

# THE ROLE OF LEGAL ACTS OF THE CENTRAL BANK OF THE RUSSIAN FEDERATION IN ENSURING BANK SECURITY

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## ABSTRACT

*The international legal principles of banking regulation and supervision, developed by the Basel Committee on Banking Supervision, require elaborating the risk-oriented approach in Russian legislation. The financial and legal doctrine and the development of Russian banking legislation and law enforcement practice testify to the growing role of the Central Bank of the Russian Federation in the financial activities of the state. This also applies to issues of the implementation by the Bank of Russia of the regulatory function as an element of its public-law status. The public-law status of the Bank of Russia assumes its authority in such distinguished aspects as: a subject ensuring national security, a subject ensuring economic security; a subject of strategic planning; a subject implementing the strategy of financial literacy improvement; a subject implementing the strategy for protecting the rights and legitimate interests of consumers of financial services; a subject providing a critical information infrastructure in the banking sector and other areas of the financial market.*

*In modern conditions, there is a forming trend of expansive release of conceptual program documents by the Bank of Russia. We can differentiate two types of conceptual program documents issued by the Bank of Russia: these are, firstly, conceptual program documents based on setting forth provisions on their status in federal laws and, secondly, conceptual program documents issued by the Bank of Russia on its initiative, i.e. for reasons not specified in federal laws. These relevant issues of monetary policy, financial market and financial technology development, availability of banking services, reflected in the above conceptual program documents, can be described as elements of the concept of the legislative policy of the Central Bank of the Russian Federation.*

*Conceptual program documents of the Bank of Russia determine the directions of statutory regulation and law enforcement practice of the Bank of Russia. This reflects the interconnection and interdependence of the types of the Bank of Russia's legal acts as elements of its competence to implement legally mandated functions, including the function of ensuring banking security: regulatory, law enforcement, and interpretative acts as well as treaties of the Bank of Russia. From the standpoint of the principle of legality of banking activity, a proposal is made to fill gaps in legal regulation. The necessity to consolidate provisions on the legal nature of letters, information letters, explanations, methodological recommendations as interpretative acts of the Bank of Russia that are not normative acts of the Bank of Russia with an officially published regulatory act of the Bank of Russia is justified.*

**Keywords:** Central Bank of the Russian Federation, Legal Acts of the Bank of Russia, Banking Security, Concept of the Legislative Policy of the Bank of Russia.

## INTRODUCTION

Relevance of the research topic, the current reality of the economic and social development of Russia testifies to an increase in the requirements for ensuring banking security as an element of economic and national security and developing legal tools in this process, which include legal acts of the Central Bank of the Russian Federation as a banking regulation and supervision body regulating respective public relations, that among other tasks refer to a better state protection of rights and legitimate interests of the weakest party of legal banking relationships: consumers of banking services. The Central Bank of the Russian Federation, being an authority with a special public-law status, plays a significant role in the financial activity of the Russian state, pursuing the public-law objectives of ensuring financial stability, namely the stability of the national currency, banking system, national payment system, and financial market (Federal Law No. 86-FZ, 2002). The Central Bank of the Russian Federation achieves these objectives of the public law by issuing legal acts as a form of implementing its competence, which possibly include regulatory, law enforcement, and interpretative acts, as well as treaties of the Bank of Russia. The types of legal acts of the Bank of Russia, i.e. regulatory, law enforcement, and interpretative acts, as well as treaties, characterize certain directions of its public-law competence implementation. Banking security is ensured by all types of legal acts of the Bank of Russia, being systematically interconnected and interdependent. The study of the effectiveness of achieving this purpose by issuing legal acts of the Bank of Russia is relevant from both theoretical and practical points of view.

Formulation of the problem Issues of banking security are important aspects of the financial and legal policy, which are reflected in the doctrinal studies. For example, the doctoral dissertation of Chernikova (2009) raised issues of legal forms of ensuring the financial stability of banks in the aspect of public-law regulation of banking activities and features of supervisory activities in the banking sector. Legal issues of banking security were investigated in the doctoral dissertation of Alekseeva (2011). The need to implement risk-oriented approaches in banking regulation and supervision as a function of the Central Bank of the Russian Federation was emphasized in the doctoral dissertation of Rozhdestvenskaya (2012). The said approaches remain relevant in the current context of implementation of a systematic approach to legal regulation of the activities of credit institutions and non-credit financial organizations in terms of mitigating risks due to the authorization of the Central Bank of the Russian Federation from 01.09.2013 to perform regulatory, monitoring, and supervising functions in the financial market, which is the subject of the doctoral dissertation of Guznova (2016). At the same time, the issues of expanding the role of legal acts of the Central Bank of the Russian Federation in the implementation of its competence for improving banking security still need further development.

The research materials are based on an analysis of sources of legal regulation of banking activities in the form of the general legal act: Federal Law No. 86-FZ (2002), special regulatory acts in the form of Federal Law No. 172-FZ (2014) and Federal Law No. 187-FZ (2017), as well as Decrees of the President of the Russian Federation, Orders of the Government of the Russian Federation, regulatory acts of the Bank of Russia, strategies, programs, principal directions, in their function as conceptual documents of the Central Bank of the Russian Federation on banking

security and the role of legal acts of the Bank of Russia in ensuring banking security, as well as contemporary scientific legal publications on the designated issues.

### **RESEARCH PURPOSE**

This research is devoted to identifying certain aspects of the public-law status of the Central Bank of the Russian Federation in ensuring banking security, analysing novelties of legal regulation of the legislative function of the Central Bank of the Russian Federation, substantiating the formation and implementation of the concept of legislative policy of the Central Bank of the Russian Federation, offering proposals to fill gaps in law by defining the status of information letters, explanations, methodological recommendations as interpretative acts of the Central Bank of the Russian Federation in an officially published regulatory act of the Central Bank of the Russian Federation.

### **RESEARCH METHODS**

In the study of the stated issues, we used general and particular scientific methods based on the laws, categories, and principles of the dialectical method of the social and legal reality cognition. The used systematic and structural method allowed determining the status of legal acts of the Central Bank of the Russian Federation as elements of its competence. The comparative legal method helped to establish the relationship of the general concept of “*legal acts of the Central Bank of the Russian Federation*” and its types: regulatory, law enforcement, and interpretative acts, as well as treaties of the Bank of Russia. The authors used the formal-logical method to consider the legal nature of the concept of the legislative policy of the Central Bank of the Russian Federation, and the formal-legal method to develop proposals to fill gaps in law with regard to the legal status of letters, information letters, interpretations, and methodological recommendations as interpretative acts of the Bank of Russia by means of adopting an officially published regulatory act of the Central Bank of the Russian Federation. The use of the hypothetical-deductive method allowed formulating the conclusion on the need to develop conceptual program documents of the Central Bank of the Russian Federation as sources of the concept of its legislative policy for ensuring banking security.

### **RESULTS AND DISCUSSION**

The study of the development of Russian banking legislation in the market economy conditions allowed identifying the legal banking regulation trends in general and special laws, as well as the trends of consolidation of issues, on which regulations of the Central Bank of the Russian Federation need to be issued, in the specified laws. As indicated by the specified sources, the Central Bank of the Russian Federation, in accordance with its legislatively defined competence, is an authority that has regulatory and law enforcement powers as regards to ensuring banking security, playing the following financial and legal roles:

1. The subject ensuring national security (Federal Law No. 390-FZ, 2010; Decree of the President of the Russian Federation No. 683, 2015).
2. The subject ensuring economic security (Decree of the President of the Russian Federation No. 208, 2017).
3. The subject of strategic planning (Federal Law No. 172-FZ, 2014).

4. The subject implementing the financial literacy improvement strategy (Order of the Government of the Russian Federation No. 2039-r, 2017).
5. The subject implementing the strategy for protecting the rights and legitimate interests of financial service consumers (Order of the Government of the Russian Federation No. 1837-r, 2017).
6. The subject ensuring the security of the critical information infrastructure in the banking sector and other areas of the financial market with the authority to issue regulatory acts (Federal Law No. 187-FZ, 2017, effective from 01.03.2018).

The definition of the subject in the system of legal relations, ensuring financial security, is stipulated by the doctrine of law, rule-making and law enforcement activities (Kucherov, 2017), and is a legal problem of the due functioning of the financial security system of Russia (Khabrieva, 2016). At the same time, it is important to abide by the principle of systemic approach to the analysis of financial relations (Artemov & Lagutin, 2017), including in the aspect of financial stability. In the implementation of the status of the Central Bank of the Russian Federation related to issuing legal acts in the field of banking security, conceptual program documents, issued by the Central Bank of the Russian Federation pursuant to and based on law, are of scientific and practical interest. These documents should include the main areas of the unified state monetary policy (Federal Law No. 86-FZ, 2002), the main directions of the development of the financial market of the Russian Federation (Federal Law No. 86-FZ, 2002), the strategy of the national payment system development (Federal Law No. 86-FZ, 2002). As of today, the following documents have been issued by the Central Bank of the Russian Federation: The Main Directions of the Unified State Monetary Policy for 2018 and the Period of 2019 and 2020 (Central Bank of the Russian Federation, 2017), The Main Directions of the Russian Financial Market Development in 2016-2018 (Central Bank of the Russian Federation, 2016), The Strategy for the National Payment System Development (Bulletin of the Bank of Russia, 2013). In February 2018, the following conceptual documents were published by the Bank of Russia on its official website at the bank's initiative: The Main Directions of Financial Technology Development in 2018–2020 (Central Bank of the Russian Federation, 2018), the draft Strategy for Improving Finance Availability in Russia for 2018–2020. As noted in the document, the main objectives of the Bank of Russia in the implementation of the main directions of the financial technology development is to assist the development of competition in the financial market, improve the availability, quality, and range of financial services, reduce risks and costs in the financial sector, as well as improve the competitive position of Russian technology in general. The indicated objectives are in high demand in the theory and practice of legal regulation of public relations in the field of banking security, including regulation through the issuance by the Bank of Russia of legal acts at the present stage, which is emphasized by Ruchkina (2017), Lauts (2017) in their publications prepared by the scientists within the framework of the international scientific and practical conference New Banking Technology-The Scenario of the Banking System Transformation.

The above-mentioned conceptual program documents issued by the Central Bank of the Russian Federation appear to reflect its legislative policy, since they have an impact on the compilation of the annual plan of regulatory acts of the Central Bank of the Russian Federation to be issued, as embodied in the recently published Regulation of the Bank of Russia No. 602-P (2017). It seems that this approach of the Bank of Russia reflects elements of the legislative doctrinal document containing a strategy for the development of the legislative activity and the system of Russian legislation (Malko et al., 2015), which is very useful for improving the

effectiveness of the legal policy and the quality of its impact on the legal life, formation of lawful behavior as a value of public relations in banking, an unconditional priority of the principle of legality of banking activity, defined in the system of financial law principles (Khimicheva & Pokachalova, 2013). It is important to emphasize that the Regulation of the Bank of Russia No. 602-P (2017) provides procedures for assessing the regulatory impact of the Bank of Russia's regulatory acts as an estimate of the potential effect of the regulatory act of the Bank of Russia. Meanwhile, the Central Bank of the Russian Federation does not consider these procedures to be final in its law-making function implementation mechanism. A review of the official website of the Central Bank of the Russian Federation allows concluding that the bank is implementing the law enforcement activity monitoring and assessment of the actual impact of regulatory acts of the Bank of Russia, regulating the financial market (Central Bank of the Russian Federation, n/d.), which demonstrates that the theory of direct and reverse dependencies in financial law developed by Gorbunova (2012: 2017) is important for the Bank of Russia.

In accordance with Article 7 of Federal Law No. 86-FZ (2002) and Regulation of the Bank of Russia No. 602-P (2017), the list of forms of regulatory acts of the Bank of Russia is limited to directions, regulations, and instructions. Meanwhile, the Central Bank of the Russian Federation issues a large number of letters, information letters, interpretations, methodological recommendations, including those in the field of banking security, whose status is not defined in officially published regulatory acts of the Bank of Russia, which cannot be considered acceptable from the point of view of the due law and order in legal banking relations. It seems that the indicated gap in the legal regulation should be fixed. Given that letters, information letters, interpretations, and methodological recommendations are aimed at explaining the meaning of provisions of a regulatory act of the Bank of Russia as well as forming its adequate legal understanding, these documents can be described as interpretative acts of the Bank of Russia. It should be noted that the Central Bank of the Russian Federation does not frequently use the legally established form of the interpretative act of the Bank of Russia. i.e. official interpretation (Regulation of the Bank of Russia No. 115-P, 2000), which seemingly does not have a due impact on the effectiveness on the implementation of the principle of legality of banking activities. As a matter of fact, the Central Bank of the Russian Federation applies punitive measures to credit institutions for violating federal laws and regulatory acts of the Bank of Russia (Federal Law No. 86-FZ, 2002), which do not include letters, information letters, interpretations, and methodological recommendations.

## CONCLUSION

The study shows the increasing role of conceptual program documents of the Central Bank of the Russian Federation, acting as an authority with a special public-law status, in the formation of the concept of the Bank of Russia's legislative policy in the field of banking security assurance, as well as the scientific, theoretical, and practical relevance of stating the legal nature of letters, information letters, interpretations, methodological recommendations of the Bank of Russia as interpretative acts of the Bank of Russia in an officially published regulatory act of the Bank of Russia.

The development of the theory of legal acts of the Central Bank of the Russian Federation and their significance in the implementation of its public-law functions testifies to the systemic interconnection of regulatory, law enforcement, and interpretative acts, as well as treaties, as

types of legal acts of the Bank of Russia, which is reflected in conceptual program documents published by the Bank of Russia, and also characterizes the reinforcement of legislative principles in legal banking regulation, the expansion of legislative grounds for the issuance by the Bank of Russia of normative acts regarding subjects prescribed by federal laws, which emphasizes the positive nature of the legislative activities of the Central Bank of the Russian Federation on relevant issues of financial and legal policy, including the issues of ensuring banking security.

The designated individual aspects of the public status of the Central Bank of the Russian Federation in ensuring banking security characterize its authority to issue legal acts aimed at mitigating banking risks and achieving financial stability as socially significant and supported by the power of the state.

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This article was originally published in a special issue, entitled: "**Legal aspects of Regionalism, Domesticity Agrarian, and Shariah principles**", Edited by Muhammad Haseeb.