

*Research article*

УДК 340

DOI:10.17323/2713-2749.2022.3.28.46

# Digitization of Rulemaking Activities in the Context of Information Society

---



**Ilya Vladimirovich Bondarchuk<sup>1</sup>,  
Artem Valerievich Rudenko<sup>2</sup>, Irina Yurievna Strelnikova<sup>3</sup>,  
Olga Vasilievna Butkevich<sup>4</sup>, Ludmila Valerievna Ryshkova<sup>5</sup>**

<sup>1, 2, 3, 4</sup> Russian State University of Justice, Crimean branch, 5 Pavlenko Str., Simferopol 295051, Russia

<sup>5</sup> Crimean Federal Vernadsky University, 4 Prospekt Vernadskogo, Simferopol 295007, Russia, mila-rigik@mail.ru

<sup>1</sup> sim.just@mail.ru

<sup>2</sup> rudenkocrimea@yandex.ru

<sup>3</sup> irina.strelnikova81@mail.ru

<sup>4</sup> olga-butkevich@yandex.ru

---



## Abstract

Digital technologies at present days increasingly permeate all human activities across the board, thus resulting in higher labor productivity and emergence of the new capabilities in science and technology spheres. In the information society standards they help to shape that are becoming a new reality. Meanwhile, the law and rulemaking activities are more latent compared to economic and other activities of society. Upholding social stability and preventing by virtue of its static nature insignificant, transitory changes of relationships is a function of law. However, rulemaking activities, like all activities of the state, are on the move along with the development of science and technology. In analyzing and adopting the best digitization practices in specific branches, legislative authorities at present days introduce digital technologies into the regulatory drafting process. The paper analyzes the R&D for digital transformation of legislative activities in order to propose an algorithm for a phased introduction of digital technologies into the work of legislative authorities.

---



## Keywords

digital environment, legislative technologies, information society, digital age, rule-making, social governance, legal implications.

---

**For citation:** Bondarchuk I.V., Rudenko A.V., Strelnikova I.Yu., Butkevich O.V., Ryshkova L.V. (2022) Digitization of Rulemaking Activities in the Context of Information Society. *Legal Issues in the Digital Age*, vol. 3, no. 3, pp. 28–46. DOI:10.17323/2713-2749.2022.3.28.46

## Background

A transition to information society emphasizes the increasing role of information to become a resource of its own, with access to information recognized as a universal right. “The information society will change the traditional paradigms in all spheres of life such as social, educational, cultural, axiological” [Gassieva K.M., 2017: 9].

Contemporary studies show that the idea of information society has penetrated human activities across the board such as sociology [Lupanov V.N., 2001: 40], social [Satokhina N., Razmetaeva Yu., 2021] and demographic processes [Bagirova E.M., 2020: 33], bibliography [Sadigova S.A., 2021: 7], etc. Meanwhile, the introduction of information technologies is also fraught with new risks, with the problems of data security [Mitrou L., 2017] and neo-terrorism [Sokolova A.A., 2021: 26] high on the public agenda. Researchers believe that information technologies as a field extend beyond national interests of particular countries. “New technologies can be used to monitor the compliance with and prevent abuse of international law. Advanced computing and robotic systems are capable of collecting and processing much more data than man ever could. They can be used to document and analyze the data to identify the actual patterns leading to a possible abuse of international law” [Tikhomirov Yu.A. et al., 2021:11].

The emergence of information society affects not only social relationships but man himself, “the primary quality now being the ability not just to learn but re-learn quickly and efficiently to stay abreast with flows of information” [Gassieva K.M., 2017: 9]. That is, the priority is for the ability to quickly absorb information across various areas of human activity. According to some authors, the digitization progress may cause qualitative changes in human capabilities through a radical technological transformation [Chubukova O.Yu., 2018: 47]. One has to subscribe to Professor D.A. Pashentsev’s opinion that “digitization is a factor of powerful impact on man which changes the human thinking model as such by affecting many of its key parameters” [Pashentsev D.A., 2019: 17].

Although jurisprudence does not rank high among the main lines of advance of information society [Kalinkina N. N., 2010: 494–499], the law largely provides a basis for the emergence of social relationships, with free access to information on legal rules and provisions being undoubtedly a standard of information society.

It is legal standards that shape the relationships in economic, cultural and social areas<sup>1</sup>. The law is a brickwork of social development which in particular supports the digitization and progress towards an information society. The law has a major impact on the process of digitization while digitization affects regulation and its forms and legal awareness of individuals [Tikhomirov Yu.A. et al., 2021: 6]. Thus, the law is both the organizing source and an object of digitization inseparable from the process of technological change transforming human activities.

## **1. The concept of rulemaking and rulemaking process**

The law as a social regulator has been embedded in the mechanism of modern rule-of-law states since the world got over the Middle Ages regulated primarily by the religion and morals. The law shifts its focus depending on the association with a particular school of legal thought. For instance, in the normative school of thought rules are created by legislator, while in legal realism, by judges. In this country, social relationships are primarily governed by regulations are outcome of legislative process.

The activities to establish general rules of conduct, that is, legal provisions, are called rulemaking or rulemaking activity. Its content is often defined as a function or form of activity, or a major feature of the state since of many political entities it is only the state that will issue ordinances binding on the country's entire population via its competent authorities.

A study of scholarly literature allows to identify several groups of researchers with different views on the said question. As used in theoretical studies, the terms that define activities of drafting and adopting regulations and provisions are ambiguous for lack of consensus among the academia on the content and correlation of the terminology in question. These activities are most often defined as rulemaking or lawmaking or as rulemaking/lawmaking activities.

---

<sup>1</sup> Collected Laws of the Russian Federation. 2017. No. 20. Art. 2901.

The first group, while discussing rulemaking, its content, structure, mechanisms, argues that the use of this term in scholarly discourse is not reasonable. They define rulemaking as the activity to “draft legal provisions or recognize the rules of conduct existing in society as lawful” [Albov A.P., 2022: 16]. Moreover, they specify that since the term *rulemaking* fails to adequately reflect the creation of social regulators (morals, law, religion etc.) by being focused on the rules, there is no sense in using it. Therefore, the content underlying rulemaking is wider than the term itself.

The second group, while using the terms *lawmaking* and *lawmaking activities*, does not use the term *rulemaking* at all [Pigolkin A.S., Golovastikova A.N., Dmitriev Yu.A., 2020: 358–361]; [Babaev V.K. et al., 2020: 323–324]; [Lazarev V. V., Lipen S.V. et al., 2020: 280–281] since they attach no independent meaning to it.

The third group, in actively using the terms *rulemaking* and *rulemaking activity*, argues that rulemaking is the starting point and the primary component of a legal regulatory mechanism which takes the form of strictly regulated activities of mainly public authorities/officers. They conceive rulemaking as “a specific form of regulatory activity to develop, specify, amend or abolish legal provisions with the purpose of harmonizing the existing or creating new relationships in society”. Moreover, the concept of rulemaking is wider than that of lawmaking since it involves the adoption of regulations not just in the form of laws but also referendums to be passed by public/municipal authorities and their officers, as well as the conclusion of standard-setting agreements/contracts. Over the last few years, the academia has supported the idea to recognize the system of scholarly knowledge on rulemaking, its types, rules, principles, legal techniques as a new branch of science to be called *normography* [Arzamasov Yu.G., 2020: 10, 31, 35]. As an applied science, normography will study various drafting technologies, theoretical issues and current problems of rulemaking.

The fourth group is revealed by the primary analysis of legal literature since the majority of works on rulemaking is focused on specific rulemaking entities such as specific agencies, departments, municipalities etc. In this case, rulemaking is defined as an activity to draft, amend or abolish all regulations except laws. That is, regarding the correlation between rulemaking and lawmaking, these two terms mean different forms of activities covered by the concept of legislation. However, rulemaking does not incorporate lawmaking.

Thus, this group does not assume the terms *rulemaking* and *legislation* to be equivalent. They argue that the latter has a wider meaning compared to the former. The advocates of this approach define legislation as “the general process of adopting any kind of instrument while rulemaking concerns just regulations” [Moskalkova T.N., Chernikov V.V., 2014: 50]. Judging from the said definition, one may conclude that “legislation has a wider content and contains the activities such as: judicial and case-by-case legislation, contractual legislation, legislation by local governments, legislation proper etc. The advocates of this approach do not equalize rulemaking and rulemaking activity either. They argue that the rulemaking activity is a more general concept that involves the drafting process. Based on the said approach, they also distinguish the range of the parties involved. While rulemaking agents will include, in their view, bodies and officers who adopt regulations, the parties to the rulemaking process will include drafters but not the adopting entity, experts and other individuals involved. In Russia, the rulemaking entities are: the President of Russian Federation; the Federal Assembly; the Government of Russia; federal executive authorities; senior officers, legislative and (the highest) executive authorities in constituent territories of Russia; other public authorities. Therefore, rulemaking entities are not always those empowered to propose laws.

There is yet another view on the correlation between the concepts under study, whereby, according to researchers, the content of rulemaking dominates over that of legislation. In principle, they argue that rulemaking describes not only the activities of public authorities to adopt legal provisions but also the process of social standard-setting by entities such as civil society associations, political parties and religious organizations. In support of this conclusion, they identify the social and legal aspects of rulemaking: legislative rulemaking or legislation as a component of rulemaking in a wider sense; creation of new and development of the existing social regulatory principles by society (rulemaking in a narrow sense) [Bakulina L.T., 2017: 43–52].

However, it would be fair to mention I.S. Samoschenko as one of the first Soviet researchers to raise this issue. He argued that legislation was the final stage of the legislative process [Samoschenko I.S., 1956: 86]. This approach dividing the contents of rulemaking and legislation based on the difference between law and rule is now solidly established in jurisprudence. This idea was developed by V.S. Nersesyants who argued that “the objective process of legislation (formalization of law) should not be confused with the formal process of lawmaking (official expression and formula-

tion of legal provisions). Legislation is the process of the actual (objective and real) emergence and recognition of particular social relationships and links between people and their associations as “normal” and “legitimate” (from a perspective of prevailing real-life relationships in the given society and corresponding ideas, values etc.), the process of social and historical shaping of common criteria, rules, scales, models, samples and standards of this “normality” and “legitimacy”, to be finally embodied in the relevant standards of behavior, action and relationships between people” [Nersesyan V.S., 1983: 344–345].

Contemporary researchers argue, following the logic of differentiation between the terms *law* and *rule*, that “any rulemaking is not legislation while the latter will anyway include the rulemaking process” [Kayaeva Kh.I., 2010: 55–71]. In this case, rulemaking is believed to be only the external process of publication of regulations devoid of its content. This literally means that, while the adoption of non-regulations assumes rulemaking, it is not legislation.

Thus, the content of rulemaking changes depending on how it is understood. In this paper, we will stick to the idea that rulemaking activities are a specific type of legislative activities to draft, amend or abolish regulations of any kind whatsoever. From a structural point of view, we will rely on the approach whereby the rulemaking activities involve the following conventional stages: drafting, approval, examination, adoption and publication of regulations.

### **1.1. Principles of rulemaking activities**

A variety of opinions on the content of the term *rulemaking* does not in any way affect the recognition of its prominent regulatory role. A vast majority of researchers agree that rulemaking is the initial stage of regulation since it purports to create legal instruments to encourage global harmonization of social relationships in the longer term, a process which cannot be arbitrary and chaotic since it should follow clearly established rules and stick to the principles developed by science and practice.

Rulemaking has the following characteristic features:

a type of legal activities to shape legal policies of the state;

activities of public nature since exercised primarily by public/municipal bodies and officers;

creative and intellectual activities since related to the study/analysis of processes and phenomena taking place in society, identification of a need in regulation of social relationships, shaping legal provisions as such, and monitoring the implementation of legal instruments to be adopted etc.;

procedural activities exercised formally and involving a number of stages. The regulatory process is governed by law, with the competent authorities, issues to be regulated and types of regulations determined;

phased activity involving certain phases”.

Any legal and rulemaking activity is not an exception and is carried out in line with certain principles understood as fundamental concepts and basic premises at the heart of legal instruments to be drafted.

A study of doctrine reveals a multitude of approaches to the understanding of rulemaking principles and their systems, with the core approaches recognized by the authors being professionalism, openness, democracy, scientific rigor, legitimacy and technical perfection.

Legitimacy of the rulemaking process means it is carried out on the basis and in compliance with the Constitution and public laws. A regulation of higher legal force has precedence over that of lower legal force. All legal instruments (including laws) adopted in a country should not be contrary to provisions of the Constitution as a directly applicable legal instrument of prevailing legal effect. All public authorities and their officers engaged in rulemaking should operate within their competence and outlined limits while observing the procedure established for the adoption of relevant instruments.

Legitimacy is ensured by a wide range of the parties to the rulemaking process, legal examination of draft regulations by various government agencies, public review by civil society, legal monitoring of the outcomes of rulemaking activities, as well as by the quality and effectiveness of the adopted regulations.

The democratic principle is the nation's involvement in rulemaking activities via deputies as representatives of the people. The direct participation is ensured by the adoption of legal instruments by a popular vote at referendums. Moreover, this kind of cooperation is exercised via civil society institutions cooperate with public authorities in the regulatory drafting process. They are called upon to review the need in regulation, identify and analyze regulatory and implementation problems, draft the texts of draft

regulations, make proposals and remarks on their content, discuss and examine them. Draft regulations are published in official bulletins and placed at web portals for public discussion. Democratic institutions, such as public hearings, discussions and reviews, are enshrined in the Russian law.

The principle of academic rigor means that opinions of the academia and digital technologies should support the development of laws and other legal instruments. In this regard, some researchers propose to develop a fundamental theory of rulemaking and development concepts of the branches of law [Khabrieva T.Ya., Tikhomirov Yu.A., 2014]. However, this principle often receives lip service and fails to be applied in practice, only to undermine the quality of regulations. For a better application of this principle, it is proposed to collect and study the information relevant for regulation, and hire consulting theoreticians from among the specialists in rulemaking to staff the legal department.

Professionalism means that regulatory drafting is the business of professionals to include not only those whose duties involve drafting work but also hired experts and, in particular, legal scholars, legal practitioners, law enforcement officers, economists, political scientists etc. A high-quality and effective regulation is not possible to draft unless a wide range of stakeholders is involved. To regulate social relationships, a regulation should be worked out from both a theoretical and practical perspective.

Openness means rulemaking activities of public authorities to be communicated to the public at large. This principle is enshrined in part 3, Article 15 of the Russian Constitution whereby laws are to be officially published. Unpublished laws will not apply. Regulations concerning civil and human rights, liberties and duties will not apply unless officially published for general awareness. Legal instruments adopted by the federal authorities will be published in the *Russian Gazette*, *Collected Laws of the Russian Federation*, *Parliamentary Gazette* and the official web-portal for legal information at [www.pravo.gov.ru](http://www.pravo.gov.ru).

The principle of technical perfection means a need to observe the rules of legal rulemaking techniques and to take into account the logic of law, wording accuracy, terminological certainty, legal language clarity etc. The observance of this principle will allow to avoid the shortcomings such as regulatory incompleteness, inaccuracy, ambiguity and divergence.

Apart from the above, the scholarly literature identifies the following principles:



conceptual/terminological certainty, adequate justification and logical balance of legal provisions, enforceability of provisions;

fairness;

diligence, thoroughness of legal drafting etc.

The observance of these principles is extremely important both for rule-making and law and order as a whole.

It is worth noting that the general principles have different interpretations in the process of rulemaking activities in constituent territories of Russia. For example, in the Republic of Crimea, the principle of legitimacy is enshrined in Article 7 of the Constitution whereby public authorities and other public agencies, local governments, organizations, civil society associations, officers and individuals shall observe the provisions of the Constitution of the Republic of Crimea, laws and other regulations of the Republic adopted as part of its mandate (part 3). In accordance with Article 57 of the Constitution, laws and other regulations of the Republic of Crimea cannot be contrary to constitutional laws of the Russian Federation and federal laws adopted as part of the jurisdiction of the Russian Federation and matters under joint jurisdiction. If provisions of the said regulations are contrary to those of constitutional and federal laws, the latter shall prevail (part 3). In case of a conflict between a federal law and a Crimean regulation adopted outside the jurisdiction of the Russian Federation and the joint jurisdiction of the Russian Federation and constituent territories, the Crimean regulation shall prevail (part 4).

As applied to the regional process, the democratic principle assumes the regional population's involvement in rulemaking. It is crucial to have the regional civil society institutions involved. A simple replication of regulations adopted by other constituent territories is not acceptable.

The principle of openness is also enshrined in regional constitutions and statutes. For instance, part 2, Article 7 of the Constitution of the Republic of Crimea says: "laws of the Republic of Crimea shall be officially published. Unpublished laws shall not apply. Regulation of the Republic of Crimea concerning civil and human rights, liberties and duties shall not apply unless published for general awareness".

Apart from the general principles characteristic of rulemaking activities as such, it would be logical to distinguish those used in constituent territories of Russia. Thus, A.N. Artamonov has identified the principles

of observing the overall legal framework and of supporting full empowerment and protecting civil rights through local laws to be adopted. Despite a clear regulatory subordination and possible procedures for intervention in case of conflict, the author has identified unresolved problems that may undermine the overall legal framework of the Russian Federation including a lack of rigorous mechanisms for overcoming the situations of conflict and a lack of procedures for removing legal gaps (especially at the regulatory level) [Artamonov A.N., 2011]. The observance of these principles will serve to avoid legal conflicts and gaps.

According to Ya.V. Gaivoronskaya, the differentiation between legislative mandates and competences, coherence and consistency of regional regulations with federal laws, and interrelations between lawmaking and practice are part of the lawmaking principles in constituent territories [Gaivoronskaya Ya.V., 2015: 126].

The principle of the differentiation of legislative mandates/competences means lawmakers should act within their competence in adopting regulations and should not infringe on the competence of other bodies.

Thus, under part 3, Article 5 of the Russian Constitution, the federal structure of Russia is based, in particular, on the delineation of mandates/competences between the federal authorities and those of constituent territories.

The principle of regulatory coherence and consistency between federal laws and regional regulations means that regulations to be adopted by constituent territories on matters of joint (federal and regional) jurisdiction cannot be contrary to the Russian Constitution and federal laws while those adopted within regional mandates cannot be contrary to regional constitutions/statutes.

## **1.2. Functions of rulemaking activities**

On the one hand, rulemaking could be regarded as a function of state in general and individual agents in particular while, on the other hand, rulemaking itself has certain functions.

The authors of a normography manual edited by Yu.G. Arzamasov believe the regulatory drafting to be the main function of rulemaking while abolition/amendment of the existing regulations is auxiliary [Arzamasov Yu.G. et al., 2020: 35–36].

In a manual edited by V.K. Babaev, the lawmaking functions include the legal reform: publication of new regulations; abolition/abrogation of obsolete provisions; removal of legal gaps [Babaev V.K. et al., 2020: 328].

V.M. Gorshenev identified the following lawmaking functions: legal reform (publication of new and abolition of obsolete provisions contrary to economic and social development, or authorization of the existing provisions etc); removal of legal gaps (including specifying and detailing the published provisions); harmonization (standardization of regulations, review of regulatory material, systematization of law) [Gorshenev V.M., 1985: 38].

To sum up, the following rulemaking functions can be distinguished. The main function is regulatory drafting or legal reform sometimes called novelization which means the adoption of new legal provisions [Smolensky M.B., 2015: 44].

The additional/auxiliary functions include:

abolition/abrogation of obsolete provisions;

removal of legal gaps;

detailing/specification, especially when regulations are adopted in furtherance of legal provisions;

systematization of law to bring order and form to its content.

The said functions allow to not only develop new regulations but to improve the national law and harmonize the legal system.

## **2. Digitization of rulemaking activities**

An analysis of current changes shows that the Russian Federation is taking much effort to achieve the standards of information society, with information openness of public authorities growing as more public data systems become available [Kozyreva A.A., 2017: 131].

The digitization and emergence of digital economy in Russia are now regulated primarily by strategic planning documents (national programmes/projects etc.), with minimum changes affecting civil, financial and other branches of law. There have been some attempts to adopt a Digital Code of Russia [Iliushenko R., Bashelkhanov I., 2018]. At the same time, once AI

robots have a legal capacity in the medium term, as some experts believe, they will be recognized as parties to legal relationships and be legally liable on their own [Laptev V.A., 2019: 99], something that will undoubtedly require to considerably reinvent the existing regulation. In this regard, individual authors suggest to introduce a self-regulated institution in the area of robotics in order to develop standards and codes of conduct binding on owners of robotic agents and robotic agents proper [Artabekov A., Yastrebov O., 2018: 781].

Rulemaking cannot stay away from global digitization processes taking place in the state and society. In welcoming the digital change, A.V. Minbaleev points out that “AI technologies are quite effectively used worldwide in rulemaking and regulatory drafting processes, often in regulatory re-drafting to reflect the amendments made by instruments of higher legal effect”, see: [Pashentsev D.A., 2019: 141].

Meanwhile, this change is fraught with risks to be accounted for in developing new rulemaking mechanisms. The digitization of rulemaking activities and attempts of transition to “soft law” as a more dynamic regulatory practice imply certain risks. Thus, as M.V. Zaloilo writes, “promoting the principles and criteria enshrined in federal law, primarily in regulations and “soft law” instruments, can disrupt the rules whereby legal provisions of higher legal effect are detailed by those of lower legal effect, handicap the delineation of mandates between the federation and constituent territories, broaden the discretionary power of constituent territories which draft the said non-regulatory instruments, increase the risk of legal uncertainty, complicate the implementation mechanism of “soft law” instruments and liability for misuse/abuse due to enforcement failure, and create a threat of violation of civil and human rights and liberties which, pursuant to part 3, Article 55 of the Russian Constitution, can be restricted only by law”. This may also tip the balance between the legislative and executive branches in favor of the latter as legislative bodies will adopt federal laws containing declaratory instructions to be interpreted and specified by the federal executive authorities in the form of guidance. According to M.V. Zaloilo, “potential use of AI to identify incomplete and fragmented regulations among those existing and pending seems a promising step to considerably simplify this process. In this regard, it will be useful to create an official database of existing and pending regulations and their implementation” [Zaloilo M.V., 2020: 34, 44]. Other authors support this idea [Churakov V.D., Pogrebnoy E.O., Khachatryan G.A., 2021: 107–159].

A full-fledged introduction of digital technologies to rulemaking activities will be constrained by a number of technological and legal factors. “Legal restrictions on the use of AI and big data technologies in rulemaking, according to researchers, will be needed to:

- avoid the duplication of electronic and hard copies in regulatory drafting;
- provide for an automated cross-machine information exchange between public data systems in regulatory drafting;

envisage the use of the said digital technologies as part of regulatory planning and forecasting by the public authorities, and as part of regulatory drafting” [Zaloilo M.V., 2020].

Apparently, the said constraints are organizational and can be removed through an evolutionary transformation of the existing regulation towards the introduction of digital technologies.

Technological constraints can only be removed in an evolutionary way through research and development.

Structurally, rulemaking activities are complex and characterized, in particular, by a combination of organizational and meaningful components.

The technological stages are:

- collection of regulatory information in support of the drafting process;
- conceptual development of a regulation to be drafted;
- preparation and amendment of a draft regulation;
- preparation of supporting documents etc. [Vlasenko N.A., 2011: 14].

Like any complex activity involving a great many different agents, rulemaking should pass through stages of the digital change. Only this approach will ensure its smooth operation at the stage of adjustment.

At the first stage of digitization, an electronic communication system could be introduced between the parties to rulemaking activities. Given multiple stages and a large number of the parties, the introduction of a communication system will allow to reduce organizational and time costs arising in the process of regulatory drafting, and will enable the parties to focus on the meaningful part of their work. A centralized electronic communication system will ensure automatic sharing of drafts between the parties, collection of their comments and proposals, amendment and

discussion of the proposed drafts. All amendments to the draft will be instantly visible to stakeholders. Since the list of those involved in a rulemaking project will change depending on a particular stage, it would be useful to make sure the previously prepared documents can be shared with new participants.

Thus, the system will accumulate all information and documents relevant to the particular drafting process. Rapid sharing of meaningful information in the system should serve to reduce the formal part of workflow, ensure a focus on the meaningful aspect of information to be provided, and switch from letterhead-type information sharing to message exchange between identifiable users.

At later stages, the electronic document sharing could be extended to cover the adoption of regulations, to be signed as e-documents without a need to produce a hard copy.

The introduction of e-document sharing to rulemaking will raise the question of document security and accessibility. A loss of original digital regulations and their drafts is fraught with major legal implications. The problem may be solved by implementation of distributed ledger technologies. The latter let to ensure the security and protection of e-documents' contents. According to some researchers prognosis, the development of blockchain will result in major changes for the entire legal sector. "Such traditional institutions as notaries and registrars, banks and probably the state itself as the controlling authority will become redundant" [Barraud B., 2018: 48].

The introduction of AI will be the next stage in digitization of rulemaking.

At first, AI can be used to run different regulatory examinations. It can perform a primary analysis of draft regulations under a set of criteria relevant to the purpose of a specific type of examination. "A neural network can be used as part of the anti-corruption examination to identify corruption-prone aspects and to simulate the use of a particular regulation. A neural network can be trained to take into account possible political, economic, social, cultural and other factors which affect the quality and contents of a draft regulation" [Zaloilo M.V., 2020: 40].

The introduction of AI to rulemaking will allow to make legal simulations more effective. One has to accept Arzamasov's view that "both business and legal regulation models may prove ineffective in certain situa-

tions dues to unpredictability of the market and its specific participants” [Arzamasov Yu.G., 2019: 18]. At the same time, the introduction of digital technologies including machine learning will allow to develop increasingly complex regulatory simulation mechanisms to reduce the risk of legal error in adopting regulations.

As more advanced machine learning algorithms are available, AI could perform regulatory drafting assignments issued by man. Experiments of this kind are already going on at European parliaments [Fotios F., 2021: 621–633] and actively discussed in Russia, particularly, at the Institute of Law and Comparative Legal Studies under the Government of the Government of the Russian Federation<sup>2</sup>.

With a capability to analyze the whole stock of available regulations in drafting a text, AI could diminish the fragmentation problem of the legal framework. Once a universal platform is used for regulatory drafting at all levels, it will be possible to reduce the negative effect of some factors responsible for fragmentation.

The regulatory duplication problem can be reduced in a similar way to get rid of duplicate federal law provisions in local laws and of duplicate statutory provisions in regulations which result in negative implications in the form of legislative inflation and devaluation of law.

Moreover, all requirements concerning legal, technical and meaningful aspects of regulations can be addressed already at the drafting stage to reduce the time spent on their preparation and adoption.

The introduction of digital technologies allows to focus on meaningful aspects of lawmaking activities. The only thing that will not change is that the final decision to adopt a provision is reserved to man as a holder of a unique set of psychological traits to critically assess the work performed by AI and the political, economic and social implications of regulation to be adopted.

At the next stage of progress in rulemaking, AI should be able to propose legal drafts for removing conflicts of law. Regulatory problems should be identified and relevant conclusions to amend the existing regulations made on the basis of big data. These may include legal precedents, specific instruments published by the authorities, legally binding actions etc. In

---

<sup>2</sup> Available at: URL: <https://izak.ru/institute/pravovye-osnovy/pravovye-kommentarii/24780/> (accessed: 15.03.2022)

digitizing the governmental document flow, these data can be consolidated into datasets susceptible of an analysis by AI systems.

## **Conclusion**

Thus, digital technologies can considerably help to the regulatory drafting by reducing the organizational and preparatory burden on rulemaking bodies and providing room for a quicker and deeper analysis of the legal framework.

Over the long term, one can expect a change in the structure of the existing stock of regulations, with researchers already aware of the fact that processes in the legal sector are blurring the lines between branches of law [Pashentsev D.A., 2019: 25]. The same is true for the form of regulations when a transition is made from highly formalized regulations to those sharing numerous meaningful connections, to regulatory datasets generated by digital systems at the operator's request to address a specific situation.

The current formalized part of contemporary legal provisions will become meta-data supporting the contents of specific legal provisions. As notes D. Howes, "Once accustomed to the visual convenience of e-texts with their specific features, users are finally ready to dismiss the rigid, mysterious format of ordinary legal texts as inaccessible and irrelevant" [Howes D., 2001: 49]. A single, multi-level, scalable, interconnected stock of regulations supported by the algorithms to identify linkages between provisions will allow to search for and analyze the needed legal information more efficiently by making regulations more available as information society gains momentum.

Digitization of rulemaking is a phased operation, with the introduction of AI as a downstream process. By using the big data analysis capability of AI, the rule-maker can quicker and clearer identify regulatory gaps, promptly respond to the emergence of new relationships, and take decisions on the basis of in-depth and comprehensive review.

However, one should be attentive to the arguments of those who believe that a legal system too dependent on big data will arbitrarily and undemocratically depart from fundamental values. The wider is the use of big data, the more they will imply and impose a sense of optimal and artificial imminence of legislative development.





## References

1. Albov A.P. et al. (2022) Law-making: concept, principles, types. Text-book. Moscow: Statut, pp. 9–26 (in Russ.)
2. Artamonov A.N. (2011) Law-making in constituent entities of Russia. Available at: URL: <http://www.consultant.ru/cons/cgi/online.cgi?req=d oc&base=CMB&n=16989#09131092096105111> (accessed: 25.10.2020) (in Russ.)
3. Arzamasov Yu.G. (2019) A regulatory impact assessment and legal risks: experience of Russia and continental Europe. *Pravo. Zhurnal Vysheyshkoly ekonomiki*=Law. Journal of the Higher School of Economics, no. 5, pp. 4–31 (in Russ.)
4. Atabekov A., Yastrebov O. (2018) The Legal Status of Artificial Intelligence Across Countries: Legislation on the Move. *European Research Studies Journal*, vol. XXI, issue 4, pp. 773–782.
5. Bagirova E.M. (2020) Transformation of moral values and human adaptation in the information society. *International Journal of Research and Reviews*, vol. 1, pp. 32–34.
6. Barraud B. (2018) Les blockchains et le droit. *Revue Lamy Droit de l'immatériel*, vol. 147, pp. 48–62.
7. Chubukova O.Yu. (2018) Conceptions of information society under conditions of NBIC-convergence. *Vestnik Polesskogo gosudarstvennogo universiteta*= Bulletin of Polessky State University, no. 2, pp. 43–48 (in Russ.)
8. Conflict of Laws (2017) Yu. A. Tikhomirov (ed.). Moscow: Norma, 312 p. (in Russ.)
9. Development concepts of the Russian law (2014) T. Ya. Khabrieva, Yu.A. Tikhomirov (eds.). Moscow: Yurisprudentsia, 128 p. (in Russ.)
10. Devins F., Kauffman S., Koppl R. (2017) The law and big data. *Cornell Journal of Law and Public Policy*, vol. 27, pp. 357–413.
11. Digitization of law-making: search for new solutions (2019) D.A. Pashentsev (ed.). Moscow: Norma, 234 p. (in Russ.)
12. Fotios F. (2021) Artificial Intelligence (AI) in parliaments — preliminary analysis of the Eduskunta experiment. *The Journal of Legislative Studies*, vol. 27, no. 4, pp. 621–633.
13. Gaivoronskaya Ya.V. (2015) Regional lawmaking: concepts, principles, regulation. *Aziatsko-tikhookeanskyi region: ekonomika, politika, pravo*=Asian-Pacific region: economy, politics, law, no. 2, pp. 120–137 (in Russ.)
14. Gassieva K.M. (2017) Transformation of the value system in information society. *Evraziiskiy soyuz uchenykh*=Eurasian Union of Researchers, no. 2, pp. 7–9 (in Russ.)

15. Gorshenev V.M. (1985) The legal activity forms in people's state: a manual. Kharkov: University, 129 p. (in Russ.)
16. Howes D. (2001) E-Legislation: Law-Making in the Digital Age. *McGill Law Journal*, vol. 47, p. 49.
17. Ilyuschenko R., Bashelkhanov I. A digital code for future Russia. Available at: URL: [http://ruskline.ru/analitika/2018/02/7/rossii\\_buduschego\\_nuzhen\\_cifrovoy\\_kodeks/](http://ruskline.ru/analitika/2018/02/7/rossii_buduschego_nuzhen_cifrovoy_kodeks/) (accessed: 25.10.2022) (in Russ.)
18. Interpretation and use of Big Data in law and practice (2021) Yu.A. Tikhomirov (ed.). Moscow: Yustitsinform, 188 p. (in Russ.)
19. Issues of Theory and Exercise of Law: textbook (2017) L. T. Bakulina (ed.). Moscow: Statut, pp. 43–52 (in Russ.)
20. Kaitaeva Kh. I. (2010) Law-making: definition, problem and types. *Obrazovaniye i pravo*=Education and Law, no. 5, pp. 55–71 (in Russ.)
21. Kalinkina N.N. (2010) The outlines of information society emerging in Russia: informatization of society and progress of data infrastructure. *Vestnik Nizhegorodskogo Universiteta*=Bulletin of the Nizhnyi Novgorod State Lobachevskiy University, no. 3, pp. 494–499 (in Russ.)
22. Kozyreva A.A. (2017) Legal aspects of information society realization under the 2017–2030 Strategy for Development of Information Society. *Pravo i gosudarstvo*=Law and State, no. 12, pp. 130–132 (in Russ.)
23. Language of law-making in context of digitization: collection of essays (2019). D.A. Pashentsev, M. V. Zaloilo (eds.). Moscow: Norma, 273 p. (in Russ.)
24. Laptev V.A. (2019) The concept of artificial intelligence and liability for its operation. *Pravo. Zhurnal Vysshey shkoly ekonomiki*=Law. Journal of the Higher School of Economics, no. 2, pp. 79–102 (in Russ.)
25. Lazarev V.V., Lipen S.V. (eds.) (2020) Theory of state and law: textbook. Moscow: Yurait, 521 p. (in Russ.)
26. Legal Techniques of Rulemaking (2011) N.A. Vlasenko (ed.). Moscow: Yustitsinform, 312 p. (in Russ.)
27. Lupanov V.N. (2001) Internet as a subject of social studies. *Informat-sionnoye obshchestvo*=Information Society, no. 1, pp. 40–43 (in Russ.)
28. Mitrou L. (2017) General data protection regulation: A law for the digital age? Available at: [https://doi.org/10.1007/978-3-319-64955-9\\_2](https://doi.org/10.1007/978-3-319-64955-9_2) (accessed: 31.05. 2022)
29. Moskalkova T.N., Chernikov V.V. (2014) Rulemaking: a practical guide. Moscow: Prospekt, 476 p. (in Russ.)
30. Nersesyants V. S. (1983) *Law and legislation*. Moscow: Nauka, 366 p. (in Russ.)

31. Normography: theory and technology of rulemaking. Textbook (2020) Yu. G. Arzamasov (ed.). Moscow: Yurait, 542 p. (in Russ.)
32. Sadigova S. (2021) General aspects of bibliography in the information society. *American Scientific Journal*, vol. 46, pp. 4–8.
33. Satokhina N., Razmetaeva Yu. (2021) “Loss of Experience” in Digital Age: Legal Implications. *Phenomenology and Mind*, no. 20, pp. 128–136. Available at: <https://doi.org/10.17454/10.17454/pam-2012> (accessed: 8.05.2022)
34. Samoschenko I.S. (1956) Legal forms of government functions in the USSR. *Sovetskoye gosudarstvo i pravo*=Soviet State and Law, no. 3, pp. 81–91 (in Russ.)
35. Smolenskiy M. B. (2015) Theory of state and law: textbook. Moscow: Norma, 490 p. (in Russ.)
36. Sokolova A.A. (2021) The age of hybrid wars and neoterrorism in the information society. *Vestnik Polesskogo gosudarstvennogo universiteta*=Bulletin of Polesky State University, vol. 1, pp. 26–33 (in Russ.)
37. Theory of State and Law: textbook (2020) V.K. Babayev (ed.). Moscow: Yurait, 516 p. (in Russ.)
38. Theory of State and Law: textbook (2020) A. Pigolkin, Yu. Dmitriev (eds.). Moscow: Yurait, 516 p. (in Russ.)
39. Theory of State and Law: textbook (2022) A. Albov, S. Nikolyukin (eds.). Moscow: Yurait, 336 p. (in Russ.)
40. Tikhomirov Yu.A. et al. (2021) The law and digital information. *Pravo. Zhurnal Vysshey shkoly ekonomiki*=Law. Journal of the Higher School of Economics, no. 2, pp. 4–23 (in Russ.)
41. Zaloilo M.V. (2020) Fragmentation as a contemporary development trend of the legal framework. *Pravo. Zhurnal Vysshey shkoly ekonomiki*=Law. Journal of the Higher School of Economics, no. 1, pp. 27–49 (in Russ.)

---

#### Information about the authors:

I.V. Bondarchuk — Associate Professor, Candidate of Sciences (Law).  
A.V. Rudenko — Associate Professor, Candidate of Sciences (Law).  
I.Yu. Strelnikova — Associate Professor, Candidate of Sciences (Law).  
O.V. Butkevich — Associate Professor, Candidate of Sciences (Law).  
L.V. Rishkova — Associate Professor, Candidate of Sciences (Law).

The article was submitted to editorial office 17.06.2022; approved after reviewing 15.07.2022; accepted for publication 19.08.2022.