

# PRINCIPLES OF MODERN STATE LEGAL POLICY IN STIMULATING AND DEVELOPING THE DIGITAL ECONOMY\*

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## INTRODUCTION

The modern economic, political, legal and socio-cultural development of modern social systems takes place in a complex, contradictory context. *On the one hand*, various subsystems of society are affected by a whole series of factors that radically change the principles of functioning of the latter, qualitatively change their target, functional, technological and other principles of action (KELLY, 2017). These factors, of course, include both digital trends in the transformation of social systems and the development trajectories of various algorithmic systems (both weak artificial intelligence systems and more complex autonomous systems of strong artificial intelligence that are currently being developed) (BROCKMAN, 2017).

It is obvious that cardinal changes in the functioning of social system and individual social institutions, as well as the challenges associated with the emergence and development of fundamentally new social relations require a doctrinal and legal and regulatory legal response. This "answer" lies in the mainstream the formation of new legal norms and legal complexes designed not only to adequately regulate innovative forms of social interaction, but also to form the so-called legal development framework for only emerging social relations mediated by digital forms and technologies (OVCHINNIKOV et al., 2020). In this regard, the key is the formation of the principles and priorities of legal policy in the field of stimulating and regulating the digital economy, as well as, on the basis of the latter, the development of the concept and

practice of advanced legal regulation (MAMYCHEV ET AL., 2020). *On the other hand*, the socio-economic, political and legal development of society should always be guided by stable national and cultural dominants and the fundamental value-normative characteristics of society (MAMYCHEV et al., 2017).

The legal system is formed and developed in a certain sociocultural environment, its individual institutions, organizations and special legally significant activities serve this environment. In this regard, the Russian pre-revolutionary lawyer G.K. Gins is right noting that "no one has yet proved that the development of law occurs completely independently of all other manifestations of culture and according to completely different laws" (GINS, 2012). Therefore, legal regulation should always be focused on preserving and reproducing the legal and cultural integrity of society, ensuring adequate regulation corresponding to the value-normative system and new challenges of social development, and also various processes unfolding in socio-economic, political and other interactions.

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The present research is devoted to the consideration of these two aspects in their contradictory interaction, as well as the legal modeling of the key principles of the modern state legal policy, taking into account the indicated aspects, i.e. digitalization of public relations and ensuring legal and cultural integrity and stable social development.

### **REGULATORY AND EMPIRICAL FOUNDATIONS OF RESEARCH**

Within the framework of this research, the existing doctrinal and legal (legal doctrines and strategies) and regulatory legal acts of the current legislation of the Russian Federation are used. In addition, other legal documents, analytical and expert developments, concepts and programs reflecting the directions, prospects and principles of legal regulation of the digital economy development and the digitalization of public relations in general are used. The authors of this research are convinced that, despite all the formality and versatility of digital systems and algorithmic solutions, their implementation and operation generate a "unique effect" of development trajectories. And this is not surprising, since, on the one hand, digital technologies are developed for specific social systems, and on the other hand, machine learning itself is carried out on specific sociocultural material.

### **THEORETICAL AND LEGAL FOUNDATIONS OF THE RESEARCH**

Strategic planning should be recognized as the most important means of countering negative phenomena in the field of social and political development. In accordance with Article 3, clause 1 of the Federal Law of the Russian Federation "On Strategic Planning", strategic planning should be understood as the activities of special subjects of state administration on "goal setting, forecasting, planning and programming the socio-economic development of the Russian Federation, constituent entities of the Russian Federation and municipal entities, economy and spheres of state and municipal administration, ensuring the national security of the Russian Federation, aimed at solving the problems of sustainable socio-economic development of the Russian Federation, constituent and municipal entities of the Russian Federation, and ensuring the national security of the Russian Federation".

Based on this definition, it should be concluded that the program for stimulating the digital economy in the context of modern public administration and socio-economic development should include not only sections on forecasting economic trends, but also explaining the goals, forecast, action plan of the state for the development of digital economy. In our opinion, a program for implementing the priorities of legal policy in the field of stimulating the digital economy should be developed only in this way. The program for implementing the legal policy priorities in the field of stimulating the digital economy is a complex of regulatory and organizational measures aimed at achieving maximum economic efficiency and the development of digital technologies in modern society and the state.

The following segments of public relations appear to be the main problematic factors and areas in drawing up such a program: the lack of forecasting national security risks in the digital world; lack of a clear theoretical, methodological and legal definition of digital forms of social relations; lack of adequate criteria to differentiate digital economy models from adjacent traditional economy models with elements of digital technologies; the presence of unresolved problems related to the development of an adequate system of legal forms and measures to counter the current and emerging threats to the development of cyber corruption (various digital forms of corruption); hypothetical and descriptive coverage of the risks of destructive effects projected in the digital space as a result of the widespread and intensive use of end-to-end technologies in modern conditions of scientific and technological progress; regulatory lag in the development of the regulatory legal framework in the context of preventing current and emerging digital economic relations; excessive legal regulation of economic relations.

The problem of the legal stimulation concept for the digital economy in Russia is determined by the need to search and doctrinally agree the key principles for legal regulation of economic relations in the modern globalizing world. In this sense, in order to successfully determine the conceptual foundations of the policy of legal incentives for digital models of economic development in the Russian Federation, it is necessary, first of all, to understand the digital economy concept, its nature and development patterns. It should be noted, however, that the

definition given in the Strategy for the Development of the Information Society in the Russian Federation for 2017-2030 does not fully reflect the geo-economic context of this phenomenon.

In this regard, the first thing that needs to be paid attention to that the "digital economy" concept is not an independent and self-sufficient economic and socio-political phenomenon. If we consider the digital economy structure, we can conditionally distinguish two blocks in it. The first block is the civil law turnover of software as a commodity, as well as information services not related to the material part of the national economy. This part of the digital economic superstructure largely forms extraterritorial sales markets, allows one not to be tied to a developer, to the territories of specific states, their tax systems, which involves the latter in globalization processes, forming interstate competition for the developer and investment.

The second part of the digital economy is represented by a wide range of digital services aimed at reducing the costs of the traditional national economic infrastructure (BUCHT & HICKS, 2018). In this digital segment, the dependence of a software developer and information services on national sales markets and territorial binding levels out global competition.

It should be borne in mind that the digital economy as a superstructure over the national economic system has a critical impact on the dynamics of economic efficiency, while simultaneously forming a complex system of connections between market actors, the state and society, changing the principles of management, control and regulation (ABDRAKHMANOVA et al., 2019). However, the impact of the new economy format on social, political, cultural, spiritual and moral structures and institutions of society, and their interdependence form the limits of the effectiveness of digital tools to reduce economic costs at the national level. Thus, both the digital economy itself and its legal regulation are limited by the corresponding level of development of society and the state. This moment undoubtedly determines the need for a comprehensive legal impact on all spheres of society, building a special system of legal principles for regulating economic and related social processes (BELYAEV & NINTSIEVA, 2020).

## OVERVIEW OF THEORETICAL APPROACHES AND THEORETICAL-LEGAL POSITIONS

The issue of the legal regulation principles itself is not new, but as to the context of the formation of a new phenomenon, i.e. the digital economy, in the scientific literature, there are even attempts to adapt the system of existing guiding ideas in a somewhat transformed form (BELIKOV, 2020). However, there is also a slightly different scientific position on this matter asserting that the existing classical system of legal regulation principles for economic relations is no longer sufficient, and there is a need to formulate additional principles that meet the specifics of the emerging matrix of digital economic relations (ANDREEVA et al., 2018).

This position determines that, in addition to the principles outlined in the Strategy for the Development of the Information Society in the Russian Federation for 2017-2030, such as: ensuring the rights of citizens to access information; ensuring freedom of choice of means of obtaining knowledge when working with information; preservation of traditional and customary for citizens (other than digital) forms of receiving goods and services; priority of traditional Russian spiritual and moral values and observance of norms of behaviour based on these values when using information and communication technologies; ensuring the legality and reasonable sufficiency in the collection, accumulation and dissemination of information about citizens and organizations; ensuring state protection of the interests of Russian citizens in the information sphere, it is necessary to formulate guiding ideas that provide a paradigmatic shift in the entire legal policy of Russia, given the fact that the legal principles themselves both reflect and reproduce the worldview foundations of society (POLYAKOV, 2020).

At the same time, in numerous scientific studies devoted to the digital economy legal regulation problems of the, there are only indications of the need to formulate general principles of legal regulation, without specifying them, even if we are talking about the essence of the ideas of legal regulation of the digital economy (VAYPAN & EGOROVA, 2019). Meanwhile, the legal doctrine and the legislator are actively formulating systems of special legal principles in certain areas of the digital economy (<http://www.consultant.ru>).

There is also no single agreed approach to the few general principles of building legal policy aimed at stimulating and regulating digital economic relations. Thus, the idea of proactive legal regulation is considered by researchers along with post-regulation (BELIKOVA, 2018); principle of co-regulation and self-regulation (The concept of "self-regulation" is established in the Federal Law "On Self-Regulatory Organizations" N 315-FZ dated 01.12.2007) is opposed to the principle of systemic centralized control.

Similar developments of general principles were undertaken by foreign scientists, in particular, the general regulatory ideas include: limitation of legislative initiatives to the real needs of the market; the principle of freedom of the digital economy (strategy of open economic systems); objectification and assessment of the legal policy effectiveness on regulation of the digital economy; regulatory impact at the place of request (regulatory jurisdiction issues); network neutrality; orientation of the law to business needs and economic reality in the most efficient way; convergence of elements of the digital economy; the principle of mutual recognition, aimed at supporting the processes of globalization of digital markets; the principle of equal opportunities for manufacturers of innovative products that change markets and classic solutions that own the market (SAVIN, 2019).

### FUNDAMENTAL PRINCIPLES AND PRIORITIES OF LEGAL POLICY

Summarizing individual doctrinal developments and legislative conceptual provisions defining new principles of legal regulation of certain areas in the digital economy, it seems necessary to systematize them and formulate general principles of legal policy to stimulate the digital economy of Russia. These principles of legal incentives may include:

**The principle of legal support for innovative technologies**, which establishes that in the process of implementing legal policy, legislators and law-enforcers support not only the development, but also the entry into the market of technological innovations in the entire range of legal regulation as the main source of development of the digital economy. Thus, the development of crowd funding platforms on the Internet network, which form the investment consolidation of society, found its support in the Federal Law N 259-FZ dated 02.08.2019 (as amended on 20.07.2020) "On attracting investments using investment platforms and on making amendments to certain legislative acts of the Russian Federation", and support for breakthrough technologies that enter into competition with established markets and change them, within the framework decision of the Federal Law N 258-FZ dated July 31, 2020 "On experimental legal regimes in the field of digital innovation in the Russian Federation. "

4.2. The principle of conceptual perception of qualitatively new models of interaction between market participants in the formation of the architecture of the legal policy priorities determines the objective need for legal doctrine and law-making in the ideological context. The creation of a favourable regulatory environment in the field of high technologies is possible only if there are taken into account the specifics of social relations that such innovations generate, and the readiness of the scientific community and the regulatory authority to develop and introduce qualitatively new approaches to regulation. For example, the hybrid nature of information services led to a decrease in the effectiveness of traditional criteria for violating competition in the economy, which required the revision of the corresponding legal decisions of antimonopoly legislation (Digital Economy and Antimonopoly Regulation: Expert Assessment of FAS Russia Initiatives, 2019).

**The principle of comprehensive legal regulation** of digital economic relations presupposes the conduct of legal policy on a wide range of public relations not only of an economic nature, but also of public relations closely related to them (KAPUSTINA, 2016). Also, comprehensive legal regulation includes the development of the smart regulation institution (a comprehensive assessment of the regulatory impact on economic processes, the introduction of a rating system with assessments made by consumers, small and medium-sized businesses; legal norms effectiveness analysis, and the like feedback modes).

**The principle of limited legal decentralization** includes the priority of dispositive and recommendatory legal regulation (PLOTNIKOV, 2018), co-regulation and self-regulation, while maintaining centralized state regulation in economic areas requiring increased legal guarantees of state security (SOLOVYOVA, 2014).

**The principle of ensuring equal access of economic entities** to the digital ecosystem, including small and medium-sized businesses and consumers through government support measures, regulatory requirements for digital platforms that provide points of entry for economic entities into the digital ecosystem, and the formation of legal grounds for the development and implementation of public digital platforms (MIKHEEVA, 2019).

**The principle of alternativeness to digital innovations** presupposes the preservation of the right to choose by a consumer and market participants the form of communication, including the traditional one. This principle ensures in the legal policy the preservation of legal grounds for the voluntary refusal of market participants from the use of digital and other high technologies,

**The principle of information transparency** of the digital economy includes ensuring the legal regime for identifying counterparties of economic relations and setting standards for their identification. Preserving the institution of anonymity in the digital environment, only outside of economic relations, allows the preservation and observance of human rights, while guaranteeing national security.

**The principle of legal standardization** means the formation of a regulatory framework that defines digital ethics standards, labour standards, etc. ethical and legal standards. This principle should be implemented both at the level of development and implementation of digital technologies and robotic technology, and at the level of operation of algorithmic and innovative technological solutions, and be expressed in a whole system of social regulatory standards and requirements: doctrinal and legal principles, regulatory and deontological standards, ethical requirements, etc.

**The principle of establishing the presumption of good faith** by users and developers of digital content. Considering the technical features of ICT, the will of a developer or a user can be distorted by network or equipment malfunctions (erroneous operations, cancellations, etc.).

**The principle of doctrinal legitimation** of legal policy. Any legislative innovations must undergo an assessment of the expert and business community to assess the ratio of the effectiveness of legal and other regulatory decisions, their limits, and the agreed terms of their introduction (the enactment of the Decree of the Government of the Russian Federation dated November 18, 2020 No. 1867). The principle implies the development of regulatory requirements for legislators on the obligation to consider regulatory impact assessments by the business environment.

**The principle of freedom of choice in the consumption of goods and services** presupposes the creation of regulatory requirements for developers of digital platforms, manufacturers of digital technology to allow a consumer to independently choose additional ones, and for developers to freely distribute all software solutions that meet security requirements on digital content platforms.

**The principle of preventive legal regulation** of economic relations using high technologies and considering risks. In the context of digitalization, the attention of legal scholars to the development of principles and methods of advanced law-making, which is based on methods of legal modelling of social processes and legal forecasting, has significantly increased in recent years. Strategic and tactical planning of law-making activities in unity with large technological projects is required for the development of digital forms of legal regulation of economic relations. An example is the Federal Law N 123-FZ dated 24.04.2020 "On conducting an experiment to establish special regulation in order to create the necessary conditions for the development and implementation of artificial intelligence technologies in a constituent entity of the Russian Federation, i.e. a city of federal significance Moscow and amending Articles 6 and 10 Federal Law "On Personal Data" (FEDERAL LAW N 123-FZ dated 24.04.2020). This regulation is aimed at the experimental implementation of AI technologies in public administration (ARZUMANYAN, 2020).

**The principle of ensuring infrastructural and technological sovereignty** includes the systematic elaboration of regulations intended for the stepwise provision of the development of domestic analogues for technically complex goods and software. The national security of Russia is currently in a tight connection with the technological sovereignty of the state, with its

ability to be not only a recipient, but also a donor of modern technologies, since its economic sovereignty is under the threat of destruction under the conditions of a new sixth technological order that dictates new rules for the formation of a national and supranational economic system.

**The principle of coordinating legal influence** on the directions and process of evolution of economic and other closely related social relations, especially in the context of growing number of offenses in the digital environment. This principle is especially important in the context of a significant increase in cybercrimes, or "any illegal action in the electronic sphere that is committed with the use of computer technology or against them" (SHESTAKOVA & ZHIRKOVA, 2019). Modern criminals use high-tech solutions for shady profits, allowing them to remain unpunished for a long time due to the difficulty of detecting the so-called "bugs" in software. Therefore, information technologies generate the emergence of new corruption-generating schemes. The further development of the digital economy cannot take place without considering the fact that those who control digital technologies find themselves in a situation conducive to corruption, since they have unique knowledge, competencies and skills that make it possible to bypass software codes and remain out of responsibility. Such persons require special control and supervision by law enforcement agencies (FEDORENKO, 2020).

**The principle of international consistency** means the development of legal policy models for the formation of uniform rules for the extraterritorial digital economy. This principle is extremely important in the context of the spread of management models based on network principles. The network space presupposes uniform international standards of interaction between states in the digital environment. In addition to the above-mentioned principles of legal policy of the state, fundamental priorities are also important, that is, the main guidelines in accordance with which the development of the main branches of law is planned. In this regard, the main priorities of legal policy in the field of the digital economy include:

- 1) Ensuring the rule of human rights and guarantees of digital security of an individual;
- 2) Orientation towards the value of justice in relations between public authorities and a citizen;
- 3) Ensuring national security in the processes of digital control over the activities of public authorities while ensuring their transparency and openness;
- 4) Proportionality when using digital measures of control over the activities of entrepreneurs while ensuring the right to a free market economy;
- 6) Interaction of public authorities and civil society structures in the processes of digitalization of the economy;
- 7) Ensuring the traditional spiritual and moral values of the peoples of the Russian Federation.

## CONCLUSIONS

The doctrine of legal digital economy stimulation requires the development and agreement of the fundamental principles concerning legal regulation of economic relations in the modern digital world. The modern digital economy is a rather complex and multi-level phenomenon, which has both global, regional and national trajectories for the development of software, information services, digital services, etc., and forms fundamentally new national and extraterritorial markets. Currently, two antinomial trends are unfolding: on the one hand, digitalization is leading to a new branch of the digital globalization of the economic system, and on the other, the dependence of the software and information service developer on national sales markets, territorial binding of servers, software products, etc. neutralizes global competition in the digital segment.

The challenges and threats of digitalization for sustainable socio-economic, political and legal development of state systems require the development of new principles for legal regulation of certain areas of the digital economy, their systematization and more meaningful legal modelling. The following principles are proposed and substantiated as the key principles of

legal stimulation and development of the digital economy by the example of the Russian Federation: legal support of innovative technologies; conceptual perception of qualitatively new models of interaction between market participants in the formation of the architecture of legal policy priorities; comprehensive legal regulation of digital economic relations; limited legal decentralization ensuring equal access of subjects to digital services; alternativeness of digital innovations; information transparency of the digital economy, legal standardization and ethical coding; freedom of choice in the consumption of goods and services; preventive legal regulation; ensuring infrastructural and technological sovereignty, etc.

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## Principles of modern state legal policy in stimulating and developing the digital economy

Princípios da política legal do estado moderno para estimular e desenvolver a economia digital

Principios de la política jurídica estatal moderna para estimular y desarrollar la economía digital

### Resumo

Em termos de conteúdo, a economia digital é um fenômeno bastante complexo e multinível, que tem trajetórias globais, regionais e nacionais para o desenvolvimento de software, serviços de informação, serviços digitais, etc., e também forma fundamentalmente novos nacional e extraterritorial mercados. Além disso, os autores apontam diferentes trajetórias para o desenvolvimento da economia digital (nacional, regional, global) e discutem suas especificidades. O trabalho científico examina os princípios e tarefas na formação de um sistema de prioridades e princípios de política jurídica na economia digital de um estado moderno. São analisadas as abordagens já desenvolvidas para a formulação dos princípios da regulação jurídica da economia digital em vários projetos de investigação, atos normativos existentes, documentos doutrinários e outros. Em conclusão, é realizada a sistematização dos desenvolvimentos conceituais e formulados a partir deles os princípios fundamentais da política jurídica do Estado moderno no campo da transformação digital da sociedade e estímulo ao desenvolvimento da economia digital.

**Palavras-chave:** Princípios jurídicos. Co-regulação. Limites da regulação legal. Interesses públicos e privados. Solidariedade jurídica.

### Abstract

In terms of content, the digital economy is a rather complex and multi-level phenomenon, which has both global, regional and national trajectories for the development of software, information services, digital services, etc., and forms fundamentally new national and extraterritorial markets. In addition, the authors point to different trajectories for the development of the digital economy (national, regional, global) and discuss their specifics. The scientific work examines the principles and tasks on forming a system of legal policy priorities and principles in the digital economy of a modern state. The already developed approaches to the formulation of the legal regulation principles for the digital economy in various research projects, existing regulatory legal acts, doctrinal and other legal documents are analyzed. In conclusion, the systematization of conceptual developments is carried out and the key principles of the modern state legal policy in the field of digital transformation of society and stimulation of the digital economy development are formulated on their basis.

**Keywords:** Legal principles. Co-regulation. Legal regulation limits. Public and private interests. Legal solidarity.

### Resumen

En términos de contenido, la economía digital es un fenómeno bastante complejo y multinivel, que tiene trayectorias tanto globales, regionales y nacionales para el desarrollo de software, servicios de información, servicios digitales, etc., y también formas fundamentalmente nuevas nacionales y extraterritoriales. Mercados. Además, los autores señalan diferentes trayectorias para el desarrollo de la economía digital (nacional, regional, global) y discuten sus particularidades. El trabajo científico examina los principios y tareas sobre la formación de un sistema de prioridades y principios de políticas legales en la economía digital de un estado moderno. Se analizan los enfoques ya desarrollados para la formulación de los principios de regulación legal para la economía digital en diversos proyectos de investigación, actos jurídicos regulatorios existentes, documentos doctrinales y otros documentos legales. En conclusión, se lleva a cabo la sistematización de desarrollos conceptuales y se formulan a partir de ellos los principios clave de la política jurídica del Estado moderno en el campo de la transformación digital de la sociedad y el estímulo al desarrollo de la economía digital.

**Palabras-clave:** Principios legales. Co-regulación. Límites de regulación legal. Intereses públicos y privados. Solidaridad jurídica.