

**EDUCATIONAL AND LEGAL STATUS OF THE ACTORS OF THE
EXPERIMENTAL LEGAL REGIMES (REGULATORY SANDBOXES) IN RUSSIA**

***STATUS EDUCACIONAL E JURÍDICO DOS ATORES DOS REGIMES JURÍDICOS
EXPERIMENTAIS (SANDBOXES REGULATÓRIOS) NA RÚSSIA***

***CONDICIÓN EDUCATIVA Y JURÍDICA DE LOS ACTORES DE LOS REGÍMENES
JURÍDICOS EXPERIMENTALES (SANDBOXES REGULADORAS) EN RUSIA***

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ABSTRACT: The purpose of this work is to study the educational and legal status of actors of Russian experimental legal regimes (regulatory sandboxes). This research analyzes categories of actors of experimental legal regimes (regulatory sandboxes), as provisioned by current Russian legislation. It distinguishes two main groups of actors according to their role in experimental legal regimes. The research methodology is based on formal logic, educational, systemic, and structural analysis and interpretation of legal regulations. The study's results provide an educational description of subjects involved in establishing a regulatory sandbox, as provisioned by the national legislation, and make a distinction between participating and regulating actors.

KEYWORDS: Experimental legal regime. Regulatory sandbox. Educational status. Digital economy. Educational description.

RESUMO: O objetivo deste trabalho é estudar o status educacional e jurídico dos atores dos regimes jurídicos experimentais russos (sandboxes regulatórios). Esta pesquisa analisa categorias de atores de regimes jurídicos experimentais (sandboxes regulatórios), conforme previsto pela legislação russa vigente. Ele distingue dois grupos principais de atores de acordo com seu papel em regimes jurídicos experimentais. A metodologia da pesquisa baseia-se na lógica formal, educacional, sistêmica e estrutural de análise e interpretação de normas legais. Os resultados do estudo fornecem uma descrição educacional dos sujeitos envolvidos no estabelecimento de sandboxes regulatórios, conforme previsto na legislação nacional, e fazem uma distinção entre atores participantes e reguladores.

PALAVRAS-CHAVE: Regime jurídico experimental. Sandboxes regulatórios. Status educacional. Economia digital. Descrição educacional.

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RESUMEN: *El propósito de este trabajo es estudiar el estatus educativo y legal de los actores de los regímenes legales experimentales rusos (sandboxes reguladoras). Esta investigación analiza categorías de actores de regímenes legales experimentales (sandboxes reguladoras), según lo dispuesto por la legislación rusa actual. Distingue dos grupos principales de actores según su rol en los regímenes legales experimentales (sandboxes reguladoras). La metodología de investigación se basa en la lógica formal, educativa, sistémica y estructural del análisis e interpretación de las normas jurídicas. Los resultados del estudio brindan una descripción educativa de los sujetos involucrados en el establecimiento de sandboxes reguladoras, según lo dispuesto por la legislación nacional, y distinguen entre actores participantes y reguladores.*

PALABRAS CLAVE: *Régimen jurídico experimental. Sandboxes reguladoras. Estatus educativo. Economía digital. Descripción educativa.*

Introduction

Federal Law No. 258-FZ of 31 July 2020, “On experimental legal regimes in the field of digital innovations in the Russian Federation” was adopted in Russia in 2020 and came into effect on 28 January 2021. It was aimed to introduce regulatory sandboxes – special regimes that allow organizations to test efficiency of innovative technologies while providing their goods and services without risks of violating the law (MAKAROV; DAVYDOVA, 2021). The first regulatory sandboxes were created after the 2007-2008 global financial crisis as means of testing and introducing new financial technologies (OMAROVA, 2020). In a large number of countries, sandboxes still operate mainly in the field of fintech (RINGE; RUOF, 2020; TRUBY, 2020). However, the scope of experimental regulation of innovations is gradually expanding (WECHSLER *et al.*, 2018). In particular, the Russian law mentioned in this article sets a common procedure for the creation and functioning of an experimental legal regime, establishing that the latter can be used in pharmaceutical industry, transport, agriculture, architecture, construction, industrial production, state and municipal services, etc. (DMITRIK, 2020).

This legal act provides a wide list of various actors engaged in establishing a regulatory sandbox, thus making it necessary to define principles of their differentiation. Firstly, the problem is complicated by the ambiguity of the terms "subject" and "participant" in the Russian legal language, the proximity, but not the identity of the semantic meanings they can be used. Secondly, the same actor can be a bearer of different statuses changing them along with the development of legal relationship (for example, an initiator or applicant may become a subject of an experimental regime). Thirdly, the regulatory framework of regulatory sandboxes has not yet been fully formed, therefore, there are contradictions and inconsistencies in the names used

in various regulatory legal acts. As a result, the list of actors of the experimental legal regime proposed by the legislator looks rather confusing and requires systematization (ZETZSCHE *et al.*, 2017).

Methodology

The research methodology is based on formal logic, systemic and structural analysis and interpretation of legal regulations. Most attention is given to the legal experiment method, implemented through regulatory sandboxes in several states, including Russia.

Results

The notion of experimental legal regime (ELR) subject has two common definitions. In a narrow sense, the ELR subject is specified by the law and is understood as one of the statuses given to entities engaged in implementing a regulatory sandbox. A broader definition covers all subjects of legal relations that involve initiating, establishing and maintaining an ELR. From the terminological standpoint, the law classifies several types of actors: regulating bodies, authorized bodies, initiators, business community organizations, coordinating authorities, ELR subjects, ELR participants and contenders. Some of them perform a regulatory function: (regulating bodies, authorized bodies, business communities, coordinating authorities), while the others either use an ELR or apply for participation because they are interested in testing and implementing digital innovations. The latter include initiators, contenders, ELR subjects and participants.

Generally, these two groups can be categorized as participating subjects and regulating subjects. However, as the legislation has already provided narrower definitions for terms “subject” and “participant”, it seems reasonable to avoid unnecessary repetitions and introduce the notions of participating and regulating actors.

The former group focuses on the ELR subject (in its narrowest meaning, provisioned by the law). The initiator and the contender are understood as entities or individuals that have not yet obtained the subject status but are intended to do so either by offering to create a new regulatory sandbox (initiators) or demonstrating their willingness to join an existing one (contenders). The ELR participant is a broader notion that includes subjects themselves, as well as any other individuals or entities engaged in legal relations with them (contractors, users and patients of ELR subjects).

The legal status of ELR initiator is one of the two ways to obtain the status of ELR subject. The **initiator** makes an offer on establishing an ELR. According to the law, this offer can be initiated by state and local authorities, legal entities and individual entrepreneurs. It is worth noting that during the consideration of the draft law, industry-specific and functional bodies of state executive authorities and local government authorities were excluded from the list of potential ELR initiators. State and local authorities can only initiate development, testing and implementation of digital innovations that are related to providing state and municipal services or maintaining state or local control (supervision).

Thus, the main types of prospective initiators are legal identities and individual entrepreneurs. For each of them, the law imposes limitations equally applicable to other actors belonging to this group.

The initiator must not be undergoing the process of restructuring, liquidation or termination of activities, engaged in any proceedings concerning their bankruptcy or have any delinquent taxes and other obligatory payments to Russian budget systems (with the exception of cases specified by the law) for the previous calendar year, the amount of which exceeds 25 per cent of initiator's balance value of assets, according to accounting data for the latest reporting period. Individual entrepreneurs, sole executives, members of the collective executive body or the board of directors (supervisory board) of a legal entity must have no prior criminal convictions. ELR initiation is restricted for foreign legal entities, as well as for Russian legal entities with at least 50 percent of their equity holdings owned by foreign legal entities, registered in offshore territories or states. The initiator must also meet its own requirements for ELR subjects that are set in the ELR program.

For getting the status of ELR subject, the initiator must submit a proposal to an authorized agency, enclosing the ELR draft program and the list of documents provisioned by the Ministry of Economic Development Order No 755 of 18 November 2020. Said order also specifies requirements for form and content of ELR proposals and programs.

Upon the ELR establishment, the initiator included in the program becomes the ELR subject the moment the ELR approval by the Russian Federation Government or the Bank of Russia (depending on digital innovation scope of application) comes into effect, unless provisioned otherwise by the program.

Unlike *initiating*, actors opting for *joining* an ELR are categorized as **contenders** – state and local authorities (for ELRs providing government and municipal services and maintaining local and state control or supervision), legal entities and individual entrepreneurs that have the intention to become an ELR subject. ELR contenders must submit an application for joining

the program to the respective body of authority (while initiators must provide a draft program and other documents specified by the law). The contender is considered to have joined the ELR the moment respective amendments to the Government or the Bank of Russia program approval come into effect, unless provisioned otherwise by the program.

As a result of the procedures mentioned above, the initiator or the contender can get the status of **ELR subject**, understood as the individual or entity performing their activities according to the ELR program. The law focuses mainly on procedural aspects of obtaining, suspending and terminating the ELR subject status and gives little information on its content, apparently expecting ELR programs to provide the necessary details. In fact, the federal law (Art.13) stipulates only three requirements for ELR subjects (maintaining the register of contractors, informing them on ELR functioning and its specifics and reviewing complaints concerning ELR establishment). No rights of the subject are mentioned at all, with the exception of the right to dispute regulators' activities, granted to all parties which interests were affected by ELR establishment and implementation.

The broader category introduced by the federal law analyzed in this study is the **ELR participant**. This notion also covers individuals and entities that established legal relations with ELR subjects as part of ELR operations.

It must be noted that laws on regulatory sandboxes, albeit still in formation, already demonstrate legal collisions and terminological discrepancies. For instance, Federal Law No. 123-FZ of 24 April 2020, "On the experiment to establish special regulation in order to create the necessary conditions for the development and implementation of artificial intelligence technologies in the region of the Russian Federation – Federal City of Moscow and amending Articles 6 and 10 of the Federal Law "On personal data", sets specific rules for ELR projects on development and implementation of AI technologies in Moscow, *de facto* establishing parallel regulation of the same field by two laws of equal legal power. While acknowledging technical and legal disadvantages of these situations and difficulties of resolving collisions between these laws (one of them is specific for a certain territory, while the other was adopted afterwards, thus allowing simultaneous application of different collision rules in case of provisional contradictions), this study will focus on terminological aspects only.

While Federal Law No. 258-FZ of 31 July 2020, defines *ELR participants* as both *ELR subjects* and *other individuals and legal entities* not being ELR subjects themselves but engaged in legal relations with said subjects, Federal Law No. 123-FZ of 24 April 2020 does not apply the notion of ELR subject whatsoever but provides a narrower definition of ELR participants. It is possible to debate the reasonability of adopting a separate federal law for a particular

territory and even provide a rational explanation (MAKAROV, 2020). However, this terminological collision demonstrates nothing but negligence and lack of systemic approach by the legislators. Terminology of digital innovations is clearly still under development, because as of now, Russian language has no commonly accepted official denominations for many notions used in this industry (DAVYDOVA, 2020). Yet in this case, none of the notions can be considered unfamiliar to Russian legislation. Thus, we may assume the legislators responsible for preparing these two laws simply ignored similar legal acts that had been in development.

The second group of subjects – regulating actors – includes regulating and authorized bodies, business community organizations and coordinating authorities that ensure ELR implementation.

1) *The regulating body* is the federal executive body of authority developing state policies and legal regulations concerning ELR initiation, establishment and implementation. According to the law, these obligations are to be fulfilled by ministries, depending on the field of applied digital innovations (medicine, agriculture, architecture and construction, industrial production, transportation, etc.). Financial market is the only exception, with regulating functions performed by the Bank of Russia.

2) *The authorized body* is the federal executive body of authority, authorized by the Russian Federation Government to maintain legal regulation and fulfill duties provisioned by Federal Law “On experimental legal regimes in the field of digital innovations in the Russian Federation”. As of now, Clause 1 of the Russian Federation Government Resolution No 437 of 5 June 2008, “On the Russian Federation Ministry of Economic Development” grants this institution the exclusive authority to perform this function, with the exception of financial market innovations.

3) *The business community organization* is the non-profit organization authorized by the Russian Federation Government (or by the Bank of Russia in case of financial market innovations) that represents business interests concerning ELR issues. Currently, the organization in charge of these duties has been specified by the Russian Federation Government Resolution No. 2790-r of 28 October 2020, “On authorizing Digital Economy autonomous non-profit organization to represent business community on the issues of experimental legal regimes in the field of digital innovations”.

4) *The coordinating authority* is the body authorized by the Russian Federation Government to settle disputes between state bodies and organizations concerning initiative proposals and other issues regulated by Federal Law “On experimental legal regimes in the

field of digital innovations in the Russian Federation”. No specific body of authority has been currently authorized to perform these duties by the law.

5) *The Bank of Russia* holds a special position among ELR-regulating subjects. While other regulatory participants were distinguished by functional criterion (with their responsibilities distributed according to functions related to all sandbox types), the Bank of Russia’s duties are application-specific: it holds exclusive rights to implement ELRs for digital innovations of the financial market. For instance, the Bank of Russia specifies the regulating and authorized bodies, as well as the business community representative on ELR issues. Details on rights and responsibilities of the Bank of Russia are specified by the Russian Federation Government Decree No. 2115 of 15 December 2020, “On approving the Resolution on specifics of applying Federal Law “On experimental legal regimes in the field of digital innovations in the Russian Federation” to legal relations arising from establishing and implementing digital innovation ELRs for the financial market”.

Besides, the Bank of Russia has already adopted several guidelines for maintaining and regulating digital innovations, e.g. Bank of Russia Ordinance No. 5634-U of 25 November 2020, “On the list of technologies used to implement, develop and utilize digital innovations in the financial market under the experimental legal regimes in the field of digital innovations”, Ordinance No. 5632-U of 25 November 2020, “On the procedure for the Bank of Russia to maintain the register of experimental legal regimes in the field of digital innovations in the financial market, and on providing access to it” and Ordinance No. 5633-U of 25 November 2020, “On the procedure for a subject of the experimental legal regime to maintain the register of parties which entered into legal relations with this subject under the experimental legal regime in the field of digital innovations in the financial market, and on ensuring a third-party access to it”.

The special status of the Bank of Russia is determined not only by specifics of financial market innovations - theorists (WECHSLER *et al.*, 2018; ZETSCHKE *et al.*, 2017) believe worldwide application of regulatory sandboxes stems from 2007-2008 financial crisis that demonstrated the necessity to balance incentives for growth and innovation, on the one hand, and customer protection and financial stability, on the other - but also by practical experience of experimental digital innovations. The regulatory platform of the Bank of Russia has been functioning since April 2018 and has already shaped certain interrelations between its subjects that are currently used as the guidance for establishing ELRs in other spheres. It is the special mechanism for regulating body-participant interactions that is vital for ELR efficiency

(EFREMOV *et al.*, 2020) and will determine adjustments of their legal statuses, as new laws are being put to practice.

Conclusions

Regulatory sandbox is an effective tool for testing and introducing innovative technologies in the modern world. Implementation of this tool in Russian legislation means not only replacing the term “regulatory sandbox” with an “experimental legal regime”, but also adjusting the original sandbox design, considering the peculiarities of the Russian legal regulation mechanism. In particular, the legislator lists in detail all possible participants of legal relations on the creation, functioning and termination of a sandbox, establishing a specific legal status for each of them.

Two groups of actors of experimental legal regimes (regulatory sandboxes) can be distinguished in the Russian Federation: participating actors and regulating actors. The former group includes initiators, contenders, subjects and participants. The latter comprises regulating and authorized bodies, the business community organization, coordinating authorities, the Bank of Russia.

Analysis of the currently forming regulatory framework of the activities of experimental legal regimes allows us to draw a conclusion about excessive bureaucratization and excessive regulation of some issues. This is confirmed by a large number of by-laws adopted for the development of the federal law on experimental legal regimes, a significant number of actors whose legal statuses are subject to regulation in these acts, terminological inconsistencies in the names of the same subjects in different acts.

The practice of functioning of regulatory sandboxes in Russia has not yet been developed. The existing regulation does not allow predicting whether this practice is successful so far. It seems that formation of the effective mechanisms of interaction between various actors, primarily between a participant of the experimental legal regime and regulatory body, will play a key role in the future. Ideally, a detailed regulation of their statuses should facilitate the establishment of appropriate mechanisms.

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