

# Chapter 26

## Legal Incentives as a Means of Mediating the Development of Environmental Entrepreneurship



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**Abstract** The chapter raises and solves the problem of using effective mechanisms of legal regulation aimed at the development of environmental entrepreneurship. Based on the analysis of Russian, foreign, and international legislation, scientific doctrine, and the experience of some foreign countries, conclusions are drawn about the need to use positive means of legal regulation (legal incentives) and negative ones (legal restrictions, prohibitions, and obligations). It is proved that when regulating rights in private sectors, it is necessary to use incentives to a greater extent, and restrictions in public sectors. The nature of relations related to environmental entrepreneurship is investigated. The key categories that encourage business entities to link their activities with the protection of the natural environment are needs and interests. The authors point out the complex structure of interests concerning the protection of the natural environment. Legal mechanisms for observing the interests of all participants in legal relations are proposed. The analysis of the institute of the best available technologies in the field of environmental protection is carried out. Conclusions are drawn about the prospects of its use in business activities and further development. The nature of the concept of ecological entrepreneurship is investigated. Conclusions are drawn about the too narrow approach outlined in the normative legal acts. It is pointed out that it is necessary to consider any business activity in the process of which technologies related to the protection of the natural environment are used as environmental entrepreneurship. The necessity of changing the system of legal regulation by increasing the number and quality of legal incentives is justified. A system of legal incentives is proposed to optimize the processes of environmental protection in the course of business activities.

**Keywords** Environmental entrepreneurship · Interest · Legal incentives · Legal restrictions · Environmental protection · Mechanism of legal regulation

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## 26.1 Introduction

The establishment and improvement of the institute of environmental entrepreneurship are a key factor in the development of modern society. At the same time, it is important not only to focus the state policy on the introduction of the best available technologies in the field of environmental protection but also to make businesses aware of the need to use modern means of environmental production. Only the coincidence of these aspirations can lead to the desired result.

The legal regulation of relations related to the protection of the natural environment has a complex nature, which is primarily due to the need to respect public and private interests (Inshakova et al., 2018a). One of the legal means to solve this problem is legal incentives. Optimization of legal incentives is one of the most effective mechanisms for regulating relations, including those related to environmental entrepreneurship.

The establishment of legal incentives is aimed at synchronizing public and private interests, where each of the parties can get its benefits: the state and society—a favorable environment, and the business entity—profit from conducting eco-friendly production. Legal incentives are designed to motivate entrepreneurs to invest in environmental protection.

Incentives are an objective necessity for the development of entrepreneurial activity in any sphere, especially in the environmental and social spheres. The effectiveness of the development of any sector of the economy depends on how the system of legal incentives is formulated. Any legal system should contain both certain incentives and restrictions, which together will create an effective mechanism for protecting the natural environment. At the same time, it is important to remember that the effectiveness of legal regulation largely depends on the consistency and consideration of the interests of all participants in legal relations (the state, society, and the business entity).

The basis of environmental and legal incentives is the method of positive motivation, aimed primarily at the formation of the business entity's economic interest in environmental protection measures. An important role is played by the formed environmental needs of the society and the economic assessment of measures to protect the environment.

When improving the legal regulation, it is necessary to investigate the nature of the legal relations that arise, as well as the main motivations that influence the formation of interest in the business entities in carrying out measures to protect the natural environment. At the same time, it is necessary to take into account both the specifics of entrepreneurial activity, the main purpose of which is to make a profit, and the specifics of environmental activity, and first of all, its public and state importance, but at the same time, the economic cost with minimal financial efficiency. All these

factors should be taken into account when building a system of legal regulation with the use of mechanisms of legal incentives and restrictions.

## 26.2 Materials and Methods

Russian and international sources of legal regulation were used in the preparation of the research. Among the Russian legal acts are the following. Federal Law No. 7-FZ “On Environmental Protection” (State Duma of the Russian Federation, 2002). Civil Code of the Russian Federation (State Duma of the Russian Federation, 1994). Federal project “Introduction of the best available technologies”, developed within the framework of the national project “Ecology” (Presidium of the Presidential Council for Strategic Development and National Projects, 2018). Information and technical Guide to the best available technologies (ITS) 46-2017 “Reduction of emissions of pollutants, discharges of pollutants during the storage and warehousing of goods” Rosstandarat (2017a). ITS-2017 ‘Improving energy efficiency in the implementation of economic or other activities’ (Rosstandarat, 2017b).

Among the international acts, the following can be distinguished: Directive 2008/1/EEC of the European Parliament and of the Council of 15 January 2008 on Integrated Pollution Prevention and Control (European Parliament and Council of the European Union, 2008); Council Directive 85/337/EEC of 27 June 1985 on the environmental impact assessment of certain projects implemented by the public and private sector (European Parliament and Council of the European Union, 1985). Much attention is paid to the analysis of the Model Law of the Union of Independent States (CIS) (2000) “On the Basis of Environmental Entrepreneurship” (Inter-Parliamentary Assembly of the Member States of the Union of Independent States, 2000).

The scientific basis of the study was the works of Russian lawyers Barkov and Grishina (2018); Vafin and Zolotova (2019), Kalinichenko (2001), who paid great attention to environmental entrepreneurship in their works. The works of Gukasyan (1970), Vaneeva (1988), Pershina (2002), Gribanov (2001), Malko (1995), (Inshakova et al., 2018a), Matytsin (2021), and others are devoted to the problems of interest, its correlation with needs, incentives and restrictions, and mechanisms of legal regulation.

The topic identified in the study is important not only for individual national systems but also for the entire international community. Because of this, the scientific literature of foreign countries is represented by numerous works in the field of environmental entrepreneurship. When conducting the study, the following works were used: He et al. (2020), Sun et al. (2020), Omri (2018), Ranjan (2019), Schlange (2009), Gurău and Dana (2018), also used the works of other authors.

The study used a dialectical method, which allowed us to consider the mechanism of legal regulation of environmental entrepreneurship as a single system, to investigate contradictions, to carry out systematization. Using the method of analysis, individual elements of the mechanism of legal regulation of environmental entrepreneurship are studied, a detailed analysis of Russian, foreign, and international legislation is made, and scientific doctrines are studied. The used method of legal analogy made it possible, based on the study of the experience of foreign countries, international experience, to formulate development prospects and recommendations for the further development of the current legislation in the field of environmental entrepreneurship. Using the dogmatic method, formal and logical connections between the presence of legal incentives and the development of environmental entrepreneurship is established. The method of the systematic approach allowed us to consider all the elements of the mechanism of legal incentives for environmental business entities.

### 26.3 Research

The problem of ecological entrepreneurship and environmental protection is relevant both for individual countries (Barkov & Grishina, 2018; Vafin & Zolotova, 2019; He et al., 2020), continents (Sun et al., 2020), and the entire international community (Omri, 2018). The law of various States provides for a variety of legal means aimed at minimizing the consequences of conducting business. Among the latter, there are various incentives and restrictions imposed on business entities to interest them in using various methods aimed at preventing harm to the environment.

Every action is based on needs and interests. Without going into the controversy about the relationship of these categories (Gukasyan, 1970), we take as a basis the statement that the need is a prerequisite for the formation of interest (Perschina, 2002). In turn, interest can be considered as the goal of the implementation of subjective civil law (Gribanov, 2001) and its limit. Civil legislation (Article 1 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation) (the State Duma of the Russian Federation, 1994) proclaimed the possibility of acquiring and exercising subjective rights by one's own will and in one's interest. However, the interests of one subject are always opposed by the interests of other subjects (in absolute legal relations—this is an unlimited and indefinite circle of persons, in relative legal relations—specific subjects and their interests), which means that it is possible to consider the interest as the limit of the exercise of a subjective right when the interests of one subject are limited to the interests of other persons. In the case of environmental entrepreneurship, the interests of both the state, the entrepreneur and individuals must be aimed at achieving one goal—the protection of the natural environment. Only with this approach can you achieve tangible results.

However, the entrepreneur's interest is primarily in making a profit (paragraph 1 of Article 2 of the Civil Code of the Russian Federation), otherwise, such activities will not qualify as entrepreneurial. In contrast to this interest, the citizens' interest in a favorable environmental environment is opposed. And here the task of the state,

which carries out the legal regulation of both business relations and relations aimed at protecting the natural environment, is to harmoniously use the set of legal means that allow the entrepreneur to realize his interest in making a profit and take measures aimed at preventing environmental consequences from doing business.

Returning to our original statement that any action is based on interest, we state that in order for a business entity to need to implement the best available technologies for environmental protection, it must have an interest. Ensuring this interest is in the field of the possibility of the state, which, through the legal regulation of relations, can establish various incentives that contribute to the emergence of interest in the subject of entrepreneurial activity. At the same time, it should be noted that in addition to incentives, legal restrictions are also an effective legal means of solving problems of environmental protection. Only a harmonious combination of incentives and restrictions will solve the problem of introducing the best available technologies for environmental protection by business entities.

An analysis of environmental legislation shows that most of it are restrictive and punitive. The restrictive nature is expressed in the establishment of legal prohibitions, and the punitive one is aimed at applying legal protection measures in the commission of environmental offenses (State Duma of the Russian Federation, 2002). The main message on which the system of legal norms is based is the presumption of the environmental danger of any business activity (Article 3 of the Federal Law “On Environmental Protection”). Very little attention has been paid to promoting eco-friendly business.

As an economic regulation, the legislation provides for the collection of fees for negative impact on the environment (Article 16 of the Federal Law “On Environmental Protection”); environmental insurance; incentives for the termination of non-ecological production; a system of state support measures, including the development of investments; the introduction of new technologies; educational and information support; the use of renewable energy; new methods of controlling environmental pollution. Among the economic instruments are the provision of tax benefits; funds from the federal and regional budgets; reduction of the level of payment for negative impact on the environment, which in general should be assessed positively. However, this provision is offset by the norm laid down in paragraph 4 of Article 16 of the Federal Law “On Environmental Protection”, which formulates the conditions for obtaining state support.

First, government support can be obtained by implementing the best available technologies, and we will discuss this issue below. Secondly, state support can be obtained under the condition of the design, construction, reconstruction, and installation of environmental systems listed in the federal law in the closed list. This, of course, prevents the introduction of the latest technologies that are unknown at the time of preparation of the law and are not included in the closed list for this reason. Thus, the use of a closed list in a mandatory norm, in our opinion, significantly reduces the effectiveness of this legal provision.

It should be noted that in general, Russian legislation in the field of environmental protection is similar to foreign legislation, where, as a rule, the most popular

legal incentives are state subsidies for environmental protection measures. Interesting in this regard is the experience of Australia, where, unlike most countries, subsidies are paid not for a specific environmental action (for example, the construction of wastewater treatment plants, etc.), but activities in the field of environmental protection—ecosystem services (Ranjan, 2019).

As a means aimed at protecting the natural environment, the Russian legislator uses the institutions of licensing, environmental certification of economic activities, obtaining a comprehensive environmental permit, declaring the impact on the environment, zoning, establishing special legal regimes, planning, monitoring, methods of control and supervision, state accounting, and others. At the same time, the bulk of the listed legal means are aimed at prohibiting, restricting, or burdening the business entity.

The implementation of the best available technologies is based on the federal project “Implementation of the best available technologies”, developed within the framework of the national project “Ecology” (Presidium of the Presidential Council for Strategic Development and National Projects, 2018). One of the components of this project is a system of information and technical reference books on the best available technologies. An analysis of these reference books, in particular, the information and technical reference book ITS 46-2017 “Reducing emissions of pollutants, discharges of pollutants during the storage of goods” (Rosstandarat, 2017a), ITS-2017 “Improving energy efficiency in the implementation of economic or other activities” (Rosstandarat, 2017b) shows that they are standardized rules for the implementation of a particular activity, which, in general, is not bad. However, it cannot be called a breakthrough technology aimed at a comprehensive solution to the problem of negative impact on the environment.

Among the economic incentives, the federal project names only the possibility of obtaining subsidies to reimburse part of the cost of obtaining coupon income on bonds issued to implement investments in the introduction of the best protective technologies (Matytsin, 2021).

It should be noted that the Russian federal project “Introduction of the best available technologies” corresponds to the main trends in the implementation of such projects in the countries of the world. Following the Organization for Economic Cooperation and Development’s best available technology policy, various countries (Germany, Sweden, India, China, the United States, and others) have developed their own best available technology concepts (OECD, 2019). At the same time, if we consider the legal means laid down in such concepts, they are primarily associated not with the development of the best technologies themselves, but with careful control over the compliance of business activities with the standards developed in the best available technologies directories. This is not to say that this approach is bad enough. However, the national legislation of some countries shows the same trend as the Russian legislation. Maximum attention is paid to restrictions and prohibitions, and very few legal and economic incentives are prescribed.

The review of the economic instruments laid down in the environmental legislation shows that there are only four economic incentives (tax incentives, the possibility of receiving subsidies from the federal and regional budgets, reduced fees for negative

environmental impacts, and reimbursement of part of the cost of obtaining coupon income), as opposed to numerous restrictions. We believe that this approach is not entirely justified. The legislator should use a legal technique based on a harmonious combination of incentives and restrictions. The establishment of numerous prohibitions reduces the effectiveness of tools aimed at introducing the latest environmental technologies.

The analysis of international acts in the field of environmental entrepreneurship shows the focus of the international community on solving the problem of negative impact on the environment as a result of entrepreneurial activity. For about fifty years, the European Community has been shaping environmental policy (Kalinichenko, 2001). Since 1973, the European Community's environmental action programs have been adopted, which form the main areas of activity in the field of environmental protection and recommend that the participating countries make appropriate changes to their national legislation. The work of the European Committee on Environment and Health is also important. The Organization for Economic Cooperation and Development, which unites the countries of North and South America, Europe, and the Asia-Pacific region in two hundred committees, conduct developments on environmental protection (OECD, 2019).

Directive 2008/1/EEC of the European Parliament and of the Council of the European Union of 15 January, 2008 on Integrated Pollution Prevention and Control (European Parliament and Council of the European Union, 2008) can be considered as one of the main documents that form the policy in the field of environmental entrepreneurship. Council Directive 85/337/EEC of 27 June, 1985 On the Environmental Impact Assessment of Certain Projects Implemented by the public and private sector (European Parliament and Council of the European Union, 1985) can also be considered. Both documents are aimed at establishing a set of measures to control and prevent pollution. Among the proposed tools, the directives provide for preventive and control measures. Preventive measures include issuing permits, licensing new facilities, setting standards, using the best available technologies, and public participation in project discussions. Control measures include state, cross-border, and public control. Among the incentives, we can single out only the encouragement of public associations that take part in the discussion and examination of environmental projects.

The member states of the Union of Independent States (CIS) have developed a model law (2000) "On the Basics of Environmental Entrepreneurship" (Inter-Parliamentary Assembly of the Member States of the Union of the Independent States, 2000), aimed at regulating the activities of performing works and providing environmental services. The analysis of this law allows us to identify a number of negative trends. The first is the proclamation of the principle of redistributing the costs of environmental protection to entrepreneurs, which, together with the presence of a fee for a negative impact on the environment, can be considered as placing a double burden on business. The second is an extremely narrow approach, indicated in the formulation of the concept of environmental entrepreneurship, which is understood as activities related to the production of goods, the performance of works and the provision of services in order to ensure the preservation, protection and restoration

of the natural environment (Inshakova et al., 2018b). Thus, this definition allows us to say that there can be environmental entrepreneurship and other things that do not have the goal of preserving the natural environment. We believe that this is incorrect. Any business, in any field of activity, should be eco-friendly (to a greater or lesser extent), it should always have the goal (along to make a profit) of protecting the natural environment. This can be expressed in the use of economical and energy-saving technologies, the development and implementation of protective equipment and equipment, control of wastewater, and so on. But in any activity-this approach should be considered as a priority.

The presented model law proceeds from the fact that the subjects of environmental entrepreneurship are persons whose production of eco-friendly products is the main activity and the share of these products is at least 75% of the annual volume of production (Article 4 of the model law “On the Basics of Environmental Entrepreneurship”). At the same time, the volume of incentives is spelled out as general directions. Thus, incentives also play an insignificant role in the basis of legal regulation at the CIS level, which, of course, does not form an entrepreneurial interest for activities in this area.

At the heart of any business, activity is a certain interest and due to the specifics of business activity, this interest is associated with making a profit. On the other hand, in order to preserve, restore and protect the natural environment, the task of any activity should be the preservation and enhancement of environmental values. Thus, the target of any business, not only environmental, can now be defined as “making money by solving environmental problems” (Schlange, 2009).

Considering environmental entrepreneurship from the point of view of the interest of the business entity in the protection of the natural environment, we can note the experience of a number of countries related to the construction of an interdependent system. In these countries, the relationship is built between the local community and business in relation to the natural environment of a particular region. This model is usually associated with community entrepreneurship (Gurău & Dana, 2018). The positive aspects of such a system are the presence of an interconnected and mutually conditioned interest on the part of all the subjects of relations. The local community, as well as local businesses, has a direct interest in preserving the habitat in which they live.

The review of the Russian, foreign and international legislation in the field of environmental protection shows a significant preponderance of negative regulators (restrictions, bans, binding, including the establishment of fees for use, regulatory compliance, licensing, etc.) over positive regulators (benefits, subsidies, incentives). Although positive regulators contribute to the development of the entrepreneur’s interest in the introduction of eco-friendly technologies and equipment in order to protect the natural environment.

Of course, the first place should go to encourage business entities to modernize production, reduce the negative impact on the environment, reduce resource consumption, and introduce waste-free technologies, and so on. At the same time, it is necessary to correctly combine incentives and restrictions. The general trend in



the use of these legal means should be as follows: incentives should be used more for private industries, and restrictions should be used more for public ones.

The legal theory relates legal incentives to subjective rights, interests, benefits, and incentives (Malko, 1995). In light of the above, it is necessary to improve the legal regulation of relations related to environmental entrepreneurship. Such improvement should be carried out in the following areas: to ensure the interest of the business entity in participating in activities aimed at protecting the natural environment, by establishing additional subjective rights, benefits, and incentives.

## 26.4 Conclusions

The conducted research allows us to draw a number of conclusions aimed at forming the interest of the business entity in the implementation of environmental activities through establishing legal incentives. Any business (not only environmental business), in any field of activity, should be eco-friendly, it should always have the goal (along with the goal of making a profit) to protect the environment. This approach should be considered a priority.

An analysis of the current Russian foreign and international legislation in the field of environmental protection has shown a significant preponderance of negative regulators (restrictions, prohibitions, bindings) over positive regulators (benefits, subsidies, incentives). These regulators contribute to the development of the entrepreneur's interest in the introduction of eco-friendly technologies and equipment in order to protect the natural environment. The necessity of introducing a number of legal and economic incentives is proved.

It is proved that for a business entity to need to implement the best available technologies for environmental protection, and it must have an interest. Ensuring this interest is in the field of the possibility of the state, which, through the legal regulation of relations, can establish various incentives that contribute to the emergence of interest in the subject of entrepreneurial activity.

A system of incentives is proposed that allows the business entity to form an interest in environmental protection measures from the following elements. Financial and credit mechanisms (provision of concessional loans or interest-free loans, subsidies, provision of subventions); tax [tax benefits or tax exemption (temporary or permanent)]; price (regulation of prices for primary resources, energy carriers); formation of a state electronic information system to promote best environmental practices; introduction of accelerated depreciation of fixed assets with environmental purposes.

The article substantiates the need to use the institution of payment for ecosystem services as a legal incentive.

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