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**THE LEGAL AUTHORITY CHANGES OF THE CENTRAL BANK OF THE RUSSIAN
FEDERATION IN DIGITAL ECONOMY SPHERE: PUBLIC AND PRIVATE ASPECTS¹**

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Abstract

In this article, the authors analyze the public and private law aspects of the changes in legal authority of the Central Bank of the Russian Federation as a financial market regulator within the digital economy development, based on the concept of the Bank of Russia legal acts in the system of the Bank of Russia legal, normative, law-enforcement, interpretive (acts of interpretation) and the contractual acts of Bank of Russia. There is an influence of the Bank of Russia program legal acts on strengthening the rule of law in the financial market, maintaining a proper level of law and order, and creating a trusted financial services environment, including digital forms. The research highlights the law-forming function of the Bank of Russia program legal acts in connection with the conceptual nature of normative, law-enforcement, interpretative, and contractual acts of the Bank of Russia. The author emphasizes the strategic nature of the Bank of Russia program legal acts, which are proposed to be considered as strategic planning acts. In order to fill the gap in legal regulation, it is proposed to affirm the legislative powers of the Bank of Russia to issue program legal acts in the field of financial technology development and in the field of ensuring financial accessibility and improving consumers' financial literacy, which are currently issued by the Bank of Russia on an initiative basis. The article proves the hypothesis that Bank of Russia regulations can be issued not only in the sphere of public relations, but also in private sphere. The authors used dialectical, formal-legal, comparative-legal, as well as inductive methods of studying the changes in legal authority of the Central Bank of the Russian Federation in the economy digitization.

Keywords

Central Bank of the Russian Federation – Law-enforcement acts of the Bank of Russia – Russia

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Introduction

Nowadays the digital economy development plays an important role in socio-economic, political and legal sphere. This is also applied to the Russian legal system. The Central Bank of the Russian Federation (Bank of Russia) as a subject of the banking system of the Russian Federation has legally defined powers that are developed in the conditions of economy digitalization. The changing aspect of legal authority and powers of the Central Bank of the Russian Federation hasn't been studied properly. The role of the Bank of Russia program legal acts influences the Bank of Russia rule-making function, as well as its enforcement, interpretation, and contractual activities issuing relevant acts, strategic program legal acts affecting public relations in the financial market, the prognostic nature of the Bank of Russia program legal acts in the digital economy development, and a number of public and private law aspects.

In this regard, the following studies are of great importance: the role of national (Central) banks in digital transformations of banking systems², the formation of a trusted environment in the banking system³, public law regulation of banking activities⁴; private law aspects in the digitization of banking relations.⁵

To analyze the changes in legal authority of the Central Bank of the Russian Federation as regulator of the financial market regulator in digital economy development it is necessary to consider the legal value of public significant character in the Bank of Russia legal acts activity (program legal acts, normative, law enforcement, interpretation and contractual acts) as legal means used for social purposes, maintenance of law and order as a reflection of the social environment, in which the rights and obligations of legal entities are realized.⁶ This is applied, among other things, to the Bank of Russia increase of consumers' financial literacy and preventing unfair practices in the financial market. The questions of legal authority and competence in relation to public administration are important in Russian legal science⁷, which should be studied from the point of view of legal foresight theory and practice⁸ in filling the gaps of legal regulation within the digital

² O. A. Tarasenko, "Digital transformation of foreign banking systems", *Banking law* num 5, (2019): 36-41.

³ James J. Lynch, *Ethical Banking. Surviving in an Age of Default* (London: Palgrave MacMillan, 1991) y Gert Wehinger, "Banking in a challenging environment: Business models, ethics and approaches towards risks", *OCED Journal: Financial Market Trends* Vol: 2 num 103 (2012).

⁴ T. E. Rozhdestvenskaya and A. G. Guznov, "Public banking law: textbook for Masters' degree students (Moscow: Prospect, 2016); T. E. Rozhdestvenskaya; A. G. Guznov and L. G. Yefimov, *Private banking law: the textbook* (Moscow: Prospect, 2020) y E. G. Belikov and A. V. Belikova, "Digital financial assets as the object of civil rights", *Bulletin of the Saratov state law Academy* Vol: 6 num 131 (2019): 169-172.

⁵ T. E. Rozhdestvenskaya; A. G. Guznov and L. G. Yefimov, *Private banking law: the textbook* (Moscow: Prospect, 2020).

⁶ S. S. Alekseev, *General theory of law: Textbook* (Moscow: TK Velbi, Publishing house Prospect, 2008); A. V. Malko, "Mechanism of legal regulation. Actual problems of the theory and practice of legal regulation: textbook for undergraduates (Saratov: Publishing House of the Saratov state law Academy, 2016) y V. L. Kulapov, *Theory of state and law: textbook* (Saratov: Saratov state law Academy, 2019).

⁷ O. E. Kutafin and K. F. Sheremet, *The competence of local councils: Handbook: 2nd ed.* (Moscow: Yurid. lit., 1986) y B. M. Lazarev, *The competence of government bodies* (Moscow: Faculty of Law, 1972).

⁸ Yu. A. Tikhomirov, *Legal foresight: scientific and practical guide* (Moscow: Institute of legislation and comparative law under the Government of the Russian Federation, 2018) y A. S. Avtonomov,

economy development. The optimal balance between private and public interests, involved in the financial control, is crucial in the legal science.⁹ In the public-legal aspect, it is important to protect financial market relations, including the aspects of criminal law regulation and criminal executive nature of punishment.¹⁰ The stated above confirms the practicality of the research topic from scientific, theoretical and practical issues.

Methodology

Dialectical and formal-legal methods allowed to establish the relationship and interaction between software legal acts and regulatory, enforcement, interpretation, contractual acts of Bank of Russia within the competence of the Bank of Russia in the field of digital technologies, and to identify legal gaps regarding the legal authority of the Central Bank of the Russian Federation in publishing software legal acts on the financial technologies development and on ensuring financial access, including digital technologies, improving consumers' financial literacy and other digital services. The authors of the article proposed to amend Federal law 86-FZ of July 10, 2002 "On the Central Bank of the Russian Federation (Bank of Russia)" (Federal law 86-FZ of July 10, 2002) regarding the Bank of Russia's authority consolidation to issue initiative program legal acts connected with legally authorized competence. Comparative legal method allowed to determine general and special Bank of Russia legislative functions in digital economy (Article 7 of Federal law, 86-FZ of July 10, 2002, special Federal laws, for example, Articles 16 and 17 of Federal law, 259-FZ of August 02, 2019 "On attracting investments using investment platforms and making changes to certain legislative acts of the Russian Federation" (Federal law of August 02, 2019). There are conclusions about the importance in observing ethical banking principles protecting the rights and legitimate interests of consumers of financial (banking) services. The inductive method is also used within the context of the studied article topic.

Results and discussion: Program legal acts within the system of the Bank of Russia legal acts as a strategic approach changing the legal authority of the Bank of Russia in digital economy sphere

The Bank of Russia program legal acts are set in the Federal law 86-FL of July 10, 2002, with amendments to the Bank of Russia status as a financial market mega-regulator

"On legal foresight. Book review: Yu. A. Tikhomirov. Legal foresight: Scientific and practical guide", State and law num 10 (2019): 35-42

⁹ O. Yu Bakaeva and E.V. Pokachalova, "Monitoring and Audit as a Tool for Achieving Balance of Private and Public Interests in Tax and Customs Legal Relations", Vestnik Permskogo universiteta. Juridicheskie nauki Vol: 4 (2018): 616-643; E. Belikov, "Tax Sovereignty of the Welfare State (Experience of The Central and Eastern European Countries), Tax Sovereignty and the Concept of Fiscal Rule-Making in the Countries of Central and Eastern Europe: Conference Proceedings". Voronezh State University, Faculty of Law, Voronezh. 2018; A. Zhutaev and M. Sadchikov, "Tax Sovereignty in Russia: Preferential Taxation Regimes Provided by Sub-Central Governments. Tax Sovereignty and the Concept of Fiscal Rule-Making in the Countries of Central and Eastern Europe: Conference Proceedings", Voronezh State University, Faculty of Law, Voronezh. 2018 y V. Popov and E. Trishina, On Correlation Between National Tax Legislation and Tax Agreements of the Russian Federation and Selected Countries of Central and Eastern Europe. Tax Sovereignty and the Concept of Fiscal Rule-Making in the Countries of Central and Eastern Europe: Conference Proceedings. Voronezh State University, Faculty of Law, Voronezh. 2018.

¹⁰ B. T. Razzildiev and N. I. Nasirov, "The penal nature of the punishment and its purpose", Amazonia Investiga Vol 8 num 21 (2019): 261-275.

(Federal law 251-FL of July 23, 2013 "On amendments to certain legislative acts of the Russian Federation connected with legal authority to regulate, control and supervise financial markets", in force from September 1, 2013 – Federal law No. 251-FZ of July 23, 2013).¹¹

The Bank of Russia authority includes preparation and implementation of the main directions in the financial market development once every three years. The Bank of Russia program act will be approved by the Government of the Russian Federation, the President of the Russian Federation, and reviewed by the State Duma of the Federal Assembly of the Russian Federation. In accordance with this procedure, the Bank of Russia has issued two documents: Main directions of the financial market development of the Russian Federation for the period 2016-2018¹² and Main directions of the financial market development of the Russian Federation for the period 2019-2021¹³. As a follow-up to the program provisions of these documents, the Bank of Russia has prepared the following program legal acts in 2018: Main directions for the development of financial technologies (2018-2020)¹⁴ and Strategies for increasing financial accessibility in the Russian Federation for the period of 2018-2020.¹⁵

Neither Federal law, 86-FZ of July 10, 2002, nor Bank of Russia regulations can monitor the procedure to adopt program legal acts developed by the Bank of Russia. In this regard, it is important to make additions to The Bank of Russia powers in Federal law No. 86-FZ of July 10, 2002¹⁶ on the right of the Bank of Russia to prepare, issue and implement initiative program legal acts promoting legally established competence to achieve the certain goals. This proposal is also in demand in terms of strategic planning, since the Bank of Russia program legal acts are of that nature. Meanwhile, Federal law, 172-FZ of June 28, 2014 "On strategic planning"¹⁷ establishes the Bank of Russia legal authority as a subject of strategic planning in accordance with Federal law No. 86-FZ of July 10, 2002. Therefore, while proposing the specified amendment to Federal law No. 86-FZ of July 10, 2002, it will also be possible to consider the program legal acts issued by the Bank of Russia as acts of strategic planning, which is important from the point of view of achieving socially significant goals. The mentioned above allows us to note the law forming function of program legal acts in relation to other legal acts of the Bank of Russia: regulatory, law enforcement, interpretation, and contractual acts of the Bank of Russia.

¹¹ Federal law No. 251-FZ of July 23, 2013 "On amendments to certain legislative acts of the Russian Federation in connection with the powers to regulate, control and supervise financial markets" 2013. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_149702/.

¹² Main directions of the financial market development of the Russian Federation for the period 2016-2018. Retrieved from www.cbr.ru/Content/Document/File/44188/onfr_2016-18.pdf

¹³ Main directions of the financial market development of the Russian Federation for the period 2019-2021. Retrieved from www.cbr.ru/Content/Document/File/71220/main_directons.pdf.

¹⁴ Main directions for the development of financial technologies. 2018-2020. Retrieved from www.cbr.ru/StaticHtml/File/36231/ON_FinTex_2017.pdf.

¹⁵ Strategies for increasing financial accessibility in the Russian Federation for the period of 2018-2020. Retrieved from www.cbrru/Content/Document/File/44104/str_30032018.pdf.

¹⁶ Federal law "On the Central Bank of the Russian Federation (Bank of Russia)". No. 86-FZ of July 10, 2002. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_37570/.

¹⁷ Federal law No. 172-FZ of June 28, 2014 "On strategic planning" 2014. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_164841/.

The interfluence of the Bank of Russia program legal acts and also regulatory, law enforcement, interpretation, and contractual acts of the Bank of Russia as a characteristic feature in legal authority changes of the Bank of Russia within the context of the digital economy

Program legal acts of the Bank of Russia affect the normative function of the Bank of Russia in accordance with Article 7 of Federal law No. 86-FZ of July 10, 2002 as the general basis for the Bank of Russia to issue normative acts on legally established competence. In the field of digital technologies there are special bases for the Bank of Russia legislative functions. Thus, Federal law No. 259-FZ of August 02, 2019, which came into force on January 01, 2020, clearly establishes the provision that the Bank of Russia adopts regulations on issues within its competence under this Federal law. At the same time, the Bank of Russia enforcement activities are largely related to the Bank of Russia publication activity of regulations specified in this Federal law.¹⁸ There is a great demand for issuing interpretative acts (acts of interpretation) by the Bank of Russia due to the innovations of legal regulations.

There is a special form of interpretation acts as official explanations of the Bank of Russia, guided by the special regulatory act – Regulation of the Bank of Russia No. 115-P of July 18, 2000¹⁹ "On the procedure for preparing and enforcing of official explanations of the Bank of Russia". However, the Bank of Russia is issuing official explanations in very few cases. Nowadays there is a tendency in the development of interpretive acts by the Bank of Russia publishing information letters about the peculiarities of statutory acts application by the Bank of Russia. Thus, the following question should be answered: why does not the Bank of Russia use the official explanation form as the corresponding interpretive act?

The fact is that the status of information letters is not regulated in the officially issued document of the Bank of Russia. Information letters from the Bank of Russia are also connected with the sphere of digital technologies. In particular, the following documents have recently been issued by the Bank of Russia and published on its official website: Information letter of the Bank of Russia, No. IN-016-41/98 of December 23, 2019²⁰ "On agreements defining the terms of interaction between banks and the Bank of Russia while presenting the information to the customs authorities in electronic form connected with the issuance of Bank guarantees", which in turn affects the Bank of Russia contractual acts, as well as Information letter of the Bank of Russia, No. IN-08-41/80 of October 29, 2019²¹ "On the usage of electronic messages in connection with the Bank of Russia Regulation

¹⁸ Federal law No. 259-FZ of August 02, 2019 "On attracting investments using investment platforms and making amendments to certain legislative acts of the Russian Federation" 2019. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_330652/.

¹⁹ Regulation of the Bank of Russia No. 115-P of July 18, 2000 "On the procedure of preparing and enforcing official explanations of the Bank of Russia". 2000 Retrieved from http://www.consultant.ru/document/cons_doc_LAW_27924/.

²⁰ Information letter of the Bank of Russia, No. IN-016-41/98 of December 23, 2019 "On agreements defining the terms of interaction between banks and the Bank of Russia while presenting the information to the customs authorities in electronic form connected with the issuance of Bank guarantees" 2019. Retrieved from www.cbr.ru/Content/Document/File/96029/20191223_in-016-41_98.pdf.

²¹ Information letter of the Bank of Russia, No. IN-08-41/80 of October 29, 2019 "On the usage of electronic messages in connection with the Regulation of the Bank of Russia No. 690 – P of 18.08. 2019". Retrieved from www.cbr.ru/Content/Document/File/85603/in-08-41_80.pdf.

No. 690-P of 18.08.2019". This allows us to recommend further renewal in publication of the Bank of Russia official explanations as interpretative acts, including the questions of digital technologies development.

The relationship between program legal acts and regulatory, law enforcement, interpretation, and contractual acts of the Bank of Russia shows the combination of public and private legal issues in its competence. The Central Bank of the Russian Federation has a special legal status, the Bank of Russia is not included in the system of Federal Executive authorities, so previously there have been questions about the powers of the Bank of Russia to issue regulations on private legal issues, based on Article 3, part 7 of the Civil code of the Russian Federation²², according to which the ministries and other Federal Executive authorities can issue acts containing civil law norms in cases and within the limits provided for by this code, other laws and other legal acts.

It seems that the problematic issue has been resolved with the introduction of Article 48, part 4 of the Civil code of the Russian Federation (Civil code of the Russian Federation (part I) No. 51-FZ of November 30, 1994), the Federal law No. 99-FZ of May 05, 2014²³ "On amendments to Chapter 4 of the Civil code of the Russian Federation and judicial recognition of certain invalid legislative acts provisions of the Russian Federation" according to which the Central Bank of Russia legal status is determined by the Constitution of the Russian Federation and the law on the Central Bank of the Russian Federation. The systematic analysis of these provisions makes it possible to conclude that the Bank of Russia may issue normative acts not only on public legal issues, but also on private ones. It seems that the study of Federal law provisions No. 259-FZ of August 02, 2019 enables to fulfill it also in relation to digital technologies.

Conclusion

1. The changes of the legal authority by the Central Bank of the Russian Federation in the digital economy sphere takes place in the public legal and private legal aspects having mutually related positions, which should be recognized as a positive factor.
2. The legal support for these changes requires a systematic and mutually dependent publication of program, regulatory, law enforcement, interpretation, and contractual acts of the Bank of Russia.
3. There is a tendency in the development of program legal acts by the Bank of Russia being initiatively developed and characterized by law formation function due to the publication of regulatory, enforcement, interpretation acts and agreements on financial market status, which may include the consumers' financial literacy improvement, prevention of unfair practices (misselling), maintenance of law and order, creating conditions for the trusted environment in the financial market.
4. There is an extension of special rule-making grounds for the Bank of Russia, when certain special Federal laws contain issues that require the publication by the Bank of Russia norms and regulations, including digital technologies.

²² Civil code of the Russian Federation (part I) No. 51-FZ of November 30, 1994. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_5142/.

²³ Federal law No. 99-FZ of May 05, 2014 "On amendments to Chapter 4 of part 1 of the Civil code of the Russian Federation and on judicial recognition of certain invalid legislative acts provisions of the Russian Federation" 2014. Retrieved from http://www.consultant.ru/document/cons_doc_LAW_162608/.

5. There is also an outreach of interpretive acts functions by the Bank of Russia: the active usage of the information letters by the Bank of Russia in order to interpret it and that sets up the renewal of the Bank of Russia official explanation publication as a prescribed norm characterizing the Bank of Russia interpretive acts.

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