions governing labor protection issues were developed taking into account the application of a risk-based approach and are aimed at preventing the occurrence of accidents when using modern technological processes.

Let us take note of the two main stages necessary in the process of reforming control and supervisory activities:

1. adoption of new requirements that will serve as the basis for technological development as well as comply with a risk-based approach;

2. introduction of new rules related to the conduct of control (supervision) operations.[15]

The implementation of the concept of "regulatory guillotine" is carried out in accordance with the "Roadmap"[16] and with the involvement of interested parties, such as business representatives, experts and scientists.

Paragraph 2 of the Roadmap directed the Ministry of Economic Development of the Russian Federation to develop a draft Federal Law titled "On Mandatory Requirements in the Russian Federation," which in 2020 acquired the status of a Federal Law and began to define the concept of a mandatory requirement and regulate the process of developing and adopting these requirements, set goals and the basic principles of their consolidation in legislation, so as to ensure the consolidation of the mechanism at the legislative level. In other words, all new rules, instructions, laws, regulations and annexes to laws must be checked for compliance with the norms of this act before consideration and approval.

In 2020, Federal Law No. 248-FZ of 31 July 2020 "On State Control (Supervision) and Municipal Control in the Russian Federation" was adopted, providing for nuances for improving this type of activity, which made it possible to create a system aimed at the qualitative regulation of control and supervisory activities and at the same time reduce the "pressure on business."

In order to reform the sphere of state control and supervision, in 2017 the implementation of the reform of control and supervision activities began. To implement the reform, 43 working groups were created, each specializing in the introduction of the regulatory guillotine mechanism in a particular industry.

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[15] Основные направления деятельности Правительства Российской Федерации на период до 2024 года (утв. Председателем Правительства Российской Федерации 29 сентября 2018 г.) [The Main Activities of the Government of the Russian Federation for the Period up to 2024, approved by the Chairman of the Government of the Russian Federation on 29 September 2018] (Sept. 10, 2022), available at https://docs.cntd.ru/document/554168464.

[16] План мероприятий («дорожная карта») по реализации механизма «регуляторной гильотины» (утв. Правительством Российской Федерации 29 мая 2019 г. № 4714п-П36) // СПС «КонсультантПлюс» [The Action Plan ("Roadmap") for the Implementation of the "Regulatory Guillotine" Mechanism, approved by the Chairman of the Government of the Russian Federation on 29 May 2019 No. 4714p-P36, SPS "ConsultantPlus"] (Sept. 10, 2022), available at https://www.consultant.ru/document/cons_doc_LAW_329301/.

Additionally, drafts of 447 acts were developed, designed to replace obsolete industry rules, instructions and resolutions that had lost their relevance.[17]

The essence of the work of the commission on deregulation, created under the Government of the Russian Federation, is to identify excessive norms, submit them for revocation, and require that the relevant departments that insist on their preservation provide evidence with specific numbers within 30–45 days regarding the need for these norms, should such a need suddenly arise.

Executive authorities at the federal level are making efforts aimed at establishing certain exceptions for them (for example, the Ministry of Internal Affairs of Russia, the Ministry of Emergency Situations of Russia, the Ministry of Health, the Ministry of Culture, the Ministry of Natural Resources, the Ministry of Industry and Trade, the Ministry of Construction, the Ministry of Transport, the Ministry of Labor and Rospotrebnadzor). Several departments asked to be released from the regulatory guillotine (such as the Ministry of Justice of Russia, the Ministry of Finance of Russia, the Russian Federal Security Service and the Federal Antimonopoly Service of the Russian Federation), justifying their requests by stating that businesses have no complaints about the checks they conduct. Such exceptions violate the logic and consistency of the ongoing reforms of control and supervision activities, which suggests that sooner or later the extension of the administrative reform to abolish normative legal acts at various levels that have lost their relevance will be extended. The reason for such an extension being granted will be the lack of sufficient time to conduct inspections at the regional and local levels. As part of the regulatory guillotine, the review of the federal legal framework was planned to be completed by 1 January 2021. Furthermore, it is planned to review the norms of the constituent entities of the Russian Federation by 2022 and municipal norms by 2023.

Turning to the difficulties of implementing the reform, we note that the main danger for the effective implementation of the mechanism of the "regulatory guillotine" is corruption in state authorities and local self-government. Corruption seriously hinders the normal functioning of all state structures, impedes the implementation of social transformations, impairs the efficiency of the national economy and causes anxiety and distrust in state institutions in Russian society,[18] including in the implementation of the regulatory guillotine mechanism. Even though the supervisory authorities have begun to apply other forms of supervision, it is impossible to take them into account with the existing reporting forms and, therefore, determine the degree of pressure on the business community. We also note that, "The relationship that has arisen in connection with the implementation

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[17] Official website of the Reform of Control and Supervision Activities (Sept. 10, 2022), available at https://knd.ac.gov.ru.

[18] *Шеншин В.М., Гордиенко У.Н.* Коррупция как угроза национальной безопасности // Право. Безопасность. Чрезвычайные ситуации. 2021. № 2(51). С. 27–33 [Victor M. Shenshin & U.N. Gordienko, *Corruption as a Threat to National Security*, 2(51) L. Safety Emerg. 27 (2021)].

of certain state powers by local self-government is legally regulated quite clearly; however, the established procedure is not always observed in fact."[19]

Some of the most frequently used new forms of control over the past two years have been raids, test purchases and cases initiated under the Code of Administrative Offenses of the Russian Federation. At the same time, official statistics do not provide for such forms of supervision in the approved forms, which leads to a distortion of the data presented on the pressure on small and medium-sized businesses.

Numerous redundant requirements have not been updated, but at the same time, administrative liability is provided for each offense.

Based on the foregoing, it can be summarized that there is a need to amend the Code of Administrative Offenses of the Russian Federation. Within the framework of the regulatory guillotine the number of articles and grounds for administrative offenses, the number of which has increased significantly in recent years, should be reduced.

Further introduction and legitimization of electronic document management are necessary for the effective implementation of the reform. Since excessive bureaucratization of control and supervisory activities is one of the key problems, a transition to electronic document management is planned as part of the reform. In the register of systemic problems in Russian businesses,[20] bureaucracy is defined as one of the artificial obstacles to commercial activity.

In 2020, departments (including ministries and committees) of digitalization and information development were created for the further implementation of electronic document management in all areas of state control and supervision in all constituent entities of the Russian Federation.

As a result, the question of substantiating and implementing the regulatory guillotine, which has previously not been singled out as a separate area for improving control and supervisory activities, is currently on the agenda.

The regulatory guillotine is, first of all, an inventory of a significant number of requirements that apply primarily to business, carried out in order to compare such requirements with modern realities. In the event that these requirements are still suitable, they will remain in effect; but, in the event that their suitability is no longer relevant, then the requirements will be revoked. This postulate underlies the decision of the Government of the Russian Federation to conduct a "regulatory guillotine."

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[19] *Немова Н.Ю., Григонис В.П.* Влияние конституционных норм на взаимоотношения органов государственной власти и местного самоуправления в Российской Федерации // Право. Безопасность. Чрезвычайные ситуации. 2021. № 3(52). С. 55 [Ninel Yu. Nemova & Valerius P. Grigonis, *Influence of Constitutional Norms on the Relationship Between Public Authorities and Local Self-Government in the Russian Federation*, 3(52) L. Safety. Emerg. 52, 55 (2021)].

[20] Register of systemic problems of Russian businesses 2019 on the official website of the Commissioner under the President of the Russian Federation for the Protection of the Rights of Entrepreneurs (Sept. 10, 2022), available at http://doklad.ombudsmanbiz.ru/doklad_2019.html.

The control and supervisory activities reform, which was announced in 2016 and launched in 2017, was implemented in 2019 and 2020 in accordance with the priority program passport.[21] In two years, regulatory legal acts that were no longer relevant were identified and revoked, in place of which new documents complying with the norms of the Federal Law of 31 July 2020 No. 247-FZ were approved.

According to preliminary plans, the reform of control and supervision activities will be finally implemented by 2025. However, even at the initial stages, the "regulatory guillotine" made it possible to achieve significant results. The fact that the World Bank in its Doing Business 2020 report included Russia in the TOP-30 most promising countries for doing business is evidence that the reform is actually effective.[22]

2. Tasks Solved Within the Framework of Models of Regulatory and Supervisory Activity

The fundamental goal of regulation and control is to improve public welfare by eliminating or minimizing certain risks, including corruption risk. Within the framework of achieving this goal, there are three specific tasks of control systems and models that can be distinguished, none of which are mutually exclusive from one another:

Effective and efficient (in terms of profitability ratio) responses to the risks and threats associated with entrepreneurial activities

The main factor in achieving this goal is the planning and scheduling of inspections, taking into account the real risks to the integrity of human life, the preservation of the environment and wildlife, and health and safety. A risk-based approach legitimizes control activities in the eyes of enterprises and places inspection activities on a rational and "scientific" basis. Moreover, a risk-based approach typically makes it possible to spend the resources of regulatory authorities in a more rational and economical manner. The business register and the use of IT tools are key elements of the system to achieve this goal. The pursuit of efficiency frequently leads to the merging of control operations and (financial and human) resources. This goal can be achieved primarily by establishing control over the number, frequency and duration of inspections. In accordance with this guiding principle, a number of countries have

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[21] Паспорт приоритетной программы «Реформа контрольной и надзорной деятельности» в редакции протокола от 21 декабря 2016 г. № 12 // Правительство России [Passport of the Priority Program "Reform of Control and Supervisory Activities" – Annex to the Protocol of the Presidium of the Council under the President of the Russian Federation for Strategic Development and Priority Projects of 21 December 2016 No. 12 (as amended on 30 May 2017, Protocol No. 6), Government of Russia] (Sept. 10, 2022), available at http://government.ru/projects/selection/655/25930/.

[22] The World Bank's Doing Business 2020 Report is the 17th edition in the World Bank Group's annual publication series, *see* World Bank, *Doing Business 2020* (2020) (Sept. 10, 2022), available at https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf.

set a maximum number of days that an inspection can last for and have also limited the number of times the inspections can take place. However, both the duration and number of inspections can be significantly reduced through proper coordination between regulatory authorities and inspection activities (for example, through joint inspections), as well as through the pre-planning of inspections in accordance with the level of risk associated with the activity and organization being inspected.

Stimulation of economic growth and employment growth by reducing administrative barriers and costs of enterprises associated specifically with inspections and inspection activities (second important goal)

This approach is predicated on the following assumptions:

• informing and communicating with businesses to familiarize them with regulatory requirements and processes and procedures for verification and control;

• given that the purpose of audits is to assess compliance and risk levels, they are carried out in accordance with pre-designed checklists that guarantee equal treatment of enterprises and predictable results of audits;

• clear, simple and transparent procedures, tasks, duties, rights and responsibilities; checks are carefully coordinated, do not duplicate and do not contradict each other, even when carried out by different bodies;

• therefore, there is coordination between the various authorities and supervisory authorities.

• the confidentiality of commercial and secret information is maintained;

• Inspectors are trained in the use of checklists and have the technical and communication skills necessary to conduct inspections and follow up.

Ensuring transparency and accountability of public services and the rule of law, in particular ensuring the legal aspect of inspections and control of activities and appeal mechanisms (an intermediate goal that contributes to the achievement of two main goals)

In a number of countries (notably Spain, Croatia, and Bosnia and Herzegovina), the regulatory body has established the control system and all inspection activities within a clear, agreed-upon legal framework. As a result, in these countries, the inspection activities and procedures were based on a legal framework that was transparent and easy to comprehend, and at the same time, this framework ensured proper access to the judiciary. For the vast majority of cases, the laws prescribe processes and procedures and define in detail the rules relating to the duties of the inspector and the inspector. It should therefore come as no surprise that one of the main tasks of such laws is to combat corruption. For example, Romania, among other countries, has revised its internal control procedures in order to ensure compliance with the regulation by control and inspection bodies and to introduce mandatory checklists for inspections and mandatory documents recording inspections and follow-up activities in order to limit the freedom of action and opportunities for soliciting a bribe.

One of the means for achieving this goal is ensuring the transparency and accountability of inspections. This implies a clear definition of the areas of competence

of the supervisory authorities, as well as the role, rights and obligations of inspectors. Some governments have also stepped up external and internal audits of regulatory bodies. For example, some Latvian inspection bodies have established departments for internal audits.

In many cases, clearly defining the standards, rights, and responsibilities of inspectors and inspected organizations leads to a significant reduction in discretion, as well as setting precise compliance targets for businesses. This can be achieved through simple measures such as the introduction of official identification documents and verification orders. A valuable tool for reducing the risk of abuse of power is the legislating of the rights and obligations of inspectors and inspected organizations, as well as for the adoption of soft legal instruments such as codes of conduct (introduced in Romania, among other countries, for tax inspectors). In addition to "soft" measures, which rarely provide for sentencing mechanisms, in some countries, such as Latvia, supervisory authorities must follow mandatory procedures and principles governing inspections, tender and appeal procedures, and so forth. Codes of Practice are made available for review by inspectors and those being inspected by regulators, which improves understanding of the procedures by all stakeholders and therefore enhances accountability and compliance.

Guidelines and checklists are important tools for ensuring the transparency and accountability of audits. They ensure that inspections comply with all regulatory requirements and prevent abuse of power by inspectors. In a number of countries, regulations require the maintenance of so-called "inspection logs," which allow public authorities to keep an official record of provisional measures imposed by inspectors after an inspection and to control the frequency with which such inspections are carried out.

Also, modern technologies, in particular electronic document management system have proven their great importance for optimizing control and supervisory activities and reducing the risks of corruption. Obviously, electronic document management system allows to quickly and efficiently monitor the activities of regulatory authorities and to respond to violations.

3. Experience in the Use of Governmental and Non-Governmental Forms of Control[23]

3.1. Review of the Negative International Experience in Russia and Europe

Opacity of the control system

It should be noted that a lack of transparency can lead to a number of problems, the majority of which are commonly related to abuse of power and other forms of

[23] *See* Florentin Blanc, *Inspection Reforms: Why, How, and with What Results*, OECD (2012) (Sept. 10, 2022), available at https://www.oecd.org/regreform/Inspection%20reforms%20-%20web%20-F.%20Blanc.pdf.

corruption. First, opacity allows individuals who are not authorized by the responsible oversight bodies to carry out inspections. In this capacity, government officials who do not have inspection powers can act as inspectors; as can persons who are in no way associated with the supervisory authority; as well as inspectors who are retired or do not have a valid inspection order. Secondly, and this is especially typical for the countries of Eastern Europe, "real" inspectors conduct far more inspections than those prescribed by the responsible control body. In general, it has been noted in numerous instances that inspectors do not produce documents at the start of an inspection, even in situations where national law requires it. This is a systemic problem, especially noticeable, among other countries, in Italy. It is rooted in a lack of transparency in the oversight system, coupled with a general fear of inspectors who represent the oversight body and have the authority to impose penalties. Above mentioned electronic document management system ensures transparency of the control system.

Excessive number of inspections: burden on businesses and partially or completely duplicative inspections associated with insufficient risk orientation and proportionality of risks, as well as the desire to constantly inspect or monitor all areas of activity

In situations where, without a preliminary analysis of the existing state of affairs, new legal acts are introduced and consequently, new areas of competence are also delineated as well as new institutions responsible for inspections and control are appointed, there is a risk that inspections will partially or completely duplicate each other. In reality, in order to enhance their authority and expand their scope and influence, compliance authorities frequently interpret regulations broadly, extending their competence to areas related to them. As a result, this leads to a situation where different inspection bodies carry out inspections on the same issues, which leads to partial or complete duplication of inspections. This situation entails significant public and private costs (because often decisions to create a new control body or a new area of responsibility are made without a preliminary cost-benefit analysis), not to mention a significant administrative burden. Insufficiently effective coordination between the various regulatory authorities is inextricably linked to a lack of clearly defined areas of authority and competence. Moreover, this can also lead to the emergence of areas of activity not covered by inspections (the planning and conduct of inspections for which no supervisory body is entrusted), which, in turn, leads to inefficient regulation and supervision. Redundant inspections also increase corruption risks.

Inspections that do not address public welfare and risk mitigation goals

Often, inspection bodies are created as a result of public discussion of a specific situation that public opinion or opposition qualifies as a problem. This occurs without a preliminary analysis of current performance and such fundamental issues as cost-benefit ratio, as well as without an analysis of the existing institutions to which such a duty could be entrusted and without defining the immediate purpose of the

institution being created in terms of the public good and risks. Both above aspects can ultimately be reduced to a single goal: minimizing or reducing risks, protects the public interest and serves the same purpose as promoting public welfare.

Lack of coordination within the model of national and local authorities

In a number of countries, enforcement of key regulations is predominantly the responsibility of local authorities operating in parallel with national agencies that either have exclusive competence in these areas of control or instruct local authorities to ensure consistent and uniform enforcement of significant regulations. These national agencies have the authority to allocate resources and also have departments that specialize in various technical aspects of audits. The quality of local inspections may suffer from a lack of resources in some regions, while other regions may have an excess of resources. In addition, the unclear division of responsibilities between central and regional/local authorities can also lead to insufficient coordination and information exchange across institutions, as well as to partial or complete duplication of checks. In such cases, the problem arises because the decision on areas of control was not the result of careful analysis. Regardless of the reasons for the occurrence, the consequences of such a decision frequently lead to confusion and misunderstandings among business entities (and the regulatory authorities themselves) about which institution is responsible for carrying out inspections in specific areas. Obviously, the development of an electronic document management system will help solve this problem.

Lack of professionalism

Recruitment guidelines, qualification testing process and procedures, training inspectors in key skills for conducting inspections, promoting compliance and reducing risks associated with economic activities, as well as inspector appraisal (and performance evaluation of inspection bodies) may not be clearly defined or may be developed inconsistently and without uniformity. It is very important to define the basic skills and techniques needed for all the different types of spheres of control. In addition, it is also critical to strengthen relationships with inspectees and reduce the burden placed on businesses.

Inadequate performance management

Typically, this results in unnecessary and unjustified unreasonable checks being conducted or an excessively high number of penalties being imposed, both of which are considered acceptable outcomes (or even one of the goals of the control system). The comparative study showed that a large number of inspections not only does not guarantee a higher level of compliance with the relevant regulations, but also is not a more effective means of protecting the public interest (which is equally applicable to punishments).

Use of audits as a source of government revenue (related to the previous point)

Enforcement is also complicated when there is a conflict between the protection of the public good and the generation of revenue (considered one of the purposes of

the government control structure). Problems arise if revenue generation is prioritized, resulting in oversight errors. This leads to significant abuse in the system, increase of corruption risks and a drop in efficiency and legitimacy. In order to prevent such conflicts of interest, it is critical to provide clear mandates and ensure that regulators act in strict accordance with their strategic goal of protecting the public interest and minimizing risk.

Disproportionate penalties and lack of proportionate and flexible accounting

If the punishment is seen as an insufficient deterrent, some of those who have been inspected may continue to violate the requirements they have already violated even after the punishment is imposed. On the other hand, excessively harsh penalties that are disproportionate to the offense are also not cost-effective; they undermine the legitimacy of government actions, promote corruption and generate resistance to audits and enforcement (resulting in lower compliance rates). According to the principle of proportionate and flexible consideration of the degree of risk, the response of control authorities to a violation that qualifies as "serious" and has the potential of violating the integrity or well-being of a person or other public interests or rights should be more severe than the response to less serious violations that do not represent an immediate threat. Therefore, the range of possible penalties should be sufficiently broad to ensure, on the one hand, a differentiated approach to different practices and, on the other hand, the effectiveness of punishment as a deterrent.

Lack of measures aimed at encouraging compliance with regulatory requirements, such as coaching, consulting, etc.

Raising compliance and reducing risks is unlikely unless inspection bodies encourage compliance (by issuing manuals, checklists or other types of information and advice in print or oral form and by improving their relationships with inspected persons). This is frequently observed, especially when the primary objective of the regulatory authorities is to generate revenue.

Inadequate compensation and career prospects

This frequently results in the departure of valuable employees (professionals, qualified and educated personnel) from institutions, while those who continue to work in this system do so for unscrupulous reasons (because they are not qualified enough to find another job or have committed corrupt acts) or remain in the service for the abuse of power).

Lack of real appeal mechanisms

In cases where the law or regulations do not provide opportunities for appeal, or when the conditions for filing a petition for legal protection are difficult to meet, or where it is known that there are no opportunities for appeal, trust in public institutions in general is reduced (especially in control bodies, inspectors and courts).

Lack of punishment of inspectors for inappropriate behavior

The lack of effective and dissuasive penalties for inspectors acting contrary to the law or professional ethics leads to a lack of trust in the compliance system among

those being inspected, as well as an increase in the number of opportunities for abuse of power and corruption.

Improper influence

"Enforcement of regulatory requirements must be independent of political influence" (Principle 7, OECD [2014]). In some instances, even when control staff is protected from political interference by law or regulation, senior staff are nonetheless subject to political influence (for example, if they are replaced as part of a political transition). In addition, inspection bodies may be directly influenced by ministries, which also risks changing some of their priorities as a result of political decisions.

3.2. Review of the Positive International Experience in Russia and Europe

Transparency of the regulatory framework, procedures and structures

Transparency is a key element of adequate enforcement of the regulations governing inspections. This principle also applies to the legal framework (for example, the UK Code of Regulatory and Supervisory Authorities;[24] Decree Law No. 5/2012 (the so-called "Italian Simplification Decree"[25]), adopted by the Italian government in 2012, which governs the delegation of government powers to implement reforms), to the procedures and practices related to verification activities, as well as to the structures, their areas of authority and responsibilities. Transparency, among other valuable benefits, helps to avoid misunderstandings on the part of those being inspected as well as the abuse of power. Effective electronic document management system promotes transparency of the regulatory framework, procedures and structures

Prevention of partial and full duplication, increase in efficiency

Often, there are an excessive number of bodies responsible for conducting inspections and exercising control, which leads to partial and complete duplication of inspections and waste of material and human resources. Consequently, this situation is associated with a significant administrative burden on business entities and unnecessary government spending. The European Union (EU) Member States that have already carried out reforms frequently considered institutional reform their top priority. These states attempted, on the one hand, to reduce the number of agencies while consolidating their functions and, on the other hand, to clearly define the areas of competence of each of the agencies. As long as the guiding principles of reform are adhered to, any of the models listed above will assist in dealing with this task, subject to the principles of reform. However, successful examples of consolidation show that it is necessary to conduct a preliminary analysis in order to diagnose the current situation. Moreover, it is also important that the process incorporate the development of fundamental legislation and coordinating

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[24] Regulator's Code (Sept. 10, 2022), available at https://www.gov.uk.

[25] Decree-Law No. 5/2012 (the so-called "Italian Simplification Decree") [Decreto Semplifica Italia] (Sept. 10, 2022), available at https://www.funzionepubblica.gov.it.

mechanisms, as well as a readiness to reform the structure. In addition, preventing partial or total duplication and improving the effectiveness of the control system also require improved communication and coordination between national (central) and regional or local structures, as well as a systematic and effective exchange of information between agencies and coordination in the planning of inspections.

Risk-based regulation

Risk-based regulation is very important because it contributes to the achievement of public policy goals through the effectiveness of targeted inspections of organizations or enterprises whose activities are associated with the highest risks. Such regulation allows for a more rational use of public resources by identifying priority industries or targets for inspections, in relation to which tighter control is required; it also reduces the burden on economic operators. Additionally, risk-based regulation offers approaches and tools for resolving specific issues, problems and situations based on a response that is proportionate to the risk.

First and foremost, the main objective of risk-based regulation is to reduce the possibility of a negative impact on public welfare (taking into account available resources). Risk-based regulation promotes rational data-driven selectivity, which can aid in the allocation of government resources in a more efficient and effective manner.

Secondly, it is fundamentally important to target the system of inspections (and in particular the procedures for inspections) based on the risks associated with the relevant economic activity and which may affect the integrity and safety of consumers, the surrounding community and society as a whole. There are a number of advantages to adhering to this principle, including the following:

• the system of checks becomes justifiable;

• the process appears more rational from the point of view of those being inspected;

• risk-based planning ensures a more cost-effective utilization of resources (both material and human);

• a risk-based approach, if applied thoughtfully and effectively, can increase the credibility of high-risk economic operators as they are proven to meet higher standards.

For this development to be effective, it is necessary to put in place and use accurate data about economic operators (for example, a suitable registry of legal entities) and IT tools.

Thirdly, less stringent or more flexible requirements for low-risk economic entities will reduce their costs. Since the vast majority of economic operators are associated with low risks, reducing the burden on them will contribute to a net reduction in the burden on the scale of the national economy.

Sharing information on planning inspections to ensure coordination (in particular between national and local authorities

International experience shows that effective information sharing helps reduce administrative burden, improve planning and ensure cost effectiveness. However, this is possible only if there is a common information system or database in place as well as a consolidation of information on all of the objects that are subject to control.

According to a report that was prepared by the OECD in 2012,[26] the information system should ideally be based on a database containing data on at least the following items: a list of all economic operators and institutions; indicators of risk factors for each organization; a list of all checks conducted; a list of test results; an automatically calculated rating of the risks associated with the activities of each economic entity or organization; and an automatically generated list of necessary checks and their schedule.

While interesting results and positive experiences have been achieved in some cases,[27] more complex systems are rare. However, despite obstacles such as the difficulty of connecting existing information systems to each other, the costs of implementing an information system, confidentiality issues and so forth, the critical importance of IT tools that ensure the sharing of information by inspection bodies makes them a key element of a rational and effective audit system.

The Inspection View system was introduced in the Netherlands in 2010 after a two-year pilot phase. This system, the main purpose of which is to enable the exchange of information based on an advanced information architecture, provides data sharing among various inspection bodies that have access to information on inspections and compliance with certain economic operators or organizations. "Inspection View" provides some degree of centralization of data on economic operators (in particular, information about previous inspections, such as inspection results), thereby giving each inspector a complete picture of a particular object.

Although it does not replace other means of data consolidation used by national authorities, the Inspection View system promotes cooperation among authorities (about five). However, regional inspectorates also have access to this application and use it in specific cases where general control is especially needed. The information contained in the Inspection View system should be used when planning inspections in accordance with a risk-based approach in order to create a more effective system of inspections. Additionally, this system helps to prevent both partial and complete duplication of checks. Using the system in conjunction with another IT tool, "Company Dossier," has proven to reduce the administrative burden on companies. The "Company Dossier" system, developed by the business community and the Ministry

[26] Blanc, *supra* note 23, at 78.

[27] Italy's "Unified Inspection Register" and the inspection management system introduced in Bosnia and Herzegovina (Republika Srpska) are discussed more fully in section (d) of the report.

of Economy in 2011, is used by economic entities that can enter data on their activities obtained within the framework of self-regulation into it and make it available for viewing by regulatory authorities (the latter get access to information only when economic operators make their profile information in the system available to them). These two tools, when used together, help inspectorates and inspectors focus on the most problematic issues and results achieved. Moreover, they contribute to the establishment or reinforcement of trust in regulatory and supervisory authorities, which has a positive impact on compliance with regulatory requirements.[28]

Professionalism

Professionalism must underlie any verification activity. This includes both technical knowledge in the relevant areas as well as general knowledge related to the conduct of audits (operational guidance, compliance promotion, ethical behavior, risk management, etc.).

Adequate performance management

Performance management should reflect, on the one hand, the general goals of inspection activities (risk reduction, protection of public interests) and, on the other hand, specific goals for each of the areas of control. It is on this basis that the goals and objectives of inspections (and inspectors) should be determined, specifically, the intended result should be positive achievements in the field of compliance and safety, and not a large number of inspections and punishments. The high (and increasing) number of sentencing cases appears to be a particularly difficult situation, as it indicates a low (and declining) level of compliance; in other words, such a situation cannot be understood as a "good result" of the inspectorate.

Preventing the use of audits as a source of income

The control system should not be aimed at generating income but at minimizing risks, protecting the public good, and protecting rights. Income generation should be excluded from the list of objectives of the control authorities, as this may contradict the above important fundamental objectives.

Role and limits of penalties and liability in terms of effective enforcement of regulations

Studies and articles highlight several questions on this issue. First, overly harsh penalties for violations that are considered minor (based on the level of risk involved) are associated with high costs for business entities, create conditions for abuse of power and do not provide a satisfactory level of trust in government bodies. In addition, penalties that do not take into account the amount of profits made or losses

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[28] Information provided on the following websites: the portal of all central government inspectorates of the Netherlands [Gateway to all central government inspectorates of the Netherlands], English version (Sept. 10, 2022), available at https://www.rijksinspecties.nl, and the program website for Environmental Information Exchange PIM [Programma Informatie-uitwisseling Milieuhandhaving] (Sept. 10, 2022), available at http://www.informatieuitwisselingmilieu.nl.

incurred as a result of a violation[29] are unlikely to prevent subsequent violations. Second, inadequate enforcement of business liability provisions leads to insufficient penalties and insufficient compensation for victims.

Thus, it is advisable to establish adequate penalties for minor violations and criminal violations, as well as a reliable mechanism for the implementation of responsibility, in the regulatory framework. So, it can prevent abuse and corruption.

At the same time, punishments alone cannot achieve compliance with regulatory requirements. Indeed, deterrence as a factor in incentivizing compliance has been proven to have a number of serious limitations.

Firstly, the effect of sentencing is mediated by the values of the inspected: the deterrent effect is stronger in the case of auditees who are initially set to comply with regulatory requirements and weaker in the case of auditees who are not set to comply with the regulatory requirements.

Secondly, in practice, strong deterrence results in significant financial costs and restrictions on personal and economic freedom, which therefore makes it difficult to achieve in most cases.

Thirdly, procedural legitimacy is frequently violated when attempts at deterrence are perceived as excessive interference by targets of control (non-periodic visits and inspections, penalties imposed without taking into account risks, requirements that restrict economic initiative too much, etc.), which has a negative effect on a major driver of compliance incentives.

Since research and experience show that deterrence is a weak incentive to comply with regulations, while legitimacy and values are, on the contrary, much stronger, the focus of verification activities should not be on deterrence through the imposition of penalties but on encouraging compliance in positive ways, such as through trust, recommendations, instructions and constructive cooperation. Punishments should be seen as a backup tool to be applied in cases of continued irresponsible behavior, against business entities committing truly criminal acts and so on.

Instruction and information

Encouragement of compliance, as opposed to enforcement and sanctions, is considered one of the most effective ways to improve the performance of enforcement agencies for the benefit of society. It has been found that, on the one hand, small and medium enterprises (SMEs) frequently do not know what to expect from inspector visits (and therefore are afraid of inspectors and may react hostilely to inspections), and on the other hand, SMEs are usually unaware of the regulatory requirements applicable to their activities as well as how to comply with them.

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[29] In this sense, as noted in the 2005 Hampton Review (Philip Hampton, *Reducing Administrative Burdens: Effective Inspection and Enforcement*, HM Treasury (March 2005) (Sept. 10, 2022), available at https://www.regulation.org.uk/library/2005_hampton_report.pdf), "Administrative sanctions do not take into account the economic assessment of the violation, and it is often more profitable for an economic operator to pay a fine than to comply with the requirements."

It has been determined that providing the inspectors with clear instructions and practical advice has proven effective and beneficial in many cases. In fact, they help improve compliance (and provide assurance that compliant targets are safe) and reduce the risks that economic activity poses to user safety, the environment among other things. In the United Kingdom, the food safety management program known as "Safer Food, Better Business" has successfully helped companies comply with regulations and reduce food safety risk. Additionally, in Lithuania, the mandatory use of checklists during inspections (ensuring that inspectors focus on what matters most) has helped to improve relations between inspectors and inspectors and to define clearer requirements, leading to better compliance.

Compensation and career prospects

It is necessary to develop a salary scale that is in accordance with clear and transparent criteria such as qualifications, continuing education, seniority and labor productivity (the number of checks carried out or punishments imposed cannot be used as performance criteria). Government officials need to be provided career opportunities based on pre-established criteria based on oversight objectives (risk minimization, compliance promotion and public welfare).

Reliable appeal mechanisms

Inspectees must be given clear information about their rights and obligations during inspections. In particular, they should be made aware of how they can challenge and appeal the findings of inspectors and report cases of abuse of power, if any. Therefore, the legal and regulatory environment should reflect such rights and obligations and guarantee the independence and effectiveness of courts or other appellate bodies. Public authorities must also make public any new interpretations adopted by the courts. This ensures that the inspectors have access to information about their rights and obligations and understand them, as well as the possibility of successfully challenging the relevant decision.

Prevention of undue influence

Best practices and international experience shows that maintaining the independence of control bodies from political forces is a key element of an efficient and effective control system. However, the executive may legitimately determine which risks are prioritized and which actions (and therefore which controls) need to be strengthened and supported with additional resources, provided that the decision is made in accordance with a risk-based approach to planning and does not lead to the so-called "risk-adjustment reflex17." In the majority of countries, control bodies are either directly or indirectly subordinate to ministries. This is, for example, typical of the Netherlands, where the heads of control bodies are appointed by ministers and, as a result, are accountable to them on an equal basis with parliament; in Bosnia and Herzegovina (Republika Srpska), the head of the state inspectorate and management are appointed by the full composition of the Cabinet of Ministers and are accountable to it, thereby excluding the direct influence of individual ministers.

4. Features of the Implementation of State Control over the Entrepreneurial Activities in Europe, USA and Canada

In the process of the functioning of modern business entities state control plays a significant role, one that aims at regulating the various aspects of the process, while at the same time taking into account the need to protect the rights of business entities.

Due to the variety of approaches, conceptual provisions and legislative regulation of state control of entrepreneurial activity, foreign countries have accumulated a wealth of practical experience in regulation in this area which can be used in Russia.

Therefore, it seems quite relevant to study state control over the implementation of entrepreneurial activities in foreign countries, which was the purpose of this article.

Due to the proximity of the legal systems of Russia and the majority of European countries within the framework of the Romano-Germanic legal family, it is advisable to first consider the state control of entrepreneurial activity and its legislative regulation in the countries of the European Union.

In practice, if a business activity has been authorized in one EU Member State of the European Union, no further authorization is required in another Member State. In light of this, the role of cooperation among the supervisory authorities of the Member States is constantly growing.

Supervisory authorities conclude cooperation agreements and exchange information with foreign supervisory authorities or international organizations established by them. In the course of such international cooperation, the supervisory authority may release data and information received from foreign supervisory authorities in order to evaluate applications for the establishment and operation of various organizations and to verify the content of authorizations and supervisory decisions, particularly measures and sanctions.

In Germany, state control of business is carried out on the basis of sectoral legislation and a number of special laws of the states and the federation. Thus, in 1970, the state of Hessen passed a law on state control of business that sought to ensure the protection of legal entities when such control was carried out by state bodies, rural municipalities and local entities.

This law established a Commissioner for the Protection of Companies to enforce its provisions, and it also ensured the Commissioner's independence in carrying out those duties, which included ensuring that the law's provisions were followed.[30]

In Sweden, Act 1973 No. 289 regulates the activities of the supervisory bodies that enforce the law,[31] which are empowered with inspection, regulatory and procedural

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[30] Vasily I. Oleinik, *Legal Regulation of State Control of Entrepreneurial Activity*, 5 Admin. L. & Proc. 37 (2018).

[31] G.G. Sidorova, *On the Issue of Improving the State Control of Entrepreneurial Activity*, 3 Legal Sci. & L. Enforcement Prac. 61 (2018).

powers to enforce judicial sanctions. The tight controls provided for in Swedish regulations have earned Sweden the label of a "hetero-control model." However, some of its provisions had to be amended by adopting a system of notification and registration, which is always the responsibility of the national control authority. This legislation is characterized by its focus on protection in the regulation of the actions of control bodies, the imposition of certain restrictions on preliminary and subsequent verification, etc.

In France, the main basis for state control of entrepreneurial activity is sectoral legislation, including EU directives, the Civil Code and the Customs Code, which is consolidated with Community legislation, the Commercial Code, the General Tax Code, the Monetary and Financial Code and the Labor Code.

As with Swedish and German law, French law provides for a supervisory body, the National Commission as the entity responsible for its application, to receive the claims of those negatively affected by the law and endows it with regulatory powers, the exercise of which guarantees statutory durability.[32]

In Spain, the law on state control of business regulates the actions of public law bodies as a means of control, and the law establishes the Federal Commissioner as the body designed to ensure state control.

On the other hand, when it comes to the control of non-public organizations, important amendments are introduced to the law regarding the body that is allowed to exercise its powers *ex officio* and take corrective measures in the event of the detection of technical or organizational violations.

In Romania, the Parliament adopted Law CXXIV of 2007 on State Supervision (HFSA), which established the procedure for supervision, because more and more companies, including banks and investment companies, whose activities overlap with companies providing financial, insurance and investment services, are concentrated in several groups of companies.

Thus, integrated control has become much more effective.

Also of interest are the experiences of the United States and Canada with state control of entrepreneurial activity. In the United States, industry laws play a major role in regulating state control of business, although certain aspects of state control regulation are established in an explanatory memorandum providing for the protection of companies audited by federal structures and agencies.

The main regulatory bodies in the United States are:

- Federal Trade Commission;
- Antimonopoly Office of the Ministry of Justice;
- Securities and Exchange Commission – U.S. Customs Service;
- Bureau of Industry and Security (BIS);
- Ministry of Commerce;

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[32] E.S. Stepanov, *State Control of Business in the European Union*, 5 Bus. L.J. 94 (2019).

• Environmental Protection Agency (EPA);
• Federal Communications Commission (FCC).

In Canada, the regulation of government control of business is established in sectoral laws and in the 1957 Act, which provides that there is no administrative appeal against the decision of the supervisory authority. Supervisory decisions can only be challenged in court; thus, the Minister of Finance, acting within the scope of his legal supervision, cannot review or overrule supervisory decisions. The claim for compensation for damages caused by the decisions of the supervisor in connection with the supervisor's decisions taken in the exercise of official powers may be enforced only if the decision or omission by the supervisor is unlawful and harm has been caused to the claimant.

Supervisory authorities, while maintaining banking and securities secrecy, treasury secrecy, insurance secrecy and business secrecy, have the right to protect all or part of their decisions in order to protect money and capital market participants, investors, depositors, insured persons or members of the treasury.

Supervisory authorities regularly publish a list of issued licenses as well as a list of foreign supervisory authorities with which cooperation agreements have been concluded on the basis of mutual recognition.

Supervisory authorities have the right to express their opinion in the preparation of legislation relating to the financial system and supervised institutions and persons and make proposals for the creation of such legislation.

Conclusion

Thus, in the majority of the countries, including Russia, around the world, there is no specialized law under state control on the protection of the rights of business entities or businesses; only a small number of countries have laws addressing state control of businesses. As a result, to a greater extent, regulation in this area is carried out through sectoral legislation regulating control over parties of various state bodies on different types of entrepreneurial activity.

An analysis of the effectiveness of the activities of the control and supervisory bodies of different countries, Russia included, revealed the growing role of control at various levels of government. Currently, in economically developed countries, a fairly diverse system of control and supervisory bodies has developed and is in operation. The organization of this system and the functions it performs are determined not only by the form of government, national traditions and characteristics but also by the general principles of work of control and supervisory bodies that have been developed over many years of practice for the international exchange of experiences.

In general, a study of the experiences of foreign countries has shown that the control and supervisory systems of nearly all countries are highly efficient and effective in their work, despite the rather large number of employees and the wide

variety of functions and control measures implemented by these bodies. The reasons and grounds for high performance are, first of all, legally established guarantees for the independence of the activities of control and supervisory bodies and, accordingly, the inability to put pressure on their activities. In addition, the rigidly established term of office for the heads of the control and supervisory bodies allow them to lead the entrusted departments for several parliamentary terms and, at the same time, severely limits the tenure of the head in the leading position of the control and supervisory body. For example, this term is 15 years in the United States, 12 years in Austria and 10 years in Canada. At the same time, the costs for the maintenance and functioning of the control and supervisory bodies themselves are approved in the parliaments of the countries by a separate estimate.

Furthermore, the analysis revealed that the reforms of the control and supervisory sphere in foreign countries, which were carried out in order to increase the effectiveness of the activities of control and supervisory bodies, were accompanied by the completion of the following interrelated tasks:

• establishment of mandatory rules of conduct for the subjects of control and supervision activities;

• improvement of controls over compliance with established rules;

• identification and evaluation of the facts surrounding violations as well as tightening measures of responsibility;

• development of measures aimed at stimulating compliance with established rules.

The emphasis that is placed on evaluating the effectiveness of the activities of control and supervisory bodies in different countries, Russia included, has shifted from assessing the actual number of inspections, violations detected, fines and penalties imposed, open criminal cases, the amounts of illegally spent public funds returned to the budget and so forth, to assessing the "quantity" and the "quality" of the facts revealed and events that were prevented in advance, which in one way or another posed a potential threat to the safety of the state as well as the society. Thus, it was implied that there was a risk of not reaching socially meaningful indicators (results), according to which society eventually evaluates the actions of government agencies in general and the actions of control and supervisory agencies in particular.

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