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Demarcation of Powers Between the Russian Federation and the Federal Subjects of the Russian Federation During the First Decade of the 21st Century: Overview and Some Observations

This article considers the dynamics and the foundational legal forms of the demarcation of powers between the Russian Federation and the subjects of the Russian Federation (constituent entities at the beginning of the 21st century. It examines initial conditions and the reasons behind such demarcation, the opportunities for the Russian Federation to demarcate powers, and the legislative decisions, which had set out the demarcation of powers. The article illustrates the organisation of contemporary power demarcation between the federal centre and the subjects of the Russian Federation, following a series of legislative changes.

Key words: federal relations, competency, powers, demarcation of powers, delegated powers, inherent powers, exercise of authority, demarcation of powers agreement, delegative agreement for exercising authority, subventions, financial guarantee of authority

Russia is a federal state. This is reflected in the country's interchangeable name: "Russia" or "the Russian Federation". The 1993 Russian Federation Constitution established the principles of Russia's federal organisation: state integrity, the unified system of governmental power in the Russian Federation, the demarcation of authority and powers between governmental bodies of the Russian Federation and the governmental bodies of the subjects of the Russian Federation, and the equality of subjects of the Russian Federation in their relationship with the federal centre. The Constitution sets out the terms of exclusive authority (article 71), joint authority between the Russian Federation and the subjects of the Russian Federation constituent entities (part one, article 72), and establishes complete authority of the subjects of the Russian Federation concerning authority outside the scope of the Russian Federation, as well as the authority of the Russian Federation in relation to

joint authority between the Russian Federation and the subjects of the Russian Federation (article 73 of the Russian Federation Constitution).

The Russian Constitution has not been altered in its scope of regulating federal relationships. However, federal relationships in the Russian Federation have undergone serious alterations during the same period. The relationship changed from the factual disregard of federal legislation by a number of regions and the lack of delineation of responsibilities between the Russian Federation and its subjects to a clear demarcation of rights, responsibilities and real accountability of regional governmental bodies of authority, with elements of centralisation between the federal centre and the regions. This was not a change in the constitutional model of Russian federalism, but rather an implementation of its “flexibility”, or fluidity, as set out by the Constitution of the Russian Federation.

The analysis of regulations set out in the abovementioned article (71–73) of the Constitution of the Russian Federation lends itself to the conclusion that when it is necessary and the required political will is present, the Russian Federation is not only capable of taking on a substantial portion of the powers, but is also capable of legislatively regulating the demarcation of powers between itself and its subjects. For instance, it is impossible to imagine social interactions, whose legislative regulation is not related to the regulation and protection of rights and freedoms (item “c” in article 71) or the protection of rights and freedoms (item “b” in part 1 of article 72 of the Russian Federation Constitution). According to article 2 of the Constitution of the Russian Federation, the individual and his rights and freedoms comprise the highest value. The acknowledgement, observance and protection of the rights and freedoms of the individual and the citizen are the state’s responsibility and, according to article 18 of the Constitution of the Russian Federation, the rights and freedoms of the individual and citizen determine the meaning, content and application of the law, as well as the work of the legislative and executive authorities and local governments. As such, all relationships regulated by law can be perceived through the prism of rights and freedoms.

A number of the positions taken by the Constitutional Court of the Russian Federation, the supreme body of judicial authority that interprets the Constitution, were formulated within the scope of this issue. As such, the Constitutional Court’s Resolution N 1-P, dated 9 January 1998, dealing with the review of the constitutionality of the Forestry Code of the Russian Federation¹, reflected the following legal position: “According to article 11 (part 3) of the Constitution of the Russian Federation, the demarcation of areas of competency and powers between the governmental bodies of the Russian Federation and the governmental bodies of the subjects of the Russian Federation is implemented by the Constitution of the Russian Federation, and federal and other agreements regarding the demarcation of areas of competence and powers. As a normative legal act of public action that regulates various areas of joint competency, the federal law sets out the rights and responsibilities of participants in a legal relationship, including the powers of governmental bodies, and thereby determines the demarcation of these powers. On the basis of article 11 (part 3), 72 (items “c”, “d”, “e” and “l” of part 1), 76 (part 2 and 5) and 94 of the Constitution of the Russian Federation, it follows that the federal assembly is within its right to determine the legislative regulation of issues, which relate to the given areas of joint competency and to define the subsequent specific powers and competency of governmental bodies of the

¹ SZ RF, 19.01.1998. N 3, st. 429.

Russian Federation and governmental bodies of the subjects of the Russian Federation” (paragraphs three and six of item 4 of the declaration section). At the same time, “on the basis of the federative nature of their (Russian Federation and its subjects) legal relationship emerges... the inadmissibility of arbitrary appropriation of the entirety of the powers of joint areas of competency by the governmental bodies of the Russian Federation, i.e. without the consideration of interests of the subjects of the Russian Federation and the role of their governmental bodies in the system of public power.” This legal position is reflected by the Constitutional Court in Resolution N 6-P, dated 11 April 2000, dealing with the review of the constitutionality of individual resolutions of item 2 of statute 2, item 1 of article 1 and item 3 of article 22 of the Federal law “On the public prosecutor’s office of the Russian Federation”.² This position, however, by virtue of its streamlined formulations, does not prevent the Russian Federation from distributing responsibilities of joint competency in a way that is perceived rational by the federal legislator.

One of the decisions reached by the Constitutional Court of the Russian Federation sets out a concrete example of how a federal lawmaker is within his right to independently regulate specific issues. The Russian Federation Constitutional Court’s Resolution N 4-P, dated 4 March 1997, dealing with the review of the constitutionality of statute 3 of Federal law, dated 18 July 1995, “On advertising”³, not only confirmed the ability of the Russian Federation to regulate a specific issue, such as advertising, but also determined that, in certain aspects of regulating advertising, the Russian Federation maintains the exclusive prerogative.

During the last (20th) century, the Constitutional Court of the Russian Federation formulated a number of other legal positions related to the demarcation of powers between the Russian Federation and its subjects in areas of joint competency:

- “on the basis of article 72, 76 (part 2) and 77 (part 1) of the Constitution of the Russian Federation, the lack of corresponding federal law on issues of joint competency does not prevent the federal subject from adopting its own normative act, as it emerges from the nature of joint competency. That said, following the enactment of a federal law, the federal subject must bring its own law to correspond with the federal law. This is set out in article 76 (part 5) of the Constitution of the Russian Federation. The necessity of the implementation of this condition must be stipulated in the constitution or the statutes of the federal subject” (Resolution N 3-P, dated 1 February 1996, of the Constitutional Court dealing with the review of the constitutionality of a number of resolutions of the Statutes-Constitution of the Chitinsk Oblast⁴; paragraph two of item 10 of the declaration section).

- in the absence of a federal law on joint areas of competency, the Russian federal subjects’ recognition of the right to carry out pre-emptive legal regulation on the subject of joint areas of competency does not automatically grant them complete decision-making power over all issues related to the given areas of competence, especially those that have a universal significance not only for the lawmaker of the Russian Federation’s subject, but also for the federal lawmaker, which are, thereby, subject to regulation by federal law (Constitutional Court Resolution N 5-P, dated 21 March 1997, related to the review of the constitutionality of the resolutions of paragraph two of item 2 of article 18 and article 20 of

² SZ RF, 17.04.2000, N 16, st. 1774.

³ SZ RF, 17.03.1997, N 11, st. 1372.

⁴ SZ RF, 12. 02. 1996, N 7, st. 700.

the Russian federal law, dated 27 December 1991, “On the foundations of the taxation system in the Russian Federation”⁵; paragraph three of item 2 and item 3 of the declaration section — not quoted directly).

- “if the subject of the Russian Federation has not adopted a law on an issue, designated as part of its competency by the federal lawmaker, as set out by article 72 (item “o” of part 1) and 76 (part 2) of the Constitution of the Russian Federation, then the federal lawmaker, if necessary, is within his powers to implement legal regulation in that sphere (Constitutional Court Resolution N 15-P, dated 3 November 1997, on the review of the constitutionality of item 1 of article 2 of the federal law, dated 26 November 1996, “On the provision of constitutional rights of Russian Federation’s citizens to elect and be elected to the bodies of local government”, in relation to the inquiry from the Tula regional court⁶; paragraph four of item 2 of the declaration section).

As such, at the onset of the 21st century, the Constitutional Court of the Russian Federation has formulated a number of legal positions, resulting from its interpretation of the Constitution of the Russian Federation, that illustrated that the powers of the Russian Federation in relation to the legal regulations of the demarcation of powers between different levels of public authority were very broad.

Nonetheless, significant changes in the sphere of federal relations in Russia have already taken place in the 21st century. The Russian Federation Presidential Decree N 741 “On the Russian Federation Presidential Commission on preparing proposals regarding the demarcation of powers between the federal authorities and the federal subject authorities of the Russian Federation” was signed on 21 June 2001.⁷ The decree stipulated that in order to improve the legislative foundations of federal relations and implement the federal law “On principles and order of demarcation of powers between the federal authorities and the federal subject authorities of the Russian Federation” a Presidential Commission, charged with overseeing the demarcation of powers between the federal authorities and the federal subject authorities of the Russian Federation, had to be formed. First and foremost, the Commission was tasked with the development and introduction of proposals related to the demarcation of powers between the federal authorities and the federal subject authorities, and local governments of the Russian Federation to the President of the Russian Federation. The Commission was also expected to implement a variety of other tasks related to the demarcation of powers. Within the scope of the Commission, working groups were created which developed proposals that dealt with different spheres of power demarcation between levels of government and also considered general issues of power demarcation. In fact, the work of the Commission has served as the basis for further changes in power demarcation.

What compelled the leadership of the Russian Federation to systemically address issues surrounding power demarcation? The general lack of power demarcation between the levels of public authority served as one of the primary reasons. Frequently, the demarcation of public authority powers necessary for satisfying the demands of individuals and the public were not at all provided for by the legislation. In the instance that the particular power was delineated in a law, the law frequently failed to specify which authority body was

⁵ SZ RF, 31.03.1997, N 13, st. 1602.

⁶ SZ RF, 10.11.1997, N 45, st. 5241.

⁷ SZ RF, 25.06.2001, N 26, st. 2652.

responsible for carrying it and did not specify at which level of government this would have to be addressed. In other words, the power was assigned to all levels of government at once, without specifying which one of those levels was in fact responsible for implementing it. Furthermore, no order or parameters for implementing powers were set up. In demarcating powers, the public authority generally assigned powers to the level of government that was most capable of dealing with it in a rational fashion.

The legislative oversaturation of declarative norms, dealing with the sphere of power demarcation, and the inconsistency of legislation at the level of subjects of the Russian Federation (although most of these were addressed before the formation of the Commission) also played a role. There was also an established practice of agreements and treaties between the governmental authorities of federal subjects and the federal government of the Russian Federation. Such agreements and treaties are permitted within the scope of the Constitution of the Russian Federation, but rather as an exception to the rule when there is an actual need to establish the specificities of power. However, at the end of the last century, the conclusion of such agreements between the federal and regional authorities became a distinct political pattern.

Most notably, the work of the Commission led to the ratification of the Federal law N 95-FZ, dated 4 July 2003, “On introducing changes to and supplementing the Federal law ‘On general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation’”⁸ and the new Federal law N 131-FZ, dated 6 October 2003, “On the general principles of organisation of local governance in the Russian Federation”.⁹ The 4 July 2003 Federal law unified the Federal law “On general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation” and the Federal law “On principles and order of demarcation of powers between the federal authorities and the federal subject authorities of the Russian Federation” (which consequently expired) into one legislative act, significantly, if not cardinally, changing the provisions of the latter and adding new provisions that deal with the financial and economic aspects of the organisational foundation and functioning of governmental authority of the subjects of the Russian Federation.

The fundamental innovation was the introduction of three categories of powers for the subjects of the Russian Federation when addressing issues of joint competency.

The first category includes powers, whose implementation was financed from the budget of the subject of the Russian Federation (provisionally — “inherent powers” of governmental authorities of the subjects of the Russian Federation). The Law includes a “basic” list of powers that must be implemented across the entire country in order to satisfy citizens’ rights and legal interests. The subjects of the Russian Federation are obligated to implement the powers set out in that list: their inclusion in the list indicates that the subjects of the Russian Federation are obligated to implement these powers. In other words, the powers contained in this list represent the subjects’ of the Russian Federation obligations, not rights.

At the same time, there are provisions that guarantee the inherent interests of the subjects of the Russian Federation. Federal laws can set out the fundamental elements of le-

⁸ SZ RF, 07.07.2003, N 24 (part 2), st. 2709.

⁹ SZ RF, 06.10.2003, N 40, st.3822.

gal regulation. However, they cannot include provisions that set out the scope and, as a rule (with few exceptions), the order of the subjects' of the Russian Federation budgetary expenditures related to the implementation of these powers. The subjects of the Russian Federation are entitled not only to administrative powers, but also to the corresponding regulatory powers. They also have the capacity to approach the implementation of most of these functions in a creative and economical way.

The subjects of the Russian Federation also had the right to execute other decisions using their budgets, if those functions were not relevant to the federal area of responsibility and issues of local significance. However, the situation became somewhat ambiguous later (this is discussed later).

The second category includes powers concerning joint areas of responsibility, assigned to be implemented by the subjects of the Federation but funded by targeted subsidies from the federal budget (provisionally — “delegated powers” of the governmental authorities of the subjects of the Russian Federation). The order and the scope of carrying out these functions are regulated in detail by the Russian Federation. Such laws must clearly set out the criteria for calculating subsidies. Even so, it is clearly set out that federal laws, normative legal acts issued by the President of the Russian Federation and the Government of the Russian Federation, which concern the subsidies to the budgets of the subjects of the Russian Federation with a view of implementing the abovementioned functions, are reviewed annually within the scope of the federal budget if the federal law on the federal budget includes the provision that the subjects of the Russian Federation are to be presented with subsidies. As such, the logic behind the federal budget sets out that if there is no federal financing, the subjects of the Russian Federation have no obligation to carry out these functions.

Federal financing gives the executive branch of the federal authorities the right to control their implementation. The law outlines that federal executive authorities are within their right to publish necessary acts in order to implement such functions, as well as oversee their direct implementation.

The third category of powers includes powers which do not require any expenditure, except for the everyday expenses needed to ensure organisational operation. On the basis of the systemic regulations in the Law, it follows that the federal authorities possess the right to implement fairly detailed normative legal regulations in relation to the order and scope of carrying out these powers. According to legal norms, the provision of subsidies from the federal budget to the budgets of the subjects of the Russian Federation can be circumnavigated only “if the powers, established by corresponding laws, do not require the creation of new governmental bodies within the subjects of the Russian Federation, budgetary institutions and enterprises, additional budgetary investments, budget payments to citizens and legal entities, or an increase in government personnel numbers in the subjects of the Russian Federation and governmental budget institutions”. This legal construction contains guarantees that ensure that the governmental bodies of the subjects of the Russian Federation are not responsible for carrying out federal functions that are not financed.

The Law has rebranded the role of agreements and treaties. Accordingly, treaties are to be concluded only in exceptional cases, where there exists an economic, geographical or other specificity of the subject of the Russian Federation, and insofar as the listed specificities frame a demarcation of powers that is different than what is established in federal law. A treaty with a specific subject of the Russian Federation must be consolidated by federal

law and should set out specific rights and obligations of both sides. As a special act, such a treaty, having been confirmed by federal law, will have priority over other federal laws (such a treaty currently exists with the Republic of Tatarstan).

In accordance with the Law, the use of a treaty as a means to delegate power from the federal executive authorities to the executive authorities of the subjects of the Russian Federation should be implemented only in the instance when the implementation of powers cannot be assigned in equal measure to the executive authorities of all the subjects of the Russian Federation through federal law. One of the provisions included the affirmation of the treaties by the federal government, which would oversee the treaties' contents and implementation. Previously, the affirmation of treaty projects was carried out by the federal government. But the scope of this affirmation was never clearly laid out, leading to various issues, including concerns regarding who was authorised to sign the document and the scope of the document itself.

For the first time, the Law provided guidance for instances when federal executive authorities temporarily delegated powers to the executive authorities of the subjects of the Russian Federation. Such delegation is not a sanction, but rather a provisional measure of normal functioning of governmental power, serving the interests of the denizens of the respective territory. In essence, the acceptance of delegated powers by the subjects of the Russian Federation does not lead to the termination of the functions normally assigned to the subject of the Russian Federation. Formally, they continue to function as before and retain their normal attributes.

The Law also included provisions that outlined the budgetary relationships between the Russian Federation and the subjects of the Russian Federation. Mainly, however, the issues of financial provision were reflected in the changes to the Budgetary Code of the Russian Federation. They were brought in by the Federal law N 120-FZ, dated 20 August 2004, "On the introduction of changes to the Budgetary Code of the Russian Federation in regard to regulating inter-budgetary relationships".¹⁰ In addition to delineating budget revenues between the different levels of government in accordance with the delineation of authority, the law set out the basic element underlying the entire mechanism of power delineation — "disbursement obligation". Disbursement obligations are stipulated by law, whether by a normative legal act, agreement or treaty set out by the Russian Federation, subject of the Russian Federation, or municipal authorities, that present individuals and legal entities, governmental authorities, local authorities, foreign governments, international organisations and other international subjects with funds from a corresponding budget (governmental non-budget fund, territorial governmental non-budget fund) (article 6). Article 85 of the Budgetary Code set out the parameters for disbursement obligations for the subjects of the Russian Federation. Specifically, it was established that executive authorities of the subject of the Russian Federation are not entitled to introduce and implement disbursement obligations related to the issues of federal government competency, except in instances which are set out by federal law. The authorities of the subject of the Russian Federation are entitled to introduce and implement disbursement obligations not related to the issues of federal government competency, local authorities, and issues relating to the competency of the federal government that are provided for by federal laws, under the condition that these funds are available from the budget of the subject of the Russian Federation (excluding grants, subsidies, and subventions from the federal budget) (item 6,

¹⁰ SZ RF, 23.08.2004, N 34, st. 3535.

statute 85). In other words, if the issue at hand is in some way related to the competency of the federal government, the subject of the Russian Federation is unable to resolve this using its own budget.

Federal law N 122-FZ, dated 22 August 2004, “On the introduction of amendments to the legal acts of the Russian Federation and the acknowledgement of expiration of several legal acts of the Russian Federation in relation to the ratification of federal laws ‘On the introduction of amendments to the Federal law ‘On general principles of the organisation of legislative (representative) and executive authorities of governmental power of subjects of the Russian Federation’ and ‘On general principles of local government in the Russian Federation’”¹¹ was introduced at the same time. The purpose of the new law was to streamline regulation in accordance with the principles of power delineation and budgetary federalism. The law introduced changes to more than 150 legislative acts. A significant number of laws were abolished due to their declarative nature.

However, the delineation of powers didn’t stop there. Firstly, during this period, legislative acts concerning power delineation were adopted on an annual basis: Federal law N 199-FZ, dated 29 December 2004, “On the introduction of amendments to the Russian Federation legislative acts related to the expansion of powers of the bodies of authority of the subjects of the Russian Federation in relation to areas of joint competency between the Russian Federation and the subjects of the Russian Federation, as well as the expansion of the list of issues of local significance for local foundations”¹², Federal law N 199-FZ, dated 31 December 2005, “On the introduction of amendments to individual legislative acts of the Russian Federation related to the improvement of power delineation”¹³, Federal law N 258-FZ, dated 29 December 2006, “On the introduction of amendments to individual legislative acts of the Russian Federation related to the improvement of power delineation”¹⁴, Federal law N 230-FZ, dated 18 October 2007, “On the introduction of amendments to individual legislative acts of the Russian Federation related to the improvement of power delineation”¹⁵. These laws apply to the specific powers in question and the general principles underlying power delineation. Secondly, individual powers constantly change the ownership within existing regulations. Such changes frequently result in changes to the list of powers considered inherent to the subjects of the Russian Federation (item 2, statute 26.3, Federal law N 184-FZ, dated 6 October 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation” (as amended by Federal law N 95-FZ, dated 4 July 2003)). Sometimes, these changes are conditioned by the fact that one power or another has completely disappeared from view as a result of working to delineate it. Other times, changes take place as a result of the federal centre’s desire to delegate a particular power to the regions, frequently as an inherent one, which would absolve the federal government from supplying subventions.

Special attention must be given to the stipulations set out by Federal law N199-F3, dated 31 December 2005, “On the introduction of amendments to individual legislative acts

¹¹ SZ RF, 30.08.2004, N 35, st. 3607.

¹² SZ RF, 03.01.2005, N 1 (part 1), st. 25.

¹³ SZ RF, 02.01.2006, N 1, st. 10.

¹⁴ SZ RF, 01.01.2007, N 1 (part 1), st. 21.

¹⁵ SZ RF, 22.10.2007, N 43, st. 5084.

of the Russian Federation related to the improvement of power delineation.” First of all, this law is interesting due to the fact that it has become a focal point for lobbying activity by the subjects of the Russian Federation with high fiscal capacity, which were unsatisfied by the limitations to the list of regional powers and, specifically, by the legal construction of article 85 of the Budgetary Code. Respective regional leaders (with Moscow’s mayor, Yu. Luzhkov as their leader) chose the State Council, the deliberative body comprising the heads of Russian regions with the President of the Russian Federation as its head, as the platform for their initiatives.

The primary reproach towards the regulation of that time was the issue that the legislation didn’t just establish a list of disbursement obligations for the subjects of the Russian Federation, but also made them inflexible in a variety of ways. In other words, the subjects of the Russian Federation didn’t have the opportunity to disburse funds to other areas, including those that have been established as essential for the development of the region and in no way violated the unity of the legal, economic and social space, despite their relation to the areas of joint competency, as outlined by article 72 of the Constitution. The reproach was illustrated with concrete examples, which included the prohibition of establishing regional post-secondary institutions, exclusion of regions in having authority in the areas of sanitary and epidemiological welfare of the population, safety and quality of products, and the prohibition of the subjects of the Russian Federation from claiming ownership of bodies of water, etc.).

Several amendments were introduced to Federal law N 184-FZ, dated 6 October 1999, that significantly changed the regulation of power delineation. There were changes to the regulation of powers “delegated” to the authorities of the subjects of the Russian Federation. These were the powers, which were regulated and financed at the federal level, but implemented by the governmental authorities of the subjects of the Russian Federation (item 7, article 26.3). At this time, there is a proposal to formalise this model of delegating individual joint competency powers from the Russian Federation to the executive authorities of the subjects of the Federation by means of federal legislation. The conditions of “delegating” will become stricter. Federal laws that set out the delegation of individual joint competency powers from the Russian Federation to the executive authorities of the subjects of the Russian Federation must contain stipulations that make specific provisions for previously established conditions: the rights and obligations of the head policymaker of the subject of the Russian Federation (the leader of the highest executive governmental authority of the subject of the Russian Federation) regarding the implementation of respective powers, including the right to determine the structure of the executive authority of the subject of the Russian Federation, which implements the listed powers, and the appointment of leaders for such bodies of authority. This formulation implies that the right of the region’s leader to determine the structure of the governmental authority and the appointment of its leaders can be limited by the influence of federal authority on that process, if the federal law authorises the federal body to do so. Some of the provisions of Federal law N 199-FZ, dated 31 December 2005, stipulate the coordination of appointment of respective leaders of executive governmental bodies of the subjects of the Russian Federation with the respective authorised federal body of executive authority.

There is also a provision that determines the scope of reporting by the highest policymaker of the subject of the Russian Federation (the leader of the highest executive governmental authority of the subject of the Russian Federation) and the governmental authority

bodies of the subject of the Russian Federation on the subject of power implementation, including the achievement of target indicators and the application of subventions from the federal budget. These are the results which the governmental authorities of the subjects of the Russian Federation must achieve when implementing corresponding powers, which are set out by the federal bodies. Accordingly, failure to achieve these results may result in unfavourable consequences, sometimes in the form of the “removal” of these powers.

There is a provision that the governmental authorities of the subject of the Russian Federation reserve the right to additionally use their own material resources and financial means to carry out their “delegated” powers, as set out by the law of the subject of the Russian Federation.

A provision was introduced that outlined the “participation of governmental authorities of the subjects of the Russian Federation in the implementation of powers of the Russian Federation, as well as powers of joint competency”. It was established that the governmental authorities of the subjects of the Russian federation have the right to take part in implementing the powers of the Russian Federation, as well as the powers of joint competency in resolving issues that are not covered by item 2, article 26.3 of the present Federal law and powers that are not delegated to them in accordance with item 7, article 26.3 of the present Federal law, with the expenses being covered from the budget of the subject of the Russian Federation (with the exception of financial funds, which are transferred from the federal budget into the budget of the subject of the Russian federation for the implementation of targeted expenses) if this participation is provided for by federal laws. The financing of these powers, as emphasised in the text of the statute, is not the responsibility of the subject of the Russian Federation, is implemented only if there is an opportunity to do so and does not serve as the basis for the provision of further financial means from the federal budget.

Article 26.3 of Federal law “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation” was amended with a new item (3.1), according to which the governmental authorities of the subject of the Russian Federation are entitled to introduce laws and other normative legal acts and regional programmes concerning issues listed in item 2 of the present statute (list of powers that are financed from the budgets of the subjects of the Russian Federation) irrespective of the presence of federal law regulations that establish said right.

At the same time, the composition of specific powers of governmental authority of the subjects of the Russian Federation had been expanded both as a result of the introduction of new inherent powers and new delegated ones. Additionally, a legal construction of “the right to implement powers” had been formulated (as a rule, the Russian legal doctrine perceives the implementation of powers as an obligation). New regional powers (or, to a large extent, powers restored after their abolition by Federal law N 122-FZ, dated August 22 2004) affected different spheres of public relations and, on the whole, expanded the scope of regional competency.

To reach particular conclusions, we must also examine how the above-listed legislative changes to the governmental authority of the subjects of the Russian Federation can lead to the delegation of powers.

Firstly, let’s review the inclusion of powers into the list outlined in item 2 of article 26.3 of Federal law N 184-FZ, dated 6 October 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of

the Russian Federation” (powers that must be implemented but are not financed from the budget of the subject of the Russian Federation). This particular item sets out the “basic” list of powers that must be implemented across the entire country in order to satisfy the rights and legal interests of the country’s citizens. The subjects of the Russian Federation are obligated to implement powers outlined in this list. Their inclusion into the list indicates that the governmental authorities of the subjects of the Russian Federation are responsible for the provision of corresponding services to the population.

The list is frequently supplemented with new powers. Nonetheless, the existing approach is not necessarily enthusiastically accepted by the federal centre, as, firstly, the expansion of the list of “inherent” powers assumes the necessity of expanding the income for the subjects of the Russian Federation (a different approach would result in tension with regional elites) and, secondly, the opportunities for control are limited. Taking into account the fact that the given approach obligates regions to incur expenses, it results in an ambiguous assessment from the regional elites. In other words, an attempt to follow this route is most likely not to be very effective and will probably lead to conflict.

Secondly, there is the possibility of delegating powers of the Russian Federation in the areas of joint competency to be implemented by the governmental authorities of the subjects of the Russian Federation through federal legislation (item 7, article 26.3 of Federal law N 184-FZ, dated 6 October 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”).

The order and the scope of implementing these powers are minutely regulated by the Russian Federation. These powers are financed through subventions from the federal budget, which doesn’t preclude further financing from the regional budget. Federal financing grants the federal authorities the right to control their implementation (the mechanisms of regulation and control of such powers are outlined in detail in item 1 of the given materials).

The regulations deriving from federal laws that outline the implementation of powers of the governmental authorities of the subjects of the Russian Federation outlined in the given item are generally enacted on an annual basis through the federal law on the federal budget for the corresponding year, if the given federal law stipulates the provision of corresponding subventions to the budgets of the subjects of the Russian Federation. On the one hand, this guarantees the rights of the regions. On the other hand, these powers may cease to exist in any given financial year.

Furthermore, in order for the federal legislator to delegate powers to governmental authorities of the subjects of the Russian Federation in this manner, the conditions for the implementation of these powers and the need for them must be fairly similar across all regions.

In accordance with item 7 of article 26.3 of Federal law N 184-FZ, dated 6 October 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”, federal laws that oversee the transfer of individual powers of the Russian Federation or the joint competency powers to the governmental authorities of subjects of the Russian Federation must contain stipulations that outline:

- the reporting procedures for the chief policymaker of the subject of the Russian Federation (the leader of the highest executive governmental authority of the subject of the Russian Federation) or the governmental authority bodies of the subject of the Russian

Federation on the subject of delegated power implementation, including the achievement of target indicators and the application of subventions from the federal budget;

- the rights and obligations of the executive branch of the federal authorities, the governmental non-budget Russian Federation funds for the implementation of listed powers by the authorities of the subjects of the Russian Federation and (or) the rights and obligations of the chief policymaker of the subject of the Russian Federation (the leader of the highest executive governmental authority of the subject of the Russian Federation) for the implementation of delegated powers, including the rights and responsibilities to appoint the heads of the executive branch of the subject of the Russian Federation or the regional governmental non-budget fund of the subject of the Russian Federation that carries out the corresponding powers;

- the rights and obligations of federal executive branch authorities and (or) the rights and obligations of the chief policymaker of the subject of the Russian Federation (the leader of the highest executive governmental authority of the subject of the Russian Federation) related to the determination of the structure of the executive authority of the subject of the Russian Federation and (or) with the authorities of the territorial governmental non-budget fund of the subject of the Russian Federation that is tasked with implementing the delegated powers;

- the powers of the executive branch of the federal authorities regarding the implementation of control and oversight of the implementation of the delegated powers by the subjects of the Russian Federation, as well as the procedures for removal of corresponding powers from the executive authorities of the subject of the Russian Federation, the reimbursement of subventions provided to the budget of the subject of the Russian Federation, the budget of the territorial governmental non-budget fund of the subject of the Russian Federation for the implementation of corresponding powers;

- the method and (or) federal standardised calculations for estimating the overall sum of the subventions coming out of the federal budget into the budgets of the subjects of the Russian Federation, or from the budget of the Federal Compulsory Medical Insurance Fund, made available to the budgets of territorial governmental non-budget funds of the subjects of the Russian Federation for the implementation of corresponding powers.

Federal laws that oversee the transfer of individual powers of the Russian Federation to the governmental authorities of the subjects of the Russian Federation may contain stipulations that outline:

- the obligations involved in the transfer of federal assets that facilitate the implementation of delegated powers to the subject of the Russian Federation;

- the obligation of the governmental authorities of the Russian Federation to use the material assets transferred to the subject of the Russian Federation that are necessary for the implementation of corresponding powers for specific purposes.

Such rigidity and precision of regulation guarantees the federal authorities' control in ensuring that delegated powers are implemented by the governmental authorities of the subjects of the Russian Federation using the means from the federal budget, including them into a unified system of executive power.

The government of the Russian Federation can establish criteria to evaluate the effectiveness of the work carried out by the governmental authorities of the subject of the Russian Federation in relation to the implementation of corresponding powers, can ensure the introduction of and procedure of removing of legislative acts related to the implementation

of delegated powers ratified by the government of the subject of the Russian Federation, as well have the capacity to transfer to the subject of the Russian Federation material assets to be used in implementing corresponding powers.

Thirdly, there exists the possibility of signing agreements that would delegate power implementation. According to article 26.8 of Federal law N 184-FZ, dated October 6 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”, the executive branch of the federal authorities, in coordination with the executive branch of governmental authorities of the subject of the Russian Federation, can partially transfer their powers if this action does not contradict the Constitution of the Russian Federation, the present federal law or other federal laws. The specified agreements are reached in the instance when a portion of the powers cannot be transferred to the executive branch of the government of the subject of the Russian Federation in equal measure by means of federal law. As such, instances when an agreement can be reached in theory are limited by the norms of the Federal law. At the same time, an instance where “the implementation of a portion of the powers cannot be transferred to the executive branch of the government of the subject of the Russian Federation in equal measure by means of federal law” has wide scope for interpretation. Such instances can include the existence of a specific organisational or cadre infrastructure of a particular subject of the Russian Federation that are not present in the majority of the other subjects of the Russian Federation and which can be used in the interests of a more effective implementation of corresponding powers.

That said, in drawing up the agreement it is essential to closely follow the formulations set out in Federal law N 184-FZ, dated October 6 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”. In other words, the subject of the agreement of the agreement should not be cooperation or collaboration, but namely the transfer of power implementation to the executive branch of the government of the subject of the Russian Federation.

The Russian Federation government’s resolution N 117, dated 1 March 2004, “On the procedures for preparing, coordinating and affirming agreements between the executive branch of the federal authorities and the executive branch of governmental authorities of the subjects of the Russian federation, on the transfer between the two of portions of their powers for implementation, as well as on the introduction of amendments into such agreements” confirms the rules for the preparation and affirmation of agreements between the federal executive branch and the executive branches of the governments of the subjects of the Russian Federation in relation to the transfer of powers between the two, as well as the introduction of changes into such agreements. Specifically, these agreements stipulate that project preparation is carried out by both sides of the agreement, namely, the executive branch of the federal authorities and the executive branch of the governmental authorities of the subject of the Russian Federation, in accordance with the requirements listed in part 2 of article 26.8 of Federal law N 184-FZ, dated October 6 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”. In other words, there must be an agreement with a main federal authority at this point already. Following this stage, the agreement project, alongside the corresponding federal government resolution regarding its confirmation, is sent to the Russian Federation Ministry of Economic Development and Trade, the

Russian Federation Ministry of Finance, the Russian Federation Ministry of Justice, and other relevant federal bodies for confirmation of its particular form. Based on the available information, it appears that the negative position of the Russian Federation Ministry of Economic Development and Trade and the Russian Federation Ministry of Finance most frequently impedes the conclusion of such agreements, even with the previous agreement from a main federal body. As such, the justification for the ministries' disagreement is not often very clear.

Federal law N 199-FZ, dated 31 December 2005, amends article 26.8 of Federal law N 184-FZ, dated October 6 1999, to include measures that expedite the conclusion of power implementation agreements between the federal executive branch authorities and the executive authorities of the subject of the Russian Federation. According to these innovations, the agreement is brought to the corresponding executive federal body or the highest executive governmental authority of the subject of the Russian Federation and is considered within a month of receipt. The federal government resolution confirming the agreement's confirmation is brought by an executive federal body to the government of the Russian Federation within a week following the confirmation of the agreement and is adopted by the Russian Federation government within three weeks of its receipt. In the instance that the agreement is not approved by both sides in the two-week period following the one-month deadline, as set out by the present item in reviewing the agreement project, the party that initiated the conclusion of the agreement applies to the governmental commission overseeing relationships between federal bodies and executive branches of subjects of the Russian Federation for consideration of the differences or informs the other party of the rejection to continue the procedures for concluding the agreement. At the insistence of one of the parties, the governmental commission must make a decision regarding sending the documents for review to one of the sessions of the Russian Federation government, which must reach a decision on the basis of the provided documents within one month.

At first glance, this approach appears to favour the subjects of the Russian Federation, which, for a long time, could not obtain an answer to the proposal of concluding an agreement. On the other hand, this mechanism simply speeds up the decision process, without necessarily taking into account the interests of the subjects of the Russian Federation. Sometimes, in order to reach a decision (to convince the federal authorities that concluding an agreement is an acceptable decision) more time is required, which is outlined in the given normative act. Having received an official rejection, it becomes harder to attain the desired outcome in the future.

Fourthly, let's consider the use of the phrase ““participation of governmental authorities of the subjects of the Russian Federation in the implementation of powers of the Russian Federation, as well as powers of joint competency””.

Article 26.3-1 of Federal law N 184-FZ, dated October 6 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”, brought in by Federal law N 199-FZ, dated 31 December 2005, establishes that the executive authorities of the subject of the Russian Federation have the right to take part in implementing the powers under the competency of the Russian Federation, as well as powers of joint competency, which are not described in item 2 of article 263 of the present federal law, and powers not delegated to them in accordance with item 7 of article 263 of the present federal law, related to expenditures undertaken by the budget of the subject of the Russian Federation (with the exception

of financial funds, which are delegated from the federal budget to the subject of the Russian Federation to carry out targeted expenditures) and if this participation is provided for by federal laws.

When discussing participation, it is important to note the following. Firstly, taking part in implementing powers outlined in the law is allowed only when such participation is directly set out in existing federal legislation. Only supplementary measures of social assistance and social support for different categories of citizens can be executed irrespective of the presence of federal legislative resolutions that establish the indicated power. Secondly, the actual formulation of the participation in implementing powers (in other words, powers that have already been established) does not grant the subjects of the Russian Federation the right to establish new powers in the area of joint competency (in other words, introducing new forms for solving actual problems).

Additionally, the model of participation in implementing powers does not have clear boundaries and criteria. This can lead to difficulties in practice. Clearly, if the formulation of “participation” is introduced as a uniform norm, then it becomes something different than a simple implementation of powers by the governmental authorities of the subjects of the Russian Federation. This means, that there is also the issue of coordinating organisation with corresponding federal bodies. This is confirmed by a norm, according to which federal laws that outline participation can (but are not obliged to) contain resolutions that set out:

- the procedures for coordinating the participation of the executive authorities of the subjects of the Russian Federation in the implementation of identified powers, as well as the specificities of such participation;
- the possibility and the boundaries of legal regulation of the specified powers by the executive authorities of the Russian Federation. It must be noted that the boundaries of legal regulation in relation to these issues are not discussed within the scope of the legislation of the subjects of the Russian Federation. Clearly, it is assumed that the availability of such a possibility is directly determined by the resolutions in federal laws, which determine the right to take part in implementing powers.

As such, the problem of the participation model’s ambiguity can be resolved through the expansion of the regulatory participation of the governmental authorities of the subjects of the Russian Federation in implementing powers under the competency of the Russian Federation, as well as joint competency powers. Specifically, the following elements can be stipulated: the governmental authorities of the subjects of the Russian Federation informing the corresponding branches of the federal authorities about their intention to participate in implementing the corresponding powers. Accordingly, if such implementation duplicates the functions of federal bodies, then within this aspect, the corresponding executive powers of the territory of the subject of the Russian Federation are transformed into regulating ones; the establishment of target, prognostic indicators and criteria for evaluating the effectiveness of the work of federal bodies of the Russian Federation that cover participation in implementing of powers by the regional branches of executive authorities; the introduction of an accountability mechanism (in addition to financial accountability) analogous to the mechanism described in item 7 of 26.3 of Federal law N 184-FZ, dated October 6 1999, “On the general principles of organisation of legislative (representative) and executive bodies of governmental power of the subjects of the Russian Federation”. If, under these conditions, the subject of the Russian Federation agrees to take part in the

implementation of powers, it becomes its right. Nonetheless, such legal innovations are not introduced into the legislation.

Fifthly, there is the possibility of establishing the rights of the governmental authorities of the subjects of the Russian Federation to implement one or another power (and not just take part in implementing it). As was already mentioned, article 85 of the Budgetary Code of the Russian Federation prohibits the subjects of the Russian Federation from carrying out disbursement obligations related to the resolution of problems that deal with the competency of the federal authorities, with the exception of instances which had been established by federal laws. Because the boundary between issues that do and do not relate to the competency of the federal authorities is difficult to delineate, the given resolution, that oversees the right of the subjects of the Russian Federation to implement powers and finance specific spheres, is, within the scope of article 85 of the Budgetary Code, a fairly acceptable solution. At the same time, the federal legislator is not active in awarding the subjects of the Russian Federation with powers, since this dilutes the principles of clear demarcation of financial obligations between the levels of public power. Specifically, the consolidation of such rights for the regions had famously resulted in stiff opposition at the federal level during the work on Federal law N 199-FZ, dated 31 December 2005, which had introduced this formulation.

As such, the problem of sufficiency of powers for the subjects of the Russian Federation remains. In reality, however, this only has implications for a small number of regions with a high level of fiscal capacity. For other regions, the existing regulatory system serves as a guarantee against dispersion of funds on tasks that do not directly deal with regional prerogatives.

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In wrapping up the topic of demarcation of powers between the Russian Federation and its subjects during the first decade of the 21st century, it is impossible not to mention Russian Federation Presidential Decree N 425-rp, dated 27 June 2011, “On the preparation of proposals for the redistribution of powers between the federal executive authorities and the executive authorities of the subjects of the Russian Federation and local authorities”.¹⁶ The decree proposed the formation of a working group on legal questions of redistributing powers between the federal authorities and the executive authorities of the subjects of the Russian Federation and local authorities and the formation of a working group to deal with financial and taxation issues, as well as inter-budgetary relationships.

There is a ten-year gap between the previously mentioned Decree, dated 21 June 2001, and the new Decree. Does the target setting of new issues in the sphere of power demarcation by the head of the government imply an admission of failure in the previous execution of power demarcation? It seems that that is not the case (and it is telling that the former working group is headed by D.N. Kozak, who headed the commission created in 2001). In fact, it is probably the opposite. All levels of public power have realised that the benefit doesn't necessarily lie in an expanded number of powers, but rather in the sound coordination of financial resources and obligations related to financial powers (previously, the federal centre was unquestionably in charge of these aspects, with regions fighting to expand their powers).

¹⁶ SZ RF, 04.07.2011, N 27, st.3932.

There exists another issue for regional and local authorities — the level of activity in searching for and accepting progressive administrative and social technologies is fairly low (it is slightly higher at the regional level). The predominating approach relies on the “status quo”, rather than “efficiency and results”. Additionally, the financing is applied to the infrastructure, rather than the result. Of course, another important problem is the lack of financing at the regional and local level (generally, across the entire country), but this largely rests on the fact that the authorities are not prepared to streamline the funds. As such, it can be expected that future work of demarcating responsibilities and related proposals will be related to the streamlining of administration. But that is another topic.