

Moving Away From Total Control in Former Communist Countries – the RRR in Inspections, and Lessons Learned from Reforming them

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Former Soviet republics and other countries of the ex-Communist “block” may seem unlikely places to look for inspiration in “better regulation”. In fact, their experience in moving away (with varying degrees of success) from an approach based on “total control” and complete risk-aversion (an absolute RRR, as it were) may be an opportunity to get many insights. Data from surveys conducted by the World Bank Group allows to shed light on trends in regulatory delivery, and in particular in inspections, which is the primary way in which the RRR is felt by businesses. This paper describes the starting situation, analyses the reform processes and their outcomes, and attempts to draw some lessons – as well as some comparisons with situations and experiences in EU and OECD countries. Tentative conclusions suggest both that addressing the inspections and control issue (and not just regulations themselves) is crucial to success in reform, and that reducing the “pressure” from total control through a “risk-focused” approach leads to real improvements in the business climate without negatively affecting public safety.

I. Introduction

The issue of the “Risk Regulation Reflex” (further: RRR) is vexing reformers who focus on “better/smarter regulation” and on the micro-economic context for growth throughout in the world. The RRR can be defined as the tendency (cutting across regulators, politicians and policymakers, media and the public) to react to any (real or perceived) “risk” with a demand for government intervention (legislation, inspection or executive measures). This “reflex” is usually particularly intense after a serious or highly publicized/visible incident, or in relation to what are seen as new or insufficiently understood threats.

The problem with this “reflex” is not that regulation is not an adequate instrument to address

“risk” (it sometimes, even often, is) – but that in such a “reflex” situation, “risk” is not adequately assessed, nor are the possible costs and effectiveness of the proposed regulation, thus resulting in an accumulation of regulations that address “risks” that are, in fact, not significant enough, or are ineffective at addressing real hazards, and in all cases generate significant costs for both public and private sectors.

Much of the work on regulatory effectiveness and burden, and on the RRR, has focused on the regulations themselves, more than on the way in which they are delivered, controlled and enforced. In particular, the issues of *inspections* has only really come to the fore in the last decade, and there is little in the way of cross-cutting, comparative research on it¹. In this paper, I will try to look at the RRR from the particular angle of inspections, and of the burden and regulatory ineffectiveness it can result in.

Indeed, for most regulated entities (mostly businesses), inspections and other forms of control are the primary form through which regulations and regulators are experienced (even when inspections are

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1 See Florentin Blanc, “Assessing Business Inspections’ Effectiveness and Burden”, 2011, available on the Internet at <<http://www.ecpr-net.eu/MyECPR/proposals/reykjavik/uploads/papers/2136.pdf>> (last accessed on 16 July 2012).

relatively rare, their possibility remains an important concern for entrepreneurs). Also, the way in which inspections are conducted (with or without flexibility and emphasis on the “spirit” or the “letter” of the rules) can make identical rules translate in very different regulatory realities. Accordingly, looking at the RRR only from the perspective of rules-setting or rules-changing is insufficient – looking at enforcement, delivery, inspections and other mechanisms (e.g. licenses) is essential.

The reason inspections are often seen by businesses as the most important (burdensome, but also in some cases helpful and needed) instrument of regulatory delivery is their *recurring* nature. Licenses and permits are usually obtained once, or renewed only rarely, whereas inspectors come back (more or less often). They are of particular interest in terms of reform because they are difficult to tackle. Regulations can be changed “on the books” but inspectors may continue to check “in the same old way”. Licenses can be eliminated for some types of activities, establishments etc. – but inspections need to be *improved* (better targeted, with a more professional and compliance-promoting inspector behaviour etc.), which takes time and resources, and can face considerable resistance.

Geographically, the paper focuses on several countries of the Former Soviet Union (Azerbaijan, Belarus, Georgia, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan), to which Mongolia (which was very close administratively to the Soviet system) is added. There are several reasons to consider this particular set of cases:

- The Former Soviet Union (further: FSU), and more broadly former command-economies of the Soviet block, have been (for many still are) characterized by rigid and heavy regulatory systems which aim at preventing “all risks, all the time, everywhere” – in effect, a 100% application of the RRR
- Most of these countries have undertaken significant regulatory reforms in the past ten or even fifteen years, and many have reached important results – thus presenting interesting lessons on how such reforms can succeed (or not), and with what effects
- In all these countries, business inspections used to be, and often still are, a major problem, and thus have been a key area of reform – which allows to investigate specifically this aspect, and the impact of changes

- Because of the salience of these issues, and of the need to have reliable data to design, steer and evaluate reforms, the International Finance Corporation of the World Bank Group, and the World Bank Group Investment Climate Advisory Services, have conducted business surveys in these countries, focusing on regulatory procedures and instruments, in particular inspections, which provide a wealth of data – on which this paper is founded. [See “Note on sources” at the end of this paper].

Before reform, the regulatory approach in countries of the former-Soviet block was (and still is in part in many cases):

- Extremely prescriptive rules which set out exactly what material should be on the walls, how a shop or factory should be laid out, what recipe to use to preserve cucumbers, how many coat-hangers should be in a hotel room etc.
- Most activities are subject to *ex ante* controls: businesses and citizens require hundreds of permits, approvals, licenses etc., which must frequently be renewed.
- Businesses are subject to numerous inspections regardless of the actual risk level of activities, and likewise customs, traffic police etc. attempt to control each and every person, truck, shipment.

One interesting lesson from the FSU seems to be that heavy RRR and constant inspections breed disrespect for the law, and corruption. Even if individuals are not corrupted, it will inevitably “corrupt” the system, i.e. make it inefficient and ineffective.

Readers may challenge this by arguing that the regimes of Central Asia, Russia or Ukraine, are “inherently” authoritarian, plagued by ‘cultural issues’. Many (over more than a century) have argued that authoritarian rule is endemic to the ‘Russian character’. Others may suggest those governments’ are unable to manage modern administrative systems because of lack of resources. This is too easy a way to dismiss the finding.

Lack of resources is not the reason. Russia’s GDP per capita, thanks to rising oil prices, now lies way above that of Chile (also reliant on natural resources exports), which boasts a far better record on corruption. ‘Cultural specificities’ is a common fallacy, used most frequently by corrupt senior officials themselves to justify the lack of reforms. In the 19th century, Germans were derided by Britons as lazy

and corrupt – and laziness was also one of the main Japanese characteristics according to Western observers in the early 20th century². Nowadays it is held that the German and Japanese cultures embody hard work and that corruption is low in Germany because it is abhorrent to the national culture.

Cultural differences exist, and the way the Soviet Union applied its laws (as tools to root out dissidents, meaning the law would always be against you no matter what it appeared to say) is also a factor in the corruption problem. But one should look closer: most Russians, Ukrainians, Tajiks etc. complain about corruption. Most officials go to great lengths to appear to comply with the laws. Most people clearly see corruption as an evil – even if it is widely practiced. Crucially, there is a wide consensus about the way the system *should* work: there should be *effective total control*. Citizens long for it, businesses assume this is how things should work and inspectors are partly pretending, partly genuinely trying to enforce rules (taking bribes is not necessarily in contradiction with thinking one is trying to enforce laws, and sometimes actually enforcing them). Our argument is that this *objective of total control* is precisely a core

element of the problem, and one that is therefore worthy of reform – and of study.

II. RRR in “real life” in the FSU – constant inspections

Most former Soviet countries have tried to maintain total administrative control of all activities in an attempt to root out any risk, any violations. This has caused a massive administrative burden, and therefore efforts were made over the past 10 years to introduce more focus and selectivity based on cost-benefit analysis. Apart from the burden, however, there is cause to think that this attempt to eliminate all violations everywhere is a primary cause of the failure of these regulatory systems.

1. The “volume” of inspections – trying to inspect everyone to address every risk

How much a regulatory agency inspects is a fundamental metric – be it relative to its staff’s other tasks, or from the inspected establishments’ perspective (what percentage of them are inspected every year, and how often on average). Data on the share of resources and staff-time spent on inspecting is mostly lacking. Even in OECD and EU countries, many agencies are loth to release such figures, or simply do not track them. It is even more so in the focus countries for our paper, even though discussions with officials suggest that *most* resources and time are spent on inspecting³.

All the countries in our “surveyed group” shared initially a high level of inspections “volume”, i.e. most businesses⁴ (75 % to 100 %⁵) were inspected⁶, usually several times a year. Post-reform data, in all countries where it is available (i.e. where reform has progressed for long enough, and where new surveys have been conducted), shows a significant decrease – which, however, varies considerably depending on the character of the reform (more or less radical and/or well implemented, with Georgia the most, and Tajikistan and Ukraine the least), and on its duration.

The graph below gives a general picture – with “baseline” and “post-reform” corresponding to different years for each country⁷ [note that reform continued in Georgia, and inspections volumes went down further, but no subsequent survey was conducted, hence the figure below is the latest available].

2 Ha-Joon Chang, *Bad Samaritans: Rich Nations, Poor Policies, and the Threat to the Developing World* (London: Bloomsbury, 2007), at Chapter 9.

3 Essentially 100% of resources spent on inspecting in FSU. Confidential data from regulatory agencies in OECD countries suggests that, there, at least 20 % is spent on analysis and back-office work (and regulatory work includes not just inspecting, but informing).

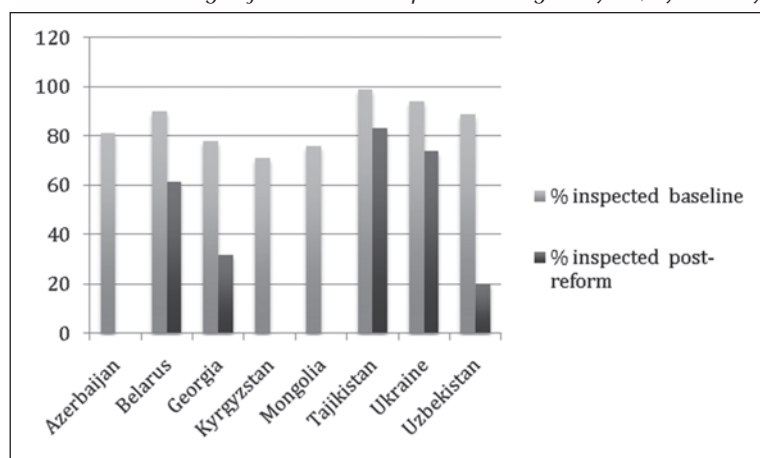
4 Looking at percentage of *establishments* would be more accurate, as a single business may operate several. In surveyed countries, however, the majority of businesses (and the near-totality of SMEs) correspond to only one establishment. Since, for sampling reasons, surveys were based on *business* population [because business registries are based on entities, not premises], the two are assumed to be essentially equivalent here.

5 The populations surveyed are not entirely identical, due to differences in the registration of sole proprietors (and the possibility, or not, to combine their sample with legal entities’), the inclusion or not of agricultural producers, etc. Nonetheless, the general picture is comparable. See survey reports for detailed methodologies.

6 To assess *targeting*, it would be better to have data on the percentage inspected *out of the supervised population*, i.e. the establishments that the regulator effectively has competence upon, but in most cases, for the countries considered, this population can be equated with the general business population, as regulators have very broad mandates, and make full use of them.

7 Azerbaijan: 2007, Belarus: 2003 and 2008, Georgia: 2003 and 2005, Kyrgyzstan: 2008 [farms excluded], Mongolia: 2008–9 (Q4 to Q3), Tajikistan: 2003 and 2007, Ukraine: 2006 and 2010, Uzbekistan: 2001 to 2007. Reforms started in: Azerbaijan 2011 only, Belarus 2006, Georgia 2001 with acceleration in 2003, Kyrgyzstan 2005 but stalled several times because of political events, Mongolia 2003 but stalled and resumed in 2009 only, Tajikistan 2006 with slow implementation, Ukraine 2007 with similarly difficult implementation, Uzbekistan 1998 deepened from 2002.

Chart 1 – Percentage of businesses inspected in a given year, by country



These figures aggregate *all* inspectorates but the bulk of inspections are conducted by one to five (at most ten) agencies, while the remainder⁸ are far less active, because of limited staff and resources. Overall, in all countries, tax inspections, fire safety inspections, hygiene and food inspections formed the bulk of the visits.

It is worth comparing this to data from some EU countries. Unfortunately, most agencies do not publish data on the percentage of businesses inspected, and very few countries have conducted surveys on this issue.

It is in some cases possible to estimate inspections incidence based on (a) the published number of inspections and (b) the total number of businesses in the country⁹. For agencies as diverse as the Dutch and French Tax services, the English HSE and Environmental Agency, the figures were all below 5% of all businesses, and often closer to 1–2%.

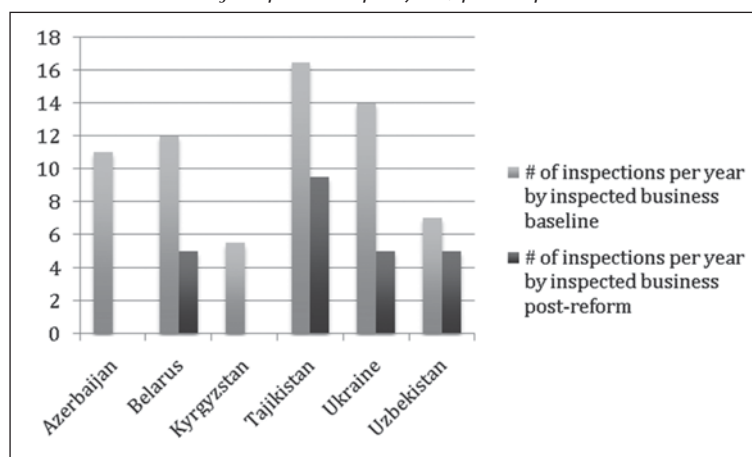
The Government of Italy has recently conducted a survey of 1,500 businesses (only legal entities)¹⁰, and 36% had been inspected at least once in the past year. While high (and justifying the govern-

ment's emphasis on this reform), this is far lower than FSU countries (or Mongolia) before reform. That it is higher than many could have expected should be an incitation for other EU countries to conduct similar studies.

2. Frequency and burden of inspections – significant, even after (partial) reform

Not only were most businesses in our surveyed countries inspected each year – but far more than once. Even post-reform (long or short), the numbers remain high in many cases (see chart below).

Chart 2 – Number of inspections per year, per inspected business



If we take Italy again as comparison, the average number was only 1.9 a year in 2011, and as low as 0.7 for micro-enterprises (up to 10 employees) – suggesting that the average would have been even lower if sole proprietors had been included.

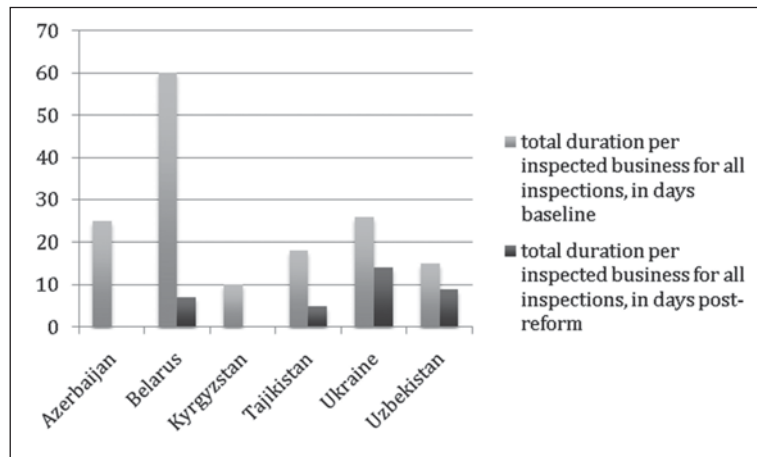
The total duration of inspections [measured in total work days based on an 8-hour day] has also been trending downwards (more or less quickly) in countries undertaking reforms, as the graph below summarizes.

8 Just a couple in Mongolia, where most agencies were consolidated in a "single inspectorate" – around 20–30 in Tajikistan, Kyrgyzstan, Uzbekistan – around 80 in Ukraine. This compares with around 70 in the Netherlands or Lithuania, similarly with only a few being really active and most of them being very small, or around 15 in Latvia or Slovenia.

9 This *over-estimates* the percentage of businesses inspected, since some may have visited twice, and this data is not usually available. This still allows to get an order of magnitude.

10 Survey conducted on 2011 data, for the Civil Service Department of the Presidency of the Council of Ministers. To be published.

Chart 3 – Total duration of all inspections (in total equivalent of 8 hours work-days), per inspected business



Evidently, such high coverage, frequent and long visits create a massive burden. The IFC has calculated very conservative estimates of this inspections burden – counting generally only labour costs and only for SMEs, and they averaged at least 0.15–0.2 % of GDP.

As a comparison, the administrative burden calculations done by the Netherlands government for their inspections reform programme (baseline measurement) in 2007¹¹ estimated the total burden of inspec-

11 See the summary note on these: Inspection Council Bureau (Netherlands), “Inspection Reform Programme”, 2009, available on the Internet at <http://www.inspectieloket.nl/Images/A5-folder-VT-aug09_310809_en_tcm296-264134.pdf> (last accessed on 16 July 2012).

12 This seems largely true in the EU as well.

13 Though actual costs per inspection were far higher for legal entities.

14 Not publicly available, obtained through an MP’s request to the Tax Service.

15 Combined with official data on fires from the Ministry of Emergency Situations available on the Internet at <<http://www.mns.gov.ua>> (last accessed on 16 July 2012).

16 Of course fire incidence is an unsatisfactory risk indicator for fire safety, since the possibility of human casualties is the main focus – but this can be used as a first indication that targeting does not seem based on risk analysis, since small cafes and restaurants are also not high-risk from the “potential fatalities” perspective.

17 In some EU countries, the split between national and local regulators may partly hide the inspections pressure. Surveys conducted by the UK’s LBRO (now BRDO – see at: <<http://bis.gov.uk/brdo>> last accessed on 16 July 2012) did not ask about inspections but showed that over the past 2 years, 50% of businesses had some contact with local regulators (often as part of inspections). Research conducted by the Dutch Government as part of its “Inspection Holiday” initiative suggests that, in many sectors, most businesses are inspected every year – but essentially by local agencies (which inspect 2 to 20 times more often than national ones, depending on sectors).

tions to be around 0.03 % of GDP – this in spite of a methodology that is far more inclusive than IFC’s (counting preparation before inspections, as well as reporting afterwards).

III. Many inspections – no targeting, wrong focus

1. Lack of targeting (or “inverse targeting”) in the FSU

The business surveys conducted by the WBG offer some insight on the targeting issue, even if the breadth of issues covered limits the level of

detail. They show that nearly every business is inspected, which means that overall there is *no* risk-focus: everyone is inspected, without regard to costs or expected effects.

Looking more closely at specific agencies allows to confirm this diagnosis:

- In most countries, the HoReCa sector was most frequently inspected¹² – generally by *all* inspectorates, and not only those focused on food safety – suggesting rent seeking in targeting (HoReCa businesses are numerous, often small and handle substantial amounts of cash)
- In Tajikistan, in 2007, 87 % of sole proprietors were inspected, versus “only” 61 % of legal entities¹³ – whereas sole proprietors are generally “lower risk” on practically every dimension
- 2007 data¹⁴ showed that in Ukraine 90 % of additional revenue collections arose from 10 % of tax inspections, whereas the other 90 % yielded only 10 % of additional collections
- 2008 survey data in Ukraine¹⁵ showed the Fire Safety service inspecting 50 % of catering and food service businesses (with a fire incidence of only 0.7 %) but “only” 29 % of agribusiness firms (with an incidence of 1.8 %)¹⁶.

As a comparison, a look at targeting in a few European inspectorates is telling. The Tax service in Germany focuses 50 % of its inspections on large and medium companies (15 % of the total number of firms). The HSE in England essentially targets 100 % of its inspections on very high risk businesses, as does the Environment Agency¹⁷.

Average duration of inspections in the surveyed countries also confirmed this lack of focus, with duration being relatively constant across sectors, and overall many checks being too short to be really meaningful.

Targeting and focusing is widely thought to be central to enhance inspectorates' effectiveness, and has been the object of much effort and investment in many of them (particularly in tax services). Publicly available data is, however, scarce – and comprehensive literature reviewing risk-analysis and targeting practices is equally missing. The above results already suggest, however, that lack of targeting is characteristic of inspection regimes that are both burdensome, and widely ineffective.

2. Focusing on risk in the inspections context – different meanings

The issue of targeting and focus in inspections becomes more complex if one attempts to define precisely *on what* should this targeting be based. It is relatively uncontroversial to point out that inspecting roughly every type or size of business establishment equally is unlikely to yield optimal resource allocation, but it is not as easy to agree on which criteria should be used to measure risk, as this first requires to agree on a *definition* of risk. Experience with reform in the FSU shows this is one of the most difficult and essential questions – getting agreement on the fact that risk-based targeting “in general” would be better than no targeting is relatively easy, but disagreements arise when trying to define what risk-based targeting means. As this is also one of the misunderstandings that lie behind the RRR in Europe and other advanced economies, this deserves a longer discussion here.

There are three ways (at least) to conceive risk in terms of business establishments or objects of inspections:

- a) Probability of non-compliance with applicable regulations
- b) Relevance of the type of establishment to a specific “risk type” that is seen as an important priority by the government or administration
- c) Combination of likelihood and potential magnitude of hazards that can be caused by the specific type of establishment, be they measured through

statistical work or through more “qualitative” experience and practical insights.

These three visions of “risk” all have their own legitimacy, but are unlikely to yield similar results. They are also often supported by different groups, with different backgrounds and interests.

a) Risk as “likelihood of non-compliance with regulations”

Focusing on the *risk of non-compliance with regulations* is the most obviously legitimate approach from a *legal* perspective, and supported by many regulators and legal scholars¹⁸. Laws are to be complied with, the executive branch (and its regulatory agencies) are there to implement these laws, and thus inspections should aim at identifying, punishing and deterring non-compliances of all kinds. This logic is clear, and has much to support it. It tends to be the prevalent understanding of “risk” in FSU countries, and when inspectorates are required to adopt a “risk-based approach”, this is the one they generally follow.

As a result, when developing criteria to classify establishments in different risk categories (and subsequently plan inspections prioritizing “higher risk” ones), FSU inspectorates start by defining “high risk” as “more likely to infringe rules”. This is generally done without consideration to the importance or relevance of these rules, or to the magnitude of the potential negative impact of infringements. Since non-compliance is seen as a risk *per se*, it does not matter what type of rule is infringed, or to what degree. This results in considering smaller businesses as systematically higher risk (non-compliances, though often minor, are most frequent there, because of lower resources and expertise), and in a focus on high-volume activities such as trade, catering etc. – where, again, non-compliance tends to be frequent but usually minor¹⁹.

18 See for instance summary in of Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation* (Cambridge: Cambridge University Press, 2007) at p. 200–202 – arguments for an enforcement approach that makes upholding compliance with the law, and enforcement thereof, a fundamental value, and thus makes other approaches to “risk” subordinate to it.

19 These observations are based on the author's personal experience while supporting the development of risk-based planning of inspections in the surveyed countries.

In theory, one could develop a more sophisticated risk-based planning approach from a “legal compliance” perspective, using the type of sanctions that can be incurred as a proxy for the seriousness of the offences. However, this would be complex to implement *seriously* (classifying all infractions recorded, analysing where the most severe are found, etc.). More importantly, one cannot assume that the legislator had a full technical understanding of the field being regulated, and insight into what activities would potentially create the highest threats. Thus, the classification would remain sub-optimal in terms of achieving useful social outcomes. Finally, simply because there is a vast number of regulations and potential infractions, it is likely that most businesses would end up being “high risk”, because many (however minor) violations can be found in most establishments. Since the purpose of a risk-based classification is *targeting*, this would defeat its purpose, as the “target” would be too broad.

Experience in the FSU shows that this is indeed what happens when risk criteria are developed in this spirit (and this is made even more obvious because the regulations there lack focus and are over-detailed and over-prescriptive). In Ukraine or Kazakhstan, for instance, risk criteria for inspections developed by the Standardization agency ended up classifying the vast majority of wares as “high risk”, regardless of whether any injuries or deaths were ever recorded as a result of their use.

b) “Politically prioritized” risk

Relying on *risks as prioritized by political programmes* can also claim to have a legitimacy, i.e. the political one (clearly a stronger claim in democratic regimes). In this perspective, the executive branch is legitimate to prioritize hazards that it sees as more important. This is articulated in some EU countries (e.g. by some in France) to justify having inspecting agencies directly subordinated to ministers, and receiving direct instructions from them that “interfere” with their usual planning. The justification is that ministers (owing their positions to elections) are more responsive to citizens’ concerns, and that this responsiveness is essential.

In the FSU context, such “responsiveness to citizens’ concerns” is not absent, even where elections are not free – since even in authoritarian regimes, keeping the majority “not overly dissatisfied” is important for stability. Ministers or presidents frequently interfere with planning by inspection agencies – sometimes for reasons that correspond to real public concerns, but often for other reasons than safety (e.g. to increase government revenue, or target businesses associated with rival politicians, etc.).

The problem is that “citizens’ concerns” are the RRR in its purest form. Instead of responding to a real issue, these are sequences whereby politicians “spin” some incident reported by the media, focus on it and proclaim a “strong” regulatory response as a solution. There is neither analysis of the real risk level, nor of the response’s adequacy. In this perspective, politically-driven inspections have been conducted in Tajikistan to “respond” to increases in fuel prices (gas stations inspected), in Mongolia during discussions about foreign investment in mineral extraction (mines inspected), etc. None of these, of course, made any difference to the real issue. Generally, the evidence from the FSU and neighbouring countries strongly supports the case to make regulatory delivery agencies more independent from direct political supervision.

c) Risk defined, and assessed, in relation to probability and degree of harm

In contrast to the first two approaches, defining risk as *the combination of the probability and the possible magnitude of adverse outcomes* is more of a “technical” (or “technocratic”) view. Risk is defined as what can create harm (to life, health, the environment, etc.) – and the risk level is proportional to how likely such harm is to occur, how severe it may be and how many people it would affect (or what would be its scope in environmental or financial terms etc.).

In this perspective, inspections should be targeted at the establishments where the combined likelihood and potential harm is greatest, which means not just greater frequency of inspections, but also “deeper” inspections, with more time spent on site, more qualified staff involved etc. There are elements of evidence that this approach indeed delivers the benefits it claims, i.e. better or constant outcomes with less costs overall (and the main reason there are only

“elements of evidence” is the very recent character of research in this field)²⁰.

There are two challenges in implementing such a system based on “actually measured/assessed risk to life/health (etc.)”: a technical one (how to get relevant data and how to plan in practice) and a legal one (is it legally acceptable to thus focus and “willingly neglect” what is considered as “lower risk”). Both challenges have been raised in FSU countries, and have posed different difficulties.

The technical challenge has two elements:

- What parameters should the risk classification be based upon, how to measure them, and how to then “rate” establishments according to these?
- How to turn these criteria and rating systems into a functioning planning tool, in particular how to get the relevant data on establishments and manage it?

There is a trend to base risk analysis, criteria development, ratings etc. on sophisticated “data mining” techniques, using statistical tools to determine “objectively” (though the selection of the parameters being analysed is never purely objective) the most relevant parameters and thresholds. This approach is most often proposed for tax inspections planning²¹ – and is most applicable in their case, as tax and accounting data are suited to processing through such tools.

In practice, deploying such approaches is usually extremely difficult, because the relevant data on establishments and inspections results is either unavailable in consolidated and computerized form, or incomplete and inconsistent. This is not just the case in the poorest countries of our sample (such as Tajikistan, where no data is yet computerized, except for tax data of the largest taxpayers and the main cities), but in middle-income countries such as Ukraine or Kazakhstan (where some data is available, but incomplete, often inconsistent etc.) – and for many inspectorates in the EU, even among its richest members (data might exist but not consolidated, or may be in numerous incompatible systems, etc.). Thus, in practice, such statistical analysis as the “pure” foundation of risk-based planning is not a feasible option.

There exists a workable alternative way to develop such rating systems, far less statistically rigorous, but generally far more usable. The essential parameters of risk for a given “sphere” of regulation and control (e.g. “food safety” or “building safety”) can be determined by a group of expert practitioners based

on (a) the existing state of science, (b) practice and experience across the world and (c) experience in-country (even if summarized more in a “qualitative” than strictly “quantitative” way). If done properly, the main parameters will often be agreed upon relatively easily, be rather consistent across countries, and effectively correspond to actual risks “on the ground”. For instance, in the food safety sphere, key parameters to classify establishments according to risk tend to be: (i) type of products processed, (ii) types of processes used, (iii) volumes, (iv) specifics of population served, (v) prior history and track record.

In the absence of “data mining”, rating and ranking based on these parameters is subject to improvement and refinement through a “trial and error” process. The group of experts developing the rating instrument will affect scores to different parameters (corresponding to different types of processes, different sizes of establishment etc.), then define overall score thresholds for classification as (e.g.) “high”, “medium” or “low” risk –based on practical experience and outside examples. The thresholds’ levels have to ensure that establishments with only minor risk factors end up as “low”, those with several critical risk factors end up as “high” etc. It is then crucial to *test* and *adjust* these scores and thresholds: the risk criteria are tested against real-life cases of establishments. If obvious aberrations occur, the scores and/or thresholds are modified. Once the system is in use, adjustments may occur if too many, or too few, busi-

20 An excellent example (*a contrario*) is through an essay that strongly criticizes the risk-focused reduction of inspections (and prosecutions) by the Health and Safety Executive in the UK (Steve Tombs and David Whyte, *Regulatory Surrender. Death, Injury and the Non-Enforcement of Law* (Liverpool: Institute of Employment Rights, 2010)). The authors did good investigative work to obtain data on numbers of inspections, prosecutions etc. by the HSE over several years (which the HSE should be publishing, but is not) – but fail to be able to prove that this results in more deaths and injuries, as none of the available statistics support this. Their claim that statistics are unreliable is not seriously backed up. In fact, the HSE’s risk-based approach appears vindicated if one looks neutrally at the data (even though changes in the structure of the economy and in technology may have helped as well). The effectiveness of risk-focused inspections is also supported by Prof. Ragnar Löfstedt, “Reclaiming health and safety for all”, UK Department of Work and Pensions, 2011, available on the Internet at <www.dwp.gov.uk/docs/lofstedt-report.pdf> (last accessed on 16 July 2012).

21 See for instance Charles Vellutini, “Key Principles of Risk-Based Audits” (ch.1), “Risk-Based Audits: Assessing the Risks” (ch.2) and “Database and IT Framework for Risk Analysis” (ch.5) in Munawer Sultan Khwaja, Rajul Awasthi and Jan Loeprick (ed.), *Risk-based Tax Audits. Approaches and Country Experiences* (Washington D.C., World Bank Group, 2011), pp. 13–36 and 57–64 – and also Ugur Dogan, “Data Warehouse and Data-Mining Tools for Risk Management: The Case of Turkey” (ch. 7), *ibid.*, pp. 71–76.

nesses end up in “high risk” and “medium risk” categories. These categories are to be used to selectively allocate limited inspection resources, so the risk classification should look like a pyramid, with more in “low”, less in “medium” and even less in “high”²².

Implementing these criteria for actual planning is difficult, because it requires consolidated data on establishments and software to use it. Most inspectorates in FSU countries have nothing of the sort and even in EU or OECD countries the situation is often problematic. Some of the challenges are:

- Collecting the information initially to create a database;
- Setting up a mechanism to update this data constantly;
- “Pooling” data across inspectorates to improve efficiency and effectiveness.

The overall take-away from the experience in designing risk-based rating and planning systems is that this is feasible if one moves away from a “statistics-based” approach and adopts a more flexible, “trial and error” one. The difficulty is in the implementation, which requires data and information management.

Interestingly, “leapfrogging” can mean that emerging economies end up with systems that are more modern, integrated and adequate than OECD or EU members.²³ The experience in the FSU backs this up – even if no country has yet fully implemented a risk-based planning system, some have developed

good rating criteria (e.g. Mongolia) and are working on setting up information systems.

3. Wrong focus – throughout the regulatory system

The issue of “lack of focus” goes beyond inspections, and extends to how regulations are designed. Regulation in former command-economy countries has focused on (i) enforcing uniform approaches, methods and products, (ii) extensive *ex ante* control and (iii) very frequent inspections. This approach is overreaching in many ways:

- Seeking to lay down not only essential safety requirements, but to force businesses to organize their work and/or produce their goods according to specific standards.
- Relying excessively on *ex ante* tools such as permits which, in fact, offer little protection (compliance upon opening is not necessarily a guarantee of ongoing compliance) but are costly (reduced innovation and competition).
- Inspecting too broadly and thus wasting small businesses’ resources but missing the goal (most complex and risky objects not properly checked).

We have already covered the third point, and will briefly outline the first two as they closely relate to the RRR issue, and to how inspections are conducted.

Technical rules in former command economies have been very incompletely reformed except for those that have already joined the EU, or are in the process of doing so. In the countries of our sample, the majority of technical and fire safety, hygiene norms etc. date from the 1950s to 1970s. The focus is on formal prescriptions. Instead of demanding that the process and product be safe in given circumstances, and that the manufacturing process incorporate self-controls, they lay down precise technical characteristics. Use of technology, production and sale of goods that do not meet government-approved standards are prohibited.

This system originates both in the overall approach to regulation that was prevalent in the mid-twentieth century (see the EU “Old Approach” Directives) and in the specific nature of these command-economies, where the State, being the sole (or principal) economic agent, treated the whole economy as one enterprise, and thus set detailed, prescriptive standards

22 A key “reality check” is to compare the risk categories thus created to relevant statistics on hazards affecting the country, when possible, otherwise absurdity can ensue. E.g. in Kyrgyzstan hairdressers were classified uniformly as “high risk” due to old Soviet-time rules (and rent-seeking considerations), even though no health statistics backed this up. (NB this example is great, you may want to put it in the main text)

23 Examples of difficulties in integrating legacy systems see: UK’s Retail Enforcement Pilot case study author date available on the Internet at <<http://www.lbpro.org.uk/resources/retail-enforcement-pilot.html>> (last accessed on 16 July 2012). In the Netherlands, the e-Inspection programme has made progress but it remains incomplete because of similar challenges – see on the internet <http://www.inspectieloket.nl/vernieuwing_toezicht/programma_einspecties/> (last accessed on 16 July 2012). For an example of “best practice” see province of Nova Scotia in Canada <<http://www.gov.ns.ca/snsmr/access/business.asp>> (last accessed on 16 July 2012) and Mike Davis, “Designing and Implementing Business Licensing Portals”, 18 May 2011, available on the Internet at <<https://www.wbginvestmentclimate.org/uploads/Session%205%20Mike%20Davis%20Designing%20and%20Implementing%20Business%20Licensing%20Portal.pdf>> (last accessed on 16 July 2012).

for every step, just as a large enterprise would for its internal processes²⁴. The survival of this system after the Soviet collapse, as these countries developed a market economy, has turned their regulations into an “absolute form” of RRR, whereby every conceivable risk is addressed in the most prescriptive and detailed way²⁵.

Furthermore, and in contrast to EU member states (but not unlike some US states), FSU countries and Mongolia impose mandatory prior approval for a wide range of activities, premises, equipments, products etc., before they can be started, used, sold etc. These approvals are issued by state institutions, the procedures to obtain them are complex and burdensome, and they are very formalistic. They are often temporary and need renewal after a few years. Surveys show that around 50% of businesses have to obtain some sort of approval every year.

These approvals are relatively ineffective to protect the public good²⁶. Research (mostly from the US) has also demonstrated the distorting effects of licensing on markets²⁷. Prior approvals can lead to extreme form of RRR, both in our sample countries and in Europe. When reforms are proposed in our sample countries (cancelling licenses, permits etc.), their opponents warn of “dangers to the public” that may arise (without backing up their arguments with data). These arguments are particularly prominent in countries with an open media scene, e.g. in Ukraine during the successive reforms of permits and technical regulations (2005–2012). Opponents of reform constantly claimed that cancelling various mandatory approvals would unleash disasters – which failed to materialize. Likewise, Georgia after the “Rose Revolution” abolished the vast majority of these approvals, without noticeable adverse consequences.

To sum up, the principal flaw in post-Soviet regulatory systems is the misguided effort to stamp out any risk – which hinges on a typical RRR vision:

- Poorly defined risk: no difference between essential safety requirements and violations of ‘bureaucratic’ rules (paperwork or standardization of products). Regulators regard *any* infringement as ‘risk’.
- No weighting of risk: no distinction is made between a hazard affecting 10 people or 10,000 people per year.
- No perspective: no cost-benefit analysis, neither on the state side (resources spent vs. expected

outcomes) nor for the economy (lost time, missed innovation, etc.).

IV. Is the “inspect everywhere, all the time” approach effective?

It is difficult to assess whether inspections are effective (be it at *increasing compliance* or at actually *decreasing risks*, which are two distinctly different goals). There remain many questions on attribution and links between inspections and outcomes, the quality of data on desired outcomes (e.g. infectious diseases fatalities, environmental pollution, labour related deaths etc.) in our surveyed countries is highly problematic.

“Regulatory effectiveness” studies have sometimes looked at inspections specifically, as the effectiveness evaluation purports to look not only at the underlying regulations, but at how they are enforced²⁸. Findings, however, are highly contrasted, or even contradictory, between studies that investigate the same issue, even

24 In this respect there are similarities between the Soviet Union and companies such as Ikea, McDonald’s or Accor, which all “standardize” all aspects of their stores, restaurants and hotels. (NB one of the main differences must be that those companies are a lot more efficient)

25 For an extended discussion of these issues see the following World Bank Group publications: IFC, “Technical Regulations in Ukraine: Ensuring Economic Development and Consumer Protection”, 2008, available on the Internet at <[http://www.ifc.org/ifcext/uspp.nsf/AttachmentsByTitle/TR_Survey_ENG_2008/\\$FILE/0625+TRSurvey_Final_ENG.pdf](http://www.ifc.org/ifcext/uspp.nsf/AttachmentsByTitle/TR_Survey_ENG_2008/$FILE/0625+TRSurvey_Final_ENG.pdf)> (last accessed on 16 July 2012) and IFC, “Reforming Food Safety Regulation in Ukraine: Proposals for Policymakers”, 2009, available on the Internet at <[http://www.ifc.org/ifcext/uspp.nsf/AttachmentsByTitle/Food_Certification_policy_note_eng/\\$FILE/Food_certification_ENG.pdf](http://www.ifc.org/ifcext/uspp.nsf/AttachmentsByTitle/Food_Certification_policy_note_eng/$FILE/Food_certification_ENG.pdf)> (last accessed on 16 July 2012).

26 See World Bank Group publications – for instance the “Permits” section in: IFC, “Business Environment in Uzbekistan as seen by Small and Medium Enterprises”, 2005, available on the Internet at <[http://www.ifc.org/ifcext/uzbeksmen.nsf/AttachmentsByTitle/SME_chapters_2004_eng/\\$FILE/SME_chapters_2004_eng.pdf](http://www.ifc.org/ifcext/uzbeksmen.nsf/AttachmentsByTitle/SME_chapters_2004_eng/$FILE/SME_chapters_2004_eng.pdf)> (last accessed on 16 July 2012) and IFC, “Business Licensing Reform: A Toolkit for Development Practitioners”, 2006, available on the Internet at <<https://www.wbginvestmentclimate.org/toolkits/business-licensing-toolkit/>> (last accessed on 16 July 2012).

27 See Morris Kleiner, “Occupational Licensing”, 14–4 *Journal of Economic Perspectives* (2000), pp. 189–202, also available on the Internet at <http://web.missouri.edu/~podgurskym/Econ_4345/syll_articles/kleiner.pdf> (last accessed on 16 July 2012) and more recently and comprehensively: Morris Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* (Kalamazoo: Upjohn Institute of Employment Research, 2006).

28 A valuable collection of such studies can be found in the Netherlands’ inspections portal library of effectiveness studies available on the Internet at <http://www.inspectieloket.nl/vernieuwing_toezicht/toezichtmeteffect/bibliotheek/> (last accessed on 16 July 2012) – however this includes many studies that are not strictly of “inspections” but rather of “control” in general (e.g. driving rules enforcement).

with similar techniques²⁹ – whether because of built-in bias in samples or models (parameters values set by researchers), or because different contexts or reference points give different results³⁰.

Factors such as natural conditions, or economic structure, may also strongly affect safety issues, making it difficult to assess the regulation's "share" in indicators³¹.

Given these limitations, available information suggests that surveyed countries' performance on promoting compliance and safety through regulatory inspections is low. Food safety is a case in point, where WHO statistics (in spite of under-reporting) seem to indicate that the incidence of food- or water-borne diseases (adding up all categories) is 2 or 3 times higher than in most EU countries.

The above, while insufficient to fully conclude on the effectiveness of different inspection methods, indicates that there is no *universal* positive correlation between increased coverage of inspections and increased compliance and/or safety³², or between stricter enforcement and improved outcomes. It is likely that different approaches have different results depending on the context, and on the point in the "inspections curve" where each agency/country finds itself. Increasing the coverage of inspections *below* a certain level may yield more compliance, and *beyond* it may actually have adverse effects – and the same could hold true for increased "rigidity" in enforcement. This is an essential conclusion from an RRR perspective.

V. Reforming inspections and regulatory systems in the FSU – methods, achievements and challenges

1. Methods – from "framework laws" to implementation work

a) Framework legislation – why and what

Reforms in surveyed countries have generally followed a similar sequence, starting with "framework legislation" setting process rules applicable to all inspections, and requirements for inspecting agencies to introduce new practices and methods, in particular risk-based planning of inspections, and the use of "check-lists". The latter are used to translate the "risk focus" requirement during the actual inspection, by making the inspector focus on essential issues rather than checking "everything" that is mandatory. This "framework legislation" also generally includes "caps" on the frequency of inspections, differentiated according to risk levels of establishments, and with exceptions for particular risks and emergencies.

Adopting such overarching legislation was a prerequisite for a number of reasons:

- Reform challenged many vested interests, and political support from the top is always limited – mobilizing and using it to get high-level legislation adopted was the most effective.
- The legal tradition in former communist countries is very formalistic and thus (a) it is very difficult to get officials to engage in a reform that is not grounded in a legal act (and not simply a govern-

29 On effectiveness of different regulatory tools and approaches, contradictions abound: OSHA rules and enforcement in the USA are either very effective or not at all – arguing the latter are Ann P. Bartel and Lacy G. Thomas, "Direct and Indirect Effects of Regulation: A New Look at OSHA's Impact", 28(1) *Journal of Law and Economics* (1985), pp. 1–25 – arguing the former are (among others) John T. Scholz and Wayne B. Gray, "OSHA Enforcement and Workplace Injuries: A Behavioral Approach to Risk Assessment", 3 *Journal of Risk and Uncertainty* (1990), pp. 283–305. A recent study purports to settle this dispute by using longer time series and a larger sample, and suggests OSH inspections are effective (see David I. Levine, Michael W. Toffel, Matthew S. Johnson, "Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss". 336 *Science*, (2012), pp. 907–911) but some of the inferences in the model (and choices in the sample) may impact the results, so it is unlikely to remain undisputed, and in any case does not test different approaches to inspections planning against each other, but just inspected vs. not inspected.

30 See Peter J. May and Soren Winter, "Regulatory Enforcement and Compliance: Examining Danish Agro-Environmental Policy", 18(4) *Journal of Policy Analysis and Management* (1999), pp. 625–651 for environment; and for tax see Erich Kirchler and Erik Hoelzl, "Modelling taxpayers' behaviour as a function of interaction between tax authorities and taxpayers", in Henk Elferris, Peter Verboon and Wim Huisman (eds.), *Managing and Maintaining Compliance* (Leiden: Boom Legal Publishers, 2006), pp. 1–20. The former show that regulators' approach and behaviour can have different outcomes depending on the context, relations between regulators and regulated etc., while suggesting that increased frequency of inspections leads to improved compliance outcomes. The latter exposes how there are trade-offs between stricter and more intensive enforcement, and more "trust-based" regulation, each of them becoming counter-productive when taken to an extreme.

31 Statistics for fire-related deaths by population gathered by the International Association of Fire and Rescue Services available on the Internet at <www.ctif.org> (last accessed on 16 July 2012) for instance show Uzbekistan having a low fatality rate. Whether this is because of structural reasons (low fire risk), under-reporting or effective enforcement cannot be ascertained. On the other hand, Russia's incidence is 10 times higher than the USA's, and both countries are more comparable (and Russia's inspections system is very similar to our surveyed countries'), which suggests low effectiveness of Russian inspections and/or legislation may be a factor.

32 For an example of study suggesting such a positive correlation see Wayne Gray and John Scholz, "Analyzing the equity and efficiency of OSHA enforcement", 13 *Law and Policy* (1991), pp. 185–214.

ment declaration), (b) inspection officials would otherwise consider that they cannot implement reform measures because they are not in line with their own specific legislation.³³

- The framework legislation included requirements for inspecting agencies to proceed with next reform steps (risk-based planning, new procedures etc.) and thus constituted a mandatory reform programme.
- Limitations were set on the powers of inspectors to visit businesses (requirement for an official order), and on their discretion “on site” and in terms of sanctions, which all had immediate effects the way inspections would be conducted
- Finally, it constituted a coercive instrument to overcome resistances to reform, as many agencies were unwilling to undertake any changes (given personal interest in the *status quo*). By setting caps on inspections for agencies without risk-based planning, or bans on inspections without check-lists, these laws pushed all inspectorates to start implementing at least *some* changes.

Even though using such legal instruments to promote risk-focused approaches may seem heavy, and is uncommon in EU/OECD, it is worth noting that Lithuania’s 2010 Administrative Procedures Law has a specific section on inspections that has been the foundation of further reform, and that the Netherlands’ government has launched an initiative called “Inspection Holiday” which resembles the “caps on frequency” mentioned above – for the same reasons, i.e. pushing the “lagging” inspectorates to move forward with reform.

b) Implementation work – risk based planning, check-lists, procedures, training

Legislation was but a stepping stone. The core transformations were linked to a move from the RRR approach (“everything is risky”) to risk-focus selectivity (choose what to inspect, where, when). This implied the development of risk criteria and rating methodologies, of “check-lists” to be used by inspectors (with a specific check-list for each agency and each type of object, combining risk-focus with transparency). This was to be complemented by training inspectors to understand and use the new approaches.

The difficulty is that the work volume involved in this change is very significant. World Bank Group

assistance was limited (only enough for a few inspectorates, and a limited set of tasks), and most governments allocate too little resources themselves to this topic (Mongolia and Armenia being partial exceptions since they have specific “reform teams” supporting the process). As a result, in most cases, development of these tools was of insufficient quality and/or incomplete, their roll out unequal at best, and training clearly insufficient.

2. Limitations – what did not get done (enough)

The main “missing element” in early reforms was the lack of emphasis on data issues – since it is impossible to really plan on a risk-analysis basis without a database and information system. When reforms started several years ago capacity was often missing, and good examples of IT use in inspections were not consolidated. This has been a serious limitation, and more recent reforms give data and information management more importance.

The difficulty to link inspection reforms to broader public sector / civil service reform, and in particular to changes in staffing and wages level (essential to have more qualified staff, with better salaries), was a major problem, and mostly remains so. The political difficulty of such reforms is considerable, and most countries have shied away from them.

Finally, institutional reform was often equally difficult. Another essential dimension of the “risk-focus vs. RRR” issue is indeed the proliferation of agencies. Most of the countries in our group have 40 to 80 agencies or government structures³⁴ authorized to inspect businesses – and many of them of course overlap. For instance, all FSU states had a Sanitary and Epidemiological Service (SES) which, in Soviet times, also covered environmental health issues. When, in the 1990s, Environmental Agencies were

33 Post-Soviet lawyers consider that powers are given by laws to executive branch agencies have to be implemented to their fullest at all times, and thus that reforms based on a risk-based approach, with discretion *not to* inspect sometimes, as illegal – even though most international legal scholarship would consider this up to the executive branch to decide to what extent to make use of powers vested into it by the legislative.

34 The situation is often as problematic in EU and OECD countries. The Inspection Council of the Netherlands counted above 70 structures authorized to inspect a few years back. Lithuania has around 80 (and is actively working to reduce this number). New agencies often get created in an RRR context, without any review of existing ones.

created, none of the SES functions were removed. Institutional duplications and overlaps are a major driver of administrative burden, budget costs, and overall RRR (as each of these agencies has a vested interest in “promoting” the importance of the risks it supposedly addresses). Real institutional reform steps in our sample have only been made by Mongolia (which in 2003 created a unified General Inspectorate for all “non-revenue” issues except fire safety, and is working on further rationalizing the internal structure of this agency) and Kyrgyzstan (which decreased the number of agencies authorized to inspect first gradually and then radically). Armenia is considering a similar move³⁵.

3. Results, challenges, lessons

The key results of these reforms have been a significant reduction in inspections coverage, frequency, overall duration and thus costs – with no worsening of the public outcomes (safety, state revenues etc.). The remaining challenge is to take the reforms a step further. But apart from the Baltics³⁶ (which have become EU members) and Georgia (which undertook far more radical reform), most countries have shown only limited improvement in terms of transparency and professionalism of inspectors. Corruption is still a problem. Officials are still focused on “finding fault” rather than promoting compliance. Backtracking on reforms is always possible, as the RRR is still quite prevalent. Some countries, such as Mongolia and Armenia, offer perspective of deepening reforms, but they are still “on the way”.

The lessons also relate to the difficulty to change behaviour in relation to inspections – be they institutional incentives, civil society expectations, staff attitudes etc. More profound transformation demands a mix that is rarely fully present: (i) sustained support not only by politicians, but by the public, which requires an open public discussion to reach consensus on the issue of “RRR vs. risk-focus”, (ii) institutional

mechanisms (such as a coordination council and a secretariat) that can support the reform implementation and (iii) real investment in information technology and staff quality.

VI. Conclusions

The objective of total control of risk is not unique to the Soviet and post-Soviet system. In OECD and EU countries, too, the RRR has a long history. The (post-) Soviet effort to “standardize” all goods reminds us of the ‘EU Old Approach’ to technical regulation, which created a strong backlash with its attempts to regulate everything including the size of cucumbers or sausages. Still, temptations exist to resort to such prescriptive regulation as soon as there is any complaint about ‘quality’ or ‘safety’. Similarly, the absence of cost-benefit analysis, and the attempt to root out *any* risk, seem to become a trend in many EU countries. In this respect, the experience of former Communist countries is interesting.

Confronted with the transition from a command economy, where the state was acting like a giant enterprise covering the entire country, producing and distributing all goods, to a market economy with a multitude of players, most countries imposed many compulsory formalities to enforce compliance. Gradually, as economies stabilized, it became evident that the new private sector’s growth was stifled by administrative burden, and that regulation was also failing in delivering expected benefits. Reforms then started which have had varying levels of success, linked both to historical factors, economic dynamics and modern politics.

What all these countries³⁷ have in common, however, is trying to narrow down the scope of compulsory rules and of heavy-handed regulatory instruments, on the basis of a cost-benefit analysis and of an evaluation of risks. Over the past 10 to 15 years, regulatory reform has made most former communist countries more business-friendly and more competitive, and has made their regulations more effective. This may allow to tentatively draw some more general lessons.

The first is that “risk-averse” regulatory delivery (i.e. the “implementation” side of the RRR) is both ineffective and inefficient... Moving towards more “risk focused” approaches (weighing cost-benefit and risk levels) is more efficient, less costly for the state, less burdensome for businesses, and need not lead

35 Consolidation of agencies is neither a panacea, nor guaranteed to succeed, but in this paper’s perspective it is relevant as a way to reduce the “automatic RRR” tendency.

36 The Baltics show the possibility of real success, but also the time it takes to reach a full transformation. In spite of EU accession, Lithuania (as per a survey conducted for the government) still saw 60% of businesses (legal entities) inspected at least once in 2011, which is one of the drivers for its active inspections reform programme.

37 Except Turkmenistan, where no such reform has taken place so far.

to increased hazards. Context and starting point of course play a role, but other research also suggests that overweening enforcement activities can actually drive compliance down, and reductions in inspections in EU countries have not appeared to result in worse outcomes either. There may be a “tipping point”, below which less control leads to worse outcomes, but there is no constant correlation between more checks and better results.

Another conclusion is that inspections can play a large part in the manifestations and effects of the RRR. They are thus an essential element of any “risk focused” reform. Looking only at the regulations on the books, without considering their delivery and enforcement, is insufficient. On the other hand, a lot can be achieved already even by improving *only* delivery and enforcement.

A third takeaway is that the real challenges arise at a relatively late stage of the reform process. Designing the initial, legal part is relatively easy and there are good models. To get it adopted requires substantial political capital. As a result of this initial step, achieving a reduction in inspections coverage and frequency is generally possible, though rarely up to the original expectations. A more challenging part is to achieve transformations in how inspections are conducted: to actually address risks rather than just focus on violations, and to promote compliance rather than focus on punishment. The *most* difficult part is then to achieve sustainable results – i.e. not only that reform does not get “rolled back” in the short term (because of various vested interests) but also that the RRR (driven by political interests or social trends) does not later lead to its reversal. Building such “sustainability” requires (ideally) genuine commitment from the regulators, and a level of consensus (which requires prior debate) in the society that “more control” is not necessarily an adequate response, or in other words that “RRR does not work”. It also requires some institutional set-up to drive the reform forward in the long run.

Finally, though I have made some parallels with EU and OECD countries at several points, it is worth mentioning a few specific examples – which will, I believe, make it clear that FSU and former-Communist countries have some valid lessons for all.

Inspecting agencies arguing against reform in our sample countries were using a “them vs. us” rhetoric – i.e. what is “good for businesses” is necessarily “bad for workers/consumers/citizens”. Western European reactions to changes in inspectorates’ practice has of-

ten been similar. In the UK, for instance, the HSE’s increasing focus and reduced number of inspections has led to charges of “regulatory surrender” and assertions that they are leaving workers defenceless in front of “death and injury” (as in the study by Tombs and Whyte³⁸).

Consolidating (merging) agencies has proven difficult in most of the countries studied. In the Netherlands, after 5 years of “Renewing Inspections” programme, there have been some mergers at the national level, but consolidating local-level inspectorates has not even started. In spite of growing collaboration, there remains a large number of separate local structures, inherited over centuries, and all with their specific but overlapping mandates.

Last but not least, France in the last few years has seen a massive increase in the number of new regulations, with many topics being re-regulated on a yearly basis. Every incident has seen a “full RRR” response by the Government. At the same time, staff (and budget) reductions in State agencies have been significant (as part of the *Révision Generale des Politiques Publiques*, “General Review of Public Policies”, a drive to review the scope of state interventions, that in practice became a drive to reduce staffing levels and merge structures, without changing missions or reducing the scope). Unfortunately, this has been done without really consolidating regulatory structures (some happened at the local delivery level, but in a rather confusing way, and without changes at the central level) and without reviewing priorities and approaches to control³⁹. The result is over-regulation on top of under-delivery. Some agencies may in fact be reaching the stage (alluded to above) where “too few” inspections may be damaging, particularly as no priority has been put on improving targeting or delivery, business or consumer education etc. No review has been done of overlaps and duplications

38 Tombs and Whyte, *Regulatory Surrender*, *supra* note 20.

39 An example recorded recently <<http://www.sudouest.fr/2012/03/16/prises-de-bec-a-la-barre-660238-7.php>> (last accessed on 16 July 2012). An ornithologist prosecuted for sheltering a few birds, which he had saved from injury, but were wild species (*not* endangered) for which he would have needed prior approval. Two typical RRR-approaches: the inspectorate (ONCFS), instead of simply reminding him about the law, forwards the case to the prosecutor. The prosecutor, instead of dropping the case, actively prosecutes it, and appeals when a lower court rejects the charges. This costs state resources and discourages positive private activity. It results from the complete lack of a “responsive” (in the sense of Ayres and Braitwhaite’s “Responsive Regulation”) approach to inspections and enforcement, and because of the prevalence of the RRR in official policy (all infractions have to be prosecuted and punished, all the time, everywhere, was the official Government position).

between agencies in areas (e.g. occupational health), where means are wasted because establishments are controlled repeatedly on the same topic by up to three structures. Safety is less well guaranteed, but regulatory burden abounds. The credibility of regulation is lower and overall the relationship between the state, businesses and citizens is strained. Lessons from the former-Communist countries may really be far more applicable than one may have thought initially.

VII. Note on sources

Data for this paper is taken from surveys conducted by the World Bank Group in the past 10 years as part of its work on regulatory reform. The methodology for the surveys is detailed in the most recent reports. The full reports are available at the following internet addresses:

IFC, "Business Environment in Azerbaijan", 2009: <<http://www.ifc.org/ifcext/abeep.nsf/Content/Reports>>

IFC, "Business Environment in Belarus", (several years)": <<http://www.ifc.org/ifcext/belarus.nsf/Content/BusinessEnv>>

IFC, "Business Environment in Georgia", (several years)": <<http://www.ifc.org/ifcext/georgiasme.nsf/Content/Surveys>>

IFC, "Business Environment in Kyrgyzstan, 2009": <<http://www.ifc.org/ifcext/kbeep.nsf/Content/Research>>

IFC, "Business Inspections in Mongolia, 2010": <[http://www.ifc.org/ifcext/eastasia.nsf/Attachments-ByTitle/Mongolia+Business+inspections+survey+report/\\$FILE/Business+inspections+survey+report.pdf](http://www.ifc.org/ifcext/eastasia.nsf/Attachments-ByTitle/Mongolia+Business+inspections+survey+report/$FILE/Business+inspections+survey+report.pdf)>

IFC, "Business Environment in Tajikistan, (several years)": <<http://www.ifc.org/ifcext/tajikistansme.nsf/Content/Survey>>

IFC, "Business Environment in Ukraine, (several years)": <<http://www.ifc.org/ifcext/uspp.nsf/Content/PMSurveys>>

IFC, "Business Environment in Uzbekistan, (several years)": <http://www.ifc.org/ifcext/media.nsf/Content/Research_UzbekSurvey>