

Legal Regulation of Digital Economy in A Modern State: Challenges and Prospects

Galina S. Belyaeva

Doctor of Law, Belgorod State University, 85 Pobedy Street, Belgorod, 308015, Russia. E-mail:
belyaeva_g@bsu.edu.ru

Andrey S. Mamin

Professor of law Belgorod State University, 85 Pobedy Street, Belgorod, 308015, Russia. E-mail:
mamin_andrei@mail.ru

Irina Kapustina

Professor of the Department of real estate expertise and management, Belgorod state technological University named after V. G. Shukhov 46 Kostyukova street, Belgorod, 308012, Russian Federation.
E-mail: i-kapustina@mail.ru

Abstract

This article is devoted to the analysis of issues regarding the problems and prospects of legal regulation of digital economy in a modern state. It is noted that in the current legal system of the Russian Federation relations related to the development of digital processes are not regulated in a comprehensive and systematic manner. In particular, at both the legislative and by-law levels, such institutions of the digital economy as "block chain," crypto currency" , "startup," "smart-contact", "ICO" (primary placement of obligations in the market of crypto currency) and some others are still not properly regulated. Within the framework of this work, the authors have attempted to define the peculiarities of the legal regulation of the digital economy in Russia and in the world, to highlight some discussion and problematic points on this problem and to express their own position for their solution. At the end of the study, the authors propose how to use foreign positive experience in this direction and determine the directions of its refraction in the Russian legal system.

Keywords: Legal Regulation, Digitalization, Digital Economy, Digital Economy Institutions, Information Society, Innovations, National Program.

Introduction

It should be noted that currently in the Russian Federation and in the world there is a digitalization of various spheres of society, connected with the active application of information technologies in the development of the information society. One of the segments of general digitalization is the digital economy, the effective functioning of which as a whole and its individual institutions seems impossible without a qualitative (arbitrary and non-competitive) legal regulation of the relevant sphere of social relations. Meanwhile, it should be noted that in the current legal system of the Russian Federation, relations related to the development of digital processes are not sufficiently regulated in an integrated and systematic manner. In particular, at both the legislative and by-law levels, such institutions of the digital economy as "block chain," crypto currency", "startup", "smart-contact", "ICO" (primary placement of obligations in the market of crypto currency) and some others are still not properly regulated. This situation, as confirmed by a number of scientists [1], causes gaps in the legal regulation of the digital economy, as well as various legal conflicts that actually lead to the displacement of a number of digital transactions, carried out primarily by small and medium-sized businesses, into an illegal financial and economic field. Moreover, resources attracted by domestic business entities in virtual world capital markets, for example, as a result of the issue of crypto

currencies are qualified by the law enforcement agencies of the Russian Federation as "operations for the illegal import of capital," which is the basis for administrative and criminal liability.

In foreign countries, too, the legal vacuum in the regulation of the digital economy causes serious problems in the social sphere. Thus, N. Jones, as an example of such a situation, cites the introduction of such innovative technology as Uber in the sphere of services provision, as a result of which the traditional model of legal regulation of transport services provision was not applicable in a number of countries, in particular in India [2]. Moreover, some Western scientists believe that the development of the digital economy can significantly change the established goals, tasks and functions of public authorities and even influence national sovereignty [3].

In this regard within the framework of this article, it seems appropriate to refer to the definition of peculiarities of the legal regulation of the digital economy in Russia and in the world, to highlight some discussion and problematic points on this problem and to express the authors' view on their solution.

Methodology

The methodological basis of the study is based on the application of various popular scientific techniques and methods of scientific knowledge (analysis, synthesis, derivation, induction, system-structural, formal-logical approaches), as well as private scientific methods - formal-legal, comparative-legal and interpretative.

Discussion and Results

Before considering the peculiarities of the legal regulation of the digital economy, it seems logical, from our point of view, to turn to the concept of legal regulation as a whole. Note that "regulation" (from lat. regulare - to put in order) in social, political, psychological, and economic domains can take many forms: legal restrictions promoted by a government authority, contractual agreements (for example, contracts between regulations and regulations 4 norms), co-regulation, third-party regulation, certification, accreditation or market regulation [5].

This approach makes it possible to speak of legal regulation as a whole as a dynamic system (process), including the formation of legal norms; their effect which results in legal relations arising or changing; realization of subjective rights and obligations through which the objectives of legal regulation are achieved [6; 7, 8; 9].

As for the concept of "digital economy," the emergence of the corresponding concept in the 1990s is related to the name N. Negroponte, who, using the metaphor about "the transition from atom processing to bit processing", noted the lack of classic goods in their "physical" embodiment such as weight, raw materials, transport, and declared advantages of a new economy based on lack of goods weight, virtuality, lack of demand for raw materials, instant global movement [10]. In the legal literature, in parallel with the concept of "digital economy," the term "intellectual economy" is also found. The authors of this term associate the functioning of this economy type with the wide use of innovation, including artificial intelligence [11].

As the Competition Committee of the Finance and Business Office of the Organization for Economic Co-operation and Development (OECD) notes the concept of "digital economy" is the basis for referring to markets focused on digital technologies that are generally involved in the trade of information goods or services through electronic commerce. The digital economy operates on a multilevel basis with separate segments related to data transmission [12].

It should be noted that the specific characteristics of the digital economy, which differ from the post-industrial model of recent times [13], require a qualitatively different model of legal regulation, to the peculiarities of which we propose to refer in more detail.

First, let us draw attention to the fact that the digital economy is more globalized than traditional models of economic relations. Due to that certain regularities and universal principles of its legal regulation at the international and national levels in different countries can be found, so that the ways of solving emerging problems in legal regulation found in different countries will also be identical. Thus, in Russia and in the world, there is uncertainty and fragmentation in the legal regulation of the digital economy institutions, which cause problems at the international level.

The main difficulty in this matter is the specificity of the subject matter of the legal regulation. The fact is that the digital economy cannot be described as a single structured system, and therefore cannot be regulated by a "package" of laws or by public administration reform in this area. This system is complex, includes a wide variety of institutions and activities and does not cover all sectors of economic activity.

The specifics of the legal regulation in this field can be described in the following example. Thus, in 2009, the report of the Australia Government Department of Broadband, Communications and Digital Economy, setting out a strategy for the development of the digital economy in the country, noted that the development of the sector required concerted action by society, industry and the State, whose role was to fill market gaps, avoid social inequality and ensure the legitimate and efficient functioning of markets. The main task of the State is to provide opportunities for all subjects to take advantage of digital opportunities through the creation of appropriate infrastructure, the promotion of innovation and the consolidation of a favourable legal regime. [14]

The main idea of this report is a perfectly fair indication that "digital" regulation and "digital" development based on it in all spheres of social relations is possible only on the basis of clear strategic conceptual planning. This principle of legal regulation of the digital economy in the Russian Federation has been embodied in the relevant strategic documents.

The main strategic document that established the legal definition of the digital economy in the Russian Federation, is the Decree of the President of the Russian Federation No. 203 of 09.05.2017 "On the Strategy for the Development of the Information Society in the Russian Federation from 2017 to 2030," which established the purposes, tasks and measures for implementation of domestic and foreign policy of the Russian Federation in scope of information and communication technologies, aimed at the development of the information society, the formation of the national digital economy, the promotion of national interests and the implementation of strategic national priorities. According to this regulation, the digital economy is economic activity, the production key factor of which is digital data, processing of large volumes and use of the results of analysis. If to compare with the traditional forms of economic management they allow to increase significantly the efficiency of various types of production, technologies, equipment, storage, sale, delivery of goods and services [15].

The document specifying the Strategy, in terms of the digital economy, is Resolution of the Government of the Russian Federation No. 234 of 02.03.2019 "On the System of Management of the Implementation of the National Program "Digital Economy of the Russian Federation"[16], which established the functional structure of the management system; procedure for development, monitoring and control of federal projects implementation; responsible authorities and organizations. This document "replaced" the previous program of the same name, but retained most of its shortcomings, namely, the lack of a definition of the concept of the digital economy and its structure; incomplete quantitative indicators of the future development of its national sector; poor development of issues of integration of domestic subjects of economic relations in the virtual segment (lack of an indication of the institute "block chain"); pretentiousness, non-availability with specific legal requirements [1, p. 70].

Foreign experience in the legal regulation of the problem is of interest in this study. In particular, since 2016, the United States has developed and implemented a comprehensive program for the development of the digital economy "Digital Economy Agenda" [17, p. 51], which regulates simultaneously the access liberalization and information security of citizens on the Internet, as well as

a number of issues to support the activities of ICT producers and sellers in the North-American and world industry markets. The analysis of the main provisions of this document shows that it is, to some extent, protectionist towards digital producers. At the same time, the program is aimed at (a) improving the efficiency of antitrust legislation in the field of digital technologies and virtual economy sectors; (b) stimulating economic actors operating in these markets; (c) improving the legal status of entities of the virtual sector of the digital economy, such as virtual corporations, financial and credit institutions (internet banks and investment funds, etc.); (d) development of legal regulation of financial and economic transactions carried out using crypto currency; (e) optimization of complex regulatory and legal support of smart-contracting institution.

Accordingly, the positive experience of such legal regulation can also be accepted by the domestic system of legal regulation of the ICT market in such areas as ensuring competitiveness and openness of production and sale of ICT for state and municipal needs; full introduction of antitrust compliance in the activities of economic actors; systemic and integrated public-private partnership in ICT; promotion of domestic technologies in developing ICT markets of "friendly" states within the framework of economic blocks such as the EAEU and BRICS.

In order to implement the directions mentioned above, it is proposed to solve the following main issues.

First, while modernizing the legal regulation of the digital economy, it is necessary to make a thorough analysis and assessment of the relevance of existing legal models, as well as the existence of conflicts and gaps in existing legislation [18].

There is a view that in the sphere of the digital economy there is a greater demand not for forward-looking (forecast-based) legal regulation, but for an approach aimed at streamlining already existing social relations after their emergence on the basis of the information available at that time [2, p. 24]. This approach can hardly be considered absolutely justified for our legal system, as it is suggested by the representative of Western civilization, where the main regulator is precedent. As for the analytical component of the law-making process in the development of the relevant legal and regulatory framework, its feasibility is beyond doubt.

Second, administrative barriers to the functioning of the digital economy institutions need to be reviewed and, if possible, eliminated (this is, inter alia, the example given at the beginning of this article on business in virtual world markets).

Third, to create unified approaches for all member states of the Eurasian Economic Union in the field of legal regulation of the digital economy, which contribute to the development of the digital economy in the corresponding legal space;

Fourth, to develop and approve the necessary methodological documents (regulations) aimed at forming appropriate competences in the field of digital economy for lawyers, public servants and other persons directly involved in the drafting process, adoption and implementation of regulatory legal acts in the sphere of regulation of the digital economy in the territory of the Russian Federation, and undertake the necessary measures to develop these competencies (professional retraining, advanced training, conferences, etc.).

Conclusion

As a result of the study carried out on the problems and prospects of legal regulation of the digital economy in the Russian Federation, the following conclusions can be drawn:

- The digital economy, as a subject of legal regulation, is characterized by its global nature, and therefore, at the international and national levels, there are certain patterns and universal principles for its regulation in various countries;

- The digital economy does not have a unified, homogeneous structure and cannot be regulated by a "package" of laws or by public administration reform in this area; it is an integrated system that brings together diverse ICT-based institutions and activities;
- "Digital" legal regulation and "digital" development based on it is possible only on the basis of clear strategic conceptual planning, which is reflected in the relevant strategic documents named and briefly analysed in our work;
- The use of foreign experience in modernizing the system of legal regulation of the digital economy is of some interest [18, p 3850].

Thus, basing on the analysis of various approaches to the study of optimizing the legal regulation of the digital economy, it can be concluded that in this area it is necessary to create a legal regime that would ensure, on the one hand, the smooth development of innovation and, on the other, minimize the possible risks associated with the inability to predict the development of institutions of the digital economy for a long period of time.

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