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FRAMEWORK AGREEMENT IN CIVIL LAW OF RUSSIA

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Annotation of the thesis
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The relevance of the topic of the dissertation research is manifested in four interrelated aspects.

Socio-economic aspect. In the age of rapid development of economic relations, the growth of transactions in the field of civil turnover, civil law subjects are looking for the most effective, flexible structures that allow them to support the interests of all participants in the transaction.

Business relations are formed between the participants of civil turnover, which presuppose the systematic homogeneous fulfillment of obligations over a long period of time. Then they can enter into a contract that will only provide for the purposes and some general conditions of such a relationship. In turn, the essential conditions will be determined after the conclusion of the main contract.

The reason for this uncertainty, or more precisely, the delay in agreeing on these terms, is that the parties are planning long-term cooperation. In view of this, in general, the desire of the parties to define the essential conditions in the framework agreement itself is seen as impractical or even impossible. An adequate solution to balance the conflicting interests of the parties in stability, on the one side, and flexibility, on the other side, is provided by the framework agreement. Currently, the design of the framework agreement is widely used in civil circulation.

The growing complexity of economic relations in the market of goods, works and services requires the legislative consolidation of not just new contractual structures, but their ability to effectively regulate the relations of participants in civil turnover. Meanwhile, the rules on the framework agreement, which is one of the elements of the civil law regulation of economic relations, need further improvement. This, in turn, will make to provide the effectiveness of long-term cooperation of the participants of civil turnover in the conditions of an unstable economy.

The law-making aspect. The construction of the framework agreement was first legally enshrined in Russian civil legislation with the adoption on March 8, 2015. Federal Law No. 42-FL "On Amendments to Part One of the Civil Code of the Russian

Federation"¹. Despite the fact that prior to the entry into force of these amendments, framework agreements were practically not regulated by law, cases of concluding such contracts in business practice were quite frequent. At that time, the framework agreement was an unnamed civil law contract, which predetermined the existence of many controversial problems in civil law and the emergence of controversial situations in practice, which were ambiguously resolved by the judicial authorities.

An analysis of the current legislation indicates an unjustified identification of the framework agreement and the contract with open conditions. An interesting question is to determine what qualifying features can characterize the specifics sufficient to identify the contract as a framework.

The doctrinal aspect. With the appearance in the Civil Code of the Russian Federation of a special norm that establishes a framework agreement, the scientific doctrine has not developed a clear understanding of the legal nature of this construction. The lack of knowledge of this area, the lack of uniform judicial practice on disputes related to the application of the construction of the framework agreement, have given rise to many theoretical and practical problems. In scientific works in recent years, a number of interesting opinions have been expressed on the application of the design under consideration, which creates an objective need to generalize knowledge about the framework agreement.

Questions remain unclear regarding the definition of the legal nature of the framework agreement, its place in the system of civil obligations, the distinction between the framework agreement and related contractual structures, their essential conditions, the moment of conclusion of the framework agreement, the liability established for the parties for non-performance or improper performance of this agreement. In Russian civil law, there is no clear definition of the content of the obligations generated by the conclusion of a framework agreement, and the developed approach to the concept of a framework agreement does not take into account the specifics of the obligations of the parties.

¹ On Amendments to Part One of the Civil Code of the Russian Federation: feder. law of March 8, 2015 No. 42-FL // assembly of legislation RF. 2015. №10. Article 1412.

The law enforcement aspect. The lack of theoretical elaboration of the provisions on the framework agreement leads to instability of law enforcement practice. When interpreting the provisions on the framework agreement, questions often arise about what kind of construction is actually enshrined in Article 429.1 of the Civil Code of the Russian Federation. However, the distinction between a framework agreement and an open-ended agreement is important in practice. The choice of the correct contractual structure, suitable for the parties to achieve the desired legal result, determines their subjective rights and obligations. For example, depending on whether the parties choose the construction of a framework agreement or a contract with open conditions, the question of the admissibility of the performance of the obligation arising from the contract in kind will be decided.

In some cases, the parties, when determining the price condition, include a specific amount directly in the framework agreement, thus, instead of the necessary framework agreement, the parties conclude, for example, a regular delivery contract. It should be noted that the legal technique in drawing up framework contracts has not yet developed perfect techniques and rules.

Despite the apparent simplicity of the design of the framework agreement due to the fragmentary legal regulation of this design in civil legislation, in practice there is a need for its further improvement. The law enforcement officer faces problems related primarily to the legal qualification of the contract as a framework. There are also problems with the qualification of additional agreements concluded on the basis of and in pursuance of the framework agreement. A large number of disputes related to the non-fulfillment of the terms of the framework agreement, the recognition of the framework agreement as not concluded, indicates the acuteness and urgency of the problems that arise in practice.

All of the above determines the relevance and importance of the topic of this dissertation work.

The degree of scientific development of the research topic. Some aspects of the framework agreement were studied in the works of Egorova, Koblov, Morozov, Mustafin, Poduzova, Tatarkina, etc. However, a comprehensive study of the stated

topic, taking into account the achievements of the reform of the law of obligations, was not conducted.

Among the most significant works is the work of Efimova "Framework (organizational) contracts" (Moscow, 2006), devoted to the study of the framework contract in Russian banking law. To date, this work is the only monographic study on the stated issue.

In recent years, the framework agreement has been considered in a number of dissertations, but only within the scope of studying some of its aspects. In this regard, the candidate's dissertations are directly referred to: Tyurina "Contract as a regulator of organizational relations in Russian civil law" (Moscow, 2012); Yurenkova "Special contractual constructions on granting the subjective right to demand the conclusion and execution of civil law contracts in the future" (Moscow, 2014); Komaritsky "Legal regulation of pre-contractual liability under the legislation of the Russian Federation" (Moscow, 2016); Tatarenko "Framework and Subscription contracts in Civil law" (Moscow, 2018). Gudovskikh's PhD thesis "The mechanism of filling open conditions of civil law contracts" (Ulyanovsk, 2019) is devoted to the problem of filling open conditions of civil law contracts.

Thus, the framework agreement itself did not become the subject of dissertation and monographic research. The above allows to state that there are not enough scientific materials in Russian civil law that comprehensively consider the essence and specific features of the framework agreement, taking into account the situation that has developed during the past changes in civil legislation, the practice of its application, and the existing problems in this area.

The object of the study is a complex of public relations, the specifics of the legal regulation of which requires the use of the construction of a framework agreement.

The subject of the research is the norms of the current Russian and foreign civil legislation, the practice of their application, the concepts of the development of civil legislation, the existing legal views, ideas and provisions contained in the works of domestic and foreign scientists.

The purpose of this dissertation is to develop a holistic scientific understanding of the framework agreement, taking into account the current state of current legislation, judicial practice and doctrine. The goal is achieved by solving the **following tasks**:

- to identify the features of the formation and development of the legal regulation of the framework agreement in Russia and abroad;
- determine the legal nature of the framework agreement, its place in the system of civil obligations;
- analyze the concept of a framework agreement, determine the range of features that form the structure of the framework agreement and distinguish it from a number of other agreements;
- on the basis of the identified features, make a distinction between the framework agreement and other related contractual structures;
- to characterize the relationship between the concepts of "framework agreement" and "contract with open conditions", as well as to form an idea of the specifics of the legal nature of these related phenomena;
- determine the content and identify the types of obligations generated by the framework agreement;
- identify the features of the dynamics of relations between the parties based on the framework agreement;
- analyze the specifics of the application of civil liability measures for non-performance or improper performance of the framework agreement.

The theoretical basis of the research is the works of Russian authors. There are M.M. Agarkov, S.S.Alekseev, V.A. Belov, M.I.Braginsky, S.N.Bratus, V.V. Vitryansky, B.M. Gongalo, M.A. Egorova, L. G. Efimova, I. A. Zenin, M. N. Ilyushina, O.S. Ioffe, A. G. Karapetov, E. B. Kozlova, O. A. Krasavchikov, P. V. Krashenninnikov, A. N. Levushkin, D. V. Lorenz, S. Yu. Morozov, I.B. Novitsky, E.B. Poduzova, B. I. Puginsky, A. S. Rainikov, Yu. V. Romanets, O. N. Sadikov, A. P. Sergeev, S. A. Stepanov, D. P. Strigunova, E. A. Sukhanov, E. A. Fleishits, E. E. Shevchenko, G. F. Shershenevich, D. O. Schniger etc.

In addition to this, I also used the studies of foreign authors. There are M. Béhar-Toushais, M.L. Cherradi, J. Gatsi, J. Ghestin, C. Hoffbauer, V. S. Milash, J.M. Mousseron, Nakata H., A. Ronzano, A. Sayag, A. Seube, D. Tallon etc.

The methodological basis of the dissertation research was the dialectical method, which made it possible to comprehensively study and analyze the framework agreement, to identify the features of the dynamics of relations between the parties based on the framework agreement.

To obtain conclusions, we used the methods of formal logic: analysis, synthesis, deduction, induction. The use of the historical method allowed us to trace the historical retrospective of domestic and foreign legislation on the framework agreement, to identify the stages of formation of doctrinal approaches to the definition of the concept of the framework agreement, as well as to identify the features of the legal regulation of the framework agreement in domestic civil law. The method of systematic research allowed us to determine the obligations generated by the conclusion of a framework agreement, to develop a criterion for their systematization, as well as to distinguish the framework agreement from other related contractual structures.

The method of technical and legal analysis allowed us to formulate definitions of the concepts of a framework agreement and a contract with open conditions. The formal legal method is used to study the regulatory framework on the topic of the dissertation research. On the basis of the comparative legal method of research, the main approaches to the regulation of the framework agreement in continental and English law are determined. It is concluded that in some countries of the Romano-German legal family, the framework agreement has no legal formalization (Germany, Italy), in other countries of continental law, the framework agreement is legally enshrined in Civil Codes (France, Russia), and in French law, the framework agreement is constructed as an organizational contract, and in Russian law, the construction of the framework agreement has a dual organizational and property legal nature. In common law countries, a framework contract is not distinguished as a separate type of contract.

The normative basis of the study was the Constitution of the Russian Federation, the Civil Code of the Russian Federation (as amended on 16.12.2019), other normative

legal acts of the Russian Federation, as well as the provisions of the civil law of foreign countries: France, Germany, Italy, England, the United States, Ukraine, Japan.

The validity and reliability of the research results are confirmed by the author's application of the methods of scientific knowledge corresponding to the dissertation work, the extensive use as a theoretical and methodological basis of the dissertation work of the materials of scientific research and the works of domestic and foreign authors, the use of the latest publications in periodicals, the analysis and generalization of a significant amount of materials of law enforcement practice on the issues of the topic under study.

The scientific novelty of the work is determined by the very formulation of the problem and the approach to its solution, as well as by the fact that for the first time after the construction of the framework agreement was fixed in the Civil Code of the Russian Federation, an attempt was made to comprehensively study the essence of the framework agreement, taking into account the current state of current legislation, judicial practice and the science of civil law.

The dissertation for the first time reveals the stages of the formation of doctrinal approaches to the definition of the concept of a framework agreement and the peculiarities of the development of its legal regulation in Russia, France and other foreign countries. The subject of the framework organizational agreement is formulated, its essential conditions are identified, and its characteristic features are identified. The work substantiates a fundamentally new position on the need to distinguish two characteristic (typical) features of a framework agreement, namely, a sign of double will and a specific goal to create a standardized framework for the formation of future agreements.

The author conducted a multidimensional comparative study of the relationship between the framework agreement and a number of other contractual structures in Russian and foreign legislation. The novelty of the study is supplemented by the justified need to distinguish between the concepts of "framework agreement" and "open-ended agreement" identified by the legislator.

The desire to discover the specifics of the framework agreement made it possible to determine the content of the obligations arising from the framework agreement, to identify and characterize obligations with positive content and obligations with negative content. New arguments are put forward in favor of substantiating the theoretical provisions already expressed in the literature on the issues of liability for non-performance and improper performance of a framework agreement.

Scientific novelty is directly expressed in the following **main provisions, submitted for defense:**

1. The legal definition of a framework agreement, contained in Article 429.1 of the Civil Code of the Russian Federation, establishes a broad approach to its definition, since it combines elements of two different contractual structures: the actual framework agreement and the contract with open conditions. A framework agreement aimed at organizing long-term relations between the parties is an organizational agreement, while an open-ended agreement refers to property agreements.

2. The framework agreement is characterized by two features: 1) the sign of a double will is manifested in the need to re-agree on the wills to clarify the conditions for the parties to fulfill the framework agreement; 2) the sign of a specific goal is the intention of the parties to create a standardized framework for the formation of future contracts based on their original agreement, that is, the definition of the regime of their relationship, indicating the general will of the parties aimed at long-term cooperation.

3. The author's definitions of the framework agreement and the agreement with open conditions are formulated:

a) framework agreement – an agreement that establishes a regime of long-term relations between the parties, covering the most general conditions for performing actions in fulfillment of emerging obligations, providing for the need to re-agree on the will of the parties on the content of other agreements (on the transfer of property, performance of works or provision of services);

b) open-ended agreement – an agreement between the parties on the transfer of property, performance of works, provision of services, involving the agreement of certain conditions by concluding separate agreements, including sending applications to

one of the parties, or otherwise on the basis of or in execution of an open-ended agreement.

4. The framework agreement differs from other contractual structures: the presence of a common goal, which is the intention of the parties to standardize their future relations; the organizational legal nature (from the option and subscription agreements); the direction of the will of the parties to establish the obligation to conclude separate contracts in its execution, the essential terms of which will be determined in the future (from the preliminary agreement); the absence of counter-provision (from the option agreement, option to conclude a contract, subscription agreement).

5. A framework agreement generates a core and additional obligations. The content of the main obligation consists in the express or implied obligation to subsequently conclude a contract (s) in pursuance of the framework. Additional obligations that arise simultaneously with the main obligation, but exist separately from it, consist in performing actions in fulfillment of the main obligation.

6. The additional obligations generated by the framework agreement are divided into positive and negative, depending on the content.

Obligations with a positive content imply that the parties are obliged to take active actions and relate to the procedure for concluding contracts in compliance with the framework agreement, as well as the content of future contracts.

Obligations with negative content consist in imposing on the parties a passive obligation not to perform certain actions (to refrain from concluding similar contracts with other persons; not to disclose to third parties information about individual contracts made or performed in accordance with the framework agreement; not to sell goods outside the territory whose borders are agreed in the framework agreement, etc.), as a rule, relate to the order of execution of subsequent contracts and are of an auxiliary nature, complementing the obligations with positive content.

7. Among the positive obligations concerning the procedure for concluding contracts in pursuance of the framework agreement, a special place is occupied by the

previous obligations that must be fulfilled before the conclusion of individual contracts on the basis of and in pursuance of the framework agreement.

The theoretical significance of the dissertation research consists in the possibility of applying the conclusions and suggestions made by the author for further scientific research of the framework agreement.

The theoretical significance of the work also lies in the fact that the provisions formulated by the author, which are adequate to the current conditions of the development of legislation, are focused on the development of scientific knowledge about the nature of the framework agreement, the types of obligations generated by it.

The practical significance of the dissertation research lies in the possibility of using author's proposals and recommendations, which are aimed at improving civil legislation. The provisions that were formulated in the work can be used in the lawmaking and law enforcement process, as well as in the contractual work of commercial and other organizations. For example, it can be used for formulating the terms of contracts. The results of the research can be used as a basis for further development of the considered problems in the process of teaching the course of civil law and business law.

Approbation of the research results is determined by the fact that the dissertation work was carried out at the Department of Civil Law of the Law Institute of the Federal State Budgetary Educational Institution of Higher Education «Irkutsk State University». Author published a major theoretical results in scientific journals. There are VI International Scientific and Practical Conference "Contemporary Problems of Russia and Foreign Countries" (December 8, 2017, Irkutsk Institute (branch) VSUYu (RPA of Russia), IV International Scientific and Practical Conference "Research and Development in Promising Scientific Areas" (March 27, 2018, Novosibirsk), scientific and practical round table on the topic "Problems of using new contractual structures enshrined in the Civil Code of the Russian Federation (subscription, framework agreements and option agreements) "(April 20, 2018, BSU Irkutsk), XIX Annual International Scientific and Practical Conference of the Law Faculty of Lomonosov Moscow State University (MSU) and XV International Scientific practical conference

"Kutafin readings" of the Moscow State Law University named after O.E. Kutafina (Moscow State Law Academy) "The Constitution of the Russian Federation and Modern Law and Order" (November 27, 2018, Moscow), the All-Russian Scientific and Practical Conference with international participation, dedicated to the 25th anniversary of the Law Faculty of Dorzhi Banzarov Buryat State University (May 16-18 2019, Ulan-Ude), IX International Scientific and Practical Conference "Law and Business: Legal Space for Business Development in Russia" (June 4, 2020, RANEPA, Moscow).

The purpose and objectives of the study determined its structure: introduction, two chapters (seven paragraphs), conclusion and bibliography.

The Introduction of the Thesis is an introductory part of the dissertation, which includes the following - substantiation of the topic's nature, purpose and objectives, object, subject, theoretical and methodological basis of the research. The scientific novelty and practical significance of the thesis are also described in the introduction. And finally, it forms the main provisions for the defense.

The first chapter is titled «General characteristics of the framework agreement». It is about the peculiarities of the formation and development of legal regulation of a framework agreement in Russia and abroad, investigates the legal nature of a framework agreement, distinguishes between a framework agreement and other related contractual structures.

The second chapter is titled «Content of the framework agreement. Dynamics of the relations of the parties based on the framework agreement». It is about the content of the framework agreement, the peculiarities of the dynamics of the parties' relations based on the framework agreement are revealed, the specifics of the application of measures of civil liability for non-performance or improper performance of the framework agreement are investigated.

The conclusion of the Thesis includes the main findings of the research topic.

List of Publications of the Thesis author. The main provisions and conclusions of the study approved in twelve works of the author, five of which published in editions included into the list of the Higher Attestation Commission (VAK) of the Ministry of Education and Science of the Russian Federation:

1. Ganeva E.O. Formation and development of legal regulation of the framework agreement in Russia / E. O. Ganeva // Eurasian Law Journal. – 2018. – No.12. – P. 186 – 190.
2. Ganeva E.O. Legal construction of a framework agreement in Russia and foreign countries: formation and modernity / E. O. Ganeva // Siberian Law Herald. – 2019. – No.1. – P. 40–46.
3. Ganeva E.O. Framework contract and qualifying his significant/ E. O. Ganeva // Reign of law. – 2019. – No. 3 (39). – P. 175–185.
4. Ganeva E.O. Positive and negative content of obligations in a framework agreement / E. O. Ганева // Civil law. – 2020. – No. 2. – P. 15–18.
5. Ganeva E.O., Filatova U.B. Organizational foundations of social entrepreneurship: features of contractual structures / E. O. Ganeva, U. B. Filatova // Siberian Law Herald. – 2020. – No. 4. – P. 54–58.