

ORIGINAL PAPER



DOI: 10.26794/2304-022X-2024-14-1-6–20

UDK 336.131(045)

JEL H61

Division of Powers of Public Authorities in Modern Conditions

Kh.N. Zambaev

Financial University, Moscow, Russia

ABSTRACT

In the context of the implementation of the provisions of the Constitution of the Russian Federation regarding the formation of a unified system of public power, the issue of improving the delimitation of powers of public authorities remains relevant. Significant amount of problems has been accumulated over the course of more than twenty-five years. This fact has an impact on the sustainability of regional budgets. The author of the article is considering the authority of regional government bodies in questions of joint jurisdiction of the Russian Federation and its constituent entities. The **purpose** of the work is to develop recommendations for improving the division of powers of public authorities and financial support this process from the position of increasing the sustainability budgets of the constituent entities of the Russian Federation. In the course of the work, based on scientific **methods** such as institutional, retrospective and comparative analyses, it was concluded that there are problems in the mechanism for delimiting regional powers that impede the increase in the sustainability of regional budgets. The main **results** of the study include suggestions for the harmonization of budget legislation and legislation in the field of delimitation of powers from the position of expanding the rights of regions to participate in the implementation of non-transferred powers, regulation of the process of introducing new powers, inventory count of regional powers established by subordinate legislation or by-laws, introduction of the practice of financial support for certain regional powers in cases and to the extent of receipt of certain non-tax revenues and the development of debt financing instruments for powers, as well as for improving the practice of financial support for delegated powers. The prepared recommendations may be useful when conducting the inventory count of regional powers from the standpoint of increasing the sustainability of regional budgets; introducing a reasonable assessment of the resource provision for new powers proposed for the implementation; shifting the emphasis from the subordinate or by-law regulation of regional powers towards strengthening their legislative regulation.

Keywords: Subject of joint jurisdiction; authority; region; public authority; budget; regional budget; sustainability; sustainable financing

For citation: Zambaev Kh.N. Division of powers of public authorities in modern conditions. *Upravlencheskie nauki = Management Sciences*. 2024;14(1):6–20. (In Russ.). DOI: 10.26794/2404-022X-2024-14-1-6–20

INTRODUCTION

The delimitation of the subjects of competence of governmental units or public-law entities (hereinafter — PLE) and the powers of public authorities or executive government agencies (hereinafter — EGA) is one of the strategic directions in the development of a unified system of public power in the Russian Federation and foreign countries. Depending on whether the balance in this issue is achieved, the fiscal policy will be organised in order to increase the sustainability of public-law entities' budgets. [1].

The analysis of foreign experience in the area of delimitation of subjects of competence allowed to establish the following features of state activity, including in the spheres of governance, social policy, financial and credit and others.

In particular, if we talk about the organisation of public power as one of the fundamental areas of public administration, most countries retain the exclusive competence of the federation in the issue of the organisation of federal power [2]. In the constitutions of some states, the subject matter of the federation includes the problems of creation and coordination of a unified system of public authority (Mexico), as well as aspects of public service. At the same time, only in some countries these issues are included in the subject of joint competence (Germany, Mexico).

Foreign policy by foreign countries is traditionally referred to the competence of the federation or to the subject of joint jurisdiction; however, in some countries there are some peculiarities. In the People's Republic of China, the Hong Kong and Macao administrative-territorial units have the authority to interact with other states in the field of culture [3], as well as with regions of foreign countries on a wide range of issues [4].

Defence tasks are national tasks, with the federation retaining exclusive competence. At the same time, the experience of some coun-

tries shows that such issues can be included in the joint competence, as in the Comoros and Somalia, for example [5].

According to the constitutions of foreign countries, the social sphere is included in the subject of jurisdiction of the federation, but sometimes it is a subject of joint jurisdiction (Malaysia). Health care as one of the most important sectors is legislatively enshrined in the constitutions of most countries as a subject of joint jurisdiction, within which powers are delimited by types of medical care. However, for example, in Canada, there is a tendency to attribute the issues of medical care to the competence of the regions, while the federal level retains only the function of normative regulation.¹

The financial and credit system of foreign countries is a subject of competence of the federation or a subject of joint competence (Germany, Italy) [6]. Antitrust regulation is traditionally the sphere of competence of the federation, but, for example, in Germany and India, serves as a subject of joint competence [7].

The delimitation of powers in economic sectors in most countries is realised in the following way: communications is a federal subject of competence (Australia) or a joint subject of competence (Bolivia, Nepal) [8]; hydropower, thermal power, renewable energy sources — mainly a subject of joint competence or federal competence (Nepal); cartography — a federal subject of competence; agriculture and agrarian policy — mainly regional competence; as for transport, the delimitation is carried out by its types [9].

DELIMITATION OF COMPETENCES AND POWERS — CURRENT STATUS

Recently, the delimitation of powers in the Russian Federation has undergone a number

¹ The Canada Health Act. R.S.C., 1985, c. C-6. Justice Laws Website. URL: <https://laws-lois.justice.gc.ca/eng/acts/c-6/page-1.html>

of significant transformations affecting the issues of regional development.

In 2020, Article 71 of the Constitution of the Russian Federation introduced changes related to the organisation and functioning of public power, including amendments to 7 out of 18 federal subjects of jurisdiction [10]. 4 out of 15 subjects of joint jurisdiction were adjusted, including in connection with the inclusion of agriculture, youth policy and clarification of health issues included in the subject of joint jurisdiction.²

In order to bring the legislation in line with the Constitution of the Russian Federation, including in connection with the alignment of the system of public authorities, amendments have been made to the issue of the organisation of legislative (representative) and executive government agencies of the constituent entities of the Russian Federation (hereinafter — the CERF). In particular, Federal Law No. 184-FL of 06.10.1999 “On General Principles of Organisation of Legislative (Representative) and Executive Government Bodies of the Constituent Entities of the Russian Federation” (hereinafter referred to as Federal Law No. 184-FL)³ which had been in force since 1999, was replaced by Federal Law No. 414-FL of 21.12.2021 “On General Principles of Organisation of Public Power in the Constituent Entities of the Russian Federation”⁴ (hereinafter referred to as Federal Law No. 414-FL).

² Constitution of the Russian Federation (adopted by popular vote on 12.12.1993, with amendments approved in the course of all-Russian voting on 01.07.2020). Art. 72. URL: https://www.consultant.ru/document/cons_doc_LAW_28399/?ysclid=lt5xi3cfew687366061

³ Federal Law of 06.10.1999 No. 184-FL “On General Principles of Organisation of Legislative (Representative) and Executive Bodies of State Power of the Constituent Entities of the Russian Federation” (latest edition). URL: https://www.consultant.ru/document/cons_doc_LAW_14058/?ysclid=lt5xovk1o4917193708

⁴ Federal Law of 21.12.2021 No. 414-FL “On General Principles of Organisation of Public Power in the Constituent Entities of the Russian Federation”. URL: https://www.consultant.ru/document/cons_doc_LAW_404070/?ysclid=lt5xm68cr3971833502

The analysis of changes in regional powers on the subjects of joint jurisdiction has shown that in the period from 1999 to 2004, the initial version of Federal Law No. 184-FL envisaged 41 regional powers of mainly social character [11], and in 2005–2022 their composition was repeatedly changed with the general trend to increase their number [12]. In 2023, as a result of the adoption of Federal Law No. 414-FL, the total number of regional powers on the subjects of joint jurisdiction totalled 170 (*Fig. 1*).

A comparative analysis of the earlier and current federal laws in force has shown that:

- 71 regional powers from those previously enshrined were retained unchanged;
- 68 regional powers were clarified, with editorial amendments made to 15 of them, expansion amendments to 29, and narrowing amendments to 24 regional powers from those previously in force;
- 2 regional powers were deleted;
- 29 new powers added.

A detailed study of the existing regional powers on the subjects of joint jurisdiction has shown that they were clarified for the purpose of expansion or contraction by means of consolidation (4 regional powers were consolidated to 2) or splitting into two or more [19 divided in connection with the formalisation of issues of state control (supervision) into independent powers].

Federal Law No. 414-FL predominantly retains the previously existing regional powers, but at the same time adds new ones and expands the already established ones. Along with the improvement of the legal regulation of the delimitation of powers provided for by it, the practice of establishing powers of executive government agencies of the constituent entities of the Russian Federation has been preserved and enshrined in other legislative acts, which have also been amended to bring them in line with Federal Law No. 414-FL [11].

The total number of powers of executive government agencies of the constituent entities

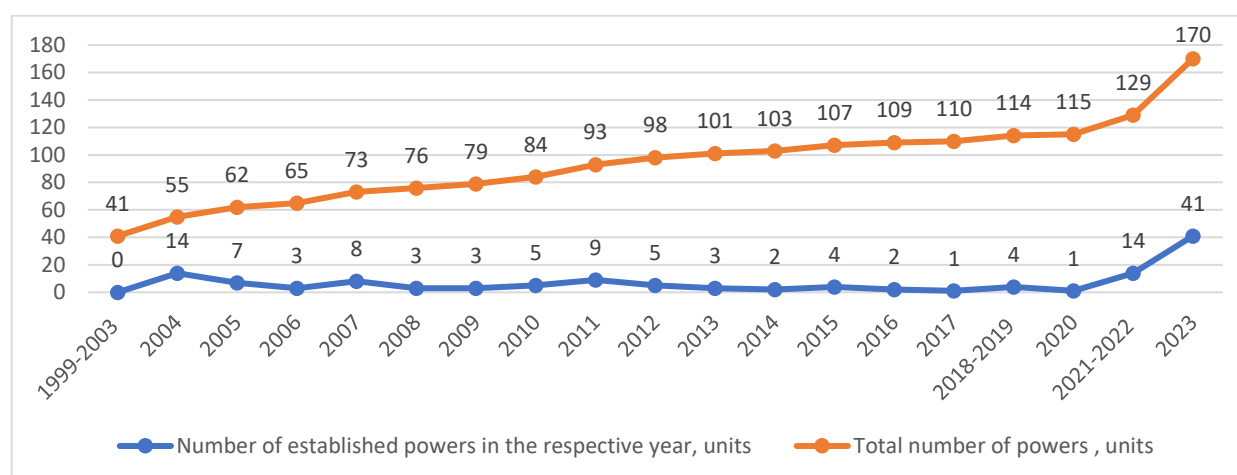


Fig. 1. Dynamics of changes in the total number of regional powers on subjects of joint jurisdiction from 1999 to 2023

Source: compiled by the author based on [13].

of the Russian Federation provided for by 126 federal laws to date is about 864.

According to Article 44 of Federal Law No. 414-FL, the list of regional powers on subjects of joint jurisdiction may be adjusted by amending it. This provision means that the establishment of new regional powers by other federal laws is possible if they are consistent with Federal Law No. 414-FL.

In addition, this legislative act provides that federal laws that address the issue of regulating the powers of executive government agencies of the constituent entities of the Russian Federation must contain provisions regarding their rights, duties and responsibilities, the procedure, and sources of their financial support.

At the same time, a selective analysis of regional powers has revealed the practice of their identical consolidation by Federal Law No. 414-FL and “sectoral” federal laws. For example, the regional authority in the field of protection and promotion of capital investments provided for in paragraph 62 of Part 1 of Article 44 of Federal Law No. 414-FL fully duplicates the regional authority already established in Part 7 of Article 4 of Federal Law No. 69-FL “On Protection and Promotion of Capital Investments in the Rus-

sian Federation”.⁵ The same can be said about the powers in the sphere of subsoil exploitation (clause 79), industrial policy (clause 147), use of hunting grounds (clause 167), information security of children (clause 168)⁶ etc.

KEY DIRECTIONS IN THE DEVELOPMENT OF LEGISLATIVE REGULATION AND FINANCIAL SUPPORT IN THE AREA OF DELIMITATION OF POWERS

In order to further improve the delimitation of powers between public authorities, it seems advisable to form a number of recommendations and, in particular, to establish that Federal Law No. 414-FL (and this fully correlates with the main subject of its regulation) provides for a basic list of regional powers on subjects of joint jurisdiction. At the same time, it is recommended that “sectoral” federal laws

⁵ Federal Law No. 69-FL dated 01.04.2020 “On Protection and Promotion of Capital Investments in the Russian Federation” (latest version). URL: https://www.consultant.ru/document/cons_doc_LAW_349045/?ysclid=lt6y0pujk9904455288

⁶ Federal Law of 21.12.2021 No. 414-FL “On General Principles of Organisation of Public Power in the Subjects of the Russian Federation”. Art. 44. URL: https://www.consultant.ru/document/cons_doc_LAW_404070/?ysclid=lt5xm68cr3971833502

disclose a detailed list of provisions characterising the basic authority, as well as the rights, duties, and responsibilities of regional authorities. It is not advisable to maintain the practice of duplicating regional powers in two federal laws. In addition, for the purpose of a uniform approach, it seems important to specify what exactly should be understood by the words: “organisation”, “participation”, “provision”, “implementation”, “support” used in the framework of powers.

The results of the analysis of the practice of delimitation of powers on the subjects of joint jurisdiction in the relationship with regional state revenues are presented in *Table 1*.

The data of *Table 1* show that the growth rate of total revenues as of 1 January 2023 is 113.12%, and the maximum positive dynamics in terms of non-tax revenues is — 142.80%.

It should be noted that not all tax revenues tended to increase: in terms of gratuitous revenues there was a decrease in the growth rate

to 97.37%. In general, the identified trend does not confirm significant or even sharp changes in the performance of regional budgets in terms of revenues.

Decrease in the actual execution of regional budgets by revenues in 2020–2022 was observed in 13 regions; as of January 1st 2023, negative dynamics was characteristic of 12 of them (*Table 2*).

In most regions the growth rate of budget execution as of 1 January 2023 was not more than 110%; under-fulfilment was observed for some revenues, which was due to the influence of macroeconomic, political, and other factors, as well as inaccuracy of the methods of budget forecasting of revenues used.

Due to the fact that as a result of the improvement of the delimitation of powers on subjects of joint jurisdiction by virtue of Federal Law No. 414-FL, regional authorities have been vested with new powers, the issue of mobilising sources of their financial support is quite acute.

Table 1

Information on the execution of regional budgets by income from 2020 to 2022

| No p.p. | Indicator name | 2020 | 2021 | Growth rate, % | 2022 | Growth rate, % |
|---------|--------------------------------------|---------------|---------------|----------------|---------------|----------------|
| 1 | Total revenues, RUR mln. | 13 253 645.61 | 15 676 412.93 | 118.28 | 17 571 705.40 | 112.09 |
| 1.1 | Tax and non-tax revenues, including: | 9 149 508.94 | 1 178 136 498 | 128.76 | 13 326 745.44 | 113.12 |
| 1.1.1 | Profit tax on organisations | 2 910 490.73 | 4 501 302.93 | 154.66 | 4 663 603.64 | 103.61 |
| 1.1.2 | Personal income tax | 3 344 636.65 | 3 802 992.39 | 113.70 | 4 423 697.68 | 116.32 |
| 1.1.3 | Excise taxes | 755 169.08 | 900 493.24 | 119.24 | 1 055 856.74 | 117.25 |
| 1.1.4 | Tax on property of organisations | 901 671.69 | 956 417.61 | 106.07 | 1 114 357.61 | 116.51 |
| 1.1.6 | Mineral extraction tax | 77 995.17 | 94 352.06 | 120.97 | 123 601.41 | 131.0 |
| 1.1.7 | Other tax revenues | 614 470.34 | 791 162.99 | 128.76 | 927 986.35 | 117.29 |
| 1.1.8 | Non-tax revenues | 459 263.06 | 630 828.56 | 137.36 | 900 798.77 | 142.80 |
| 1.2 | Gratuitous receipts | 3 776 207.84 | 3 676 792.95 | 97.37 | 3 922 587.21 | 106.69 |

Source: compiled by the author based on iMonitoring. URL: <https://www.iminfin.ru/areas-of-analysis/budget/otdelnye-pokazateli-ispolneniya?territory=45000000> (accessed on 18.07.2023).

Table 2

Information on the execution of individual regional budgets by income from 2020 to 2022

| No p.p. | Region name / | 2020 | 2021 | Growth rate, % | 2022 | Growth rate, % |
|---------|------------------------------|---------------|------------|----------------|------------|----------------|
| 1 | Chukotka Autonomous District | 51 836.02 | 51 237.59 | 98.85 | 50 229.61 | 98.03 |
| 2 | Kaliningrad Region | 124 500 813.0 | 122 216.71 | 98.17 | 115 872.53 | 94.81 |
| 3 | Republic of Crimea | 209 449.02 | 197 716.26 | 94.40 | 260 502.09 | 131.76 |
| 4 | Jewish Autonomous District | 19 283.59 | 22 431.69 | 116.33 | 21 553.64 | 96.09 |
| 5 | Magadan Region | 47 713.68 | 51 735.95 | 108.43 | 47 371.95 | 91.56 |
| 6 | Republic of Sakha (Yakutia) | 249 785.16 | 320 787.01 | 128.43 | 319 635.05 | 99.64 |
| 7 | Vologda Region | 99 823.06 | 142 589.77 | 142.84 | 132 026.77 | 92.59 |
| 8 | Murmansk Region | 87 999.07 | 118 651.09 | 134.83 | 105 966.48 | 89.31 |
| 9 | Krasnoyarsk Region | 28 8697.92 | 395 779.60 | 137.09 | 372 364.07 | 94.08 |
| 10 | Tyumen Region | 168 792.67 | 249 290.45 | 147.69 | 239 421.32 | 96.04 |
| 11 | Chelyabinsk Region | 198 009.43 | 274 401.54 | 138.58 | 252 712.06 | 92.10 |
| 12 | Belgorod Region | 111 375.86 | 158 754.03 | 142.54 | 138 471.61 | 87.22 |
| 13 | Lipetsk Region | 73 342.10 | 113 211.53 | 154.36 | 93 549.48 | 82.63 |

Source: compiled by the author based on iMonitoring. URL: <https://www.iminfin.ru/areas-of-analysis/budget/otdelnye-pokazateli-ispolneniya?territory=45000000> (accessed on 18.07.2023).

In terms of regional budget revenues as a recommendation it seems appropriate to draw attention to the need to improve the quality of administration of state revenues on the basis of improving the methods of budget forecasting of revenues. Indeed, the analysis of control and expert-analytical materials of the control and expert-accounting bodies of the constituent entities of the Russian Federation shows that there is often a significant under-receipt of revenues or, on the contrary, excessive growth of their volumes, which in general allows to state the inaccuracy of methods of budget forecasting of regional revenues. Closely related to this issue is the problem of introduction and assessment of tax expenditures of the regions.

Establishment of new regional powers on the subjects of joint jurisdiction provides for the need to find sources of their financial support, which (in order to improve the sustainability of regional budgets in connection with the improvement of the delimitation of powers) is recommended to be carried out on the basis of the specifics of the assumed expenditure obligations arising as a result of the consolidation of the relevant regional powers. In this regard, as such sources can be considered the expansion of the practice of providing inter-budgetary subsidies, other inter-budgetary transfers for the purpose of co-financing expenditure commitments on subjects of joint jurisdiction, which fully corresponds to the goal of establishing a unified system of public power.

In order to implement regional powers to build infrastructure, it is recommended to more actively attract and use infrastructure budget loans provided under the federal project “Infrastructure Menu”.⁷ In addition, since the regions have the right to exercise powers that are not assigned to the subject of jurisdiction of the Federation and the subject of joint jurisdiction, the issue of the sources of their financial support is quite important from the point of view of improving the sustainability of regional budgets. It should be taken into account that the principle of general (cumulative) coverage of budget expenditures does not provide for linking budget expenditures with its certain revenues, except for those situations when the law stipulates the implementation of budget expenditures in cases and within the limits of receipt of certain non-tax revenues of budgets.⁸ In this regard, it is proposed to apply the mechanism of financial provision of certain powers by redistributing budget allocations through the consolidated budget list and without amending the budget law. At the same time, it is recommended to consider the existence of the possibility of such redistribution in cases and within the limits of receipt of the relevant non-tax revenues of the budgets of the regions as the basis for redistribution of budget allocations.

PECULIARITIES OF APPLICATION OF DEBT FINANCING INSTRUMENTS IN THE IMPLEMENTATION OF REGIONAL POWERS

Among the sources of financial support, special attention should be paid to the fundamentally new ones, which are used in the activi-

ties of both economic entities and a particular region. In particular, we are talking about the use of debt financing instruments, including “green” bonds. Their application is based on ESG principles, which provide for the implementation of sustainable development financing taking into account environmental, social, and corporate governance principles.

The principles of “green” bonds in global practice are implemented by the International Capital Market Association (ICMA). According to ICMA, these securities are debt instruments, the proceeds from the placement of which (or an equivalent amount) are used to finance or re-finance, including in full or in part, new and/or existing “green” projects.⁹

The application of “green” bonds under the ICMA principles is based on four main components:

- utilisation of funds;
- project appraisal and selection process;
- management of funds;
- reporting.

The use of bond proceeds is limited and can only be used for “green” projects. The latter include those related to renewable energy, energy efficiency, pollution prevention, sustainable management of natural resources and land use, biodiversity conservation, environmentally friendly transportation, sustainable water and wastewater management, “green” buildings, and others. All of them are fully within the competence of the regions.

The process of project evaluation and selection consists of the issuer establishing and providing potential investors with information on the purpose of “green” projects, the procedure for determining their eligibility, and the identification and assessment of potential risks of such projects. Funds management involves

⁷ Passport of the federal project “Infrastructure Menu”. URL: https://minstroyrf.gov.ru/upload/iblock/d07/FP_Infrastruktorno_menu-01.02.2022.pdf

⁸ Budget Code of the Russian Federation of 31.07.1998 No. 145-FL. Art. 35. URL: https://www.consultant.ru/document/cons_doc_LAW_19702/?ysclid=lt7d1e5313919266518

⁹ International Capital Market Association (official website). 2023. URL: https://www.icmagroup.org/assets/documents/Sustainable-finance/Translations/Russian-GBP_2021-06v2-100222.pdf (accessed on 19.07.2023).

keeping records of funds from the placement of “green” bonds in a separate account in a way that should be recorded in the form of a special procedure related to operations within the framework of such projects.

Upon completion of individual stages of “green” projects, the issuer generates the necessary information on the use of funds from the placement of “green” bonds.

Thus, the application of new approaches to the mobilisation of financial resources by executive government agencies of the constituent entities of the Russian Federation seems to be quite justified, as it provides for the possibility of directing the latter to the implementation of specific powers. In particular, within the framework of Federal Law No. 414-FL, the authority to organise transport services for the population has been expanded — the involvement (along with the previously listed types of transport) of urban land electric transport, which includes electric buses (clause 23, part 1, article 44).

In this regard, the experience of Moscow (as a city of federal significance) in the application of “green” bonds, the placement procedure of which is based on ICMA principles, is quite illustrative.

In order to define exhaustive requirements for government securities classified as green bonds, the Concept of Green Bonds of the City of Moscow was adopted.¹⁰ Their placement with the right to purchase only by individuals began on 30 May 2023 on the platform “Finservices” of the Moscow Exchange; the volume of the issue was 2 billion roubles, the coupon rate — 8.5% per annum. It should be noted that the entire volume turned out to be in demand and was implemented in less than one and a half months against the planned term of six months. Funds

from the placement of “green bonds” were used to purchase electric buses, which meets the objectives of an eligible “green” project, as well as the criteria for sustainable (including “green”) development projects in the Russian Federation and the requirements for verification of sustainable development financing instruments in the Russian Federation.¹¹

Thus, since within the limits of regional powers on subjects of joint jurisdiction there are quite a large number of powers related to environmental development, such practice of financial support for the implementation of permissible projects is one of the ways to increase the sustainability of regional budgets, contributes to solving the problems of environmental, economic and social development of the regions.

PROPOSALS TO IMPROVE THE IMPLEMENTATION OF DELEGATED POWERS AND AUTHORITY

Within the framework of analysing the delimitation of powers, special attention is also paid to the issue of powers delegated on the basis of individual federal laws. In the course of the study of federal legislation it was revealed that to date the provisions on delegation of powers have been established in 37 federal laws providing for a total of 110 powers. The most active process of delegation of powers was observed in the period up to 2015 (*Fig. 2*).

The regional level is mostly delegated with powers in the area of:

- protection and use of fauna objects, water and forest relations, veterinary — about 38 powers;
- social sphere (prevention of neglect of minors, provision of housing for certain cat-

¹⁰ Moscow City Government Order No. 309-GO dated 23.05.2023 “On Amending the Moscow City Government Order No. 269-RP dated 23 April 2021”. URL: <https://www.dropbox.com/s/y8aviiufuae5cs6/3.%20Концепция%20зеленых%20облигаций%20%281%29.pdf?dl=0> (accessed on 19.07.2023).

¹¹ Resolution of the Government of the Russian Federation of 21.12.2021 No. 1587 “On Approval of Criteria for Sustainable (including green) Development Projects in the Russian Federation and Requirements for the Verification System of Sustainable Development Financing Instruments in the Russian Federation” URL: <http://government.ru/docs/all/136742/> (accessed on 19.07.2023).

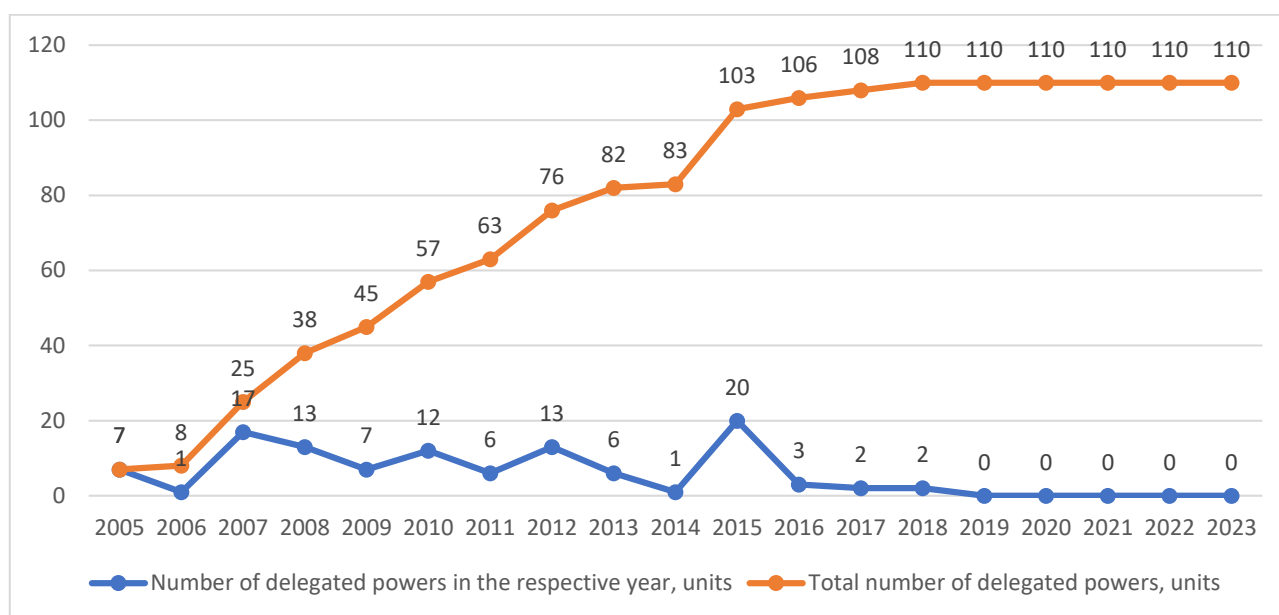


Fig. 2. Dynamics of the number of delegated powers

Source: compiled by the author.

egories of citizens in need, provision of social support measures for payment of housing and communal services, work and employment, education, etc.) — about 33 powers;

- management of federal land plots — 23 powers.

This list also includes certain powers in the field of accounting, reporting and statistics (4 powers), environmental expertise (3 powers), provision of judicial power (2 powers), town planning and architecture (2 powers), protection of objects of cultural heritage (2 powers), state registration of acts of civil status (1 power), military registration of citizens (1 power), and others.

Delegation of powers to regional bodies is currently carried out exclusively within the framework of powers under the subjects of jurisdiction of the Federation and subjects of joint jurisdiction, and its financial support is provided by subventions from the federal budget.

At the same time, within the framework of the principles of financial support for the exercise of regional powers provided for by Art. 42

of Federal Law No. 414-FL establishes certain cases in which a subvention may not be granted — for example, when there is no need for the following:

- creation of new regional bodies and state institutions;
- making additional budget investments, payments from regional budgets to citizens and legal entities;
- increasing the number of regional state civil servants and employees of state institutions.

Thus, the implementation of the delegated powers, unless one of the above situations is expected to occur, is carried out by the regions independently at the expense of their own budgets, but with the preservation of control by the federal executive authorities over this process.

We believe it is reasonable to note that the implementation of powers (including transferred powers), which are not assigned to the regions within the existing delimitation of powers, provides for the expansion of job responsibilities of regional civil servants, employees

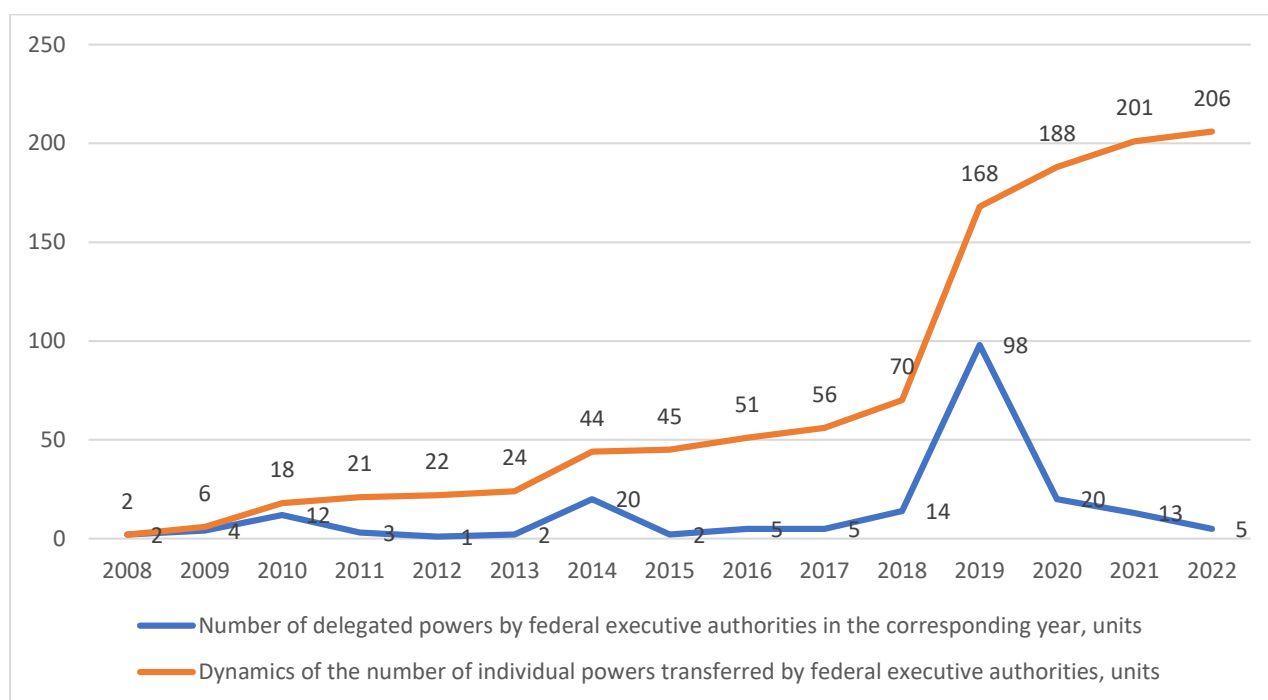


Fig. 3. Dynamics of the number of powers transferred by federal executive bodies to regional executive bodies

Source: compiled by the author.

of state institutions — a situation arises when the region actually performs powers not assigned to its competence, but at the expense of its own funds.

In this regard, the need to improve the methodology for calculating the volume of subventions becomes obvious. This should take into account not only the creation of bodies and institutions, investment, but also the need to financially support the performance of job duties by regional civil servants and employees of public institutions in a combined format.

The analysis of the part of powers delegated by federal executive authorities (hereinafter — FEA) to regional executive bodies (Fig. 3) showed that 205 concluded agreements are currently in force, and one was recognised as invalid in 2018. [14].

The main federal executive authorities that have concluded agreements with regional executive bodies on the transfer of certain powers are the Ministry of Labour of Russia, the Ministry

of Health of Russia, the Ministry of Emergency Situations of Russia, the Ministry of Internal Affairs of Russia, the Ministry of Culture of Russia, the Ministry of Construction of Russia, Federal Service for Environmental, Technological and Nuclear Oversight of Russia, the Ministry of Natural Resources, Federal Agency for Subsoil Usage, Russian State Register, and others. The delegated powers include mainly such issues as the provision of social protection measures for the disabled and certain categories of citizens, provision of technical rehabilitation equipment, sanatorium and resort treatment, protection of the population and territories from emergency situations, drawing up protocols on administrative offences in the sphere of public order and security, etc.

The implementation of the mechanism of transferring a part of powers on the basis of the concluded agreement is, most likely, of an exceptional nature, since its application is possible only in the case when a part of powers cannot be

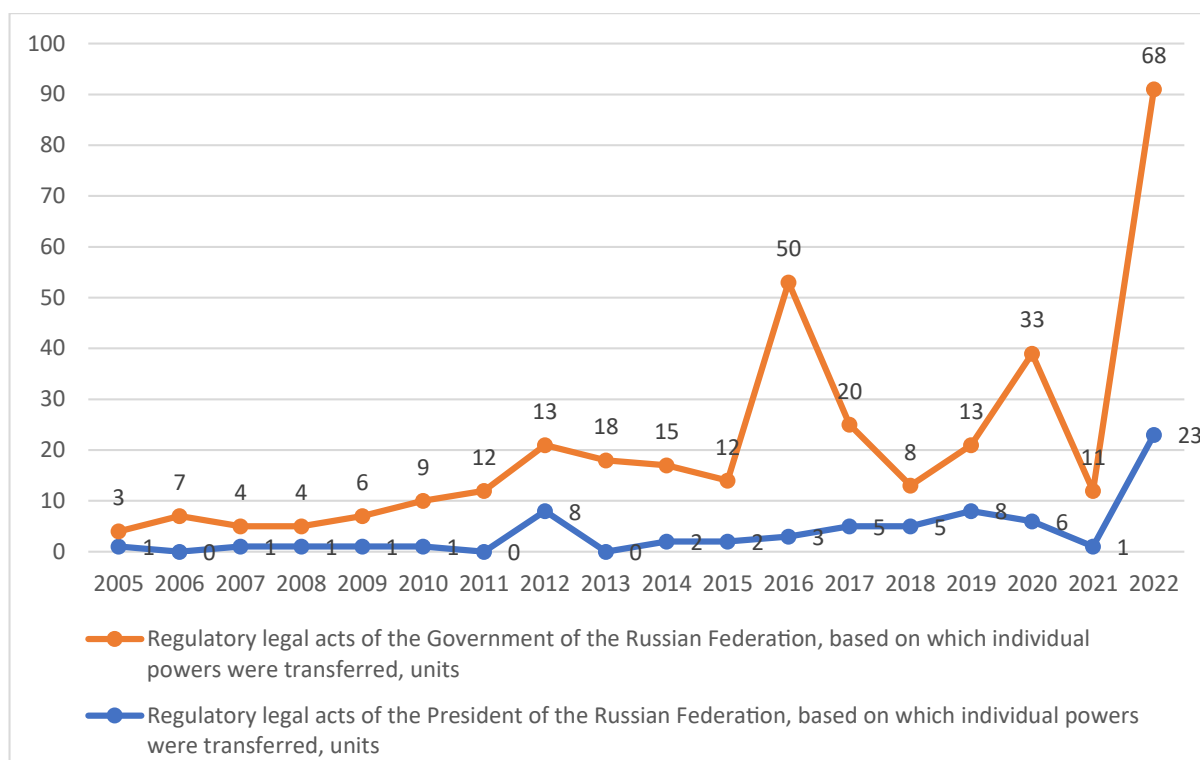


Fig. 4. Dynamics of the number of adopted acts of the President of the Russian Federation and the Government of the Russian Federation

Source: compiled by the author.

assigned by the federal law equally to regional executive bodies. It should be noted that this format fully takes into account the interests of both parties to the agreement, since the current legislation provides for provisions on the transfer of the necessary amount of financial support and material resources from the federal executive body to the regional executive bodies.

The analysis of the peculiarities of transferring certain powers of federal executive authorities to regional ones on the basis of regulatory legal acts (hereinafter — RLA) of the President of the Russian Federation and the Government of the Russian Federation has shown that for the period from 2005 to 2022 about 374 such regulatory legal acts have been adopted and have remained in force to date (Fig. 4).

It should be noted that under Art. 46 of Federal Law No. 414-FL provisions are established on the necessity to coordinate draft regulatory

legal acts being developed with executive government agencies of the constituent entities of the Russian Federation.

Since some regulatory legal acts adopted before 2005 are still in force and their provisions still establish certain powers, it is obvious to recommend the necessity of their inventory and transition from the practice of subordinate establishment of powers to their legislative regulation.

In addition, Part 2 of Article 46 of Federal Law No. 414-FL provides for a provision regarding the need to determine the scope of powers of federal executive authorities that are to be transferred to the regulatory legal acts of the President of the Russian Federation or the Government of the Russian Federation. At the same time, the procedure for determining the said volume of powers to be transferred is not established, but it is only stated that its

Table 3

Information on the number of regions distributed taking into account compliance with the conditions for the provision of extrabudgetary transfers from the federal budget

| No p.p. | Indicator name | 2020 | 2021 | 2022 |
|---------|---|------|------|------|
| 1 | Number of regions that do not receive subsidies | 13 | 13 | 23 |
| 2 | Number of regions in which the share of subsidies did not exceed 10 per cent of own revenues of consolidated regional budgets | 32 | 36 | 19 |
| 3 | Number of regions in which the share of subsidies exceeded 10 per cent of own revenues of consolidated regional budgets | 34 | 30 | 37 |
| 4 | Number of regions in which the share of subsidies did not exceed 40 per cent of own revenues of consolidated regional budgets | 6 | 6 | 6 |

Source: compiled by the author.

formation takes into account federal powers both on subjects of jurisdiction of the Federation and on subjects of joint jurisdiction. In order to eliminate legal uncertainty, it seems expedient to establish the procedure for determining the volume of delegated powers.

RECOMMENDATIONS ON THE ELIMINATION OF ADMINISTRATIVE BARRIERS IN THE SPHERE OF NON-DISTRIBUTED POWERS

Particular attention should also be paid to the issue of participation of regional authorities in the exercise of powers not assigned to them under the subjects of jurisdiction of the Federation and subjects of joint jurisdiction. Current federal legislation provides for the right of the regions to participate in the exercise of such powers at the expense of their own budgetary resources, including the implementation of additional measures of social support and assistance to certain categories of citizens. This practice of involving the regions in solving tasks and fulfilling the functions of the state is a right, not an obligation, which they can use if they have an additional opportunity to do so.

At the same time, the budget legislation of the Russian Federation provides the conditions for the provision of inter-budget transfers (hereinafter — IBT) from the federal budget to the regional budgets [15]. According to paragraph 3 of Art. 130 of the Budget Code of the Russian Federation (hereinafter — BC RF), the regions, which for two out of three reporting fiscal years the share of subsidies from the federal budget exceeded 10% of own revenues of the consolidated regional budget, starting from the next fiscal year, do not have the right to establish and fulfil expenditure commitments that are not related to the solution of issues attributed by the Constitution of the Russian Federation and federal laws to the powers of executive government agencies of the constituent entities of the Russian Federation.¹²

Analysis of the data in *Table 3* shows that there are about 40 such regions, and the possibility of exercising powers that are not attributed to their competence is limited for them.

¹² Budget Code of the Russian Federation of 31.07.1998 No. 145-FL, Art. 130. URL: https://www.consultant.ru/document/cons_doc_LAW_19702/

The problem arising in this situation is that the powers not attributed to the regions represent the residual competence, which is essentially a regional competence within the framework of the domestic model of delimitation of powers, because in the case of an issue not regulated by federal legislation, its solution could be dealt with by the regions in accordance with the law of a constituent entity of the Russian Federation. Provided it is settled at the federal level, the regions will be obliged to bring their laws in line with the newly adopted federal laws. In these circumstances, a contradiction arises, since Federal Law No. 414-FL does not provide for any conditions or reservations regarding the realisation of the granted right to exercise non-transferred powers. There are also no norms of a referential nature regarding the need to implement this right in view of the Budget Code of the Russian Federation.

Thus, in the context of improving the delimitation of powers, it is important to harmonise legislative norms not by establishing prohibitions, but by giving the regions the right to independently decide on additional expansion of their powers.

In view of the above, a partial, rather than complete, ban on the exercise of powers that do not fall within their competence should be envisaged in respect of regions whose budgets for two of the three reporting fiscal years contain a share of subsidies in the volume of own revenues of the consolidated regional budget exceeding 10 per cent. Among the exceptions it is proposed to include powers in the social sphere, including the provision of additional measures of social support and protection of certain categories of citizens, based on the need criteria established by the region. The proposed recommendation fully promotes the realisation of the regions' rights to exercise non-transferred powers and harmonises the provisions of Article 130 of the Budget Code of the Russian Federation and Article 48 of Federal Law No. 414-FL.

CONCLUSIONS

The analysis of the updated legislative regulation in the area of delimitation of powers of public authorities, including on subjects of joint jurisdiction, has allowed us to establish that, in general, its improvement, provided for by Federal Law No. 414-FL, is aimed at bringing it in line with the Constitution of the Russian Federation in terms of establishing the basis for the organisation and functioning of public authorities in the constituent entities of the Russian Federation. At the same time, the updated delimitation of powers does not resolve the range of problems that have accumulated over the period of Federal Act No. 184-FL's operation. The process of establishing the correlation between the subject of regulation of Federal Law No. 414-FL and sectoral federal laws establishing the powers of regional authorities is still not regulated, which is manifested in the consolidation of identical powers in these legislative acts. To date, there has been no inventory of previously adopted bylaws that established additional regional powers in different years. The principles of financial support for the implementation of regional powers, including those in the subjects of joint jurisdiction, do not provide for conceptually new mechanisms aimed at increasing the sustainability of regional budgets.

Based on the identified problem areas, the following recommendations have been formed, aimed at establishing a balance in the legislative regulation of regional powers both on the part of Federal Law No. 414-FL and sectoral federal laws:

- regarding the need to adjust the mechanism of granting subventions (when deciding on its granting) in terms of financial provision of the transferred powers. This takes into account not only the need to create new government bodies and public institutions in the re-

gion, but also the need to financially ensure the fulfilment of the transferred powers as a result of an increase in the functions of existing regional government bodies, regional public institutions and, accordingly, an increase in the job responsibilities of regional public civil servants and employees of institutions;

- on the issue of priority implementation of legislative regulation of regional powers as compared to the current practice of adopting subordinate legislative acts, as well as the need for an inventory of previously adopted subordinate normative legal acts in order to optimise the powers provided for in them. For this purpose, it is proposed to review the enshrined regional powers for the relevance of their preservation and subsequent legislative regulation;

- regarding the expediency of harmonising the budget legislation of the Russian Federation and Federal Law No. 414-FL in terms of the regions' right to exercise non-transferred powers, which is currently possible if the threshold value of inter-budget transfers from the federal budget is not exceeded. This rec-

ommendation implies an increase in the sustainability of regional budgets under the existing delimitation of powers. The elimination of contradictions in the provisions of the above-mentioned legislative acts will fully facilitate the realisation by the regions of their residual competence, for example, in the exercise of non-transferred powers in the social sphere by providing additional social support to certain categories of citizens;

- on the issue of improving the principles of financial provision of regional powers, including through the implementation of a mechanism for raising funds through the placement of government securities according to the principle of "green" bonds, as well as the application [taking into account the principle of total (cumulative) coverage of budget expenditures] of the practice of establishing grounds for redistributing budget allocations for the implementation of certain regional powers (through the consolidated budget list without amending the law on the regional budget) in case and within the limits of receipt of certain non-tax revenues.

REFERENCES

1. Sergeev A.A. Delimitation of powers and expenditure obligations of state authorities of the constituent entities of the Russian Federation and local self-government. *Vestnik Moskovskogo gosudarstvennogo oblastnogo universiteta. Seriya: Yurisprudentsiya = Bulletin of the Moscow Region State University. Series: Jurisprudence*. 2020;(4):55–64 (In Russ.). DOI: 10.18384/2310–6794–2020–4–55–64
2. Platonov V.M. Decentralization, devolution and the competing federalism as the frames of differentiation of areas of jurisdiction and powers in the federal state: The experience of the Unites States of America. *Evraziiskii yuridicheskii zhurnal = Eurasian Law Journal*. 2018;(12):65–69. (In Russ.).
3. Cheung P.T.Y. Toward federalism in China? The experience of the Hong Kong Special Administrative Region. In: He B., Galligan B., Inoguchi T., eds. *Federalism in Asia*. Cheltenham: Edward Elgar Publishing; 2007: 242–265.
4. Zhang Yu. Delimitation of legislative powers in the PRC — theory and practice. *Sovremennoe pravo = Modern Law*. 2021;(9):127–131. (In Russ.). DOI: 10.25799/NI.2021.35.48.019
5. Kincaid J., Aroney N., eds. *Courts in federal countries: Federalists or unitarists?* Toronto: University of Toronto Press; 2020. 583 p.
6. Trojbic B. Conflicts over mineral rents in petrofederations. *Forum of Federations. Occasional Paper Series*. 2019;(42). URL: https://www.forumfed.org/wp-content/uploads/2019/07/OPS_42Petrofederations_in_comparative2.pdf

7. Ganguli A. Interface between international law and municipal law: Role of the Indian judiciary. In: Patel B.N., ed. *India and international law*. Leiden: Koninklijke Brill N.V.; 2008;2:11–47.
8. Phyak Pr., Awasthi L.D. Developing and implementing multilingual policy in a federal Nepal: Opportunities and challenges. *Forum of Federations. Occasional Paper Series*. 2022;(54). URL: https://forumfed.org/wp-content/uploads/2022/02/OPS-54-Language-Policy_Nepal2.pdf
9. Merkulenko A.A. Division of subjects of jurisdiction and power between the center, regions and municipalities in constitutions of federal and decentralized countries. *Vestnik Permskogo universiteta. Yuridicheskie nauki = Perm University Herald. Juridical Sciences*. 2023;(59):73–96. (In Russ.). DOI: 10.17072/1995–4190–2023–59–73–96
10. Yun L.V., Zamanova A.N. Topical issues of delimitation of powers of state authorities of the Russian Federation and its subjects.. *Vestnik Rossiiskogo universiteta kooperatsii = Vestnik of the Russian University of Cooperation*. 2022;(4):143–146. (In Russ.).
11. Efimov G.A. Law and agreement as ways of delimiting the subjects of jurisdiction and powers in a constitutional state: Regulatory issues. *Vestnik Mezhdunarodnogo yuridicheskogo instituta*. 2020;(4):41–50. (In Russ.).
12. Channov S.E. Division of powers for joint jurisdiction subjects in the context of the Russian Federation subjects budgetary security. *Vestnik Povolzhskogo instituta upravleniya = Bulletin of the Volga Region Institute of Administration*. 2020;20(5):12–20. (In Russ.). DOI: 10.22394/1682–2358–2020–5–12–20
13. Klimanov V.V., Mikhailova A.A. Adjustment of powers of Russian regions within the framework of new constitutional requirements. *Finansy = Finance*. 2023;(1):16–20. (In Russ.).
14. Voronov V.V. On the delineation of powers between levels and authorities in the Russian Federation. *Gosudarstvennaya sluzhba = Public Administration*. 2019;21(4):27–31. (In Russ.). DOI: 10.22394/2070–8378–2019–21–4–27–31
15. Suleimanov M.M. Problems of differentiation of subjects of the Russian Federation and trends in the delimitation of tax powers between levels of public authority. *Finansy = Finance*. 2020;(11):16–23. (In Russ.).

ACKNOWLEDGMENT

The article was prepared based on the results of research carried out at the expense of budget funds on a state assignment to the Financial University.

ABOUT THE AUTHOR



Khongor N. Zambaev — Cand. Sci. (Econ.), Associate Professor of the Department of Public Finance, Financial University, Moscow, Russia
<https://orcid.org/0009-0005-3279-0398>
 KNZambaev@fa.ru

Conflicts of Interest Statement: The author has no conflicts of interest to declare.

Article was submitted on 26.09.2023, revised on 27.10.2023, and accepted for publication on 04.03.2024. The author read and approved the final version of the manuscript.