

Artículo de investigación

Legal Aspects of Ensuring Economic Security in The Conditions of the Digital Economy Development

Правовые Аспекты Обеспечения Экономической Безопасности В Условиях Развития Цифровой
Экономики
Aspectos legales de garantizar la seguridad económica en las condiciones del desarrollo de la economía
digital

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Abstract

The goal of the research is to identify the problems of the legal groundwork for ensuring economic security under the conditions of the accelerating implementation of digital technologies in the sphere of economy. *Research methodology.* During the research, a dialectic approach to declared relations was used, as well as the following methods: analysis, synthesis, comparison, forecasting, formalization, formal legal and comparative legal methods. *The main content of the research.* The article analyzes both national and international risks associated with the development of society and economy digitization, as well as existing legislation that regulates informational relations including their protection. Profitability and uncertainty of the norms of law, including of the international nature, have been noted in this sphere. *Results.* Risks arising from the expanded implementation of digital technologies in the economic sphere have been identified. Subjects of law-making at various levels must in advance develop and adopt relevant legal regulatory acts that govern the digital relations in the economy in view of the world experience. They should create conditions for the functioning of an effective competitive economy while protecting the rights and legal interests of participants of economic relations.

Аннотация

Цель исследования выявить проблемы правового обеспечения экономической безопасности в условиях ускорения внедрения цифровых технологий в сферу экономики. Предложить меры по снижению правовых рисков в ходе цифровизации экономики. *Методология* исследования. В процессе исследования нашли использование диалектический подход к познанию заявленных отношений, а также были применялись следующие методы: анализ, синтез, сравнение, прогнозирование, формализация, формально-юридический и сравнительно-правовой. *Основное содержание исследования.* Анализируются риски, связанные с развитием цифровизации общества и экономики, носящие не только внутрисударственный, но и интернациональный характер, а также действующее законодательство, регулирующее информационные отношения, в том числе и направленную их охрану. Отмечается прибыльность и неопределённость норм права в данной сфере, в том числе и международного характера. *Результаты:* выявлены риски, возникающие в связи с расширением внедрения цифровых технологий в

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Keywords: law, law-making, legislative drafting, economy, economic security, digital technologies, threat, risk, violation of the law.

экономическую сферу. Субъекты правотворчества на различных уровнях должны заблаговременно разработать и принять соответствующие нормативные правовые акты, регулирующие цифровые отношения в сфере экономики с учетом мирового опыта. Они должны создать условия для функционирования эффективной конкурентоспособной экономики и при этом защитить права и законные интересы участников экономических отношений.

Ключевые слова: право; правотворчество; законотворчество; экономика; экономическая безопасность; цифровые технологии; угрозы; риски; правонарушения.

Resumen

El objetivo de la investigación es identificar los problemas de las bases legales para garantizar la seguridad económica en las condiciones de aceleración de la implementación de las tecnologías digitales en el ámbito de la economía. Metodología de investigación. Durante la investigación, se utilizó un enfoque dialéctico para las relaciones declaradas, así como los siguientes métodos: análisis, síntesis, comparación, pronóstico, formalización, legal formal y legal comparativo. El contenido principal de la investigación. El artículo analiza los riesgos nacionales e internacionales asociados con el desarrollo de la digitalización de la sociedad y la economía, así como la legislación existente que regula las relaciones informativas, incluida su protección. La rentabilidad y la incertidumbre de las normas de derecho, incluidas las de carácter internacional, se han observado en esta esfera. Resultados Se han identificado los riesgos derivados de la implementación ampliada de las tecnologías digitales en la esfera económica. Los sujetos de la legislación a varios niveles deben desarrollar y adoptar por adelantado los actos reglamentarios legales relevantes que rigen las relaciones digitales en la economía en vista de la experiencia mundial. Deben crear las condiciones para el funcionamiento de una economía competitiva efectiva y al mismo tiempo proteger los derechos e intereses legales de los participantes de las relaciones económicas.

Palabras clave: ley, elaboración de leyes, redacción legislativa, economía, seguridad económica, tecnologías digitales, amenaza, riesgo, violación de la ley.

Introduction

Ensuring economic security is an important issue, the resolution of which largely determines the national security status. Significant changes taking place in this field, both at the international and domestic levels, led to the adoption of the new strategic planning document entitled the National Security Strategy of the Russian Federation (Decree of the President of the RF, No 683, 2015). In this regulatory legal act, economic security, along with the national defense, state, social, information, environmental, transport, energy security and security of person, is included as a backbone element of national security. In this regard, a positive technical and legal decision can be noted, when compared with the Federal Law of the Russian Federation "On Security", the economic security is identified as an independent constructive element of national security and is not attributed to other types of security.

Logically justified and timely was the statement of the Strategy of Economic Security of the Russian Federation until 2030 (Decree of the President of the RF, No 208, 2017) (hereinafter – the Strategy), with the adoption of which the State Strategy of Economic Security of the Russian Federation adopted in 1996 became inoperative. More than a twenty-year period of operation of the above regulatory legal act caused the need for re-thinking the national strategic priorities in the field of economic security, which is rational considering the high dynamics of economic relations. The innovative nature of the Strategy is proved not only by updates, which affected the juristic thesaurus but also informative characteristic ensuring the protection of economic relations.

One of the most significant novelties is the consolidation of challenges and threats to economic

security, that is, a set of conditions and factors that damage the economic security. These include “weak innovative activity, lagging in the development and implementation of new and promising technologies (including digital economy technologies)”, etc. Given the novelty of the named threat, it is essential to give it an appropriate characteristic. Of particular importance in this regard is the legal component of the phenomenon under review due to the mutual influence of law and the digital economy.

Implementation of digital technologies in economic activity entails respective differently directed reactions. They influence both the formation of new norms of law and the change of the existing ones, as well as the state of law-making in the sphere of the digital economy, in general, is an important factor that affects the dynamics of law. Recognizing the influence of the economy digitization on the law that regulates the economic relations, one should not rule out other processes and their impact on the economy. Primarily, this includes globalization of economic relations, interstate integration and increase of the role of international legal regulation of these relations.

While recognizing the influence of digitization on legal regulation, it should be noted that this phenomenon has not been sufficiently studied. Despite the existence of numerous publications on this subject, currently, there have been no material patterns found, which must be taken into account by the subjects of law-making when adopting relevant legal and regulatory directions. When reviewing the problem of modern law development in the conditions of formation of digital reality, academician T.Ya. Khabrieva noted that it is impossible to respond unambiguously to a number of important questions, including concerning the change in the borders of legal regulation, whether they will be expanded or, vice versa, narrowed (Khabrieva, 2018, p. 12).

When anticipating the informative consideration of ensuring economic security in the conditions of development of the digital economy, it should be recognized that this process is irreversible. In this connection, the use and activation of the positive potential of the digital economy and neutralization of its negative manifestations are obvious. To solve this highly complex task it is mandatory to use legal arrangements. In such a case, it should be taken into account that the influence of the new technology breakthrough is not restrained by the economy but affects all spheres and fields of social activity. Meanwhile, it is the economic sphere, where the influence of the digitization process is manifested most prominently.

The emergence of new processes is traditionally associated with certain risks and the formation of the digital economy is not an exception. Economic activity traditionally pertains to a high-risk sphere of society’s functioning. An urge to raise its effectiveness and obtain profits requires that the subjects of economic relations make non-traditional decisions different from those made by their predecessors, that is, essentially, take the risk. Moreover, professor of the Munich University, U. Bekom defined the current state of industrial civilization as a “risk society” (Beck, 2000, p. 384).

The economy cannot be free from risk, but it should be justified, when, in case of need, relevant protective mechanisms can be used, which allow minimization of the negative impact of respective threats. The expert society, in particular when discussing the issue of financial sector digitization, concludes that the development of digital economy elements entails higher risks (Samiyev, 2017).

In a number of studies dedicated to risks due to the development of the digital economy, it is noted that under conditions of due legal regulation of these relations, probability of risks increases. This point of view is advocated by O.A. Stepanov when reviewing problem issues of implementation of venture projects in Russia (Stepanov, 2017, p. 55). As to increase of risks during the expansion of the digital economy, it must be remembered that they have diverse nature and concern economic, social, legal and other consequences. Risks may be differentiated in view of the object of economic activity and other criteria as well. In this connection, targeted measures on their timely diagnostics, prevention, termination, as well as minimization of negative consequences and application of relevant restorative justice mechanisms, should be taken.

When considering the risks arising in the course of ensuring economic security in view of digital economy development, it necessary to keep in mind the changes taking place in society under the influence of the digital environment, including the destruction of traditional society foundations, social order, system of values. In this regard, a number of authors consider the following: the emergence of a new type of individual – “electronic nomad”, establishment of the world dominated by simulation information, expansion and genesis of tracking systems and, as a consequence, development of anonymity systems, risks associated with changing the role of state, risk of labor market reduction and, as a result, escalation of social tension (Yakovleva, Seliverstova, Grigorieva, 2017, p. 237).

Methods

The research methodology for economic security implies that not only methods of obtaining knowledge traditional for legal science are used, but also a turn is taken to a universal category of “risk”, which is not exclusively legal but is studied by such sciences as philosophy and economics. Meanwhile, the risks in the legal sphere have their own characteristics, particularly in the field of legal support of economic security. The study of legal regulation of economic security, taking into account digitization of the economy, is influenced by both advanced and lagging legal regulation. Definition of lagging legal regulation of the specified sphere poses a challenge, but it is much simpler than the former because it implies the identification of gaps in the regulation of social relations in the conditions of economy digitization. Advanced development consists of forecasting when it is necessary to model legal regulatory acts considering social relations, which are still developing. In research of legal aspects in the sphere of the digital economy, it is essential to refer to international legal regulatory acts, part of which have greater legal force in respect to interstate legislation. Of great importance are conclusions contained in the works dedicated to cybercrime, internet crime electronic government, electronic “persons” and issues of acquisition of the legal status of robotics. At the same time, of value is the traditional legalistic method that consists of the analysis of existing legal constructions, their decomposition into separate components, comparison, etc.

Analysis and Discussion

In the course of ensuring economic security, it is necessary to solve the problem of determining the subject of legal regulation of the digital economy. Its complexity results from the fact that it implies mutual regulation of economic and information relations in their unity. There is a need for search and legal mediation of relations associated with information (exchange of relevant data) and management of economic relations. In this case, it is required to take into account the specifics of nano-, bio-, information, cognitive technologies, which are designed to ensure implementation of priority directions of the development of science, technologies and engineering in the state. At the stage of the legal and regulatory framework, it is important to adequately know their nature, prevent their deformation when carrying out legal regulation. Meanwhile, consideration should be given to the innovativeness of these relations. In this regard, it is proposed in the literature to impart legal personality to artificial intelligence systems,

legalize them as an “electronic person” (Yastrebov, 2017).

In view of the complexity and novelty of the subject of legal regulation, it is natural to form the national digital economy as part of the Strategy for Development of Information Society in the Russian Federation for 2017-2030. Its value is so high that the progress of the Russian economy towards digitization is naturally attributed to high priority national projects. In the course of implementation of the legal and regulatory framework of the economy, it is necessary to consider various degrees of digitization of relations in certain areas of economic activity, its priority and further prospect for implementation. As evidenced in practice, this process is most intensive in retail sales, advertising and finance. In light of this factor, prospects for ensuring economic security should be determined. Otherwise, lagging will take place, and, as a result, loss of competition, fall in the level of economic relation protection and damage to its subjects will follow.

Recognizing the role of law in the system of legal and regulatory mediation of relations in the field of the digital economy and its protection, one should not disregard the potential of other social regulators. In other words, it is necessary to abandon the hyper-assessment of law, its potential and not slip into legal romanticism. Rapid implementation of digital technologies in the economy entails the “lagging” of law, which to some extent is compensated by moral and corporate norms and other social instruments. The difficulty lies in the “translation” of informational-technical norms into technical-legal norms. In such a case, their essential characteristics must not be lost and legal regulatory framework must be adequately ensured. The subject of law-making needs to know the specifics of information processes in the economy, and, above all, to identify those that should act as an object of legal regulation. This approach was supported by the Resolution of the European Parliament dated February 16, 2017 (resolution of the European Parliament, 2017). This act notes that along with the norms of law, the standards of morality, which define the ethical principles of robotics, should be used in the design, development and use of robotics.

Regulation of the digital economy, including the provision of economic security, must not be limited by the norms of law. It is important to use comprehensively other social regulators, including moral, religious and corporate standards, which guide the developers and users of the electronic product.

Complexity in ensuring economic security is tied with the “lagging” of legal regulation. The innovative potential of the digital economy is so great that advanced law-making is an illusion (Pashentsev, Zaloilo, 2018, p. 43–45). This may be explained by the circumstance that as a result of the digitization of economic relations, new relations emerge, which had not existed or taken place before and did not require legal regulation. “Digitization of social relations leads to a situation when all processes in society, including the legal sphere, accelerate manifoldly. More and more groups of relations, which are formed in virtual space not regulated by law, emerge” (Baranova, 2015, p. 233). It is necessary to agree with this statement as this situation results in gaps in the law.

This should not stop the subjects of law-making in search of the most effective forms of the legal regulatory framework. Meanwhile, it is important to demonstrate certain flexibility here, give up stereotypes, use law-making instruments, which regulate relations in the field of the digital economy with the highest quality, and critically assess the existing legislation (Kerry, Brown, 1992).

When pointing out the need for use of various social norms in the regulation of the digital economy, one cannot get around the issue of legal regulation-to-self-regulation ratio. Self-regulation makes it possible to promote the initiative of subjects of digital relations but in such a case, it is necessary to define their limits. Using information resources in the economy may lead to both expansion and limitation of such borders. Here, it is important to establish the interests of society, state and separate individual. When solving this task, one can speak not only of optimizing the limits of legal regulation but also a public-to-private regulation ratio.

The example of Internet network can illustrate the emergence of various virtual communities, which communicate and coordinate the actions of their members by means of network technologies. It is important to determine the area of relations in the sphere of the digital economy, which may be carried based on self-regulation, prevent their over-regulation by the state, thereby preventing their retreat in the shadow sector. In this case, the issue of ensuring security should be addressed to the subjects that carry out self-regulation conferring relevant responsibility to them. In other words, the state should share the burden of ensuring security with these subjects.

In view of the novelty of relations in the sphere of the digital economy, it is important to envision the development of digital technologies. With that purpose, it is required to use the potential of legal

forecasting, legal monitoring, as well as legal modeling, and permanently assess the impact of regulation.

Development of digital technologies updated the problem of sovereignty. Obviously, the establishment of boundaries, their crossing for goods and services changes significantly. We noted that the potential of the digital economy could be used to overcome the sanctions regime. Meanwhile, one should also take into account the danger of unrestricted movement of economic, primarily financial, assets. It has to be agreed that development of digital technologies leads to the failure of development of international financial crime, which, in some cases, is not limited to the territory of a particular state and is global in nature, causing damage to investors, banks and other financial institutions in various countries (Kerry, Brown, 1992).

This raises a legitimate question as to which way countries should choose when regulating digital economy: automation, integration, combination. From the perspective of ensuring economic security, the most preferable is the formation of exclusively national legislation in this sphere, which would reflect solely the interests of a separate state. Such a way is utopic, which is predetermined by specifics of the subject of legal regulation, which goes beyond the exclusive legal regulatory competence of a separate state. In this connection, the digital economy, being a supranational unit, should act as an object of regulation of both domestic and international law. Meanwhile, international legal regulation will probably assume a multi-level character. It should use legal and regulatory acts of the UN, the World Trade Organization, the International Monetary Fund, the International Bank of Reconstruction and Development, the International Telecommunication Union, etc. The role of the legal and regulatory framework for international organizations of the regional and interregional level will increase, e.g., the European Bank of Reconstruction and Development, Organization of Petroleum Exporting Countries, Eurasian Economic Union, etc.

The paradox of the present moment in solving the problem of the legal and regulatory framework of the digital economy lies in a certain anticipating policy when respective strategic approaches are developed and fixed. Adoption of the Digital Single Market Strategy by European Commission on May 6, 2015 may serve an example. (Paris, Simon, 2016, p. 17).

It is considered important to prioritize the legal regulation of certain relations. It is believed that preference should be given to economic relations that have already been subject to digitization (post factum regulation), as well as those that have primary importance for ensuring economic security. This may include telecommunication, telemedicine, protection of personal data of the subject, protection of information infrastructure, ensuring digital identity, e-trade, provision of online security, distance (remote) labor relations and implementation of the country's fiscal function.

Implementation of the legal regulatory framework in the sphere of the digital economy will make it possible to relieve conflict tension. According to E.V.Talapina, it is necessary to speed up the implementation of digital technologies in the field of government procurement, which currently is a highly criminal environment (Talapina, 2018). It is necessary to agree with this proposal and extend the use of digital technologies in every possible way to the area of provision of other public and municipal services as well.

Expressing a certain concern in terms of limiting the functioning of digital economic relations by means of over-regulation, one cannot disregard the need to transform the methods of influence, first of all, of state enforcement. Cybercrime becomes a real phenomenon, which has a significant disorganizing effect on the public, including economic relations (Nomokonov, Tropina, 2012). It is necessary to agree that "one of the negative consequences of information technology development is the emergence and development of a new form of crime — high-tech crime, when computers or computer networks act as an object of criminal offense, as well as a means or method of committing crimes" (Dremlyuga, 2008, p. 45).

Apparently, there will be difficulties with the application of measures of traditional state enforcement forms. This, first of all, applies to measures of prevention, restraint, protection and procedural provision. Perhaps, legal responsibility in this situation will largely retain its positions but it will become more difficult to solve the problem of proving, detecting the signs of a set of all elements of offenses. It is essential to work out an enforcement toolkit, which will effectively ensure economic security, and, on the other hand, minimize the enforcement impact on the subjects of digital relations. There is a need for adaptation of state enforcement, its forms and measures to the specifics of digital relations protection.

Development of digital relations must be appropriately reflected at the level of subjective

organization of state authorities, including the subjects ensuring economic security. Establishment of the State Chancellery for the Internet Information in 2011 by the State Council of the People's Republic of China is characteristic. This body is intended to improve the legal regulation system in the field of Internet information, strengthen control over information and content on the Internet, direct planning and development of cultural programs by interested agencies (online games, audio and video products, online publications), monitor planning and creating leading news sites and fight illegal websites.

There were certain changes in state authorities of the Russian Federation as well. In accordance with Decree of the President of the Russian Federation dated May 15, 2018 No. 215 "On the structure of federal government authorities", the Ministry of Communication and Mass Media of the Russian Federation was renamed into the Ministry of Digital Development, Communication and Mass Media of the Russian Federation. It is essential that this implies not a rebranding of the respective subject of government control but a qualitative change of its characteristics. Along with this, it is important to create relevant territorial structures. It is obvious that there is a need to re-think the role of electronic government in the provision of public services.

Conclusions

Digitization of economy entails the emergence of new threats, which must be diagnosed and blocked in advance. A vector of the legal and regulatory framework in this sphere must be oriented considering these events.

In order to ensure economic security in the conditions of formation of the digital economy, it is necessary to ensure the combination of the legal regulatory framework and use of the potential of other social regulators. In such a case, it is essential to ensure flexibility in regulation, determine the areas of economic relations, which will be digitized first, and implement advanced law-making.

While recognizing the role of legal and regulatory provision of economic security under conditions of the digital economy, it is necessary to use the potential of self-regulation. Such an approach will promote the reduction of propensity towards the conflict in this sphere.

In the course of the reformation of the legal and regulatory provision of economic security in the conditions of economy digitization, it is necessary to take into account the potential of both domestic legislation and generally accepted principles and rules of international law.

Expansion of practice of implementing digital technologies in the sphere of the economy along with the reform of legal regulatory framework must entail a change of the methods used, as well as the system of subjects for ensuring economic security.

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References

- Baranova M.V. (2015). Advanced lawmaking in the legal system of modernity. *Bulletin of the Saratov State Law Academy*, № 1 (108), pp. 43–45.
- Beck U. (2000). *Risk Society. On the way to another modernity*. M.: Progress-Tradition, p. 384.
- Civil law norms on robotics: the resolution of the European Parliament dated February 16, 2017. The resolution provides recommendations for the European Commission regarding civil law norms on robotics (2015/2013 (INL)) http://robopravo.ru/riezoliutsiia_ies (access date: 03/21/2019).
- Decree of the President of the RF No 683 (December 31, 2015). “On Strategy of National Security of the Russian Federation:”. Collection of legislation of the RF, No 1 (part. II). Art. 212.
- Decree of the President of the RF No. 208 (May 13, 2017). “On Strategy of Economic Security of the Russian Federation for the period till 2030”. Collection of legislation of the Russian Federation, No 20. Art. 2902.
- Dremlyuga R.I. (2008). *Internet crime: a monograph*. Vladivostok: Publishing House of Far Eastern University, p. 240.
- Kerry J. and Brown H. (1992) “The BCCI Affair: a report to the Committee on Foreign Relations, United States Senate”.
- Khabrieva T.Ya. (2018). “Law in the face of the challenge of digital reality”, *Journal of Russian law*, No. 9, p. 5–16.
- Nomokonov V.A., Tropina T.L. (2012) “Cybercrime as a new criminal threat”, *Criminology: yesterday, today, tomorrow*, No 1 (24), pp. 45–55.
- P. Samiyev. (2017) “What will the digitization of the financial sector lead to?”, *Bank review*, No. 6, pp. 78–82.
- Paris Th., Simon J.P (2016). “The European Audiovisual Industry and the Digital Single Market: Trends, Issues and Policies”, *Digiworld Economic Journal*, No. 101, p. 17.
- Pashentsev D.A. Zaloilo M.V. (2018). “The impact of modern digital technologies on the content and nature of the law-making activity: the theoretical and legal aspect”, *Legal science and practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, No 4 (44), pp. 231–235.
- Stepanov O.A. (2017). “To the problem of minimizing the criminal risks of implementing venture projects in Russia”, *Modern Law*, No. 11, pp. 54–58.
- Talapina E.V. (2018). “Legal regulation of digital government in Russia: possibilities of incorporating the OECD requirements”, *State power and local self-government*, No. 3, pp. 20–25.
- Yakovleva E.L., Seliverstova N.S., Grigorieva O.V. (2017). “The concept of an electronic nomad: the risks of digital economy development”, *Actual problems of economics and law*, V. 11, No. 4., pp. 226–241.
- Yastrebov O.A.(2017). “Discussion on the prerequisites for assigning the legal status of "electronic persons" to robots”, *Legal Issues*, No. 1, pp. 189–203.