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# KAZAN UNIVERSITY LAW REVIEW

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**Dear readers,**

I would like to present for your attention the third regular issue of the journal “Kazan University Law Review” in 2021.

The issue you are holding now has articles on vital questions of theory and practice of Russian and foreign law.

The issue starts with the article by Valeriy Lapshin, Doctor of Legal Sciences, Professor of the Department of Criminal Law and Criminal Procedure of the Ugra State University, “A person subject to criminal liability for violation of transport security using artificial intelligence technologies”. The article analyzes the opinions of a number of researchers, on the basis of which conclusions are drawn about the person liable for a transport crime committed using a highly automated vehicle. The author's definition is given, features are highlighted.

The issue continues with an article by Doctor of Civil and Family Law of the Bulgarian Academy of Sciences, Judge-Registrar of the Varna Regional Court, Baltov Rosen Petkov, “Transferring dematerialized shares in Germany, Austria and in the United States of America”. The article provides a brief overview of the historical development of dematerialized shares in Germany, Austria and the United States of America (USA), a brief comparison is made between dematerialized shares in the United Kingdom and in Germany and Austria. The author named the features that led to the development of depository services. We pay special attention to the comparative analysis of intermediaries and investors in German and Austrian law, on the one hand, and in English law, on the other. The study provides an answer to the question of the reasons why securities certificates in Germany and Austria were withdrawn from the transfer process by withdrawing them from circulation (immobilization), and not by canceling them (dematerialization).

I am sincerely glad to present to you the study of the Candidate of Legal Sciences, Associate Professor of the Sevastopol State University, Vyacheslav Gusyakov, “State control (supervision) in the implementation of entrepreneurial activities in the oil sector of energy”. The article reflects the results of the analysis

of the current legislation regulating the general procedure for the implementation of state control (supervision), as well as review documents. I will emphasize the value of the identified areas of development and improvement of the problematic aspects of this area.

*With best regards,  
Editor-in-Chief  
Damir Valeev*

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## ARTICLES

**VALERY LAPSHIN**

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of the Department of Criminal Law  
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State University

### **A PERSON SUBJECT TO CRIMINAL LIABILITY FOR VIOLATION OF TRANSPORT SECURITY USING ARTIFICIAL INTELLIGENCE TECHNOLOGIES<sup>1</sup>**

DOI 10.30729/2541-8823-2021-6-3-166-183.

**Abstract.** *Modern technologies used in the creation of various types of vehicles significantly change the idea of the functions of the person responsible for ensuring transport security. Artificial intelligence integrated into the vehicle control system has already greatly simplified the tasks that the driver of a car, train, aircraft and other mechanical vehicles solves.*

*Unmanned vehicles in the future will not need a driver at all, since it will be completely replaced by an intelligent control system. But neither domestic nor foreign manufacturers of high-tech vehicles guarantee the complete safety of the operation of the latter. On the contrary, according to available forecasts, the number of transport accidents will increase as the number of drones in operation increases. This will require determining the person held liable for a violation of transport security committed through the use of unmanned vehicles.*

*The object of the present study is the social relations that arise when determining a person who is subject to criminal liability for violating the rules of safe movement and operation of unmanned vehicles. The purpose of the work is to establish legally*

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<sup>1</sup> The reported study was funded by RFBR and Yamal-Nenets Autonomous Okrug, project number 19-49-890002): "The Limits of Humanization of Punishments in Northern (Arctic) Penitentiary Institutions: Modern and Contemporary History".

*significant signs of a person who is recognized as the subject of the relevant elements of transport crimes.*

*The research methodology is represented by a combination of general scientific and particular scientific methods of cognition, namely: dialectical, comparative legal, formal logical, as well as survey and content analysis methods. All of the above methods were used in the study of materials and empirical data obtained in the process of preparing this work.*

*The research materials represent a set of the following official, scientific, empirical and other data: 1) statistical indicators and analytical reviews of the pace of development of the digital economy; 2) a set of provisions of normative acts of international and national law that regulate public relations in the field of artificial intelligence and the possibilities of using this technology in the production of highly automated vehicles; 3) the results of criminal law research on the problem of the subject of transport crimes committed using drones; 4) data obtained in the course of surveys of heads of IT companies that are residents of the Skolkovo Innovation Center; 5) other materials related to the subject of the study.*

*Based on the results of the study, conclusions were formulated about the current lack of a need for a radical revision of approaches to the definition of legally significant signs of a special subject of a transport crime. Modern “unmanned” vehicles do not yet have an automated control system that would completely eliminate the need for direct or remote presence of the driver in order to control the movement process. Therefore, the obligation to comply with the relevant rules still rests with the driver - an individual who is responsible for criminal offenses against transport safety. This conclusion is also based on criticism of the results of the latest studies, the authors of which insist on the need to extend responsibility for these socially dangerous acts both to drivers and to: 1) developers of software for unmanned vehicles and elements of high-tech transport infrastructure, 2) owners of highly automated vehicles, 3) vehicles with artificial intelligence technology integrated into the control system.*

**Keywords:** *transport security, special subject of a transport crime, criminal liability, highly automated vehicle, artificial intelligence technologies in the field of transport, a source of increased danger.*

## **Introduction**

Domestic criminal law doctrine, as well as investigative and judicial practice, recognizes as the subject of a transport crime only an individual who has reached the age determined by criminal law, who at the time of committing the crime consciously drives a vehicle. “Awareness” in this case not only states the fact of

the sanity of the said person, but also indicates that he has an unlimited ability to control the movement of the vehicle in which he is located. In this regard, drivers and driver-instructors are brought to criminal liability for committing transport crimes, first.

A significant increase in the manufacturability of modern vehicles leads to the elimination of the need for direct and even indirect (in the future) human participation in driving a vehicle. In this regard, a person is already now becoming not a direct driver, but an operator driving a vehicle at a distance. In the near future, technological progress will ensure the movement of a vehicle completely uncontrolled by a person. The artificial intelligence technology introduced into the control system will determine the required route, promptly solve problems to eliminate emergency situations that arise during the movement: overcoming obstacles, actions in an emergency, an unforeseen threat of causing physical harm and (or) property damage, etc.

But the removal of a person from the process of driving a highly automated vehicle (hereinafter referred to as HAV) by no means excludes all the listed negative consequences of a violation of transport security: from material damage to disasters accompanied by the death of several persons. Under these conditions, the question inevitably arises of establishing the culprit for subsequent prosecution for committing a transport crime.

The legislation of various states ambiguously resolves the issue of criminal liability of a person for committing socially dangerous acts, in which the direct cause of physical harm or property damage is the activity of high-tech means and other sources of increased danger. However, none of the proposed options for the implementation of criminal law in such cases does not meet the requirements of domestic law regarding the rules for qualifying crimes in the process of establishing the basis for criminal liability (Article 8 of the Criminal Code).

The solution of the issue of responsibility for the commission of a transport crime using “drones” is currently highly relevant. The presence of this gap in both domestic and international law creates legal obstacles to the development of high-tech transport and its use to increase the welfare of the population and increase the level of comfort of life on the territory of any state. In addition, the lack of legal opportunities to implement responsibility for transport crimes committed using HAV leads to impunity, which in turn creates conditions for the growth of crime in the development and use of high technologies.

The study of the currently emerging public relations in the field of the use of HAV involves the establishment of legally significant signs of a person who is held criminally liable for committing encroachments on transport security. To achieve this goal, it is necessary to consistently solve the tasks of: 1) determining the prospects for the development of HAV and their use in the national and

international transport system, 2) assessing the state of legal regulation of the use of “Artificial Intelligence” technology in the creation of unmanned vehicles and their subsequent use, 3) identification of a person (persons) subject to criminal liability for harm caused in the course of the activities of the HAV.

### **Methodology**

The achievement of the set goal and the successful solution of the listed tasks are ensured by the balanced use of general and particular methods of scientific research. Thus, the dialectical method and the deduction method were used throughout the entire study, including when formulating the rationale for conclusions and proposals for determining the subject of criminal liability in the composition of transport crimes that are committed using HAV. To ensure the sufficiency of the empirical base, the method of interviewing representatives of Russian companies-residents of the Skolkovo Innovation Center, which develop products using artificial intelligence technologies, was used. When identifying a gap in the legal definition of the subject of a transport crime using the HAV, the method of content analysis of the relevant norms of the Russian criminal law was used. Finally, the comparative legal method was used in the study and comparison of the content of the provisions of domestic, foreign and international law on the use of artificial intelligence technologies in the field of transport, as well as on liability for causing harm by technical means that operate without the direct participation of a person or control on his part.

### **Research**

The creation and study of the possibilities for the safe use of HAV are varieties of a larger technological phenomenon of the modern world — artificial intelligence. It is impossible to overestimate the importance of this technology for mankind, since many states are currently considering national leadership in the field of artificial intelligence as a means of ensuring not only economic, but also national security in general.

Thus, the President of Russia said that a state-monopoly in the field of artificial intelligence can become the ruler of the world<sup>1</sup>. Presidential Executive Order No. 13859 of February 11, 2019 states: “Artificial intelligence promises to stimulate the growth of the United States economy, strengthen our economic

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<sup>1</sup> Putin: a monopolist in the field of artificial intelligence can become the ruler of the world / The President of Russia set the task of significantly increasing funding for scientific research in the field of artificial intelligence [Electronic resource] // URL: <https://tass.ru/ekonomika/6489864> (date of access: 31.07. 2021).

and national security, and improve our quality of life. ... America's continued leadership in artificial intelligence is paramount to maintaining the economic and national security of the United States and shaping the global evolution of artificial intelligence in alignment with our nation's values, policies, and priorities”<sup>1</sup>. The PRC authorities indicate that the “Artificial Intelligence” technology until 2030 inclusive will be considered as the main direction of the national economy, which allows China to gain unique advantages “when conquering new markets in the global division of labor”<sup>2</sup>.

These and other statements by politicians from various countries about the importance of the development and widespread introduction of artificial intelligence are fully consistent with the indicators of the annual growth of financial investments in those companies that develop artificial intelligence technologies for various sectors of the economy. According to the AI Index Report 2021, prepared by representatives of Stanford University, the total investment in artificial intelligence technologies in 2020 amounted to 67.9 billion US dollars, which is 40% more than in 2019<sup>3</sup>. A multiple increase in the income of companies operating in the segment of artificial intelligence is also predicted<sup>4</sup>. Given these facts, it can be assumed that artificial intelligence technologies will become a predetermining direction not only for the economic, but also for the political development of the major powers of the world community. On the contrary, a lag in the field of artificial intelligence will create a threat of at least the economic dependence of an outsider state on countries supplying these technologies.

### *Artificial intelligence and transport law*

Despite the universality of the application of artificial intelligence technology, at present it has received the greatest demand in several sectors of the economy, including in the field of transport. It is predicted that already in 2022, sales of vehicles, the movement of which is provided by various automated control systems,

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<sup>1</sup> Maintaining American Leadership in Artificial Intelligence / A Presidential Document by the Executive Office of the President on 02/14/2019 [Электронный ресурс] // URL: <https://www.federalregister.gov/documents/2019/02/14/2019-02544/maintaining-american-leadership-in-artificial-intelligence> (дата обращения: 31.07.2021).

<sup>2</sup> Kovacic L. Chinese experience in the development of the artificial intelligence industry: a strategic approach / Carnegie Moscow Center [Electronic resource] // URL: <https://carnegieendowment.org/2020/07/07/en-pub-82172> (accessed: 07/31/2021).

<sup>3</sup> The volume of investment in artificial intelligence technologies has reached almost \$68 billion [Electronic resource] // URL: <https://tass.ru/ekonomika/10835935> (date of access: 07/31/2021).

<sup>4</sup> Aksenova E.I. Expert review of the development of artificial intelligence technologies in Russia and the world. Selection of priority areas for the development of artificial intelligence in Russia. M.: SBI “RIHOMM MCHD”, 2019. 38 p.

in the USA, the European Union and Japan will exceed half of all vehicle sales, which will significantly change the entire transport infrastructure in the near future. Tentatively, by 2030, unmanned trucks and cars, as well as aircraft, will completely renew the fleet of modern vehicles<sup>1</sup>.

The technical improvement of vehicles, which will lead to the absence of the need for direct control by a person, does not guarantee the safety of such automated operation. Disasters that are already happening<sup>2</sup> and, unfortunately, will become more frequent in proportion to the increase in the number of operated “drones”. For this reason, there is a need to revise the regulations that not only regulate the features of the production and operation of the HAV, but also determine the basis and conditions for criminal liability of persons who have violated traffic safety and operation of transport through the use of the HAV.

High-quality regulatory and legal regulation and proper protection of relations in the field of traffic safety and operation of unmanned vehicles will provide society with an understanding of the rules for the creation and limits of the use of HAV. Of course, at present, the need for relevant regulations is quite high. But the current legislation of both Russia and foreign countries does not yet offer any solutions in this regard, which leaves an obvious legal gap regarding the creation and use of these new generation vehicles. At the same time, both in international law and in domestic legislation, there is a tendency to establish basic principles and humanitarian principles (priorities) for the use of artificial intelligence in any field of human activity. Based on this, we can conclude that the formation of the legal basis for the use of artificial intelligence technologies, as well as determining the legal status of the subject of liability for harm caused by the activity of a technical device with artificial intelligence.

The main source of international law, which determines the principles of road traffic of motor vehicles, is the Vienna Convention of 08.11.1968 “On Road Traffic”. On its basis, the Rules of the road and the operation of vehicles have been developed in many states, but for objective reasons, the Convention does not provide for the specifics of the use of HAV, as well as the requirements for the transport infrastructure that ensures their safe operation.

Meanwhile, the international community has high hopes for the development of artificial intelligence technologies used in the field of transport. Thus, following the results of the Conference “Human Rights in the Age of Artificial Intelligence:

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<sup>1</sup> *Aksenova E.I.* Expert review of the development of artificial intelligence technologies in Russia and the world. Selection of priority areas for the development of artificial intelligence in Russia. M.: SBI “RIHOMM MCHD”, 2019. 38 p.

<sup>2</sup> *Begishev I.R., Khisamova Z.I.* Artificial intelligence and criminal law: monograph. M.: Prospekt, 2021. 192 p.

Europe as a Creator of International Standards in the Field of Artificial Intelligence” (Berlin, January 20, 2021), a resolution was adopted, according to which artificial intelligence is recognized as a universal opportunity for human development, and society (paragraph 1). The conference participants recognized the need to develop a legal framework that forms the basis for any application of artificial intelligence (paragraph 7). The conference participants did not make any special statements on the use of artificial intelligence technologies in the automotive industry and transport infrastructure.

Domestic legislation also does not have detailed mechanisms for the legal regulation of the production and operation of HAV. Nevertheless, it compares favorably with both international law and the law of many foreign countries by establishing basic concepts and fragmentary regulation of the features of the use of HAV, their differentiation according to the degree of autonomy of control while moving along a given route, as well as the development of directions for resolving issues of safe operation unmanned vehicles, including cars with artificial intelligence.

Thus, Federal Law No. 462-FZ of December 30, 2015, amended the Air Code of the Russian Federation (clause 5, article 32), in accordance with which the category “unmanned aircraft” was defined — an aircraft controlled in flight by a pilot who is outside board of such aircraft (remote pilot). So far, this is the only official definition of a vehicle that is controlled from a distance. Of course, the identification of the concepts “unmanned vehicle”, “HAV” and “a vehicle controlled by artificial intelligence technologies” is unacceptable. But the undeniable significance of the above definition contained in paragraph 5 of Art. 32 of the Air Code of the Russian Federation, consists in designating legal features that seem to be characteristic of all the listed types of vehicles, namely:

1. the vehicle is driven. From the beginning to the end of its journey, the vehicle is under the control of the driver, and therefore cannot make independent decisions regarding the choice of speed mode, control features and other essential driving conditions;
2. the presence of the driver during the movement is mandatory. In this regard, the recognition of a vehicle as “unmanned” is purely formal, since it indicates only a feature of remote control, which implies the absence of a driver directly on board an aircraft, car, etc., moving along a given route.

Legislatively fixed signs of a “drone” are also of great importance for the subsequent identification of a person liable for damage to objects of criminal law protection caused as a result of accidents (crashes, collisions, etc.) of unmanned and other HAVs. The legislator currently does not leave the possibility of recognizing an unmanned aircraft (it seems that any HAV) as a subject of legal liability, since human control over the vehicle is presumed throughout the entire flight.

Several by-laws have also been adopted, which form the basis of sources of domestic transport law. The main one is the Strategy for the Development of the Automotive Industry until 2025 (approved by Decree of the Government of the Russian Federation of April 28, 2018 No. 831-r). In accordance with this document, new types of high-tech products of the domestic automotive industry are of critical importance in the medium term. Artificial intelligence technologies are recognized as one of the main areas for improving these vehicles. The use of artificial intelligence in the automotive industry involves the creation of an unmanned vehicle. The strategy forms an integrated approach, which consists in creating not only unmanned vehicles, but also the corresponding road and telecommunications infrastructure that provides HAV with the necessary services and information. All this suggests that in the near future a new transport infrastructure will be created in Russia or the existing transport infrastructure will be significantly modernized, providing the widest possible use of unmanned vehicles and other HAVs.

In terms of technological and other features of unmanned vehicles, the Strategy determines that in reality they do not imply the absence of a driver in the vehicle cabin while driving (an exception is autonomous unmanned vehicles of levels 4 and 5). The car will already correspond to the type of “unmanned” vehicles if it has “driver assistance systems”. Such systems are integrated into additional equipment installed on the vehicle: cameras, radars, vision components, robotic steering systems, braking systems, etc. Thus, the control of “unmanned” vehicles, which will be put into operation in the short and medium term, will continue to be carried out by the driver, who is in the car and controls the movement process.

Special attention in the Strategy is paid to the prospects for the development of legal regulation of the use of unmanned vehicles. In particular, the following are cited as possible regulatory measures:

1. development of standards, operation of unmanned vehicles;
2. determination of the responsibility of the operator, whose actions affect the process of driving the specified vehicle;
3. determination of responsibility for a traffic accident and its consequences of a manufacturer of autonomous unmanned vehicles of levels 4 and 5, as well as persons using these vehicles.

Considering the foregoing, it can be assumed that in the near future the legislator will have to address the issue of expanding the range of subjects of transport crimes and (or) propose fundamentally new solutions on the application of measures of legal liability for harm caused to public relations protected by criminal law as a result of the use of an unmanned vehicle or other HAV.

In part, promising directions for solving these issues are defined in the Decree of the Government of the Russian Federation dated November 26, 2018 No. 1415 “On conducting an experiment on trial operation of highly automated vehicles on public roads”. This project to test HAV on public roads is being carried out from 12/01/2018 to 03/01/2022 on the territory of 11 constituent entities of Russia. Despite the experimental nature of the use of HAV on public roads, the Decree of November 26, 2018, in sufficient detail for a by-law normative act, legally significant signs of persons directly involved in the experiment and potentially responsible for the harm caused as a result of an accident or a car accident are recorded (paragraph 3, 18 of the Decree).

So, in paragraph 3 of the said Decree, the basic concepts are given, including the owner and driver of the HAV. The first can only be represented by the legal entity that owns the HAV involved in the experiment. The driver is characterized by the following legally significant features:

1. is a natural person;
2. is located in the driver's seat of the vehicle;
3. activates the HAV automated driving system;
4. controls the movement of HAV;
5. if necessary, switches the HAV control to manual mode.

The legal status of the driver who participates in the experiment does not imply fundamental differences from the duties assigned to the driver of the vehicle in accordance with Decree of the Government of the Russian Federation of October 23, 1993 No. 1090 (as amended and supplemented) “On the rules of the road.” Considering that the legal entity — the owner of HAV, in accordance with the current legislation, cannot be held criminally liable, the driver of this vehicle is still the only person who has all the signs of the subject of the relevant crimes.

Obviously, on the basis of the results of the experiment already obtained, the Government of the Russian Federation, by order of March 25, 2020 No. 724-r, approved the Concept for ensuring road safety with the participation of unmanned vehicles on public roads. Of course, one of the key goals of implementing this Concept is to ensure road safety and create a safe transport environment, and “reducing the role of the human factor” is recognized as a means of achieving it. This statement, fixed in the program regulation, clearly indicates that, regardless of the results of the tests, unmanned vehicles equipped with artificial intelligence technology (4 and 5 levels of automation) will replace traditional cars (1–3 levels of automation) from the transport infrastructure, control which involves the direct participation of a person. This again puts before the legislator the question of revising the status of a person guilty of a transport crime. Attention is also drawn to this in the Concept: “it is necessary to provide for the differentiation of the level

of responsibility of road users depending *on the level of autonomy* (author's italics) of vehicles.”

Pointing to possible options for determining the sources of threat to transport security, formed using highly automated systems and high-tech tools, as well as the persons responsible for the corresponding socially dangerous encroachments, the authors of the Concept indirectly indicate possible directions for solving these problems. In particular, the Concept states: “The right of independent decision-making by an automated driving system may be limited in the case established by law, if there is an appropriate technical capability on the part of the intelligent transport system”. Attention is also drawn to the need to ensure the information security of HAV and the security of all components of the transport infrastructure from possible cyberattacks. Thus, with a literal interpretation of the above provisions of the Concept under consideration, one cannot exclude in the future the possibility of recognizing as the subject of transport crimes not only individuals involved in the direct or indirect management of HAV, but also persons ensuring the information security of HAV, serving high-tech transport infrastructure facilities, with the help of which the moving HAV is oriented in space. Moreover, pointing to the “right to make a decision” belonging to the “automated driving system”, which can be limited “in the case established by law”, one cannot exclude the option of implementing criminal quasi-responsibility. It can apply both to the legal entity — the owner of HAV, and to HAV itself, since the “right to make decisions” must correspond to the obligation to bear responsibility for the actions or omissions performed.

One of the first examples of the regulatory implementation of the installations provided for in the previously mentioned program documents is the National Standard of the Russian Federation approved by Order No. 135-st of March 11, 2021 of Federal Agency for Technical Regulation and Metrology. Means of monitoring the conduct and predicting people's intentions. Hardware and software using artificial intelligence technologies for wheeled vehicles. Classification, purpose, composition, and characteristics of photo and video recording means. The standard was developed by Yandex Taxi LLC and is intended for use in mass production of wheeled vehicles equipped with hardware and software using artificial intelligence technologies. However, in reality, the requirements of the Standard refer exclusively to equipment that allows you to predict the behavior of the driver of the vehicle, as well as provide him with information support while driving to prevent violations of traffic safety rules, death of people, destruction of property, environmental damage. For this reason, the Standard does not apply to HAVs that are or can be controlled without the direct participation of an individual driver.

***Person subject to criminal liability for harm caused  
by HAV activities***

Domestic investigative and judicial practice does not yet know cases of convicting persons who were not directly in the car and did not drive it at the time of the traffic accident. But the facts when HAV, which is controlled using artificial intelligence technologies, causes death to a person, unfortunately, are no longer isolated. The first accident involving an unmanned vehicle occurred on May 7, 2016 in Williston (North Dakota, USA). The unmanned control system of the Tesla Model S car was unable to identify a long truck turning around as an obstacle. As a result of the collision, a passenger who was in HAV was killed<sup>1</sup>. In 2018, an Uber Technologies Inc self-driving car collided with a pedestrian in one of the cities in Arizona (USA). The victim died from her injuries. During the investigation of this incident, it was established that, in accordance with the software used to manage HAV, this situation was normal<sup>2</sup>.

It is thought that the number of accidents involving HAVs will only increase as the number of such vehicles on public highways increases. The same can be said about other types of unmanned vehicles. It is possible that by eliminating completely or significantly reducing the “human factor”, the movement of high-tech transport units will indeed become safer, but the complete elimination of accidents and disasters is unlikely to be possible.

Some researchers, not without reason, state that the root cause of modern accidents caused by the failure of technical systems is not only the incompetence of users, but also design flaws in both software and finished high-tech products. Their low quality is explained in the scientific literature mainly by two reasons: firstly, these are global trends to increase the speed of development and placement on the market of a fundamentally new product in order to obtain economic advantages over competitors. Therefore, a finished high-tech product is often modified by the manufacturer in the course of warranty service, and not as part of testing prior to mass production. Given the insignificant “life cycle” of many high-tech products, which is determined by a period of 2–3 years, such an approach to production is more adapted to modern market relations.

Secondly, modern high-tech products are the result of complex production. Each component of a technically complex product is developed, and possibly produced, by various business entities. As a rule, there is no single developer who represents the project as a whole and exercises control at all stages of the production

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<sup>1</sup> Killer robots. 10 real cases [Electronic resource] // URL: <https://vseonauke.com/18564293793656366-98/roboty-ubijtsy-10-realnyh-sluchaev/> (11.08.2021).

<sup>2</sup> *Begishev I.R., Khisamova Z.I. Artificial intelligence and criminal law: monograph. M.: Prospekt, 2021. 192 p.*

process. The lack of understanding of the overall goal of the project, at least at the level of the “functional diagram”, significantly increases the risk of hidden flaws, which are revealed during the operation of the finished product<sup>1</sup>.

It is well known that in order to implement criminal liability, it is required to identify a specific person who is guilty of a crime. Compositions of socially dangerous encroachments on transport security are no exception to this rule. Taking into account the provisions of the current regulatory acts of strategic importance, in conjunction with the existing features of the production and operation of high-tech products that combine not only design solutions, but also complex software, it becomes obvious that it is impossible to use the traditional algorithm for determining the subject of a transport crime in cases where an accident or catastrophe occurs with the participation of drones and other HAV. Based on the analysis of possible options for the development of a causal relationship, I believe that the circle of subjects of criminal liability can hypothetically be represented by the following persons:

- the driver on board the HAV, who, in the event of a threat of a traffic accident, is obliged to transfer the vehicle to manual control and prevent damage to objects of criminal law protection;
- a driver who controls HAV remotely;
- owner of HAV;
- HAV manufacturer;
- developer of artificial intelligence technology and other software embedded in the HAV control system;
- a person who has made unauthorized changes to the HAV software and (or) information and telecommunication means of the transport infrastructure.

In the theory of criminal law, various opinions have been expressed regarding the solution of this problem. So, A. I. Korobeev and A. I. Chuchaev believe that persons with special legally significant features can be recognized as the subject of a transport crime committed using an unmanned vehicle. These authors include: a) software developers — “personalized developers”, “a specific computer program”, for a “specific unmanned vehicle”; b) persons supervising the safe operation of the programs specified in paragraph 1; c) owners of unmanned vehicles, who are responsible for monitoring the safe operating conditions of these vehicles; d) persons directly in the unmanned vehicle and exercising control over the safety of its operation<sup>2</sup>.

<sup>1</sup> *Kovalev V.* “Why equipment breaks”, or what is the forgotten concept of “reliability” // *Components and technologies*. 2008. No. 4. pp. 19–22.

<sup>2</sup> *Korobeev A.I., Chuchaev A.I.* Unmanned vehicles equipped with artificial intelligence systems: problems of legal regulation // *Asia-Pacific region: economics, politics and law*. 2018. No 3. pp. 117–132.

Arguing about the subject of the *corpus delicti* of a transport crime committed in the conditions of operation of HAV, I. N. Mosechkin believes that, depending on the actual circumstances of the incident, it will be possible to recognize as such: 1) a software manufacturer acting intentionally or through negligence, if the corresponding program made an incorrect decision as a result of which harm is caused to public relations protected by criminal law; 2) the manufacturer or seller of HAV equipped with artificial intelligence, provided that they are aware of the presence of technical, software and other defects in the produced / sold vehicle; 3) driver, operator and other user of HAV, but taking into account the degree of automation of the vehicle; 4) “other persons” carrying out unauthorized interference with the operation of the HAV software<sup>1</sup>.

Without differentiating legal liability for harm caused by “robots with artificial intelligence”, V. A. Laptev proposes a solution to this problem, taking into account the degree of dependence of the actions of the robot on the person. On this basis, the author identifies three stages in the formation of responsibility, namely: 1) the operator or manufacturer is responsible for the actions of the robot (short term); 2) the manufacturer will bear subsidiary liability together with the robot whose actions caused harm (medium term, which is characterized by giving the robot legal personality); 3) the robot will bear “cyber-physical legal responsibility” for its actions, which will perform both regulatory and protective functions (long-term perspective)<sup>2</sup>.

Some researchers more radically raise the issue of responsibility for causing harm resulting from an accident or other emergency with an unmanned vehicle. For example, Hin-Yan Liu, in one of his scientific works, asks about the fundamental possibility in such cases to talk about both criminal and other types of liability. Describing responsibility as an inevitable reaction of society and the state to causing harm from an action that is performed in the conditions of the subject's freedom of choice, the author draws attention to the fact that in these situations such freedom is excluded. There is no person who performs the functions of a traditional driver when driving an unmanned vehicle, and the programmer who developed digital software for unmanned vehicle control, for objective reasons, is deprived of the opportunity to influence the operation of the software when driving HAV. The idea of recognizing an unmanned vehicle as a subject of responsibility is perceived critically, since the latter acted in accordance with the legalized traffic algorithms that were previously written in

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<sup>1</sup> *Mosechkin I.N.* Artificial intelligence in criminal law: prospects for improving protection and regulation: monograph. Kirov: Vyatka State University, 2020. 111 p.

<sup>2</sup> *Laptev V.A.* The concept of artificial intelligence and legal responsibility for its work // *Law. Journal of the Higher School of Economics.* 2019. No 2. pp. 79–102.

the onboard software. Consequently, the actions of HAV that caused harm cannot be considered illegal. All this leads to the need to come to terms with the idea of the inevitability of accidents and disasters involving HAV, for which no one can be held accountable<sup>1</sup>.

Thus, the opinions of scientists about the subject of responsibility for transport crimes, the means of committing which is HAV and (or) artificial intelligence, differ significantly. It is currently impossible to obtain empirical data on this subject of research, since domestic investigative and judicial practice does not yet have precedents in determining the person liable for a transport crime committed in the conditions of using a high-tech car or other vehicle (unmanned) vehicle. Therefore, to solve this problem, it will be useful to know the opinion of representatives of enterprises that develop high technologies and their introduction into the production sector.

Thus, top managers of resident companies of the Skolkovo Innovation Center see differently the possibilities of exercising liability for harm caused by technical means, the actions of which are determined by artificial intelligence technologies. Head of Skolkovo Technopark S. F. Poplavsky believes that technical means capable of carrying out “intellectual activity”, which is based on predictive analytics (analytics, the result of which is an indication of events that will occur in the future), are in principle not capable of performing actions beyond the control of a person. These neural network technical means and devices are not self-learning, and therefore offer final solutions based on predictive analysis only in accordance with the rules and algorithms prescribed in the software that is used when working with input data<sup>2</sup>. Thus, machine learning is based on the use of various sections of Data Science, and a “smart” technical device make a decision as it was trained by DataScientists, that is, developers of special software. Hence, according to S. F. Poplavsky, it is incorrect to raise the question of assigning responsibility for actions performed by an inanimate high-tech tool. For causing harm by the actions of the latter, only the person — the author of the specialized software — should be held liable.

This opinion, in general, is shared by the General Director of ANP Ceges Technology G. S. Tsedilkin, who manages developments in the field of “Digital

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<sup>1</sup> *Liu Hin Yan*. Irresponsibilities, inequalities and injustice for autonomous vehicles. Ethics and Information Technology. 2017 [Electronic resource] // URL: [https://www.researchgate.net/publication/319239390\\_Irresponsibilities\\_inequalities\\_and\\_injustice\\_for\\_autonomous\\_vehicles](https://www.researchgate.net/publication/319239390_Irresponsibilities_inequalities_and_injustice_for_autonomous_vehicles) (Accessed 08/21/2021).

<sup>2</sup> *Boyarkin A.* Predictive analytics: benefits, tools and examples [Electronic resource] // URL <https://sales-generator.ru/blog/prediktivnaya-analitika/#3> (Accessed: 21.08.2021); *Bruskin S. N.* Models and tools of predictive analytics for a digital corporation // *Vestnik REU im. G. V. Plekhanov*. 2017. No. 5. pp. 135–139.

Vision” and the provision of comprehensive information security services. A neural network integrated into any technical device is currently a new algorithm (means) that provides decision-making, the prediction of which becomes possible based on the information received by the specified device. In this regard, we can conclude that “the machine makes a decision, but does not think.” Therefore, in the event of harm resulting from the use of a high-tech tool, the responsibility for the onset of negative consequences should be borne by the manufacturer, who violated the safety rules during the production process and (or) did not exclude all negative scenarios during the operation of his products.

S. Yu. Sorokin, General Director of Intellogic LLC, sees the solution to this problem somewhat differently. Sorokin. Medical products manufactured by the company can only be used if a Registration Certificate of the Federal Service for Surveillance in Healthcare is obtained. Obtaining official documents, on the basis of which a high-tech product, including software, is recognized as safe for use in accordance with the declared purpose, removes the manufacturer's responsibility for harm that in reality can be caused not as a result of using a medical product for which a registration has been received certificate, but as a result of improper handling of this product by an employee of a medical institution. In this regard, the responsibility for such harm should be assigned solely to the user of high-tech products who have passed all the necessary procedures for admission to operation.

Finally, according to the General Director of the companies “OKB” ATM Cargo Drones “and” Hoversurf “A. V. Atamanov, liability for damage caused by the use of a vehicle equipped with artificial intelligence technologies should be equally borne by both the manufacturer and the operator. In each specific case, it is necessary to establish not only the fact of harm, but also the reason for the accident or catastrophe. In modern conditions of production and operation of unmanned vehicles, it is quite possible to establish not only the cause, but also specific persons who manufactured the corresponding HAV unit or wrote a certain piece of software, the failure of which led to serious consequences. Similarly, it is possible to establish the guilt of the user of an unmanned vehicle if the accident occurred as a result of violation of the rules of operation by him. Taking into account the severity of the consequences, criminal liability, under certain conditions, can be extended not only to an individual, but also to the HAV development company as a whole.

## Results

Based on the results of the study, it turned out to be impossible to establish not only a generally accepted or shared by most researchers opinion about a person who is liable for a transport crime committed using HAV, but even to accurately

determine the direction that Russian and foreign legislators will take when solving the problem of liability for negative results activities of artificial intelligence in the field of transport. Predicting the best solution to this problem is currently quite difficult, since unmanned vehicles, as well as other HAV controlled using artificial intelligence technology, are still being operated only in an experimental format.

And yet today it is required to determine the legal features of the subject of a transport crime of the future, at least to indicate the limits of responsibility of persons whose lack of professionalism can jeopardize transport security. I think that a fundamental revision of the approach to determining the subject of a transport crime committed using an unmanned or other high-tech vehicle will not be required either now or in the near future.

First, in accordance with the official five-level classification of all automated vehicles that are currently available and will appear in the future, only vehicles of the fifth level will have such an automated driving system that completely eliminates the need for a driver to drive a vehicle (Government Decree RF dated March 25, 2020 No. 724-r). Therefore, in the event of an accident involving a vehicle belonging to the fifth level of automation, it will be necessary to radically revise the issues of qualifying a transport crime in terms of determining the subject of its composition. In all other cases, unmanned vehicle control systems, artificial intelligence technologies integrated into HAV systems are designed not to replace the driver (pilot, driver), but only to provide him with additional comfort and assistance in the process of driving a vehicle.

The possible absence of the driver inside the vehicle he is driving does not matter for qualification. The technological features of the HAV, which allow it to be controlled remotely, do not relieve the person controlling the movement of the vehicle from a distance from the obligation to comply with the established rules and operate safely. For these reasons, the driver, even if he refuses to directly (manually) control a vehicle moving in the “autopilot” mode, *ceteris paribus*, remains a person who is criminally liable for committing a transport crime.

Secondly, a broad interpretation of the concept of “a person driving a vehicle” in the qualification process is inappropriate, since this can lead to insurmountable difficulties in distinguishing between related elements of transport crimes. Therefore, it is unacceptable to recognize a person who is a software developer for the HAV control system, as well as a person who was directly involved in the production of an unmanned vehicle, as subjects of the offenses under Art. 263, 264, 264<sup>1</sup> and 271<sup>1</sup> of the Criminal Code. When they commit socially dangerous acts that encroach on transport security and cause physical and (or) property damage, the issue of bringing to responsibility under Art. 263<sup>1</sup>, 266–267<sup>1</sup> of the Criminal Code.

Finally, thirdly, the very formulation of the question of the criminal liability of a person only on the grounds that he is the owner or other legal owner of HAV is incorrect. In the event of an accident or disaster involving a HAV, this person may be subject to other types of legal liability for damage caused by the activities of a source of increased danger, a variety of which is an unmanned vehicle.

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**TRANSFERRING DEMATERIALIZED SHARES IN GERMANY,  
AUSTRIA AND IN THE UNITED STATES OF AMERICA**

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**Abstract.** *The present article is aimed at briefly reviewing the historical development of dematerialized shares in Germany, Austria, and in the United States of America (the USA). A brief comparison is made between the dematerialized shares in the United Kingdom and those in Germany and Austria. Further, described are the reasons, which have led to the development of the depository services, on the basis of which the German and Austrian markets built a new system for transferring securities around the fundamental legal analysis, where there is a Central Securities Depository, which keeps in custody the certificates for most of the securities listed on the market.*

*There is a comparison made between the intermediaries and the investors in the German and Austrian law, on the one hand, and in the English law, on the other.*

*Discussed is the reason the securities certificates in Germany and Austria were removed from the transferring process by taking them out of circulation (immobilization), and not through abolishing them (dematerialization).*

*Presented is the development of the most active and liquid capital market in the world — that of the United States Department of the Treasury. There is a brief description made of the System of the conventional paper certificates and the system of the dematerialized securities known as direct holding system, as well as of the System for immobilization and possessing through intermediaries, known as indirect holding system. The Depository Trust Company is specified, as well as its functions. There is a description provided of the concepts “materialized security” and “dematerialized security” pursuant to the Uniform Commercial Code of the USA.*

*In conclusion, there is a short presentation of the currently valid legal status quo related to transferring dematerialized shares in the three countries.*

**Keywords:** *dematerialized shares; securities; paper certificates; dematerialization; Central Securities Depository; direct and indirect holding.*

## **Transferring dematerialized shares in Germany and Austria**

### *Historical development*

Germany and Austria felt the need to abolish the paper form of transferring securities in the 1930s. Until then, the German and Austrian securities were transferred through physical provision of paper certificates. However, the circumstances in the 1930s prompted the reduction of the need to move around the paper certificates.

Nevertheless, the authors of the reform from the 1930s could have used a law, which was enacted in 1910 and provided the possibility to issue and hold the government bonds as dematerialized securities, the reform did not make use of that model. Instead, it was carried out in line with the legal regulations, which had been existing by then. Prior to the reform, securities were considered tangible assets, while the securities owned through intermediaries, were analyzed under the Property Act for property deposited in custody. The authors of the reform did not change the principle of that analysis; they rather modified the act for depositing property in custody in order to regulate the securities held as common property, which is not distributed individually to a particular person. Securities continued to be classified as tangible assets. The analysis was left untouched, irrespective of the fact that the individual certificates were replaced by global certificates, but it was further extended in order to include the government bonds for which there were no certificates existing.

All the three jurisdictions — of England, Germany and Austria, abolished the need to physically move the paper certificates in the process of transferring. The time when that happened was determined by circumstances beyond the law. However, the law — and in particular, the legal doctrine regulating securities before the reform — determined the way in which that reform was implemented.

Prior to the dematerialization, securities were classified as intangible assets, where after the dematerialization the former principles of analysis were still applied. Securities were still classified as intangible assets, and the procedure for transferring, regulating the dematerialized securities, replaced the procedure existing before that. Dematerialization had no impact either on the securities held through intermediaries. The analysis prior to the dematerialization was that the intermediaries kept the securities in custody in favor of the investors, and that analysis was applied nevertheless whether the securities were held in a materialized or dematerialized form<sup>1</sup>.

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<sup>1</sup> *Micheler E. Property Securities. A Comparative Study. Cambridge University Press, 2007, p. 227–228 (hereinafter only Micheler, E. Property ...).*

The analysis in the German and Austrian law used to be focused on the securities of a bearer, since the majority of the German companies issued them. However, that was changed over the recent years.

Irrespective of the different doctrinal approach dominant in England, on the one hand, and in Germany and Austria, on the other, there is one important similarity. All the three jurisdictions have found the way to abolish the paper form from the process of transferring securities.

#### *Current status*

The majority of the securities under German and Austrian law are issued in the form of documents of a bearer, where those documents are considered tangible assets. In the basis of contemporary German law, there is the theory that the certificates for the securities are paper documents of a very special type. The law, which concerns a paper document, is materialized in the document and, therefore, it can be transferred according to the rules regulating the tangible assets. If a paper document is transferred, the buyer will acquire not only the ownership over the paper document, but also the rights related to it. The term in the German language for the German securities is “Wertpapier” and it is used both in German and Austrian law. The word “Wertpapier” literally means “paper for value”, and the term reflects the fact that the document related to a security epitomizes a valuable right. The term is aimed at reflecting also the theory, which lays the foundations of both German and Austrian securities, i.e., that the rights concerned by the securities certificate and the certificate itself merge and become one single tangible asset. As a result of that, securities, their transferring and the indirect ownership over securities are all subject to the rules regulating the tangible assets.

The analysis adopted by contemporary German and Austrian law appeared somewhat later after securities were used for the first time.

The securities depositories in Germany and Austria emerged as the prevailing type of service provider, which was of assistance to the clients wishing to own securities indirectly. The rules concerning the securities and their transferring — in particular, the rule protecting a buyer from counter claims — fostered the development of this type of service provider on the German and Austrian markets. The fact that the securities were governed by the rules concerning the tangible assets encouraged Germany and Austria to abolish the paper form from the transferring process through immobilization, and not through dematerialization.

In order to facilitate the indirect holding of securities, German and Austrian law elaborated a complex doctrine for joint ownership and co-ownership. That particular form of analysis of the doctrine emerged both in Germany and in Austria because securities were classified as tangible moveable property. This legal analysis provided the regulatory framework where the securities market and the legal regulations

supporting it developed. The analysis influenced the way in which the paper form was eliminated from the transferring process, nevertheless Germany had introduced an alternative system for transferring government bonds, which could have been used as a model for creating a transferring system without using a paper carrier<sup>1</sup>.

### *Indirect holding*

The German and Austrian legal doctrine in respect to securities influenced the type of service provider, which emerged on the German and Austrian markets in order to serve investors, who wanted to own shares indirectly. The process, whereby the paper certificates were eliminated from the transferring process, was formed by the legal doctrinal framework, which directly regulated the owned securities.

The fact that the German and Austrian bearer securities were classified as tangible assets brought the advantage that the German and Austrian rules concerning assignment were no longer applied for transferring. Transferring, instead, was subjected to the rules, identical to those regulating the tangible assets. As a result of that, the acquirer was protected against counter claims. The legal doctrine, where the purchaser of securities is offered protection against counter claims, had a huge impact on the development of the institutional framework, prevailing in Germany and Austria.

The bona fide acquirer becomes owner upon acquiring tenancy over the securities. That rule had a substantial influence on the way in which investors held securities certificates in Germany and Austria. Unlike England, where the securities certificates did not need to be deposited in custody, because the owners would not lose their rights if those certificates were stolen and then transferred to a third party, any investor under the German and Austrian law had to keep the securities certificates out of circulation, so that a third party would not be allowed to acquire tenancy over them, and, subsequently — ownership over the bearer securities.

The paper certificates should be kept in a safe place, and that need of depositing in custody facilitated an important development in Germany and Austria. It created a demand for depository services, and that demand was met by the German and Austrian banks, which developed the activity of depositing securities in custody for investors as a separate branch of its commercial activities.

Instead of renting out deposit boxes or safe deposit boxes to individual investors, banks initially took the securities certificates and kept them in custody for the respective clients. The banks kept separate files for every client; the paper documents were not physically held by the investors, nevertheless, they were distributed for each of them. The German, and Austrian depository services for securities are an

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<sup>1</sup> *Micheler E. Property in Securities. A Comparative Study.* Cambridge University Press, 2007, p. 145–147 (hereinafter only Micheler, E. Property ...). Regarding the rules regulating securities in contemporary German and Austrian law, see p. 165 and the following.

example how a doctrine can foster the emergence of certain types of infrastructure providers. Similarly, just like the English law on novation facilitated the advent of registrars in England, the German and Austrian doctrine, protecting buyers against counter claims, favored the emergence of depositories in those countries<sup>1</sup>.

The German and Austrian rules, safeguarding buyers against counter demands, issuing from unlawful transferring, prompted the need for investors to prevent any disappearance of their documents. That led to a demand for depository services on the German and Austrian markets. That demand was met by the German and Austrian banks, which elaborated specialized depository services. The doctrinal framework, regulating the paper transferring of securities, influenced the way in which the paper certificates were removed from the transferring in Germany and Austria. The legal doctrine, which provides the ground for securities in both jurisdictions, is based on the normative presumption that the special rules regulating securities transferring are applied because securities are tangible assets. Hence, the legal experts drew the conclusion that if securities were not classified as tangible, those specific rules could not be applied. Securities transferring, instead, should have been governed by the laws for assignment. In order to prevent that, it was possible to elaborate a special regime, which was to be applied for securities transferring, nevertheless how they were classified. Besides, it would have been possible both for the German and Austrian law to refer to the rules, which had existed for the government bonds, for which there were no paper certificates.

That option, however, was not the preferred one. The securities certificates, instead, were eliminated from the transferring process by taking them out of circulation (immobilization), and not through abolishing them (dematerialization). The prevailing point of view was that it was essentially important that the legal analysis governing the paper certificates be further applied, even though in an environment, where paper certificates no longer fulfilled their original function for transferring the rights embodied in them. As a result of that, the German and Austrian markets introduced the central securities depositories<sup>2</sup>.

Unlike England, which chose to transfer dematerialized securities, Germany and Austria preferred their immobilization. The relationship between intermediaries and investors is followed in respect to depositing property in custody according to the German and Austrian law. Investors are considered co-owners of the indirectly held papers; moreover, they jointly possess the securities certificates deposited with the Central Securities Depository. That is opposite to the position adopted in the

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<sup>1</sup> *Micheler E.* Op. cit. p. 182–183.

<sup>2</sup> *Ibid.* P. 192. For more details about the process, which led to taking securities out of circulation (their immobilization) in Germany and Austria and the legal analysis of that process, see pp. 193–215.

English law, where the relations with the investors, who hold securities indirectly, is governed by the Custody Act.

The co-ownership interest in indirectly owned securities is transferred through registration in the books of the intermediary, who keeps the securities. That registration is classified by law as including transferring the tenancy over the securities certificates from the seller to the buyer.

The buyers of indirectly owned securities are protected against counter claims issuing from unlawful transferring, on the basis of the same rules, which protect the buyers of directly held securities in the German and Austrian law. Irrespective of the fact that the investors have a co-ownership interest within the total amount of securities, kept at the Central Securities Depository, a bona fide buyer can rely on the rules protecting a buyer of a tangible asset against unlawful transferring. The situation in the English law is less clear. The rules regulating materialized securities were not forbidden when dematerialized securities were introduced in England. It is still unclear, however, whether and to what extent the rules protecting the buyers of materialized securities provide protection to the buyers of dematerialized securities.

At the same time, none of the jurisdictions did create a completely new legal regime, which would facilitate securities transferring carried out without the need of moving the paper certificates. Instead of that, the rules existing in all the three jurisdictions governing transferring through the use of a paper carrier were modified in order to address transferring without the use of a paper carrier. Furthermore, the legal norms regulating transferring through the use of a paper carrier had a major impact on the institutional formation used in order to regulate transferring in a dematerialized form.

The analysis in the German and Austrian law is focused on the securities of a bearer, since most of the German companies used to issue them. This, however, started to change over the recent years. Some big companies, listed on the stock exchange in Germany, have replaced the bearer stocks with registered ones, where that change has been prompted by the globalization. The reason for that change was that the companies in question wanted to be able to get registered directly on the **New York Stock Exchange — NYSE**. NYSE, however, lists only registered stocks. In order to be able to issue the same type of stocks to the investors in the USA, as well as to the German investors, the German issuers decided to issue registered shares, instead of shares of a bearer both on the US and on the German stock markets. The German legislation supported that change by reforming the legal regulations for the registered shares, which have been traditionally represented in the German Companies Act (Aktiengesetz).

That act requires from the German companies issuing registered shares to keep a shareholder's registry. At the same time, the act related to that registry was updated, where the changes made included also a change in the German legal

terminology. Prior to the reform, the share registry was called “the book of shares” (Aktienbuch). This term was abandoned in the reform process and was replaced by the term “registry of shares” (Aktienregister). The explanatory notes to the revised legislative act explicitly state that this terminology was chosen to reflect more accurately the English term for a “registered share”.

The German settlement system helped the German companies in the transition from bearer shares to registered shares by introducing an option allowing the small-scale investors to list their names in the share registry, nevertheless whether they own those shares through a chain of intermediaries or not. That development is an example of convergence (alignment). German law has changed to align with the prevailing international standard to enable the German issuers to be competitive on the global market.

It should be pointed out that the reform did not change the already existing legal doctrine. The bearer shares were replaced by registered shares to ensure compliance with the American market practice. The share registry was renamed so that it should reflect the English language use. None of those changes, however, had an impact on the doctrinal analysis of share transferring. The reform was carried out in line with the prevailing doctrine in the German law about ownership and it did not change the legal nature of the German shares. Besides, that reform did not change the analysis of the transferring process. The German registered shares, as well as the German shares of a bearer, are also considered tangible assets. In order to be transferred via the German settlement system, they should be endorsed. That endorsement transforms the registered shares into bearer shares, whereupon their transferring is governed by the same rules, which regulate all the other bearer securities. The certificates for the registered shares are deposited with the Central Securities Depository. Just like with the bearer shares, the rules about the tenancy over those securities certificates determine the time when the buyer becomes owner of the registered shares, and irrespective of the change in the name, listing in the German share registry does not turn the respective holder of a share into an owner of the shares.

### **Conclusion**

Securities are classified as tangible assets both in the German and in the Austrian legal doctrines, while their transferring is governed by the same rules as those for the tangible assets. This analysis is supported by the theory that the paper certificates traditionally issued for securities epitomize the rights related to the certificates. The analysis was developed towards the end of the nineteenth century and became an orthodox theory, predominant in Germany and Austria after the German provinces and Austria adopted the rules protecting the bona fide buyers against unlawful issuing.

According to the German and Austrian law, a buyer should acquire tenancy over the securities certificate in order to become an owner of the certificate and the rights

related to it. A buyer of securities is protected against counter claims resulting from unlawful transferring in the same way as a buyer of tangible moveable property; there is also a rule protecting the buyer against claims resulting from improper issuing.

Both in the German and in the Austrian law, the rule protecting a buyer of securities from unlawful transferring requires that the risk in such transferring should be borne by the securities owner, who would lose his/her rights when a benevolent buyer acquires tenancy over the securities documents against payment of the respective value. As a result of that, there is a need of keeping the documents in custody under the German and Austrian law, which facilitates the emergence of depositories in both jurisdictions.

The theory underlying securities and their transferring in the German, as well as in the Austrian law, had a major impact on the way in which the paper certificates were abolished from securities transferring in both countries.

The theory presents the regulatory principle that the rules protecting the investors from counter claims resulting from unlawful transferring are applied only because the securities are classified as tangible. If securities were classified as intangible, investors would not have been protected against non-permitted transferring. When processing the paper certificates became too cumbersome, it was considered reasonable on the German market not to adopt an entirely new regime; instead, it was decided that the previous legal analysis should remain unchanged. Securities were further classified as tangible assets, however, paper documents, representing the securities, were immobilized. The German and Austrian markets developed a new system of transferring around the fundamental legal analysis.

There is the Central Securities Depository, which keeps in custody the securities certificates for most of the German securities listed on the market. Clients usually own the securities through sub-custodians, who have accounts at the Central Securities Depository, while the relationship between the clients and their depositories is analyzed in the light of providing one's property for keeping in custody. It is not considered that the depositories have property rights over the clients' securities; they are only intermediaries in the tenancy between their clients and the securities certificates, which are kept by the Central Securities Depository. The investors are considered co-owners and joint-tenants of the securities held at the Central Securities Depository. The ownership over those securities is to be transferred by registering, which, however, under the doctrine is classified as including transferring of the joint tenancy from the seller to the buyer. The buyer is protected against counter claims, which may result from unlawful transferring or improper issuing<sup>1</sup>.

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<sup>1</sup> *Micheler E.* Op. cit. Pp. 216–221.

## **Transferring dematerialized shares in the United States of America**

### *Historical development*

On a global scale, dematerialized investment securities appeared much earlier and were related to the process of the so-called dematerialization. The necessity of their introduction was a result of piling heaps of paper in the stock markets in the United States of America (USA) and their difficult processing — a phenomenon called “paper crunch”. Dematerialized securities were officially introduced in the USA with the Uniform Commercial Code (UCC) back in 1977. They are regulated there as uncertificated securities, or those are investment securities for which there is no certificate issued to represent them, and their transferring is done through registration in books kept for this purpose by or at the expense of an issuer. § 8–102 from UCC, definitions (15) and (18).

For more than 30 years the largest, most active and most liquid market in the world, that of the United States Department of the Treasury, was in a process of on-going abolishment of securities’ physical certificates. There are several milestone years illustrating that process:

In 1968 were adopted provisions authorizing the first “book-entry” procedures. The “Book-entry System” is the system for carrying out and registering the issuing and dealing with dematerialized shares;

In 1979, all the new treasury bills were issued only in a dematerialized form;

In 1985, the Federal National Mortgage Association started applying the “book-entry” system;

In 1986, all the new treasury bills and bonds were issued in a dematerialized form;

The market for the most liquid of the instruments on the cash market in the USA — the federal funds emerged since both borrowers and lenders were looking for ways to make use of the opportunities, provided by the trade with reserve funds. The trade with federal funds started in the 1920s and involved only several banks, members of the Federal Reserve, which were based in New York. Nowadays, that market includes more than 14 000 commercial banks and a wide range of non-bank financial institutions. The characteristics of the federal funds, as well as the mechanisms of their purchase and sale, reflect most accurately the needs of the players on the contemporary capital market<sup>1</sup>.

On a global scale, those markets, which are most efficient, will obtain competitive advantage and a dominant position in the actual formation and distribution of the investment products. From a historical perspective, the USA is a leader and innovator

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<sup>1</sup> Donald R. Fraser and Peter S. Rose. *Financial Institutions and Markets in a Changing World*, third edition, BPI, USA, 1987 ..., p. 277. More about the federal fund market. p. 277–284 (hereinafter only Donald R. Fraser and Peter S. Rose., *Financial...*).

in the field of dematerialized securities. Nevertheless, there are other competitors gaining momentum on the market of dematerialized financial instruments. The Euro has created potential for major competition within the European Economic Union, where the links between the separate countries and unions are formed with a head-spinning speed. Furthermore, some later emerging players on the capital market are making quick transition towards securities dematerialization. Among such countries are Australia, the Republic of South Africa and India.

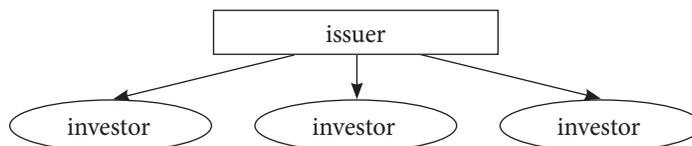
#### *Current status*

Transferring dematerialized shares in the USA is governed by Art. 8 of UCC, which regulates ownership and transferring securities and other financial assets. The provisions of Art. 9 of the UCC are related to securing those assets. Art. 8 and Art. 9 are part of the numerous legal norms of the US regulatory basis governing securities and investment assets. Article 8 settles with its content the transactions with securities, the relations between the issuers, investors, intermediaries, and sellers and their buyers. Articles 8 and 9 from the current version of the UCC are adopted by all the fifty states and the District of Columbia. UCC — Art. 3 regulates the ownership and transferring of negotiable instruments (securities), for which there can be established and owned rights over securities through the indirect holding system under Art. 8<sup>1</sup>.

#### *Direct and indirect holding systems*

The system of immobilization and possessing through intermediaries does not entirely replace the system of dematerialized securities, and none of those systems does entirely replace the system of direct holding and the provision of conventional certificates on paper. Article 8 of the UCC contains the legal regulations for all the three systems. The system of the conventional paper certificates and the system of the dematerialized securities are known as *direct holding system*. The system for immobilization and possessing through intermediaries is known as *indirect holding system*.

With the direct holding system, each investor is registered as an owner of the security in the issuer's registries, which are often kept by a transferring agent. This can be illustrated by figure 1.



**Figure 1.** *Direct holding system*

<sup>1</sup> Bjerre C. and Rocks S. The ABCs of the UCC. Article 8, Investment securities, 2004, p. 1–4 (hereinafter only Bjerre, C. and Rocks, S. The ABCs ...).

With the indirect holding system, most of the investors have no direct connection and do not communicate directly with the issuer, but they own their investment through intermediaries. The indirect holding system is not entirely independent of the direct holding system: in the case with the securities. The legal entity, which is at the top of the indirect holding chain, communicates with the issuer from the direct holding system. The relation between the two systems, as well as the relationships within the indirect holding system, can be illustrated by figure 2.

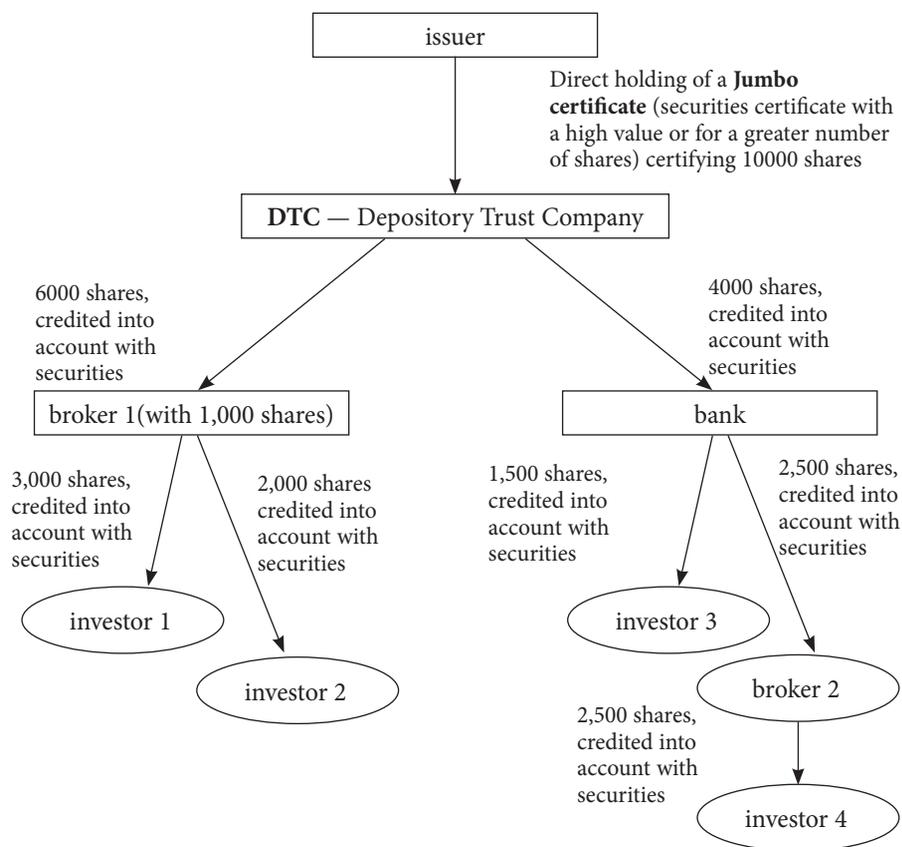


Figure 2. Indirect holding system

**The Depository Trust Company — DTC**, is the clearing organization for the majority of the publicly traded corporate capital securities, corporate debt securities and municipal debt securities, and its representative is usually Cede & Co. It was established in 1973 with the main goal to reduce the costs on the securities

transactions, as well as to carry out their clearing and settlement by immobilizing securities and transferring securities holding by book entry movement<sup>1</sup>. Some of the services, which that institution offers are:

- custodian services; securities clearing and settlement;
- asset management, including services related to depositing securities and services related to dividend payment.

The securities (or other financial assets) are shares from the capital of a corporation, where investor 1 has the right of collateral for those shares, credited into his/her securities account kept with broker 1. Broker 1, in turn, is in the same relationship with the DTC, which is the registered owner of the shares in the books of the computer corporation.

#### *Scope of the two systems*

The direct holding system is applied only for securities, while the indirect holding system has a wider application and comprises securities as well as other financial assets. The definition for a *security*, presented in § 8–102 of the UUC supported by § 8–103 of the UCC differs substantially from the security definition used in the federal securities acts.

It is important to quote part of the provision of § 8–102, namely § 8–102 (1) of the UCC, directly concerning the above discussed question:

“A materialized security,” means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer: which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer; which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and which: is, or is of a type, dealt in or traded on securities exchanges or securities markets; or is a medium for investment”.

“Uncertificated (dematerialized) security” means a share, participation or another other interest in an issuer or in property or an enterprise of an issuer, or an obligation of an issuer, which is not represented by a security certificate, where the transfer of which shall be registered upon books maintained for that purpose by or on behalf of the issuer; which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and which: is, or is of a type, dealt in or traded on securities exchanges or securities markets; which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

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<sup>1</sup> [www.dtcc.com/about/subs/dtc.php](http://www.dtcc.com/about/subs/dtc.php)

“A security” may be materialized or dematerialized. If it is materialized, the terms “security” and “materialized security” may mean either an intangible interest, or the document representing that interest, or both, as required by the context. The present article, and not article 3 regulates the written document, which is a materialized security, nevertheless, the document in question meets the requirements of the latter article as well. The present article does not concern money. If a security is detained by or delivered to an issuer or his/her transferring agent due to reasons other than registering of transferring, another temporary purpose, payment, replacement or acquisition by an issuer, such a security shall be treated as a dematerialized security for the purposes of the present article.

A materialized security is in a “registered from” if it nominates a person, who is entitled to the security or to the rights it represents and its transferring may be registered upon books maintained for that purpose by or on behalf of the issuer, or if that is specified in the security.

A materialized security is in a “bearer from” if it belongs to the bearer according to its terms, but not by reason of an additionally registered endorsement.

### *Summary*

The individual shareholders in the USA certify their ownership right in a business company through the shares acquired by them from its capital. The ordinary share capital entitles the holder to take part in the company control having right to one vote for each share listed in the registry, as well as to an interest in the profits in the form of dividends and to participate in the distribution of the net assets in case of a company dissolution upon satisfying the creditors. There are also classes of share capital, such as preferential shares, which are superior to the ordinary shares in respect to dividends and the distribution of the net assets with a company’s dissolution.

By exercising their right to vote, the shareholders choose the directors of the business company and thus exert indirect control over its activities. They are entitled to receiving information about the company’s activities by reviewing its books. The shareholders can keep their percentage of votes controlling whether the company shall emit any additional amounts of shares from its capital by exercising their right to preferential buyout. They are entitled to prosecute a claim on behalf of the company for damages incurred upon it if, at a request by them, the company refuses to do so<sup>1</sup>.

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<sup>1</sup> *Ronald A. Anderson, Ivan Fox and David P. Twomey*. *Business Law, South — Western publishing CO., USA, 1987*, p. 860–861. For more about share capital, transferring of shares and shareholders’ rights and obligations, see pp. 839–863.

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**STATE CONTROL (SUPERVISION)  
IN THE IMPLEMENTATION OF ENTREPRENEURIAL ACTIVITIES  
IN THE OIL SECTOR OF ENERGY**

DOI 10.30729/2541-8823-2021-6-3-198-213.

**Abstract.** *An analysis was made of the current legislation regulating the general procedure for exercising state control (supervision), as well as review documents on state control (supervision) of the Ministry of Economic Development of the Russian Federation, the Federal Antimonopoly Service, the Committee for Permitting and Supervisory Activities of the Russian Union of Industrialists and Entrepreneurs (RUIE). At the same time, directions for development and improvement were identified. In particular, it was noted that a fundamental methodological document has been developed — the Performance and Efficiency Management Maturity Standard, in accordance with which work will be based on the implementation of the performance and efficiency system in the activities of control and oversight bodies in 2018–2025.*

*In order to develop a systematic understanding of control (supervision) in the oil industry, their types are considered at certain stages of economic activity of business entities in the oil sector: 1) at the stage of prospecting, exploration of oil fields, 2) at the stage of oil production, 3) at the stage of transportation, 4) during storage, processing and marketing.*

*On the part of the state, at the first stage of economic activity, the basic requirements are established, and state control is exercised over geological study, rational use and protection of the subsoil. At the extraction stage, in accordance with the provisions of Art. 23.3 of the Law of the Russian Federation “On Subsoil”, technical, tax and other types of control are carried out. At the stage of transportation, along with technical and technological, customs control is carried out. During storage, processing and marketing, as well as at other stages of*

*economic activity, antimonopoly control is carried out. It is noted that in this area, the reform of control and supervision activities and a risk-based approach are also being carried out in the organization of certain types of control (supervision) in the field of antimonopoly regulation. At all stages of economic activity, the requirements for the safe conduct of work must be met. These requirements relate to energy, industrial, environmental and other types of safety. Along with the specified special control checks in the field of activity of economic entities, checks are also carried out by other control and supervisory bodies: the prosecutor's office, the Ministry of Emergency Situations, the sanitary and epidemiological service, etc. It is concluded that a system-forming regulatory legal act is needed, which defines the concept of control (supervision), types of control (supervision), state bodies exercising control (supervision), procedures for exercising control (supervision) and mechanisms for protecting the rights of controlled economic entities in the oil sector of energy. Within the framework of the tasks defined in the Message of the President of the Russian Federation in terms of improving the control and supervision system, it is advisable to analyze all regulatory legal acts in this area. It is also necessary to develop and adopt a general backbone law on the types of state control (supervision) and general rules for its implementation.*

**Keywords:** *state control (supervision), entrepreneurial activity, oil sector of energy, types of state control.*

Control (supervision) by the state in the oil sector of energy is carried out by various state bodies, depending on the sphere of business activity subject to control. In order to develop a systematic understanding of control (supervision), it is advisable to consider their types at certain stages of the activities of economic entities in the oil sector: 1) at the stage of prospecting, exploration of oil fields, 2) at the stage of oil production, 3) at the stage of transportation, 4) at storage, processing and marketing.

General rules for the implementation of state (municipal) control (supervision) are contained in the Federal Law of December 26, 2008 No 294-FZ “On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control”<sup>1</sup>.

In Decree of the Government of the Russian Federation of 05.06.2013 No 476 “On issues of state control (supervision) and the invalidation of certain

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<sup>1</sup> Federal Law of December 26, 2008 No 294-FZ (as amended on December 27, 2018) “On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control” (as amended and supplemented, entered into force from 01/27/2019) // Collection of Legislation of the Russian Federation, 12/29/2008, No 52 (part 1), art. 6249.

acts of the Government of the Russian Federation”<sup>1</sup> the Regulations on the implementation of state control are approved and the types of federal state control are established. In particular, it has been established that federal state control (supervision) is carried out by the following federal executive bodies and their territorial bodies:

a) the Federal Antimonopoly Service in the exercise of control over compliance with the legislation of the Russian Federation and other regulatory legal acts of the Russian Federation on the placement of orders;

b) the Federal Service for Supervision of Consumer Rights Protection and Human Welfare in the implementation of federal state supervision in the field of consumer protection — for compliance with the requirements for including information on the energy efficiency class of the product, other mandatory information on energy efficiency in the technical documentation attached to the product, in its labeling, the application of such information on its label, as well as the rules for the inclusion (application) of such information;

- c) Federal Service for Ecological, Technological and Nuclear Supervision:
- when exercising federal state construction supervision — over compliance within its competence during construction, reconstruction of buildings, structures, structures with energy efficiency requirements, requirements for their equipping with metering devices for used energy resources;
  - when exercising, within its competence, state control (supervision):
  - for the observance by the owners of non-residential buildings, structures, structures during their operation of the energy efficiency requirements for such buildings, structures, structures, the requirements for their equipping with metering devices for the energy resources used;
  - compliance by legal entities in whose authorized capital the share (contribution) of the Russian Federation, a subject of the Russian Federation, a municipality is more than 50 percent and (or) in respect of which the Russian Federation, a subject of the Russian Federation, a municipality have the right to directly or indirectly dispose of more than 50 percent of the total number of votes attributable to voting shares (stakes) constituting

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<sup>1</sup> Decree of the Government of the Russian Federation of 05.06.2013 No 476 (as amended on 03.11.2018) “On issues of state control (supervision) and invalidation of certain acts of the Government of the Russian Federation” (together with the “Regulations on federal state supervision in the field of communications”, “Regulations on state supervision in the field of atmospheric air protection”, “Regulations on state supervision in the field of use and protection of water bodies”, “Regulations on federal state supervision in the field of protection, reproduction and use of wildlife and their habitats”, “Regulations on federal state fire supervision in forests”, “Regulations on State Veterinary Supervision”, “Regulations on Federal State Sanitary and Epidemiological Supervision”// Collected Legislation of the Russian Federation, 17.06.2013, No 24, Article 2999.

the authorized capital of such legal entities; state and municipal unitary enterprises, state and municipal institutions, state companies, state corporations, as well as legal entities whose property is more than 50 percent of the shares or shares in the authorized capital owned by state corporations, requirements for the adoption of programs in the field of energy saving and increasing energy efficiency;

— for conducting a mandatory energy audit within the prescribed period;

d) the Federal Tariff Service, when exercising federal state control (supervision) in the field of state-regulated prices (tariffs), over compliance by organizations engaged in regulated activities with the requirements for the adoption of programs in the field of energy saving and energy efficiency improvement and the requirements for these programs in case if prices (tariffs) for goods, services of such organizations are regulated by the Federal Tariff Service.

The provisions of the Federal Law “On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control”, other federal laws and legislation on energy conservation and improving energy efficiency<sup>1</sup>.

Information on the results of control as a whole is published in the annual reports of the Ministry of Economic Development of the Russian Federation “On the implementation of state control (supervision), municipal control in the relevant areas of activity and on the effectiveness of such control (supervision)”<sup>2</sup>. Also, the Committee for Permitting and Controlling and Supervisory Activities of the Russian Union of Industrialists and Entrepreneurs (RUIE) publishes an analytical report “Controlling, Supervisory and Permitting Activities in the Russian Federation: Analytical Report”<sup>3</sup>. In addition, in accordance with paragraph 5 of the minutes of the meeting of the Presidium of the Council under the President of the Russian Federation for Strategic Development and Priority Projects dated October 19, 2016 No. 8, the FAS Russia is a federal executive

<sup>1</sup> Decree of the Government of the Russian Federation of 05.06.2013 No 476 (as amended on November 3, 2018) “On issues of state control (supervision) and the invalidation of certain acts of the Government of the Russian Federation” (together with the “Regulations on federal state supervision in the field of communications”, “Regulations on state supervision in the field of atmospheric air protection”, “Regulations on state supervision in the field of use and protection of water bodies”, “Regulations on federal state supervision in the field of protection, reproduction and use of wildlife and their habitats”, “Regulations on federal state fire supervision in forests”, “Regulations on State Veterinary Supervision”, “Regulations on Federal State Sanitary and Epidemiological Supervision”// Collected Legislation of the Russian Federation, 17.06.2013, No 24, Article 2999.

<sup>2</sup> <http://economy.gov.ru/minec/main>

<sup>3</sup> <http://www.goskontrol-rspp.ru/docladykomiteta/>

body that is a participant in the priority program “Reform of Control and Supervisory Activities”<sup>1</sup>. As part of participation in this priority program, the FAS Russia developed a passport for the priority project “Reform of the control and supervisory activities of the FAS Russia”, approved by order of the FAS Russia dated May 11, 2017 No. 624/17<sup>2</sup>.

At the Gaidar Forum, the Prime Minister of the Russian Federation D. A. Medvedev proposed to reduce the burden on entrepreneurs and revise the system of requirements to ensure an economic breakthrough in Russia<sup>3</sup>. The Message of the President of the Russian Federation on February 20, 2019 notes that “for the remaining two years — there are two years ahead — with the participation of the business community, it is necessary to update the regulatory framework, save only those documents that meet modern requirements. The rest — to hand over to the archive!”<sup>4</sup>.

In the legal literature, both theoretical and practical problems in the field of control and supervision activities have been studied<sup>5</sup>. So, in the legal reference

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<sup>1</sup> Report of the FAS Russia to public discussions of law enforcement practice of antimonopoly authorities // <http://knd.fas.gov.ru/doksto/2878>.

<sup>2</sup> Order of the Federal Antimonopoly Service of Russia dated May 11, 2017 No 624/17 “On Approval of the Passport of the Priority Project” Reform of the Control and Supervisory Activities of the Federal Antimonopoly Service of Russia” // SPS ConsultantPlus.

<sup>3</sup> <https://rg.ru/2019/01/15/medvedev-reshil-uprostit-zhizn-biznesa-s-pomoshchiu-regulatornoj-gilotiny.html>

<sup>4</sup> <https://tass.ru/obschestvo/6137938>

<sup>5</sup> Control and Supervisory Activities in the Russian Federation: Analytical Report — 2012 / V. V. Bakaev, A. G. Zuev, M. G. Kirzhimanov and others. M.: MAKSPress, 2013. 148 p.; *Blazheev Ya. A.* Legal problems of ensuring state supervision in the oil and gas complex of the Russian Federation // *Legal world*. 2016. No. 5. S. 36–43; *Soldatenkov O. O.* State environmental supervision: some issues of theory and practice // *Legal world*. 2014. No. 8. S. 43–47; *Petrov A. V., Epifanov A. E.* Legal nature of state control and supervision // *Journal of Russian law*. 2013. No. 7. P. 36–49; *Zaslavskaya N. M.* Problems of building a modern functional organization of state environmental control // *Ecological Law*. 2010. No. 3. S. 17–22; *Belyaev V. P.* Control and supervision as forms of legal activity: questions of theory and practice: Dis. ... Dr. jurid. Sciences. Saratov, 2006; *Denisov S. A.* Formation of the control branch of state power and limitation of corruption // *State and Law*. 2002. No 3; *Sterling M. R.* Legal regulation of the organization of control and supervisory activities of federal executive bodies of the Russian Federation: Dis. ... cand. legal Sciences. St. Petersburg, 2004; *Tarasov A. M.* State control: essence, content, current state // *Journal of Russian law*. 2002. No. 1; *Yablonskaya A. B.* The control and supervisory function of state power in the Russian Federation (theoretical and legal research): Dis. ... cand. legal Sciences. M., 2010; *Shlyuter M. S.* Administrative responsibility for offenses in the field of subsoil protection and subsoil use: monograph. Moscow: Prospekt, 2015. 136 p.; *Bevzenko R. S.* Use of subsoil without a license: public and private aspects // *Bulletin of the Supreme Arbitration Court of the Russian Federation*, 2007, No 6; *Karaseva S. Yu.* Overview of the practice of consideration by federal arbitration courts of disputes related to licensing // SPS “ConsultantPlus”. 2008;

system “Garant” there are 3318 non-cancelled regulatory technical documents issued before January 1, 1990, including regulatory and technical documents regulating control (supervision) in the oil sector of the economy (for example, Guiding Document RD 39-30-499-80 “Regulations on the maintenance and repair of the linear part of the main oil pipelines” (approved by the Ministry of the Oil Industry on December 31, 1980, etc.))<sup>1</sup>.

The reports of the Ministry of Economic Development emphasize the gradual streamlining of the procedures for exercising state control (supervision) and municipal control<sup>2</sup>. In the Report of the Ministry of Economic Development on the results of the activities of the Ministry of Economic Development of Russia for 2017 and the tasks for 2018, the key point is the submission to the State Duma of the Russian Federation of the draft law “On state control (supervision) and municipal control in the Russian Federation”<sup>3</sup>. Federal Law No. 17-FZ of February 19, 2018 “On Amendments to Article 77 of the Federal Law “On the General Principles of Organizing Local Self-Government in the Russian Federation” and Article 25.1 of the Federal Law “On Protection of Competition” provides for the entry into the Unified Register of Inspections of information on inspections, conducted:

- the FAS of the Russian Federation in exercising control over compliance with antimonopoly legislation;
- bodies of state control (supervision) in relation to local self-government bodies. In addition, in 2013–2017, the number of inspections in Russia (including inspections within the framework of license control) decreased by 31 percent<sup>4</sup>. Decree of the Government of the Russian Federation dated May 23, 2017 No. 999-r on amendments to the main directions for the development and implementation of a system for assessing the effectiveness and efficiency of control and supervisory activities, approved by Decree of the Government of the Russian Federation dated May 17, 2016 No. 934-r, which provides for changes in the conceptual apparatus for the terms “performance”

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*Panov S. V., Klyuev S. V.* Supervision over the execution of legislation in the sphere of the fuel and energy complex // *Legality*. 2011. No 2. S. 3–7.

<sup>1</sup> Control and Supervisory Activities in the Russian Federation: Analytical Report — 2012 / V.V. Bakaev, A.G. Zuev, M.G. Kirzhimanov and others. Moscow: MAKS Press, 2013. 148 p.

<sup>2</sup> For example, the Report “On the implementation of state control (supervision), municipal control in the relevant areas of activity and on the effectiveness of such control (supervision)” // <http://economy.gov.ru/minec/main>.

<sup>3</sup> Report “On the results of the activity of the Ministry of Economic Development of Russia for 2017 and tasks for 2018” // [economy.gov.ru/minec/main](http://economy.gov.ru/minec/main).

<sup>4</sup> *Ibid.*

and “efficiency”, changing the structure of the list of performance indicators and the effectiveness of control and supervisory activities, as well as changes in the standard list of indicators and, as a result, focused on minimizing the damage caused to legally protected values (life, health, property, etc.) in controlled areas.

Adopted on the basis of the specified order of the Government of the Russian Federation by eleven federal executive authorities (Ministry of Emergency Situations of Russia, FAS Russia, Federal Tax Service of Russia, Federal Service for Veterinary and Phytosanitary Supervision, Federal Service for Supervision of Consumer Rights Protection and Human Welfare, Federal Service for Surveillance in Healthcare, Federal Service for Supervision of Natural Resources, Federal Service for Supervision in the Sphere of Transport, Federal Service for Labor and Employment, Federal Service for Ecological, Technological and Nuclear Supervision and the Federal Customs Service of Russia) departmental orders on the approval of performance and efficiency indicators for 41 type of control (supervision).

A fundamental methodological document has been developed — the Performance and Efficiency Management Maturity Standard, in accordance with which work will be based on the implementation of the performance and efficiency system in the activities of control and oversight bodies in 2018–2025<sup>1</sup>.

To achieve the goal of improving regulation in the field of control (supervision), Decree of the Government of the Russian Federation of December 26, 2018 No 1680 sets out the requirements for the organization and implementation by state control (supervision) bodies, municipal control bodies of measures to prevent violations of mandatory requirements, requirements established by municipal legal acts<sup>2</sup>. This Resolution, which entered into force on January 1, 2019, establishes general requirements for the organization and implementation of measures by the authorities to prevent violations of mandatory requirements.

At the same time, in the sphere of state (municipal) control (supervision) there are issues that need to be addressed, including in the sphere of control (supervision) in the oil sector of the economy, arising at different stages of economic (entrepreneurial) activity.

<sup>1</sup> Report “On the results of the activity of the Ministry of Economic Development of Russia for 2017 and tasks for 2018” // [economy.gov.ru/minec/main](http://economy.gov.ru/minec/main).

<sup>2</sup> Decree of the Government of the Russian Federation of December 26, 2018 No 1680 “On approval of general requirements for the organization and implementation by state control (supervision) bodies, municipal control bodies of measures to prevent violations of mandatory requirements, requirements established by municipal legal acts” // Collection of Legislation of the Russian Federation, 31.12.2018, No 53 (part II), article 8709.

At the first stage of the activities of economic entities of the oil industry, the executive authorities and executive authorities of the constituent entities of the Russian Federation, within their powers, resolve issues of subsoil use, subsoil protection and environmental protection.

On the part of the state, at this stage, the basic requirements are established, and state control is exercised over geological exploration, rational use and protection of the subsoil.

The main requirements for the rational use and protection of subsoil are defined in Article 23 of the Law of the Russian Federation “On Subsoil”, in particular, they include:

1. compliance with the procedure established by law for granting subsoil for use and preventing unauthorized use of subsoil;
2. ensuring the completeness of the geological study, rational integrated use and protection of subsoil;
3. conducting advanced geological study of subsoil, providing a reliable assessment of mineral reserves or properties of a subsoil plot provided for use for purposes not related to the extraction of minerals, etc.

The powers of federal government bodies in the sphere of regulation of subsoil use relations include, in particular, the establishment of a procedure for exercising state supervision over geological exploration, rational use and protection of subsoil, organization and implementation of federal state supervision over geological exploration, rational use and protection of subsoil.

Decree of the Government of the Russian Federation of May 12, 2005 No 293 approved the Regulations on State Supervision of Geological Survey, Rational Use and Protection of Subsoil<sup>1</sup>. The task of state geological supervision is to ensure that all subsoil users comply with the established procedure for using subsoil, the requirements of the legislation of the Russian Federation and duly approved standards (norms, rules) in the field of geological exploration, use and protection of subsoil, the rules for maintaining state accounting and reporting.

State geological supervision is carried out in accordance with the legislation of the Russian Federation:

- the Federal Service for Supervision in the Field of Natural Resources, which is the body of state geological supervision, the Federal Service for Environmental, Technological and Nuclear Supervision, which is the body

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<sup>1</sup> Decree of the Government of the Russian Federation of May 12, 2005 No 293 (as amended on June 5, 2013) “On Approval of the Regulations on State Supervision of Geological Survey, Rational Use and Protection of Subsoil” // Collection of Legislation of the Russian Federation, May 16, 2005, No 20, art. 1885.

of state mining supervision, and their territorial bodies in cooperation with other control bodies;

— state authorities of the constituent entities of the Russian Federation.

Order No. 670 of the Federal Service for Supervision of Natural Resources dated 10/18/2016 approved the List of legal acts containing mandatory requirements, compliance with which is assessed when carrying out control measures within a separate type of state control (supervision) (together with the “Procedure for maintaining the List of legal acts containing mandatory requirements, compliance with which is assessed when carrying out control measures within a separate type of state control (supervision)”)<sup>1</sup>. Order No. 447 of the Federal Service for Supervision of Natural Resources dated September 18, 2017 approved the forms of checklists (lists of checklists), in particular, those used in the implementation of federal state supervision of geological exploration, rational use and protection of subsoil; as well as those used in the implementation of state environmental supervision in the internal sea waters and in the territorial sea of the Russian Federation (including when laying submarine cables and pipelines; carrying out drilling operations; carrying out measures to prevent and eliminate spills of oil and oil products)<sup>2</sup>.

In this supervisory area, by Order of the Federal Environmental, Industrial and Nuclear Supervision Service No. 254 dated July 10, 2017 approved the List of regulatory legal acts and regulatory documents related to the scope of activities of the Federal Service for Ecological, Technological and Nuclear Supervision (section I “Technological, construction, energy supervision”) P-01-01-2017”<sup>3</sup>.

<sup>1</sup> Order of the Federal Service for Supervision in the Sphere of Natural Resources dated 10/18/2016 No 670 (as amended on 04/17/2018) “On the List of legal acts containing mandatory requirements, compliance with which is assessed when carrying out control measures within a separate type of state control (supervision)” (together with the “Procedure for maintaining the List of legal acts containing mandatory requirements, compliance with which is assessed when carrying out control measures within a certain type of state control (supervision)”) // The text of the document is given in accordance with the publication on the website <http://rpn.gov.ru> as of May 14, 2018.

<sup>2</sup> Order of the Federal Service for Supervision of Natural Resources dated September 18, 2017 No 447 (as amended on May 30, 2018) “On approval of the forms of checklists (lists of checklists)” (Registered with the Ministry of Justice of Russia on November 9, 2017 No 48820) (as amended and add., entered into force on 01.01.2019) // Official Internet portal of legal information <http://www.pravo.gov.ru>, 09.11.2017.

<sup>3</sup> Order of the Federal Environmental, Industrial and Nuclear Supervision Service No. 254 of July 10, 2017 (as amended on March 21, 2018) “On Approval of the List of Regulatory Legal Acts and Regulations Related to the Field of Activities of the Federal Environmental, Industrial and Nuclear Supervision Service (Section I “Technological, construction, energy supervision”) P-01-01-2017” // ConsultantPlus.

In addition, the state authorities of the constituent entities of the Russian Federation exercise state geological supervision. The timing and sequence of administrative procedures in the implementation of state geological supervision are established by administrative regulations developed and approved in accordance with the Decree of the Government of the Russian Federation of May 16, 2011 No 373<sup>1</sup>.

At the extraction stage, in accordance with the provisions of Art. 23.3 of the Law of the Russian Federation “On Subsoil”, subsoil users who carry out the primary processing of mineral raw materials obtained by them from the subsoil are obliged to ensure:

1. strict observance of technological schemes for the processing of mineral raw materials, providing a rational, integrated extraction of the useful components contained in it; accounting and control of the distribution of useful components at various stages of processing and the degree of their extraction from mineral raw materials;
2. further study of the technological properties and composition of mineral raw materials, conducting experimental technological tests in order to improve the technologies for processing mineral raw materials;
3. the most complete use of products and waste products (sludge, dust, wastewater, and others); storage, accounting, and storage of temporarily unused products and production waste containing useful components. Accordingly, inspections are carried out by the Federal Service for Environmental, Technological and Nuclear Supervision, the Federal Service for Supervision of Natural Resources, the tax service, antimonopoly authorities, etc.

At the stage of transportation, along with technical and technological control, customs control is carried out<sup>2</sup>. Since January 1, 2018, the Customs Code of the Eurasian Economic Union has been in force on the territory of Russia “(Appendix No. 1 to the Treaty on the Customs Code of the Eurasian

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<sup>1</sup> Decree of the Government of the Russian Federation of May 16, 2011 No 373 (as amended on January 23, 2014) “On the development and approval of administrative regulations for the performance of state functions and administrative regulations for the provision of public services” (together with the “Rules for the development and approval of administrative regulations for the performance of state functions”, “Rules for the development and approval of administrative regulations for the provision of public services”, “Rules for the examination of draft administrative regulations for the provision of public services”) // Collection of Legislation of the Russian Federation, 30.05.2011, No 22, art. 3169.

<sup>2</sup> Order of the Federal Customs Service of the Russian Federation of 04.05.2006 No 422 “On the control of documents related to the application of the procedure for the movement of goods by pipeline transport”.

Economic Union)<sup>1</sup>. Customs regulation is carried out in accordance with international treaties regulating customs legal relations, including the Customs Code of the EAEU, and acts constituting Union law, as well as in accordance with the Treaty on the Eurasian Economic Union of May 29, 2014<sup>2</sup>.

During storage, processing and marketing, as well as at other stages of activity, antimonopoly control is carried out. It should be noted that in this area, the reform of control and supervisory activities and a risk-based approach are also being carried out in the organization of certain types of control (supervision) in the field of antimonopoly regulation.

Decree of the President of the Russian Federation dated June 30, 2016 No. 306 “On the Council under the President of the Russian Federation for Strategic Development and Priority Projects” established the Council under the President of the Russian Federation for Strategic Development and Priority Projects<sup>3</sup>, which was transformed into the Council under the President of the Russian Federation for Strategic Development and National projects<sup>4</sup>. One of the priority areas of strategic development is the reform of control and oversight activities.

At all stages of economic activity, the requirements for the safe conduct of work must be met. These requirements relate to energy, industrial, environmental and other types of safety. The list of regulatory legal acts containing industrial safety requirements was approved by order of the Federal Service for Ecological, Technological and Nuclear Supervision<sup>5</sup>. Order of the said Federal Service dated

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<sup>1</sup> Customs Code of the Eurasian Economic Union (Appendix No. 1 to the Treaty on the Customs Code of the Eurasian Economic Union) // Official website of the Eurasian Economic Union <http://www.eaeunion.org/>, 04/12/2017.

<sup>2</sup> “Treaty on the Eurasian Economic Union” (Signed in Astana on May 29, 2014) (as amended on April 11, 2017) // Official Internet portal of legal information <http://www.pravo.gov.ru>, 01/16/2015.

<sup>3</sup> Decree of the President of the Russian Federation of 06/30/2016 No 306 (as amended on 07/19/2018) “On the Council under the President of the Russian Federation for Strategic Development and Priority Projects” // Collection of Legislation of the Russian Federation, 07/04/2016, No 27 (part III), art. 4459.

<sup>4</sup> Decree of the President of the Russian Federation of July 19, 2018 No 444 (as amended on January 26, 2019) “On streamlining the activities of advisory and advisory bodies under the President of the Russian Federation” (together with the “Regulations on the Council under the President of the Russian Federation for Strategic Development and National Projects”) // Collection of legislation of the Russian Federation”, 07/23/2018, No 30, article 4717.

<sup>5</sup> Order of the Federal Environmental, Industrial and Nuclear Supervision Service No. 421 dated 10/17/2016 (as amended on 05/15/2018) “On approval of lists of legal acts containing mandatory requirements, compliance with which is assessed when carrying out control measures as part of the implementation of types of state control (supervision) assigned to the competence of the Federal Service for Environmental, Technological and Nuclear Supervision” (together with the “Procedure

November 15, 2018 No 567 approved the Safety Guide “Recommendations on the procedure for the temporary decommissioning of technical devices and structures at hazardous production facilities of the oil and gas complex”<sup>1</sup> in accordance with paragraph 2 of Article 10 of the Federal Law of July 21, 1997 No 116 -FZ “On Industrial Safety of Hazardous Production Facilities”<sup>2</sup>, as well as in order to promote compliance with the requirements of the Federal Norms and Rules in the field of industrial safety “Safety Rules in the Oil and Gas Industry”<sup>3</sup>.

Along with the specified special checks in the field of activity of economic entities, checks are also carried out by other control and supervisory bodies: the prosecutor's office, the Ministry of Emergency Situations, the sanitary and epidemiological service, etc.

The main problems of control and supervision activities, in particular, in the field of subsoil use and protection, were identified in the work of the team of authors “Control and supervision activities in the Russian Federation: Analytical report — 2012”<sup>4</sup>.

It should be noted that there are also difficulties associated with the implementation of control and other control and supervisory bodies. So, for example, in the practice of the Ministry of Emergency Situations, the question arose of the need to develop an oil spill response plan for an organization that is an oil carrier, as well as the question of whether an organization (small oil company) not categorized by civil defense operating hazardous production facilities is required III

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for maintaining lists of legal acts and their separate parts (provisions) containing mandatory requirements, compliance with which is assessed when carrying out control measures as part of the implementation of types of state control (supervision), referred to the competence of the Federal Service for Ecological, Technological and Nuclear Supervision”) // ConsultantPlus.

<sup>1</sup> Order of the Federal Environmental, Industrial and Nuclear Supervision Service No. 567 dated November 15, 2018 “On approval of the Safety Guide “Recommendations on the procedure for temporary decommissioning of technical devices and structures at hazardous production facilities of the oil and gas complex” // ConsultantPlus.

<sup>2</sup> Federal Law of July 21, 1997 No 116-FZ “On Industrial Safety of Hazardous Production Facilities” // Collection of Legislation of the Russian Federation, 1997, No 30, art. 3588; 2017, No 11, art. 1540.

<sup>3</sup> Order of the Federal Environmental, Industrial and Nuclear Supervision Service No. 101 dated March 12, 2013 (as amended on January 12, 2015) “On Approval of the Federal Norms and Rules in the Field of Industrial Safety “Safety Rules in the Oil and Gas Industry” (Registered with the Ministry of Justice of Russia on April 19, 2013 No 28222) (as amended and supplemented, effective from 01/01/2017) // Bulletin of normative acts of federal executive authorities, No 24, 06/17/2013. Information posted on the official website of the Federal Service for Environmental, Technological and nuclear supervision at: <http://www.gosnadzor.ru>.

<sup>4</sup> Control and Supervisory Activities in the Russian Federation: Analytical Report — 2012 / V.V. Bakaev, A.G. Zuev, M.G. Kirzhimanov and others. Moscow: MAKS Press, 2013. 148 p.

and IV hazard classes, which does not have a mobilization task, does not operate hazardous chemical production facilities, create and maintain local warning systems in a state of readiness<sup>1</sup>.

In general, the solution of these problems requires a systematic approach, i.e., a system-forming regulatory legal act is needed, which defines the concept of control (supervision), types of control (supervision), state bodies exercising control (supervision), procedures for exercising control (supervision) and mechanisms for protecting the rights of controlled economic entities in the oil energy sector.

We believe that the improvement of subsoil legislation, as well as the formation and development of special legislation regulating economic (entrepreneurial) activities in the oil industry, can contribute to the solution of existing difficulties.

For example, the “Model Code on Subsoil and Subsoil Use for the CIS Member States” (hereinafter referred to as the Model Code on Subsoil Use)<sup>2</sup> contains section XV “Subsoil Use Safety”, which sets out the basic principles of subsoil use safety and types of security, and also contains section XVI “State supervision and control over the use and protection of subsoil”.

In the Model Subsoil Code, safety principles include:

1. labor safety for the life and health of the population living and (or) working in zones of harmful influence of mine workings and associated technological processes;
2. safety for buildings and structures;
3. safety of the natural, including geological, environment;
4. security from encroachments on property.

The types of security include:

1. preservation of the geomorphological state of the earth's surface;
2. geoeological safety;
3. technical and technological safety;
4. social security.

We believe that the list of types of security in the national legislation on oil activities should be set out more broadly, taking into account the provisions of

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<sup>1</sup> “Overview of the law enforcement practice of the supervisory authorities of the Ministry of Emergency Situations of Russia. Answers to the most pressing issues of organizing and implementing supervisory activities of the Ministry of Emergency Situations of Russia” (approved by the Ministry of Emergency Situations of Russia) // Consultant Plus. The text of the document is given in accordance with the publication on the website <http://www.mchs.gov.ru> as of April 28, 2017.

<sup>2</sup> “Model Code on Subsoil and Subsoil Use for the CIS Member States” (Adopted in St. Petersburg on December 7, 2002 by Resolution 20–8 at the 20th plenary meeting of the Interparliamentary Assembly of the CIS Member States) // Information Bulletin. Interparliamentary Assembly of States Members of the Commonwealth of Independent States. 2003. No 30 (part 2). Pp. 5–218.

the National Security Strategy<sup>1</sup> and the Environmental Security Strategy<sup>2</sup>. Thus, according to the concept of national security contained in the National Security Strategy, national security includes the defense of the country and all types of security provided for by the Constitution of the Russian Federation and the legislation of the Russian Federation, primarily state, public, information, environmental, economic, transport, energy security, personal security.

In the Model Subsoil Code, in the section “State supervision and control over the use and protection of subsoil”, the tasks of state control in the field of use and protection of subsoil are highlighted and the powers of state supervision and control over the use and protection of subsoil are defined.

Taking into account the model legislation, the existing theoretical provisions on control and supervision activities, it is advisable to include in the Law “On Subsoil” a special chapter “State supervision and control over the use and protection of subsoil”, which provides for the principles of subsoil use safety and types of security, and also discloses tasks of state control in the field of use and protection of subsoil and determine their types, as well as regulate the powers of state supervision and control over the use and protection of subsoil.

Within the framework of the tasks defined in the Address of the President of the Russian Federation in terms of improving the control and supervisory system, it is advisable to analyze all regulatory legal acts. It is also necessary to develop and adopt a backbone law on the types of state control (supervision) and the general rules for its implementation.

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<sup>1</sup> Decree of the President of the Russian Federation of December 31, 2015 No 683 “On the National Security Strategy of the Russian Federation” // Collection of Legislation of the Russian Federation, 04.01.2016, No 1 (Part II), Art. 212.

<sup>2</sup> Decree of the President of the Russian Federation of 19.04.2017 No 176 “On the Strategy for Environmental Security of the Russian Federation for the period until 2025” // Collection of Legislation of the Russian Federation, 24.04.2017, No 17, art. 2546.

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