

ADMINISTRATIVE AND LEGAL REGULATION OF GREENHOUSE GAS EMISSIONS IN THE FRAMEWORK OF A REGIONAL EXPERIMENT

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A legal experiment refers to approbation of legislative novelties on a limited scale and covering a limited number of people aiming at assessing effectiveness and usefulness of novelties in order to determine optimal options for future commonly applicable law-making decisions.

During the Soviet period, legal experiments were conducted in a systematic manner. The scientific concept of the experiment was in place, including the methodology of conducting the experiment, goal setting, principles of the experimental legal regime, its stages, and results' evaluation. Today, legal experiments are not regulated. The criteria and principles for conducting legal experiments are formulated mostly for the scientific field. Nevertheless, there are some emerging legal forms where definitions and procedures for conducting experiments are being legally codified. This may be a sign of the emergence of a new direction in the development of the administrative laws.

Experiments are conducted in various areas of legal relations, such as economics and finance, culture, environmental and social spheres, digitalization, etc. A recent example of a legal experiment in the environmental sphere is the Law on conducting an experiment on limiting greenhouse gas emissions in some regions of Russia, which was adopted in 2022. The experiment will continue until 2028. It involves introduction of a pilot cap and trade system. Sakhalin region has been chosen for its piloting. Cap and trade system is being introduced for key regional emitters – regional regulated organizations (RRO) in an attempt to achieve carbon neutrality of the Sakhalin Region by 2025.

The analysis of the pilot regulatory framework for the Sakhalin experiment has led to the following conclusions:

- the experiment is based on a combination of administrative and civil law norms;

- generally speaking, the pilot regulatory framework in the Sakhalin Region meets the main criteria for conducting the experiment. However, lack of a clear system for evaluating its results and uncertainty regarding its further application in the country are significant drawbacks;

- the use of quotas as one of the administrative and legal methods of regulation is being tested. A comprehensive experiment could involve testing other methods in order to identify the most effective approach for greenhouse gas emissions' reduction. The option of paying a fixed amount (1000 rubles) for exceeding the quota represents a quasi-tax, which can be seen as a separate regulatory method;

- the state support measures are a counterweight of the additional financial burden put on the RRO and should be specified in dedicated normative acts. Substantial support measures may potentially allow for replacement of a special coefficient that reflects the amount of the tax paid by RRO used in the quota calculation methodology and thus help to ensure harmonization with foreign analogues.

1. Introduction

Conducting an experiment before the introduction of new regulations is an actively used practice in Russian lawmaking, dating back to the 19th century [1-4]. The meaning of the legal experiment lies in the exclusion or minimization of possible negative consequences from innovations in the legal regulation of certain social relations. Soviet lawyers V.I. Nikitsky and I.S. Samoshchenko noted the important role of the experiment in testing the effectiveness of new legal norms and gave the following definition of a legal experiment - "organized by the competent law-making body, approbation of proposed legislative innovations on a limited scale for testing the effectiveness, usefulness and cost-effectiveness of experimental legal norms and for working out the best options for future law-making decisions of general action" [5, p.17].

During the Soviet period, legal experiments were conducted in a systematic manner. The scientific concept of the experiment was developed, as well as methodology for its implementation, including goal setting, the principles of the experimental legal regime (hereinafter referred to as ELR), its stages, and evaluation of the results [6-7]. After some break from the late 1990s - the first decade of the 2000s, at present, the practice of legal experiment in Russia began to be addressed more often [3, p.169], [8-9]. ELR in modern Russia is used in the field of economics, culture, law enforcement, environmental and social spheres, as well as on the issues of holding elections, digitalization [10-15]. However, the systematic approach that was inherent in the legal experiment in the Soviet period has not yet been formed.

A recent example of a legal experiment in the field of environmental protection is the pollutant emissions quoting in the period from 2020 to 2026 in the 12 most polluted cities of the country in order to improve the quality of atmospheric air (Law No. 195-FZ)¹. In 2022, the law

was adopted on conducting an experiment to limit greenhouse gas emissions (hereinafter referred to as GHG) in certain regions of Russia in the period up to 2028 (Law No. 34-FZ)². The first region of the experiment was the Sakhalin region. As part of the experiment in the Sakhalin Region, a mechanism for quoting GHG emission and fees for exceeding established quotas will be tested. Carrying out regional experiments related to carbon regulation is foreseen by the Strategy for socio-economic development with low GHG emissions until 2050, adopted in 2021.

An experimental approach to regulation of GHG emissions is actively used abroad - in South Africa, Colombia, Thailand, Mexico, Korea, China³. In these countries, carbon pricing - whether in the form of a carbon tax or emission quotas (carbon market) was preceded by an experimental (pilot) regime, within which the entire regulation mechanism was adjusted. At a pilot stage, softer regulations can be applied compared to those introduced in full-fledged regulation. Also, in the pilot phase, the administrative and legal support of the carbon regulation mechanism and the interaction of state bodies at various levels are being tested.

This article discusses the features of the administrative and legal regulation of the legal experiment to limit GHG emissions in Russia through the prism of the formed criteria and principles for the implementation of legal experiments.

2. Criteria for an experimental legal regime

The procedure for conducting the experiment in some countries is fixed by law. For example, in France, according to the Constitution, a

pollution" // Collected Legislation of the Russian Federation. 2019. No. 30. Art. 4097.

² Federal Law No. 34-FZ dated March 6, 2022 "On Conducting an Experiment to Limit Greenhouse Gas Emissions in Certain Subjects of the Russian Federation" // Collected Legislation of the Russian Federation. 2022. No. 10. Art. 1391.

³ World bank. 2022. State and Trends of Carbon Pricing 2022. State and Trends of Carbon Pricing. Washington, DC: World Bank. URL: <https://openknowledge.worldbank.org/handle/10986/37455> (Accessed: 07/01/2023).

¹ Federal Law No. 195-FZ dated July 26, 2019 "On conducting an experiment on quotas for pollutant emissions and amending certain legislative acts of the Russian Federation in terms of reducing atmospheric air

legal experiment is possible within a limited scope and for a limited period in such a way as to exclude the threat of the implementation of the rights and freedoms of citizens enshrined in the Constitution [16, p.115]. In Russia, the rules for conducting legal experiments are generally not regulated, but the emerging practice of ELR and a significant backlog in the scientific literature [6, 7, 8, 10, 17, 18, 19] make it possible to identify the most important criteria for legal experiments:

- 1) the presence of a specific goal - testing a certain hypothesis about the effectiveness, efficiency and expediency of regulation,
- 2) goal-setting is justified by the expectation of a positive (even breakthrough) effect of the introduction of special (new) norms that are different from general regulation;
- 3) limited duration of the experiment;
- 4) appointment of an authorized body - the coordinator of the experiment;
- 5) availability of the experiment program;
- 6) the presence of a mechanism for monitoring, controlling the experiment;
- 7) the presence of a stage of summing up and making decisions on subsequent actions to expand the scope of the new regulation;
- 8) voluntariness of participation;
- 9) reversibility of the experiment.

However, at the current stage, the decisions of federal and regional authorities to conduct experiments, according to researchers, are of a “spontaneous” nature [7], without compliance with the specified criteria and proper analysis of possible negative consequences. For the period 1994-2019 only in half of the regulatory legal acts establishing the ELR, the purpose of the experiment and indicators of achieving the goal were indicated [12, p.15]. In this regard, lawyers raise the issue of regulating the ELR and even the need to adopt a framework law on legal experiments [6], [15]. It is also noted that non-compliance with the ELR criteria can lead to the implementation of pseudo-experiments [19, p.336; 20, p.58]. Other researchers reasonably warn against excessive enthusiasm for legal experiments, since the role of the state as a

regulator may depreciate in the public mind, and the experiment itself may delay the entry into force of full-fledged regulation [18, p.19].

Gradually, the procedures for conducting a legal experiment in Russia are fixed in legal forms, including at the legislative level. For example, the law “On Mandatory Requirements in the Russian Federation” defines ELR as “the application for a certain period of time of special regulation in relation to a certain group of persons or in a certain territory, including the complete or partial refusal to use a separate group of persons or on certain territory of mandatory requirements or in refusing to carry out permitting activities in relation to the object of permitting activities”⁴. The law “On Experimental Legal Regimes in the Field of Digital Innovations”⁵ enshrines the concept of “special regulation” - legal regulation that differs from general one and is established by the program of the experimental legal regime in relation to participants in the experimental legal regime for a certain period. There is also a deadline for the experiment - three years, with the possibility of extension under certain conditions. Legislative consolidation of the ELR may be a sign of one of the new directions in the development of administrative and legal regulation [21, p.160].

However, the process of unifying the rules for conducting experiments is not complete.

3. Administrative and legal features of the experiment to limit greenhouse gas emissions in the Sakhalin Region

In accordance with Law No. 34-FZ, *the purpose* of special regulation - is to achieve carbon neutrality on the territory of the Sakhalin Region by December 31, 2025. In the territories of other subjects, the deadlines for achieving carbon neutrality will be set by amending the law. The law gives the concept of carbon neutrality - the state balance between anthropogenic GHG emissions and

⁴ Article 13 of the Federal Law of July 31, 2020 No. 247-FZ “On Mandatory Requirements in the Russian Federation” // Collected Legislation of the Russian Federation. 2020. No. 31. Art. 5006.

⁵ Federal Law of July 31, 2020 No. 258-FZ “On Experimental Legal Regimes in the Sphere of Digital Innovations”// Collected Legislation of the Russian Federation. 2020. No. 31. Art. 5017.

their absorption, in which the mass of anthropogenic GHG emissions does not exceed the mass of their absorption in a calendar year (Article 2). The terms “carbon intensity” and “verification” that are important for carbon regulation are also fixed.

The objectives of the experiment are to stimulate the introduction of technologies to reduce GHG emissions and increase their absorption; formation of an independent verification system and creation of a system for the circulation of carbon units and quota fulfillment units.

Regarding *the introduction of special (new) norms that differ from general regulation*, we note that the main difference between the ELR in the Sakhalin Region (and potentially in other regions) from the general federal one is the introduction of quotas and fees for exceeding the quota for GHG emissions.

The experiment in the Sakhalin region is carried out from 09/01/2022 to 12/31/2028. Thus, one of the ELR criteria - *a limited period of validity* - is met.

A feature of the legal structure of the experimental regulation of GHG emissions in the Russian Federation, in contrast to, say, the experiment on quotas for pollutant emissions, is the combination of administrative and civil law norms in it (in the second case, only administrative law norms are involved).

Administrative and legal regulation is conditioned by the powers of state executive authorities in relations with emitters of emissions and other entities (quotas, the use of administrative enforcement measures, the provision of budget subsidies, etc.), civil law regulation - by the definition of carbon units (results of climate projects) and quota fulfillment units as a special object of civil rights and the formation of a system of civil legal relations associated with this (verification, accounting, circulation of carbon units and quota fulfillment units).

The precise distinction and identification of the relevant types of public law and private law relations is an important task of scientific research, as it allows the most efficient use of both

traditional [22-23] and new models and methods of legal regulation. And if the civil law side of carbon regulation has received coverage in a number of domestic scientific publications [24-25], then there are no administrative and legal studies on this issue.

The law on the experiment is inextricably linked with the law “On limiting greenhouse gas emissions” adopted in 2021 (Law No. 296-FZ)⁶. Despite the name, this law does not directly limit emissions, it only introduces a carbon reporting requirement - for large enterprises (with annual emissions from 150 thousand tons of CO₂-eq.) - from 2023 and from 50 thousand tons of CO₂-eq. and more - from 2025) and establishes the legal framework for the implementation of climate projects in Russia - measures to reduce (prevent) GHG emissions or increase their absorption).

The new (in addition to those established by Law No. 296-FZ) powers of the *Government of the Russian Federation* include: establishing a period for assessing the balance of emissions and removals in the region, taken into account when determining quotas; determination of the authorized federal executive body to maintain the register of GHG emissions; setting the rate of payment for exceeding the quota and the rules for calculating and charging fees for exceeding the quota.

The new powers of *the federal executive authorities* include: establishing the procedure for classifying legal entities and individual entrepreneurs as regional regulated organizations; approval of methodological recommendations for conducting an inventory of GHG emissions and removals on the territory of the participant in the experiment, coordination of the regional GHG inventory; approval of guidelines for organizing public discussion of the draft program of the experiment; approval of the form of the report on the results of monitoring the implementation of the experiment program and the procedure for its submission; approval of the methodology for designing quotas for regional regulated organizations (hereinafter - RRO); approval of methodological recommendations for public

⁶ Federal Law of July 02, 2021 No. 296-FZ “On Limiting Greenhouse Gas Emissions” // Collected Legislation of the Russian Federation. 2021. No. 27. Art. 5124.

discussion of the projected quotas; approval of guidelines for assessing the fulfillment of the quota by the regional regulated organization.

The powers of *the authorities of the subject of the federation* include: approval of the list of regulated organizations, establishment of the procedure for the preparation of the regional GHG inventory and its structure; preparation of a draft program for the experiment, organization of its public discussion and approval based on the results of the discussion; formation of proposals for quotas for agreement with the coordinator of the experiment; making a decision on the release of quota fulfillment units; assessment of the fulfillment of quotas; establishment of RRO support measures to reduce emissions, increase their absorption, as well as to introduce the best available technologies (hereinafter referred to as BAT).

The Ministry of Economic Development of Russia was appointed *coordinator of the experiment*, which reflects the compliance with another ELR criterion - the presence of a coordinating body. The coordinator of the experiment has been given the authority to adopt a number of regulations on regulatory issues within the framework of the experiment. Also at the level of the subject, the concept of "authorized executive body of the subject of the Russian Federation" is introduced - authorized to conduct an experiment on the territory of this subject of the Russian Federation (Ministry of Ecology of the Sakhalin Region).

The launch of the quota mechanism requires decisions to be made on a number of issues, including: formation of a RRO pool (setting criteria for inclusion in regulated organizations), determination of regulated types of economic activity and GHG, determination of the method for calculating quotas (develop a methodology for calculating quotas), method of distribution of quotas (for a fee or free of charge), the method of fulfilling quotas (whether to allow compensation mechanisms - in our case, carbon units from climate projects), compliance with established rules (responsibility for non-compliance), carbon reporting (terms, format).

Since the number of large GHG emitters in the Sakhalin Region is small and not enough to launch the carbon market, the threshold for inclusion in the experimental regulation was lowered compared to the federal approach - up to 20 thousand tons of CO₂-eq / year. The indicator of 20 thousand tons of CO₂-eq is close or equal to the level used in the European Emissions Trading System, China, Kazakhstan and other countries. The criteria for inclusion in the RRO are the same as at the federal level. The Government of the Sakhalin Region has approved a list of 50 RRO - mainly enterprises in the fuel and energy sector, transport and housing and communal services.

Quotas for emissions are carried out according to the methodology for calculating projected quotas. In accordance with Law No. 34-FZ (Article 8), when designing quotas, the regional balance of GHG emissions and removals, the required rate of emission reduction "taking into account the amount of taxes and fees paid by the regional regulated organization to the budgets of the budgetary system of the Russian Federation" are taken into account. The approved methodology for determining projected quotas contains calculation formulas that take into account the above-mentioned approaches through special coefficients. Coefficient 1 should increase the calculated quota for organizations applying BAT, but by a very small amount - by fractions of a percent and coefficient 2 should take into account the high tax burden (if any), but the increase in the quota will also be imperceptible - by ten thousandths of a share. The use of the coefficient 1 in the quota method is consistent with one of the principles of the experiment - a differentiated accounting for the indicators of carbon intensity of RRO when setting quotas. However, BAT reference books will be updated according to the agreed schedule from 2022 to 2026⁷. In the first years of the experiment, information for applying the coefficient 2 simply may not be available.

⁷ Decree of the Government of the Russian Federation dated June 10, 2022 No. 1537-р "On approval of a phased schedule for updating information and technical reference books on the best available technologies" // Collected Legislation of the Russian Federation. 2022. No. 25. Art. 4367.

To determine projected quotas, verified GHG emission reports from RRO are used. Quotas are set immediately for each year of the experiment until October 1 of the first calendar year of carbon reporting (that is, until October 1, 2023). In accordance with one of the principles of the experiment, RROs participate in the formation of proposals for the establishment of quotas within the framework of public discussion. Based on the results of the discussion, "the supreme executive body of the constituent entity of the Russian Federation that is a participant in the experiment makes one of the following decisions: 1) on the approval of quotas; 2) on changing quotas".

RROs are required to submit verified carbon reporting annually by July 1. Deadlines, report form and reporting mechanism are harmonized with Law No. 296-FZ. The introduction of a requirement for mandatory verification of emission reports is similar to foreign practice and a significant difference from the requirements of Law No. 296-FZ, which does not provide for verification. Verification will be carried out by organizations accredited in accordance with Russian legislation.

RROs are required to comply with the established quotas and pay for their excess. Various types of fees are provided for compliance with established quotas: RRO can purchase quota fulfillment units from another RRO or carbon units from climate projects that belong to a RRO or purchased from another organization, or make a payment to the regional budget (1000 rubles per 1 ton of CO₂-eq.). The latter allows us to speak about the application of a quasi-tax in parallel with the market method of regulation, which is associated with certain risks of not achieving the expected result of the experiment - the launch of the carbon market. The ability to pay directly to the budget without additional organizational and financial costs for the implementation of climate projects or the acquisition of a quota fulfillment unit may be an argument for RRO to resort to this option. Moreover, direct payment may be the only way to meet emission allowance obligations in the absence of offers to sell carbon units and credit fulfillment units. Thus, the mechanism for the circulation of carbon units may not be launched in

practice, or may not be in demand. This is the risk zone of the experiment. On the other hand, the proposed approach of paying for exceeding the quota in the form of a fixed amount could be separated into a separate method of regulation.

RROs have the right to implement climate projects. The right is established by Law No. 296-FZ, but within the framework of the experiment, a more reasonable motivation for the implementation of the climate project appears - to fulfill the quota. Law No. 34-FZ does not provide for any restrictions on the use of compensation mechanisms - carbon units from climate projects, their localization (location of the climate project), limits of carbon units for offsetting emissions. Let us pay attention to the fact that the use of compensation mechanisms abroad is very limited - either completely prohibited (in the EU), or a small share is allowed (2-10% of the established quotas in China). The law does not clearly indicate the possibility or impossibility of using foreign carbon units. The issue is relevant in connection with one of the fixed principles of the experiment - "circulation and offset of carbon units and quota fulfillment units on the territory of the Russian Federation *and at the international level*".

A special place in the law on the experiment is occupied by the program of the experiment. The program reflects the activities, the implementation of which will ensure the achievement of the goal of the experiment. *The existence of an experimental program* is another criterion for a legal experiment.

The mechanism for monitoring the experiment consists in the annual reporting the program of the experiment by the authorized body to the highest executive body of the subject of the Russian Federation - the participant in the experiment and the coordinator of the experiment. After the completion of the experiment, the coordinator of the experiment submits a report to the Government of the Russian Federation within three months. However, the procedure for summing up and making decisions on subsequent actions to expand the scope of the new regulation and the procedure for the reversibility of the experiment are not indicated either in the Law or in the subordinate legislation. The participation of other regions in the experiment is a right (Article 1 of Law No. 34-FZ), that is, the extension of the experiment to other

regions is not obvious.

Criteria for evaluating the experiment are not currently formulated. Without this, it is impossible to objectively evaluate the experiment and make an informed decision on the application of its results. It is possible to determine the evaluation indicators and the procedure for collecting information on the indicators for each of the objectives of the experiment: stimulating the introduction of technologies to reduce GHG emissions and increase their absorption; formation of an independent verification system; creation of a system for the circulation of carbon units and quota fulfillment units. The performance of tasks can be assessed, for example, by the number of technologies introduced, the number of accredited verifiers involved in the experiment, the number of transactions in the register of carbon units related to compliance with RRO obligations, the number of carbon units used from climate projects in order to fulfill the quota, the number of payments of 1000 rubles etc. The criterion for achieving the goal can be a zero balance of emissions and removals in the region in 2025 in tons of CO₂ equivalent (100% carbon neutrality) with a permissible deviation, for example, 2-5% excess of emissions over absorption.

The creation of special legal regulation in a particular region, as already noted, inevitably puts legal entities and individual entrepreneurs which are participating in the experiment and are outside the regulation in unequal conditions. In this regard, Law No. 34-FZ provides for economic support measures for RRO, which have not yet been specified. The regional government has *the right* to provide as support measures "subsidies related to the reimbursement of costs for the production of goods, performance of work, provision of services, in order to achieve carbon neutrality by the participant in the experiment"⁸. Support measures are a counterbalance to the additional financial burden on the RRO. It is also necessary to disclose the further use of revenues to the budget from payments for exceeding the quota - "in order to finance activities aimed at reducing GHG emissions and increasing their absorption, as well as the development of research activities in the field of

creation (development) of technologies for reducing GHG emissions and increasing their absorption"⁹. It can be assumed that significant support measures will make it possible to replace the coefficient used in the methodology for calculating quotas for accounting for tax payments made by RRO. On the other hand, the use of support measures should not deprive the very idea of a quota system and payment for exceeding quotas. This is not an easy task that requires careful study.

4. Conclusion

1. The legal experiment to regulate greenhouse gas emissions in the Russian Federation is based on a combination of administrative and civil law.

2. An experimental legal regime for regulating greenhouse gas emissions in the Sakhalin Region consists in testing one of the administrative and legal methods - quotas. A full-fledged experiment could consist in testing other methods to identify the most effective in achieving reductions in greenhouse gas emissions. The provided opportunity to pay for exceeding the quota in the form of a fixed amount (1000 rubles) is already in fact a quasi-tax, which can be proposed as a separate method of regulation.

3. In general, the established regulatory framework for the experiment in the Sakhalin Region meets the criteria for conducting the experiment, but the lack of a clear system for evaluating its results and the uncertainty regarding further application throughout the country is a significant drawback.

1. The government support measures are a counterbalance to the additional financial burden on RRO and require specification. It is necessary to adopt normative acts establishing the criteria for providing such support and the support measures themselves and the procedure how to access them. Significant support measures would make it possible to replace the tax payment accounting coefficient used in the quota calculation methodology and, thus, to more harmonize the experimental quota methodology with foreign analogues.

⁸ Article 12 of Law No. 34-FZ.
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⁹ Paragraph 15 Art. 8 of Law No. 34-FZ.

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