

Regulatory Reform Tools in Ukraine

Andrey Astrakhan

Summary

- Regulatory Policy Law (RPL) and regulatory process and their main elements
- Regulatory Impact Analysis (RIA) and Regulatory Impact Evaluation (RIE): components, institutional framework and enforcement
- Quick Deregulation (QDR)/Guillotine

Implementation of the Regulatory Policy Law (RPL)

(Adopted by Ukrainian Parliament
September 11, 2003 by 421 votes of the
Deputies of the Parliament. The Law
became effective in January 2004)

Regulatory Process

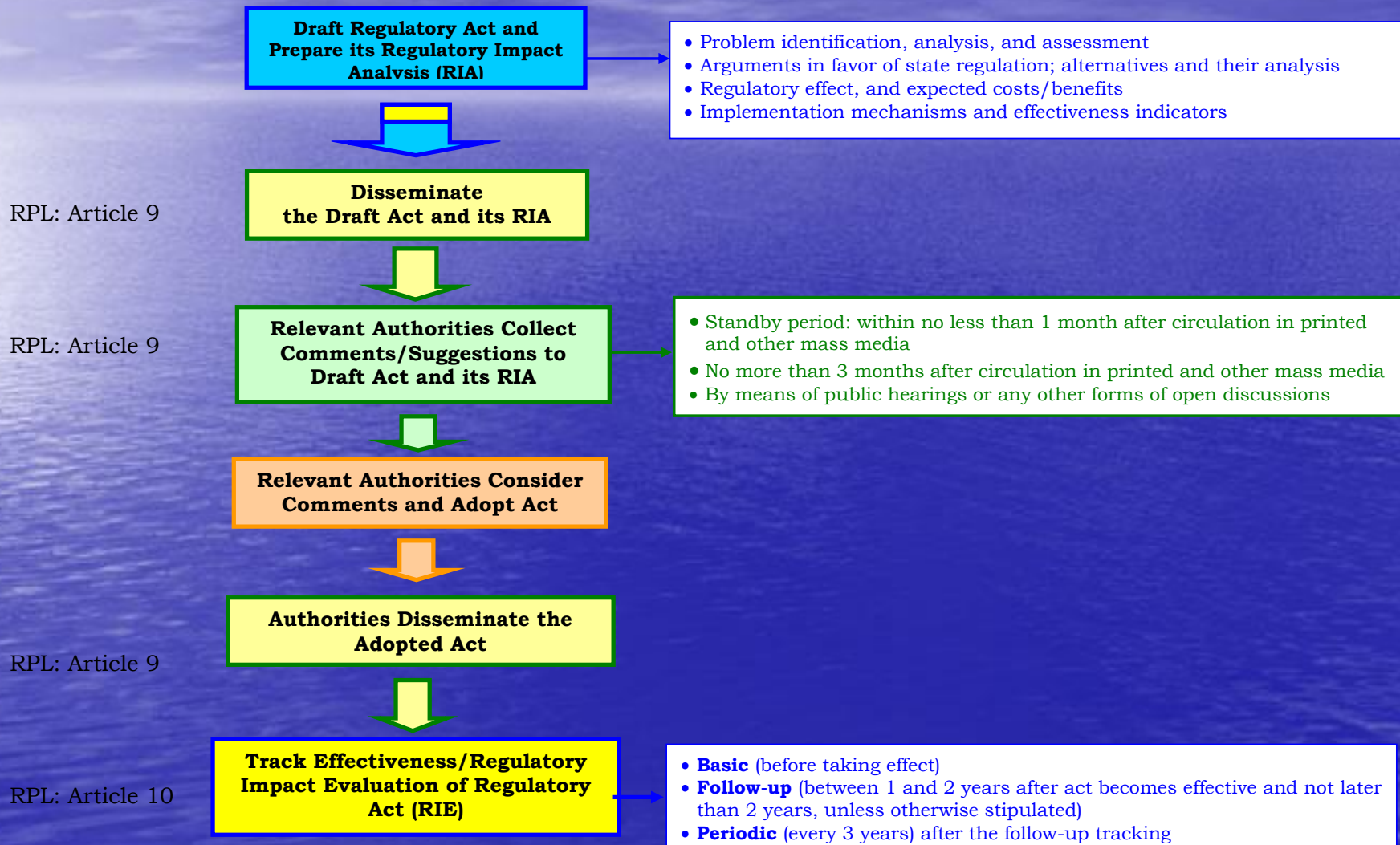
- The law applies to any legal act which regulates economic relationships between economic agents and the relationship between the government and economic entities
- Publication of regulatory plans for the coming year in mass media and/or in the Internet
- Publication of the text of all draft regulations with their Regulatory Impact Analysis (RIA) must also be accessible, providing a forum for comments. Interested parties will have from 1 to 3 months to provide comments and suggestions
- Every existing regulatory act's effectiveness must be monitored and evaluated: a baseline survey must be conducted before the act becomes effective, a follow up survey - 1 year after the adoption, and a periodic survey - every 3 years after the follow up survey

Regulatory Policy Law (RPL)

Compliance Requirements

Andrey Astrakhan

RPL: Article 8



Regulatory Impact Analysis (RIA)

- All draft regulatory act at the local and national level must include a Regulatory Impact Analysis (RIA)
- The draft regulatory act and its RIA must be made public and discussed by interested parties to provide comments and suggestions
- Interested parties, including business entities and their Associations, may also prepare their own RIA of the draft regulatory act as a means to engage authorities in discussion of the act (*Article 6 of the law*)

- Problem addressed by means of the state regulation should be clearly identified
- Aims of the state regulation shall be identified
- All acceptable alternative ways of achieving the above aims shall be determined and evaluated; and arguments for the benefits of the method selected shall be given
- Mechanism for solving the problem, and the relevant actions to be taken shall be defined
- Grounds for the probability of achieving the aims targeted in case the regulation is adopted shall be given
- Expected results of adopting the regulation shall be determined
- Proposed period of validity for the regulation shall be substantiated (in case there is a limitation for this period)
- Indicators of effectiveness of the regulation shall be determined
- Actions for evaluation of the impact of regulation shall be determined

Regulatory Impact Evaluation (RIE) Indicators

- Type and title of the regulation evaluated, the date of its adoption and number (for a baseline evaluation, the date of adoption and number are not indicated)
- Evaluation executor's name/title
- Regulation's goals
- Time frame for the evaluation's implementation
- Evaluation type (baseline, follow-up or periodical)
- Methods for obtaining evaluation results
- Data and assumptions upon which the impact was evaluated, as well as methods of data collection to measure the indicators
- Quantitative and qualitative indicators of the regulatory impact
- Evaluation of the regulation's results and goals achieved

RPL Enforcement

- All state regulatory institutions including Parliament, Government and Presidential Secretariat should apply RIA, RIE as well as other norms of the law in the process of elaboration and utilization of all type of regulatory documents and can't proceed in this case with discretion
- A regulatory act can't be adopted or approved, if not accompanied by its RIA or not published in draft form
- If certain types of regulations (orders of ministries and agencies, certain local regulations) were adopted in contradiction with the requirements of the RPL, one may appeal to the State Committee for Regulatory Policy and Entrepreneurship (SCRPE), which then requests from the Ministry of Justice of Ukraine denial or withdrawal of the official registration of the regulation in question
- If a regulatory act is adopted and there are doubts about its legitimacy with regard to the requirements of the RPL this could be used as a legal tool in a court for repealing or annulment of such regulatory act
- Based on the RIE collected data one can appeal to the SCRPE and/or higher authorities to revoke an inefficient regulation and to force the responsible agency to comply with the RPL

Results of RPL Implementation in 2004-2006 *(Qualitative)*

- Formed a normative base for the implementation of the state regulatory policy
- Developed institutional structures to ensure implementation of the state regulatory policy. In all regions of Ukraine there were formed Appeal Regulatory Commissions
- Broken a total neglect of adherence to the requirements of RPL among central and regional executive authorities
- Developed mechanisms of private-public interaction

Results of RPL Implementation in 2004-2006

(Quantitative)

- In December 2005 just 12 and in December 2006 - 26 ministries and other CEB of 71 published in time their regulatory action plans for 2006 year
- In 2004-2006 the SCRPE reviewed 5087 draft regulations and rejected 1134 (22,3%) because of non-compliance with RPL
- 81,7% of draft regulatory acts in 2004, 91,4% in 2005, and 95,8% in 2006 were accompanied by RIAs
- 78% of draft regulatory acts in 2004, 89,9% in 2005, and 95,1% in 2006 were preliminary published for public consultations

Low Quality of RIA

- Process of RIA preparation doesn't comply with RIA methodology approved by the Cabinet of Ministers of Ukraine
- 100% of rejected RIAs don't reflect regulatory objectives, don't contain indicators of effectiveness of future regulatory acts and action plans with clear time frame related to application of RIE surveys and indicators
- 65% of rejected RIAs don't contain analysis of regulatory problems and justification of elaboration of the new regulations
- 30% of rejected RIAs don't contain analysis of alternative methods of problems solution
- Lack of reliable and comprehensive informational/statistical database
- Poor quality of cost-benefit analysis in the process of RIA preparation

Better Implementation of RPL *(Amendments to RPL)*

- Publish all draft regulatory documents of central bodies on SCRPE's managed website
- Implement clear system of administrative sanctions for violation of RPL norms
- Define more precisely Court authority to repeal regulatory documents on the basis of RPL norms violations

Better Implementation of RPL *(Institutional Capacity Improvement)*

- Development of the competence, functions and statute of internal structures (departments, sub departments, sectors) of regulatory bodies responsible for RPL implementation
- Transformation of the SCRPE to the National Commission for Regulatory Policy (NCRP)
- Enhancement of the awareness and role of the national, sectoral and regional business Associations, Unions, NGOs in regulatory policy principles and RPL norms
- Development of the training programs in regulatory reform sphere on the national and regional levels
- Development of the system of monitoring and evaluation of the effectiveness of all regulatory reform actions and initiatives

Better Implementation of RPL (RIA and RIE Development)

- Set clear Parliament, CabMin, and Presidential Secretariat rules for application of Regulatory Impact Analysis (RIA) in regulatory documents drafting process. Establish in above mentioned regulatory bodies internal structures responsible for RIA and RIE application
- Develop methodologies for RIA and RIE application with detailed guidelines (manual) for cost benefit and cost effectiveness analysis
- Improve the mechanism of RIA and RIE application in practice of all regulatory bodies

Quick Deregulation (QDR) Strategy (Ukrainian Regulatory Guillotine)

The Regulatory Guillotine©

- A review process for existing regulations
- Rapidly eliminate large numbers of unneeded regulations, based on a systematic review
- Quick deregulation method that requires effective enforcement
- Based on:
 - A defined regulatory documents to be reviewed (the inventory)
 - A timeframe for the review
 - A firm deadline for the guillotine to drop
 - Reversing the burden of proof for keeping regulations
 - Private sector participation

Necessity to Implement in Ukraine

- Over-regulation and bad regulations hurt business and discourage foreign and domestic investment
- Enormous number of inefficient and outdated regulations provide opportunities for corruption
- Elimination of economically inefficient, outdated or illegal regulatory acts, which harm business and discourage investment
- Inventory and codification of Ukrainian regulatory acts
- Creation of efficient and acceptable business, legal and regulatory environment
- Further development and implementation of stable and consistent regulatory policy
- Harmonization and implementation of international regulatory principles in legislative practice
- Elimination of major barrier to competing with WTO and EU member countries.

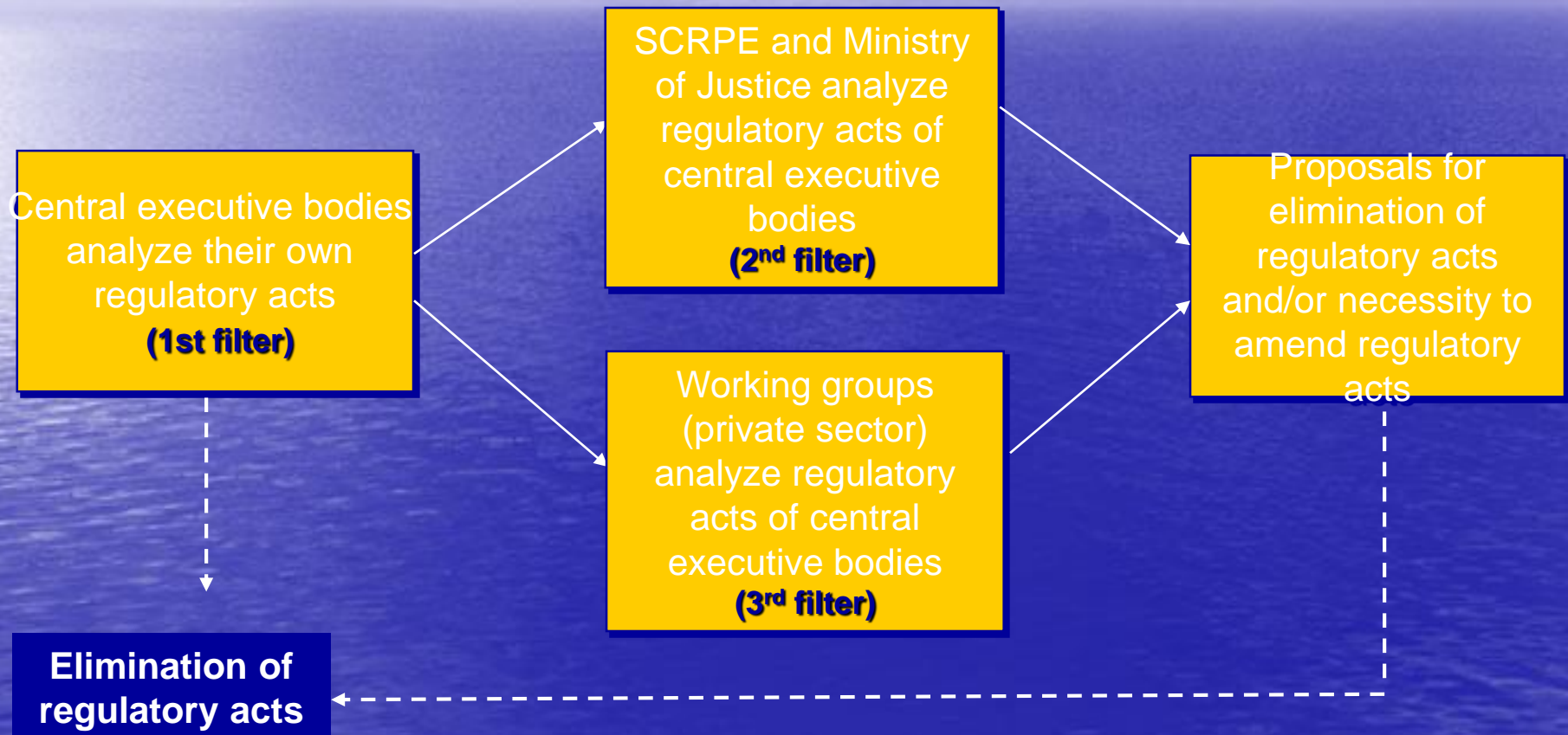
Preparatory QDR/Guillotine Process

- Since January, 2005 the Ukrainian regional Authorities have been assisted to implement quick deregulation strategy in 7 Ukrainian regions: Donetsk, Ivano-Frankivsk, Kharkiv, Kherson, Lviv, Zaporizhya and Vinnitsa
- Governors and Oblast Center Mayors QDR/Guillotine Resolutions drafted with assistance of international and local experts
- 7 Governors and 6 Oblast Center Mayors Resolutions adopted in the period from 01/01/2005 to 06/01/2005
- International and local experts jointly with SCRPE drafted Presidential QDR/Guillotine Decree and discussed it with senior officials of the Presidential Secretariat, Cabinet of Ministers, Ministry of Justice, Ministry of Economy, Ministry of Finance
- The QDR/Guillotine Decree was signed by the President of Ukraine 06/01/2005 № 901

Regional level QDR/Guillotine Scheme



National level QDR/Guillotine Scheme



QDR/Guillotine Mechanism

- Ministries, Regional Executive Bodies, Municipal Authorities prepared the list of regulatory acts for QDR/Guillotine review (***first filter initial review***)
- Ministries, Regional Executive Bodies, Municipal Authorities set up QDR/Guillotine working groups with representatives of regulatory bodies, private businesses, business associations, NGOs and experts
- QDR/Guillotine Working groups reviewed and formed three lists of regulations: (i) those that are not business-friendly and not consistent with the state regulatory policy principles and should be repealed; (ii) those that are partly not consistent with these principles and should be amended; and (iii) those that are consistent with these principles (***second filter review***)
- SCRPE and Ministry of Justice additionally reviewed the list of regulations that were identified like consistent with state regulatory policy principles (***third filter review***)
- SCRPE and Ministry of Justice formed a summarized list of all regulations and compared it with information in the Unified Regulation Register, identifying regulations that were not the subject of QDR/Guillotine review, and should be excluded from the State Register (***QDR/Guillotine deadline/drops***)

Results and Lessons of the First Phase of QDR/Guillotine Strategy

- As a result of the first phase QDR/Guillotine implemented at the national and regional levels in 2005, about 14,000 of regulations were reviewed, about 6,500 of those were identified as being not business-friendly and burdensome for entrepreneurs, near 5,000 of them repealed, and near 1,000 amended
- Some obstacles impeding business growth were eliminated that should stimulate growth of employment, investment, GDP, number of new businesses
- Insufficient time (3 months) for QDR review of the whole mass of regulatory acts
- Inadequate level of private sector involvement
- Lack of authority of oversight body (SCRPE) to finalize decisions regarding cancellation or amendment of business unfriendly regulations
- Laws haven't been reviewed at the time of the first phase of QDR strategy implementation

Development of QDR/Guillotine strategy (Second Phase of Ukrainian Regulatory Guillotine)

- Second phase of QDR/Guillotine should be sectors oriented to allow for identification and elimination of problematic laws and regulations in the most overregulated spheres and economic sectors
- Second phase of QDR/Guillotine should commence with several most problematic areas of regulation (permits, licensing, customs procedures, tax administration, transportation, etc.) It is recommended to identify the most problematic areas jointly with representatives of the private sector
- It is essential to conduct a second phase expert examination of the regulations recognized by the quick review during the first phase as being in compliance with the principles of the state regulatory policy and being business-friendly
- Special care should be taken to ensure that conclusions on regulations contain justification of their overall existence, economic expediency as well as conclusions²⁴

Development of QDR/Guillotine strategy (Second Phase of Ukrainian Regulatory Guillotine)

- To address this issue it is advisable to set up joint Parliamentary/Governmental or inter-ministerial working groups to be made up of highly-knowledgeable representatives of the Parliament, Central Government agencies (ministries and state committees), SCRPE, representatives of business community, and experts
- It is recommended to set up these groups with a high status, e.g., at the Deputies Head of the Parliament or Deputies Prime Minister's level
- Conduct performance evaluation of the working group members who participated in the first phase of QDR. This evaluation could be used for renewing the composition of the working groups to improve the qualifications level of the working groups for the second phase of QDR. It is essential to review the composition of the working groups and select the most active and professional representatives of the private sector

Development of QDR/Guillotine strategy (Second Phase of Ukrainian Regulatory Guillotine)

- Define more precisely the time frame for the second phase of QDR/Guillotine strategy based on the experience of similar exercises conducted in other countries
- Working groups for the second phase of QDR/Guillotine should report not just for quantitative indicators (the number of regulations reviewed, proposals on repealing or amendment submitted, etc.), but also for qualitative indicators (impact on employment, investments, GDP growth, number of new businesses, etc.)
- Establish proper controls over the process of second phase of QDR which needs to be provided at the top Parliamentary or Governmental level, e.g., the Head of the Parliament or Prime Minister's or Deputy Prime Minister's level

Critical Factors of Success for Regulatory Reform Implementation

- Government commitment to the reform
- Importance of the comprehensive approach to reform and development of the regulatory reform strategy
- Legislative aspect - the necessity to reflect principles of state regulations of business activity in the Law
- Utilization of QDR/Guillotine strategy as a commencement phase of regulatory reform
- Development of RIA and RIE methodology and detailed manuals/handbook regarding application of these methodologies
- Institutional aspect - establishment of the central oversight body responsible for the regulatory reform coordination and RIA/RIE quality control
- Establishment in regulatory bodies their internal divisions responsible for application of regulatory policy tools
- Active involvement of private sector and their Associations, Unions in regulatory reform practice
- Periodical recommencement of utilization of QDR/Guillotine strategy
- Importance of capacity building