

# General characteristics of the legislation of the Russian Federation on state control and supervision of business activities

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## **Abstract**

*The legal institute of state control supervision and municipal control has an intersectoral and interdisciplinary nature, due to a variety of mandatory requirements, the fulfillment of which is imposed on a variety of subjects and is fixed in various legal sources. This means that it is practically impossible to create a unified legislative basis for such types of control and supervision activities as tax, budget antitrust, customs, border control, control in the field of public procurement and use of public property, given their industry, organization, information and management specifics, or even different constitutional legal regimes (for example, for presidential and parliamentary oversight, prosecutorial oversight).*

## INTRODUCTION

The specifics of the unified legislative framework for control and supervision in the field of entrepreneurial activity is explained by an extensive list of exceptions from the scope of Federal Law dated December 26, 2008 No. 294-FL “On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal control”, which in itself is a comprehensive and systemic legislative act that forms the fundamental basis for the performance of public functions of control and supervision in the Russian Federation.

Researchers note that the third stage of reforming the control and supervision legislation is currently underway, which should end with the adoption of the federal law on state control (supervision) and municipal control in the Russian Federation (Nozdrachev et al., 2017; Astakhova, 2017; Mitskevich et al., 2017; Mamedov, 2018).

The adoption of Federal Law No. 294-FL was related to the second stage, since it replaced the Federal Law of August 8, 2001 No. 134-FL “On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the State Control (Supervision)”. The second stage is characterized by a qualitatively new level of protection of the rights of business entities, primarily due to a significant increase in the procedural rules governing the conduct of inspections, involvement of the prosecution authorities in the decision-making process, the establishment of a list of restrictions and duties for control and supervision bodies aimed at to

ensure the objectivity and motivation of decisions made, to establish an exhaustive list of gross violations of the order of SIC control measures entailing recognition of the inspection invalid.

#### Methodology.

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition. The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature and the study of materials of judicial practice.

#### **Discussion and results.**

The third phase of the reform of control and oversight activities can be counted from 2015, when changes to the federal law No. 294-FL were introduced related to the introduction of a risk-based approach, attribution of mandatory requirements to the subject of regulation of the prevention law, including issuing a warning about the inadmissibility of violations development and implementation

of planned checklists during scheduled inspections, updating of mandatory requirements, development of informatization of the performance of control and oversight functions, adjustment of the register of inspections, a single register of small and medium-sized enterprises, the introduction of interagency electronic interaction, the possibility of compiling and sending documents in electronic form, a significant expansion of the list of forms and types of control measures, including scheduled (raid) inspections, control procurement, etc (Shapieva, 2016; Mayorov et al., 2017).

Significant novelties of the third stage are changes aimed, on the one hand, to limit unreasonable checks carried out on unverified requests, according to unconfirmed information (the institution of preliminary verification, filing electronic applications only through identification and authentication systems), to eliminate unnecessarily burdensome requirements, and with the other is to reduce the risks of abuse of rights on the part of business entities (the possibility of transferring a planned audit and making changes to the audit plans).

Under the state control (supervision) of entrepreneurial activity is understood the activities of authorized bodies of state power (federal executive bodies and executive bodies of the constituent entities of the Russian Federation), as well as other authorized state institutions and their officials, aimed at preventing, detecting and suppressing violations by legal entities, their leaders and other officials, individual entrepreneurs, their authorized representatives obligatory requirements through the organization and conduct of inspections, the adoption of measures provided for by the legislation of the Russian Federation to prevent and (or) eliminate the consequences of identified violations, as well as the activities of these bodies and institutions for the systematic monitoring of compliance with mandatory requirements, analysis and forecasting of the status of compliance with mandatory requirements in the course of activities legal entities, individual entrepreneurs (Article 2 of the Federal Law No. 294-FL) (Danilov-Danilyan, 2018; Sitnik, 2017)

Thus, the hallmarks of state control and supervision of business are the following.

- a. They are carried out by specially authorized state bodies and state institutions and their officials in the performance of state functions in accordance with the requirements of administrative regulations;
- b. They are carried out in relation to legal entities and individual entrepreneurs, their branches, separate structural divisions, objects and territories, and, as a result, indirectly in relation to their officials and other authorized representatives;
- c. They are aimed at preventing, detecting and suppressing violations of mandatory requirements, as well as eliminating their consequences;
- d. They are aimed at the prevention of violations of mandatory requirements, including through systematic monitoring of their implementation, analysis and prediction of the status of compliance with mandatory requirements;
- e. They are carried out in the established procedural procedure (Nozdrachev, 2012; Starilov et al., 2016).

The need to maintain control and supervision functions for a certain type of state institution is explained by the specifics and scope of verification activities, the limited staffing resources of state authorities in these areas, the lack of necessary material and technical resources among state bodies, and the close relationship between these types of control and supervision activities with regulatory and other administrative activities of these state institutions. At the same time, the problem of the legal status of officials of state institutions performing state functions of control and supervision remains unsolved, since they are not government employees and they are not subject to the prohibitions, restrictions and duties that are designed to ensure compliance with anti-corruption, competent and other requirements (Kovtun et al., 2011).

Depending on the territorial scale and public-legal level of control and supervisory powers, the following types of control and supervisory activities are distinguished: federal state control (supervision), regional state control (supervision) and municipal control (Turovskaya, 2017). The difference between these types of control and supervisory activities, in addition to assigning specific control and supervisory functions to the powers of federal bodies of state power, bodies of state power of constituent entities of the Russian Federation or local authorities, is as follows:

✚ The budget level from which the activities of the control and oversight bodies are financed.

✚ The type and level of regulatory legal acts regulating control and supervision activities - first of all, the provisions on control and supervision and administrative regulations for the performance of control and supervision functions.

✚ The type and nature of mandatory requirements that are verified during the implementation of control and supervision measures.

✚ The territorial scope of control and supervision activities.

✚ The type of bodies and officials who exercise control and oversight powers, their place in the system and structure of the relevant executive bodies (Trofimchuk, 2016).

At the same time, federal legislation allows the transfer of certain federal control and supervisory powers to regional government bodies, as well as the transfer of certain powers of government bodies of constituent entities of the Russian Federation to local authorities.

The type of exercised control and supervisory powers may affect:

- ✚ The organizational structure of bodies exercising control and oversight powers.
- ✚ The procedure for appointing the head of the supervisory authority.
- ✚ The form and procedure for monitoring the implementation of control and supervision functions.
- ✚ The procedure for approving administrative regulations for the performance of control and supervision functions.
- ✚ Reporting procedure for the exercise of authority.

By setting the concept of “control measure” in article 2 of Federal Law No. 294-FL, the federal legislator aimed to distinguish the actions of authorized officials from the exercise of control and supervision functions from other legally significant actions and decisions implemented within other legal regimes, primarily in the provision of state and municipal services, licensing activities. The control event has the following distinctive features:

- ✚ The activities of specially authorized bodies, organizations and their officials, including attracted experts.
- ✚ Measures (actions) to consider the documents of a legal entity, individual entrepreneur.
- ✚ Measures (actions) for the inspection, inspection of territories, buildings, structures, structures, premises, equipment, other similar objects, vehicles and transported goods.
- ✚ Measures (actions) for sampling products, environmental objects, industrial environment objects.
- ✚ Activities to conduct research, testing, examinations and investigations aimed at establishing a causal relationship between a revealed violation of mandatory requirements and facts of harm.

It should be borne in mind that the signs of a control measure specified in the law are not exhaustive, they should also include requests for documents, information, issuing instructions on eliminating violations, making decisions on limiting or suspending activities, applying other preventive measures, and exemptions, inspections, inspections, etc. In addition, a number of actions that are related to control measures are identical in content and legal consequences to legal actions that do not control measures and implemented in the framework of other legal regimes in the provision of public services in the production of cases on administrative violations in the implementation of operational and investigative activity.

Defining the concept of “verification”, the federal legislator set as his goal to oblige authorized bodies, organizations and their officials to carry out control activities only within the framework of an officially appointed control audit - until an audit order is issued in the established manner, no control measure can be carried out, if the conduct of these activities is regulated in the manner prescribed by law.

The scope of control activities that will be carried out as part of the audit depends on the type and type of audit (scheduled or unscheduled, documentary or field), the nature of the mandatory requirements, the compliance with which will be verified, other factors affecting the achievement of the goals and objectives of the audit (Mulenka, 2015).

Part 4 of Article 1 of Federal Law No. 294-FL lists the types of state control (supervision) in relation to which other federal laws may establish the features of the organization and conduct of inspections in terms of the type, subject, grounds for inspections, the timing and frequency of their conduct, notifications of unscheduled on-site inspections and coordination of unscheduled on-site inspections with prosecution authorities. An analysis of federal laws that established these features showed that they mainly relate to additional grounds for conducting scheduled and unscheduled inspections, taking into account the specifics of the relevant objects and objects of control (licensed activities, hazardous production facilities, protection objects), the composition of the participants in these relations, implemented their rights and obligations; establishing reduced deadlines for the frequency of scheduled inspections; establishing the grounds for conducting inspections without coordination with the prosecution authorities and without notifying the person of the inspection.

Continuing the characterization of the regulatory framework of state control and supervision, we should dwell on the correlation of these two types of legal acts, such as the provision on a specific type of state control (supervision) and administrative regulation, the execution of the state function to carry out state control and supervision. The regulation on state control (supervision) in a specific

sphere or branch of government at the federal level is approved by the Government of the Russian Federation, at the level of constituent entities of the Russian Federation - by the highest official (supreme executive body of state power) of the constituent entity of the Russian Federation. The Regulation on control (supervision) is a fundamental legal act for this activity, which establishes:

- ✚ A list of bodies and officials authorized to carry out control and supervision activities.

- ✚ The competence of bodies and officials in the performance of relevant state functions.

- ✚ The subject of control and supervisory activities, including the distribution of types and forms of control checks.

- ✚ Parameters of a risk-based approach, including criteria for classifying objects as a certain risk category, frequency of inspections, use of a list of control questions, etc.

- ✚ The organizational and informational basis for conducting individual control activities, affecting the rights and obligations of the audited entities.

#### CONCLUSIONS.

Thus, the regulation on control (supervision) is a mandatory and system-forming normative legal act providing for the features of the organization and implementation of control and supervision activities in a specific area or field of government.

The draft federal law on state control (supervision) and municipal control in the Russian Federation implies the mandatory development and approval of provisions on all types of state and municipal control and supervision.

There are practically no publications in the scientific literature that would analyze the development, structure, content of this type of regulatory legal acts, in contrast, for example, from administrative regulations. At the same time, the possibilities of administrative regulations in the formation of mechanisms (procedures) for control and supervision activities are extremely insignificant, although this type of regulatory structures cannot be underestimated - they have the highest degree of systematization and individualization of regulatory requirements, as well as the maximum information component that ensures openness and predictability of control execution - supervisory functions (Kirienko, 2012; Buryaga, 2013; Mulyenko, 2015; Koshevarova, 2016; Turovskaya, 2017;

Kovtun et al., 2011; Astakhova, 2017).

Analysis of court decisions challenging certain provisions of administrative regulations allows us to highlight a number of typical shortcomings or errors made by authorized bodies in the development and approval of this type of regulatory legal acts:

Firstly, the establishment of uniform requirements for the procedure (administrative procedure) for the performance of the state control and supervision function both in relation to business entities and to other entities - citizens, public authorities, which does not meet the principles of accounting for the specifics of the functioning of controlled facilities.

Secondly, the establishment of general requirements for the control check procedure and "remote control" (raid inspection), for example, present an official certificate, familiarize yourself with the order to conduct a control measure.

Thirdly, referring to the elements of the administrative procedure (administrative actions) in the implementation of state control and supervision or its result, the compilation of protocols on administrative offenses, the issuance of their procedural decisions provided for by the Code of Administrative Offenses of the Russian Federation, which entails a mixture of legal regimes of measures for control and supervision and proceedings on administrative offenses - the most striking example is the Administrative Regulation of the Ministry of Internal Affairs of Russia performing state functions the implementation of federal state supervision in the field of road safety in terms of compliance with the requirements of the legislation of the Russian Federation on road safety, rules, standards, technical norms and other requirements of regulatory documents in the field of road safety during construction, reconstruction, repair and operation of roads, approved by order of the Ministry

of Internal Affairs of Russia dated March 30, 2015 No. 380, which stipulated in paragraph 17 as a result of the execution of state funds There are several procedural decisions that can be made only after consideration of an administrative case.

Fourth, the reproduction of the provisions of Federal Law No. 294-ФЗ, which cannot be used for this type of state (municipal) control and supervision, including the grounds for carrying out control measures (causing harm to life, health, and the environment).

Fifth, the lack of proper detailing of administrative procedures that are not clearly spelled out in Federal Law No. 294-FL:

- Transfer of verification from documentary to field when it is impossible to complete it.
- Making changes to the order (order) by the timing, composition of inspectors, etc.
- Amending the issued order.
- The timing of the preparation of decisions on the beginning of certain types of unscheduled inspections, for example, the execution of a previously issued order.

Establishing the general principles of protecting the rights of entrepreneurs in the exercise of state control (supervision), the federal legislator aimed to ensure good law enforcement practice both in the field of subordinate legal regulation of the fulfillment of the functions of control and supervision, and in the field of specific management decisions. A significant part of the principles is related to ensuring the openness and accessibility of information on the organization and conduct of inspections, as well as compliance by prohibitions by authorized bodies, organizations and their officials with imposing obligations on legal entities and individual entrepreneurs not established by law. Unfortunately, most of the principles enshrined in the article reproduce prohibitive and binding normative regulations governing the procedure for conducting inspections, therefore, do not have their own regulatory potential.

The most important principle that is truly capable of exerting a regulatory influence on managerial decisions is the principle of presumption of good faith of legal entities and individual entrepreneurs, obliging law enforcement agencies to motivate acts on the application of restrictive and restrictive measures, to prove violations committed by the audited in the prescribed manner.

Principles such as conducting audits in accordance with the authority of a public authority and the responsibility of public authorities are universal in nature and are inherent in any administrative activity.

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