

Chapter 50

The Problems of Legal Regulation of Economic Security in the Context of Development of the Digital Economy



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Abstract This research is aimed at identifying the key problems of regulatory support of economic security in the context of the accelerated introduction of digital technologies into the field of the economy and elaborating the guidelines for the elimination of legal risks caused by the introduction of digital technologies. The authors have identified the risks that arise due to the fact of the extensive introduction of digital technologies into the field of the economy. Lawmakers at various levels must in advance elaborate and adopt the relevant regulatory legal acts, regulating digital relations in the field of the economy with consideration for global experience. It is necessary to provide conditions for the functioning of an efficient competitive economy and at the same time to protect the rights and legitimate interests of parties to economic relations.

1 Introduction

The support of economic security is a major problem, the resolution of which largely depends on the state of national security. Significant changes occurring in this field both at the international and national levels gave rise to the adoption of a new strategic planning document in the form of the National Security Strategy of the Russian Federation. Economic security along with defense of country, state, public, information, environment, transport, energy security, and personal security is included in this regulatory legal act, as systemically important elements of national security. In this regard, a positive technical legal solution can be pointed out, whereas in comparison with the Federal Law of the Russian Federation “On

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security,” economic security was qualified as an independent structural element of national security, and not reckoned among other types of security.

Recognizing the influence of digitalization on legal regulation, it should be noted that this phenomenon is understudied. Despite the intensification of publications on this topic, essential patterns which must be taken into consideration by the law-makers in the course of adoption of relevant legal regulations have not been found yet. When we consider the problem of development of modern law under conditions of development of digital reality, academician Khabrieva, T. Y. notes that it is impossible to give an unambiguous answer to a number of important questions, particularly on the change in the boundaries of legal regulation. Will they be expanded or, conversely, narrowed? (Samiev 2017).

When we anticipate a meaningful consideration of the provision of economic security in the context of development of the digital economy, the irreversibility of this process should be recognized. In this regard, the use and intensification of the positive potential of the digital economy, and the neutralization of its negative manifestations is obvious. Legal remedies should necessarily be used in the solution of this complex problem. That said, it will be appreciated that the influence of a new technology breakthrough is not limited to the economy but influences all spheres and areas of social activity. At the same time, it is in the field of the economy that the influence of digitalization process is manifested in the most vivid way.

2 Materials and Methods

The emergence of new processes is traditionally associated with certain risks and the formation of the digital economy is no exception. Economic activity traditionally belongs to high-risk sphere of functioning of society. The desire to increase its efficiency and to realize a profit demands making unconventional decisions from the parties to economic relations; these decisions should differ from those that were made by their predecessors, which means in actual fact they have to risk. Moreover, the current state of industrial civilization has been defined by the Professor at the University of Munich Beck, U. as the “risk society” (Yakovleva et al. 2017).

The economy cannot be “risk free,” but the risk must be reasonable, when in case of need it will be possible to use the relevant defense mechanisms that will make it possible to minimize the adverse impact of relevant threats. In particular, during the discussion of the problem of digitalization of the financial sector, the expert community came to the conclusion that the development of elements of the digital economy will entail risk increase (Yakovleva et al. 2017).

In a number of studies dealing with the risks due to development of the digital economy, it is pointed out that if there is no proper legal regulation of these relations, the probability of risk increases. Such a viewpoint is defended by Stepanov, O. A. in the consideration of topical issues of implementation of venture projects in the country (Yastrebov 2017).

When it comes to increasing risks with the expansion of the digital economy, one should bear in mind that they are multifaceted and relate both to economic, social, legal, and other consequences. They (risks) can also be differentiated with account of the economic entity, as well as other criteria. In this regard, one should take targeted measures for their timely diagnosis, prevention, and elimination, as well as minimizing their negative consequences, and the use of relevant restorative justice mechanisms.

When considering risks arising in the course of the provision of economic security with due account for development of the digital economy, one should take into account the changes occurring in the society under the impact of the digital environment, including the disruption of traditional social principles, social structures, social order, and axiological reference points. In this regard, a number of authors argue the emergence of an individual of a new type—“an electronic nomad;” the formation of a world with the dominance of simulative information; the extension and genesis of tracking systems and, as a consequence, the development of anonymity systems; the risks of changing the role of the state; the risk of contraction of the labor market and, as a result, the increase in social tension (RoboPravo 2017).

3 Results and Discussion

The problem of identification of the subject of legal regulation of the digital economy should be resolved in the course of the provision of economic security. Its complexity is due to the fact that it is referred to mutual regulation of economic and informational relations in their unity. There is a need for search and legal mediation of relations associated with information (relevant data exchange) and management of economic relations. In addition to the above, it is necessary to consider the specificity of nano-, bio-, information, cognitive technologies, which are designed to ensure the implementation of priority lines of development of science, technologies, and engineering in the state. That said, it is important to adequately get to know their nature, to prevent their deformation at the stage of legal regulation. That said, account must be taken of the innovative nature of such relations. In this regard, literature sources suggest providing the artificial intelligence systems with legal capacity and competence, to legalize them as an “electronic person” (Pashentsev and Zaloilo 2018).

Taking into account the complexity and the innovative nature of the subject of legal regulation, the formation of the national digital economy within the framework of the Information Society Development Strategy in the Russian Federation for 2017–2030 is quite logical. Its significance is so great that the movement of the Russian economy on the way toward digitalization, has naturally been assigned to priority national projects. In the course of legal regulation of the economy, one should take into consideration different degrees of digitalization of relations in certain fields of economic activity, its priority, and further implementation prospects. Experience has proven this process takes place most intensively in retail, advertising,

and finance. Taking into account this factor, one should evaluate prospects of the provision of economic security. Otherwise, there will be a lag and, as a result, loss of competitiveness, drop in the level of protection of economic relations, and infliction of damage to its parties.

While recognizing the important role of law in the system of 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, one should abandon the hyper-assessment of law, its potential, to sink to just romanticism. The rapid introduction of digital technologies into the economy entailed “lagging” of law, which is offset by morality, corporate standards, and other social tools to some extent. The complexity consists in the “conversion” of informational and technical standards into technical legal standards. Moreover, their essential characteristics should not be lost and legal regulation should be adequately ensured. A lawmaker needs to learn the specific character of information processes in the field of the economy and most importantly identify those that must act as the subject of legal regulation. Such an approach was supported in the European Parliament Resolution of February 16, 2017 (Baranova 2015). It is pointed out in this legislative act that in addition to the rules of law, rules of morality in which the ethical principles of robotics are defined, must be used in the design, development, and utilization of robotics.

The complexity of the provision of economic security is associated with “lagging” legal regulation. The innovative capacity of the digital economy is so high that advanced lawmaking is an illusion (Kerry and Brown 1992). This can be explained by the fact that due to digitalization of economic relations, new relations arise, which have not existed before, or which existed before but did not require any legal regulation. “Digitalization of social relations results in the fact that all processes in society, including the legal sphere, are accelerated many times. Increasingly new groups of relations emerge, forming in a virtual space, not regulated by law” (Paris and Simon 2016). We have to agree with this statement, as this leads to the emergence of gaps in legislation.

At the same time, this must not prevent lawmakers from searching for the most efficient forms of legal regulation. This being said, it is important to show some flexibility on this case, to abandon stereotypes, and to use lawmaking tools which regulate relations in the field of the digital economy in the most qualitative manner, to review current legislation (Talapina 2018).

While noting the need to use various social norms in the process of regulation of the digital economy, one cannot disregard the issue of correlation between legal regulation and self-regulation. Self-regulation makes it possible to promote the initiative of the parties to digital relations, but it is necessary to put limits on them. The use of information resources in the economy can lead to both the expansion and limitation of such limits. In this case, it is important to identify the public interests, state interests, and interests of a specific individual. In solving this problem, we can talk not only about the optimization of limits of legal regulation but also about the correlation between public and private legal regulation.

Through the example of the Internet, we can illustrate the emergence of various virtual communities that communicate with each other and coordinate the actions of their members through the use of network technologies. It is important to identify such domain of relations in the field of the digital economy, which can be carried out on the basis of self-regulation, to prevent their excessive regulation by the state, which will prevent their withdrawal into the shadow sector. This being said, the question of provision of security must be directed to entities which perform self-regulation with the assignment of the corresponding responsibility to them. In other words, the state must share the burden of provision of security with these entities.

Taking into account the novel nature of relations in the field of the digital economy, it is important to anticipate the development of digital technologies. To this end, the potential of legal forecasting, legal monitoring, and legal simulation should be used to assess the regulatory impact on a regular basis.

Development of digital technologies makes actual the problem of sovereignty. It is evident that the establishment of boundaries, their overcoming for goods and services is changing significantly. We have pointed out that potential of the digital economy can be used to overcome the sanctions regime. At the same time, one should take into account the danger of unhampered movement of economic assets, primarily financial. One should agree over the fact that development of digital technologies entails the development of international financial crime, which in some cases is not limited to the territory of a particular state, is global in nature, causes damage to investors, banks, and other financial institutions in various countries (Talapina 2018).

The question naturally arises—what path should be chosen by countries in the process of regulation of the digital economy: autonomy, integration, or combination? From the perspective of the provision of economic security, it appears that the best possible method consists in the formation of purely national legislation in this field, where only the interests of a particular state would be reflected. At the same time, such a path is utopian, which is predetermined by the specifics of the subject of legal regulation which goes beyond the boundaries of exclusive regulatory competence of a particular state. In this regard, digital economy as a supranational entity must act as the subject of regulation of both national and international legislation. That said, it seems probable that international legal regulation will be multilevel in nature. Regulatory legal acts of the UN, World Trade Organization, International Monetary Fund, International Bank for Reconstruction and Development, International Telecommunication Union, etc. must be used in it. At the same time, the role of legal regulation of international organizations at both regional and international levels, e.g., European Bank for Reconstruction and Development, Organization of Petroleum Exporting Countries, Eurasian Economic Union, etc. will be growing.

The paradoxicality of this moment in the resolution of the problem at the stage of legal regulation of the digital economy consists in a certain wait-and-see policy, when relevant strategic approaches are formed and established. The adoption of the Digital Single Market (DSM) Strategy by the European Commission on May 6, 2015, may serve as an example (Nomokonov and Tropina 2012).

We believe that it is important to define the priorities of legal regulation of certain relations. In our opinion, preference should be given to economic relations that have already been exposed to digitalization, i.e., regulation *post factum*, as well as those that are of primary importance for the provision of economic security. This may include telecommunications, telemedicine, protection of personal details of parties, protection of information infrastructure, provision of digital identity, electronic commerce, provision of online security, remote employment relations, and implementation of the fiscal function of state.

Legal regulation in the field of the digital economy will make it possible to “defuse” the “conflictive tension.” According to E. V. Talapina, it should accelerate the introduction of digital technologies in the field of state procurements, which is currently a highly criminalized environment (Dremluga 2008). We should agree to this offer and to expand the use of digital technologies to the utmost to cover the field of provision of other public and municipal services as well.

When we express a certain concern regarding the limited functioning of digital economic relations through excessive regulation, one should not disregard the need for transformation of impact methods, state coercion in the first place. Cybercrime is becoming a real phenomenon which has a significant disruptive impact on social relations, including economic relations. It should be agreed that “one of the negative consequences of the development of information technologies is the emergence and development of a new form of crime—crime in the field of high tech, when computers or computer networks act as the subject of criminal infringement, as well as means or methods of commission of crimes”, that is, cybercrime.

Development of digital relations should be adequately reflected at the level of subjective management of public authorities, including the subjects of the provision of economic security. An illustrative example is the creation of the State Chancellery for Internet Information by the State Council of the People’s Republic of China in 2011. The specified body is intended to improve the legal regulation system in the sphere of Internet information, to tighten control over information and content on the Internet, to manage the planning and development of programs in cultural sphere (online games, audio and video products, and online media) by involved governmental agencies, to monitor the planning and creation of leading news sites, to fight against illegal websites.

Certain changes have also occurred in the executive authorities of the Russian Federation. In accordance with the Decree of the President of the Russian Federation No. 215 of May 15, 2018 “On the Structure of Federal Agencies of Executive Authority,” the Ministry of Communications and Mass Media of the Russian Federation was renamed as the Ministry of Digital Development, Communications and Mass Media of the Russian Federation. That said, it is important that there was talk not of rebranding of the relevant state management entity, but of the major breakthrough in its functional characteristics. At the same time, it is important to create appropriate territorial structures. It is evident that there is a need to rethink the role of digital government in the provision of public services.

4 Conclusions

Digitalization of the economy gives rise to the emergence of new threats that should be diagnosed and eliminated in advance. Taking into account these phenomena, one should orient the vector of legal regulation in the specified field. In order to provide economic security in an age of the formation of the digital economy, the combination of legal regulation and the use of potential of other social regulators should be ensured. That said, it is important to ensure flexibility in regulation, to identify the domains of economic relations which will be primarily exposed to digitalization, and to carry out advanced lawmaking activities. Recognizing the important role of regulatory the provision of economic security in an age of the digital economy, one should put the self-regulation potential to good use. Such an approach will contribute to the reduction of proneness to conflict in this field. In the course of reforming of regulatory support of economic security in an age of digitalization of the economy, one should consider the potential of both national legislation and generally recognized principles and rules of international law. Extensive practice of the introduction of digital technologies into the field of the economy coupled with the reform of legal regulation should give rise to the change in methods employed, as well the system of economic security subjects.

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