

# PROBLEMS AND TASKS OF THE LEGAL SUPPORT OF DIGITALIZATION OF THE OIL INDUSTRY

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*The author singles out the main areas of digitalization of the oil industry and identifies certain problems of the legislative support based on an analysis of the content of program documents, regulatory acts, special literature. In particular, general theoretical problems include the establishment of the uniform key terms and concepts in the legal regulation field: “digital economy”, “digitalization”, “digital technologies”, “objects of the critical information infrastructure”, “digital rights”, as well as the scientific justification of the creation of a consistent system of the legal regulation of digitalization of the economy in general, as well as of individual branches. It is proposed to reveal the content of the “digital economy” term based on the performed analysis. It is proposed to supplement the powers of the Ministry of Economic Development of Russia with the functions of coordination of the activities of government authorities in the sphere of digitalization in various branches of the economy and coordination of corporate governing bodies in branches of the economy that implement intra-departmental digitalization programs, in particular, in the branches of the fuel and energy complex in relation to objects of the critical information infrastructure. It is also expedient to create a special structure for improving the federal laws in terms of the creation of the single interconnected system for the legal support of the digital economy policy.*

**Keywords:** energy law, energy legislation, legal support of digitalization of the oil industry.

Information technology is actively implemented in the development of systems of control over production and technological processes used in the fuel and energy complex. The issues of digitalization in the oil industry including the implementation and improvement of decision-making systems and business processes using information technology and thus the issues of the legal regulation of relations arising in connection with the digitalization become relevant in

the conditions of the general digitalization of the economy. The need to accelerate the digital transformation of the real sector of the economy is noted in the Address of the President of the Russian Federation to the Federal Assembly of January 15, 2020 [1].

The areas of digitalization of the economy in general and its individual branches are defined in program documents, including in the Decrees of the President of the Russian Federation, government orders. Obviously,

they apply to the oil industry. So, it is noted in the Decree of the President of the Russian Federation No. 642 of January 12, 2016 (hereinafter referred to as Presidential Decree No. 642) that the priority areas of the scientific and technological development of the country in the near future will be the areas that will allow to improve the efficiency and create innovative technologies contributing to the development of the internal market and creating a stable status of the country on the external market.

According to the directives of the government, these vectors of the scientific and technological progress are designed to ensure the transition of the society and all its elements to digitalization, i.e., to advanced digital, intellectual and production technologies, robotization of various systems, new materials, design methods, the creation of large data volume processing systems, machine learning and artificial intelligence as well as “the transition to the environmentally friendly and resource-saving electric power industry” [2], etc.

The global foreign and domestic policy strategy in relation to digitalization is worded in the Strategies for the Development of the Information Society in the Russian Federation for 2017 to 2030, which are clearly focused on the creation of an information society in the country, the national digital economy as well as ensuring state interests of Russia and implementing its strategic priorities in the rapidly changing surrounding geopolitical environment [3]. This document notes that “the digital economy is an economic activity, where the key production factor is digital data, large data volume processing and the use of the analysis results that can significantly increase the efficiency of various types of production, technologies, equipment, storage, sale, delivery of goods and services compared to the traditional economy management forms”. There has recently been

worded a definition in the knowledge system generalizing the said processes: “the digital economy ecosystem”. This is understood as the partnership of various organizations and their technological platforms, Internet services, analytical systems and information systems of the government authorities of the Russian Federation as well as organizations and citizens.

Among the strategic documents ensuring digitalization of the economy, one should also note the Decision of the Council of Heads of Governments of the CIS Member States On the Strategy for Ensuring Information Security of the Members of the Commonwealth of Independent States [4], which, as indicated in the general provisions, is the state position on the essence and content of cooperation of the CIS member states to ensure information security.

The Law On the Security of the Critical Information Infrastructure of the Russian Federation was developed and adopted in order to raise the efficiency of the legal regulation in the sphere of digitalization and the use of information technology in the Russian Federation. In accordance with this legislative document, the following objects refer to the critical information infrastructure: information systems, information and telecommunication networks, automated systems of control over subjects of the critical information infrastructure. These objects, in addition to government authorities and state institutions, should include Russian legal entities and (or) individual entrepreneurs who possess, on an ownership or lease basis, or on other legal grounds, information systems, information and telecommunication networks, automated control systems that operate in various spheres including but not limited to the fuel and energy complex, the mining industry. The subjects also include Russian legal entities and (or) individual entrepreneurs that ensure the interaction

between the mentioned systems or networks. Obviously, the provisions of this law apply to legal entities in the oil industry if such legal entities use information systems, information and telecommunication networks, automated control systems when carrying out economic activities.

General provisions on the development and operation of information systems are contained in Federal Law No. 149-FZ of July 27, 2006 On Information, Information Technology and Information Protection. This document gives a definition of an information system as a set of information contained in databases as well as information technology and technical means processing such information. In accordance with Article 13 of the abovementioned law, the following components related to the general information system can be singled out:

1) federal information systems and regional information systems created respectively on the basis of federal laws, laws of the constituent entities of the Russian Federation, legal acts of government authorities;

2) municipal information systems created on the basis of a decision of a local self-government authority;

3) other information systems.

There exists an important legislative provision in defense against departmental hegemony: in accordance with Articles 10 and 14 of the Federal Law On Information, Information Technology and Information Protection, the cases of and conditions for the mandatory provision of information as well as lists of information types provided on a mandatory basis or the procedure for determining such lists can be established only by federal laws.

In order to create the state information system of the fuel and energy complex (SIS FEC) and the regulatory framework that determines its legal regime, there was adopted the Federal Law On the State Information

System of the Fuel and Energy Complex aimed at increasing the efficiency of the implementation of state functions in the FEC and related branches of the economy based on the use of the SIS FEC. The subject of the legal regulation of the law is social relations that develop in view of the creation, operation and improvement of the SIS FEC.

Article 5 of this Law defines the members of the state information system of the fuel and energy complex obliged to provide information that will be included in the indicated state information system. The following entities and persons are assigned to the members:

1. The operator of the SIS FEC: the Ministry of Energy of Russia. In accordance with the Regulation on the Ministry of Energy of the Russian Federation. The Ministry of Energy of the Russian Federation acts as a federal executive authority responsible for the implementation of the state policy and the legal regulation of all processes taking place in the fuel and energy complex.

As mentioned in the law, the operator may also be an organization engaged by the Ministry in accordance with the laws of the Russian Federation. The Ministry of Energy ensures the development, organization of operation and the improvement of the information system of the fuel and energy complex.

Publications point out some discrepancy between the provisions of the law On the State Information System of the Fuel and Energy Complex and the law On Information, Information Technology and Information Protection [5]. Thus, in accordance with the law On Information, Information Technology and Information Protection, the operator of an information system is a citizen or a legal entity operating the information system, and in accordance with the law On the State Information System of the Fuel and Energy Complex, the operator of the SIS FEC is an

executive authority: the Ministry of Energy of Russia. Indeed, this remark is hard not to agree with. It would be expedient to give a more detailed definition of the “operator of an information system” concept in the general law On Information, Information Technology and Information Protection in view of the identified discrepancy between the provisions. In particular, it would also be expedient to include in the content of this definition given in the general law a provision stating that other persons defined in special laws may act as operators.

2. The members are also organizations obliged to provide information for the inclusion in the state information system of the fuel and energy complex (legal entities and individual entrepreneurs who are investors (concessionaires, private partners), customers (developers) of construction (reconstruction) of facilities for the extraction, production, processing, liquefaction, enrichment, transformation, storage, transfer, distribution, transportation, supply, transshipment, reloading, dispatching, sale of energy resources and their derivatives, procurement of energy resources provided that such facilities meet the characteristics set by the Government of the Russian Federation.

3. The next group of members of the SIS FEC is legal entities and individual entrepreneurs engaged in geological study and exploration of mineral deposits, which are energy resources.

4. The members of the SIS FEC also include legal entities and individual entrepreneurs engaged in the extraction, production, processing, liquefaction, enrichment, transformation, storage, transfer, distribution, transportation, supply, transshipment, reloading, dispatching, sale of energy resources and their derivatives, procurement of energy resources provided that the volume of the extraction, production, processing, liquefaction, enrichment,

transformation, storage, transfer, distribution, transportation, supply, transshipment, reloading, dispatching, sale of energy resources and their derivatives, procurement of energy resources carried out by such legal entities and individual entrepreneurs is equal to or exceeds the values set by the Government of the Russian Federation;

5) Organizers of trade in oil and petroleum products are also among the members of the SIS FEC.

6) One more group of members is legal entities, individual entrepreneurs consuming energy resources and their derivatives and meeting the criteria set in accordance with the applicable laws.

In pursuance of the provisions of this law, subordinate laws establish the necessary requirements for the hardware, software and linguistic means of ensuring the operation of the state information system of the fuel and energy complex and the rules for the mandatory provision of information by the subjects of the state information system of the fuel and energy complex for inclusion in the system. In addition, there has been determined the procedure for access to the information contained in the state information system of the fuel and energy complex. Within the framework of solution of the abovementioned tasks, the rules concerning the interaction of the state information system of the fuel and energy complex with other information systems have also been developed. In accordance with Paragraph 4 Part 2 Article 5 of the Federal Law On the State Information System of the Fuel and Energy Complex. The minimum volumes of the extraction, production, processing, liquefaction, enrichment, transformation, storage, transfer, distribution, transportation, supply, transshipment, reloading, dispatching, sale of energy resources and their derivatives, procurement of energy resources carried out by legal entities and individual entrepreneurs

to be referred to the subjects of the state information system of the fuel and energy complex were approved by Resolution of the Government of the Russian Federation No. 76 of February 2, 2019. In accordance with Paragraph 2 Part 2 Article 5 of the Federal Law On the State Information System of the Fuel and Energy Complex, Resolution of the Government of the Russian Federation No. 154 of February 16, 2019, established characteristics of facilities for the extraction, production, processing, liquefaction, enrichment, transformation, storage, transfer, distribution, transportation, supply, transshipment, reloading, dispatching, sale of energy resources and their derivatives, procurement of energy resources to refer legal entities and individual entrepreneurs who are investors (concessionaires, private partners), customers (developers) of construction (reconstruction) to the subjects of the state information system of the fuel and energy complex.

Resolution of the Government of the Russian Federation No. 127 of February 8, 2018, established the rules for the reference of objects of the critical information infrastructure of the Russian Federation to a certain category, and the list of criteria for highlighting the importance and ratios of objects of the critical information infrastructure of the Russian Federation.

Within the framework of program and strategic documents, the Ministry of Energy of the Russian Federation has taken the appropriate measures aimed at the creation and operation of the FEC information system.

According to the Ministry of Energy of Russia, the summary information on the FEC is obtained by the Ministry of Energy of Russia from information systems of the industries, but the consistency of data is not ensured. There is no single FEC database [6]. The SIS FEC covers various

industry segments (oil, gas, coal, electric power industry, renewable energy, energy efficiency) and the integration segment (the FEC in general) collecting and analyzing data on different subjects (production, investments, economics and tariffs, ecology, labor, emergency situations, etc.).

The Ministry of Energy of Russia issued Order No. 884 of August 22, 2019, establishing parameters related to the forms for the mandatory provision by legal entities of information necessary for the inclusion in the sector related to the oil production, petrochemical industry, transportation of oil and petroleum products through main pipelines, the state information system of the fuel and energy complex as well as requirements for the completion of such forms.

It is assumed that the SIS FEC will further develop starting from 2021 as this state information system is unique in terms of the development and implementation scale; it unites the information on all FEC branches of the Russian Federation, has no analogues among other state information systems. This explains numerous questions raised at the deployment of this system to a great extent. For example, the Rules for Submitting Information to the State Information System of the Fuel and Energy Complex (SIS FEC) set deadlines for correcting inaccurate information found in the system, but there are no information submission deadlines [7].

It should be noted that alongside the increase in various information technology application spheres, there arise new information threats related to terrorist, extremist, criminal and other illegal purposes [8].

Considering the above, it would be advisable to supplement the powers of the Ministry of Economic Development of Russia with the functions of coordination of the activities of government authorities

in the sphere of digitalization in various branches of the economy and coordination of corporate governing bodies in branches of the economy that implement intra-departmental digitalization programs, in particular, in the branches of the fuel and energy complex in relation to objects of critical information infrastructure.

The establishment of the uniform key terms and concepts in the legal regulation field: “digital economy”, “digitalization”, “digital technologies”, “objects of critical information infrastructure”, “digital rights”, as well as the scientific justification of the creation of a consistent system of the legal regulation of digitalization in the economy in general and in individual branches should be referred to general theoretical problems.

The legal literature gives the definition of the digital economy as a complex system of economic relations containing digital data that are the key production factor [9].

A general theoretical problem is the problem of creating a system of the legal support of digitalization of the economy based on the establishment of the uniform key terms and concepts in the legal regulation sphere. Based on an analysis of theoretical and legislative provisions, it is proposed to give the following definition to the “digital economy” term: the “digital economy” is an aggregate of digital ways of submission, storage, transmission, application of information with the help of digital devices used in everyday life and digital technologies.

It seems expedient to take into account the integration processes of the establishment of, in particular, common oil and petroleum product markets for the purposes of the development of the unified legal regulation system, and thus create data sections in the SIS FEC, which would match the sections of the EAEU integrated information system and be developed in accordance with the general parameters of the integrated information

system of foreign and mutual trade defined in the Treaty on the EAEU.

One of the serious questions is the issue of the discrepancy between the data on the oil and gas export to the European countries and the data of these countries on the import of oil and gas from the Russian Federation. The general FEC information system should solve this issue at least in part. References to different methods of maintaining statistics in Russia and by foreign trade partners of the country, the lack of the uniform approach to the classification of goods transported across the customs border as well as the inclusion of data on the same transaction in different periods do not resolve the challenging aspects.

It seems necessary to develop an appropriate legal framework on the procedure for the creation, use and identification of objects of the critical information infrastructure by subjects in each branch of the fuel and energy complex taking into account the peculiarities of the economic activity in the branches of the fuel and energy complex based on the use of specific objects.

It is clear that the FEC information system is not only one of the largest but also one of the most “closed” information systems in Russia due to its strategic importance. And therefore, it is necessary for the law On the State Information System of the Fuel and Energy Complex to define the principles the restrictions in relation to the distribution of this information should be built on rather than the powers of a separate government authority in relation to such restrictions.

That said, this may concern not only the Federal Security Service but also the Government of the Russian Federation, its individual ministries, governors and state corporations.

It is necessary to improve the federal laws for the purposes of the legal support of the digital economy of the Russian Federation including in certain economic areas.

Perhaps, one should consider the issue of incorporating a special competence center for the “digitalization” of the economy including in terms of retraining of personnel both on the management and engineering levels;

creation of the necessary conditions for the incorporation of joint ventures rendering services in the business process informatization sphere by analogy with those that already operate for energy service agreements;

introduction of the principle of the obligatory use of the automated remote collection of information on the volume of consumed utilities, which include: electric power supply, heat supply, water supply.

Organization of the digitalization in the oil industry seems expedient on this basis. The difficulties in organizing digitalization of the oil industry according to the uniform rules and on a uniform basis are obviously due to the diversified structure of economic entities in the industry (business entities with state participation, business entities with the participation of foreign companies, business entities based on private property).

In such conditions, it is advisable to raise the question of the development and adoption of an industry agreement aimed at creating a digital ecosystem based on common organizational principles. ■

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