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Acceptance of Goods and Services under the Contractual System: Regulation and Digitization Issues



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Abstract

It is relatively recently that the way goods and services (GS) are accepted in the contractual system has become a focal point of research. It was prompted by the changes to the contractual system law introduced mandatory e-certification since 1 January 2022. However, while the process of e-certification as enshrined now in the law on contractual relationships was in the limelight, the concept of e-acceptance, definitions of actual and documentary acceptance and other issues were largely left out. A study of how acceptance is regulated under the national law shows a lack of systemic approach to the e-certification procedure in the law on contractual relationships, a need to put in place an acceptance procedure and to ensure public and municipal customers' satisfaction with the quality of goods and services they purchase. The paper provides an overview of research on specific aspects of GS acceptance in the contractual system and identifies its place in the process of contractual performance. It is proposed to have a special terminology in the effective contractual relationships law for defining GS acceptance based on its purpose and identifying structural elements. A new approach to contract execution regulating actual and documentary acceptance as part of e-certification needs to be adopted. With regard to digital solutions required for e-certification, technological aspects are discussed with a view to possible regulation. It is equally proposed to formalize e-certification in the contractual system as a possible model for applying the block chain technology for the public (municipal) procurement system. An analysis of digital processes that support e-certification in the contractual system suggests a need to provide a link between technological and legal aspects of e-certification.

The author also proposes a number of block chain related issues to be discussed with relation to the e-certification system.



Keywords

acceptance of goods; e-certification; digital contract execution; digital solutions: contractual system; block chain for e-certification.

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Background: State of Knowledge

The acceptance of goods and services is governed by civil law provisions, with Article 513 of the Civil Code of Russia (hereinafter referred to as CCR) defining the procedure for acceptance of goods by the buyer who is required to do whatever is necessary to accept the goods under a supply contract.¹ The contents of this article require the buyer (recipient) to check the quantity and quality of shipment and, in case of any discrepancy/defect, advise the supplier accordingly. Moreover, pursuant to part 2, Article 513 of CCR, all terms for acceptance are established by laws, other regulations, or business customs.

Civil law regulation of the acceptance procedure following adoption of the Civil Code was relatively straightforward with little room for legal discussion. In studying the concept and meaning of “acceptance” as legal category, N. Tkacheva notes with good reason that studies of this subject are rare, with doctrinal works dating back to the Soviet times and dealing mostly with procedural not theoretical aspects [Tkacheva N.G., 2009: 386]. A review of the studies of legal aspects of GS acceptance at the current stage of legislative development shows that, on the one hand, the relevant issues were raised in respect of acceptance under private transactions or regarding performance under special agreements. Complex issues of regulating acceptance of goods and services for public procurement were also identified in the context of overall approaches to understanding essential features [Ilyushina M.N., Chelyshev M.Yu., Sitdikova R.I., 2022] or legal nature of contract [Veshnyakova N.A., 2004]. M.V. Shmeleva observes that contract execution is not a simple act but a complex interrelated system, and argues with good reason in favor of e-document exchange to be introduced to the procurement process at the stage of contract execution

¹ Collected Laws of Russia, 1996. № 5, Article 410 // SPS Consultant Plus.

[Shmeleva M.V., 2020: 26]. P.S. Tarabaev has explicitly raised acceptance issues, only to conclude that while acceptance is a distinct civil law transaction, its absence in the contract does not void the contract [Tarabaev P.S., 2011: 150]. E.E. Stepanova argues acceptance is not a distinct transaction but a process for the buyer to perform an obligation [Stepanova E.E., 2018: 16]. One has to agree with F.A. Tasalov who identifies a causal link between acceptance and the customer's payment for contractual performance, only to directly affect the legal outcome of obligations — to be terminated following due performance or default by a party — as well as the legal outcome of the security that the supplier previously made available to the customer. This author also notes that, despite the importance of acceptance, the national legislator has failed to establish a legal regime which, once followed, would allow to address multiple issues arising at this stage [Tasalov F.A., 2023: 278]. While it is true that this attitude to regulating acceptance followed from Federal Law No. 94-FZ of 21 July 2005 “On Placing Orders for the Procurement of Goods and Services for Public and Municipal Needs”², the current contractual system did nothing to change it. F.A. Tasalov concludes with good reason that in defining the contractual performance stage, the legislator stated a regulatory dualism at the acceptance stage based on provisions of the Civil Code and requirements of Law No. 44-FZ, with the next attempt to define the provisions for acceptance under procurement contracts in Law 44-FZ having failed as well [Tasalov F.A., 2023: 279]. This conclusion needs to be supported in order to change the approaches to regulating GS acceptance in the contractual system.

In discussing current approaches to acceptance one will inevitably observe that studies almost ignore the approaches to public/municipal customer satisfaction with the quality of goods and services as well as those to quality inspection at the acceptance stage. Meanwhile, the issues of quality and satisfaction with contractual performance as well as of the whole procurement process should govern customer action at the stage of acceptance, otherwise the public procurement system will be devoid of its main purpose which is quite weakly formulated by current regulation of the contractual relationship system. Thus Yu. A. Kuznetsova defines quality as a prerequisite of adequate performance of the contract's subject matter, with proper performance of obligations to be ensured by adequate acceptance of goods, defect detection, claim and penalty procedures [Kuznetsova Yu.A., 2014: 116].

Current approaches to legal analysis of essential features of GS acceptance in the public procurement system are even more limited and only fol-

² Collected Laws of Russia. 2005. No. 30 (part 1). Article 3105 // SPS Consultant Plus.

low the latest changes to the contractual relationship system in force since 2022.³ With regard to enforcement, the changes introduce the terms “e-certification” and “e-acceptance”, both of which are often used synonymously. Meanwhile, Federal Law No. 44-FZ “On System for Procurement of Goods and Services for Public and Municipal Needs” of 05 April 2013 (Law 44-FZ on the contractual system) does not define these concepts.⁴ A number of authors analyzing the emerging terminology have identified some e-certification related issues. Thus, O. A. Beliyeva identifies e-certification as partial automation of smart contracts, a technology introduced for procurement purposes in the Moscow area [Beliyeva O.A., 2021].⁵ D. Kazantsev rightly observed the intuitive simplicity of the e-certification process and its capability to improve the procurement system’s transparency [Kazantsev D.A., 2021: 61]. In a belief that e-certification problems are temporary, some authors propose to train specialists in digital platform skills [Tirskaya N.B. et al., 2022: 117]. M.S. Port in analyzing e-acceptance in a description of the UIS functional flow chart under the contractual system praises the advantages of e-acceptance for customers and other parties to avoid human error [Port M.S., 2021: 104-108]. In point of view of author of the article presented, it is necessary to, firstly, introduce “acceptance” and “e-certification” as categories in the regulation of contractual relationships, secondly, identify legal and technological links of e-acceptance, and, thirdly, describe the mechanism for introducing e-acceptance into the digital contractual system. Such regulation of the acceptance stage could determine possible ways for increasing the contractual system’s efficiency.

1. Legal Approaches to Regulating Acceptance of Goods in the Contractual System

In defining the regulation of GS acceptance, it is necessary to underline that it makes up the final stage for due performance of obligations under the terms of a public (municipal) contract. While legislation is almost silent about regulation of acceptance, it is worth noting that its mechanism has long been provided for by the relevant instructions, with acceptance of goods and services thus largely relying on the procedure established by the Instruction on quantitative acceptance of capital and consumer goods/ser-

³ Federal Law No. 360-FZ “On Amending Specific Regulations of the Russian Federations” of 02 July 2021. Collected Laws of Russia. 2021. No. 27. Article 5188 // SPS Consultant Plus.

⁴ Collected Laws of Russia, 2013. No. 14. Article 165 // SPS Consultant Plus .

⁵ Beliyeva O.A. Smart contracts and its use for procurement. Legal support of digital state and municipal procurement, unification and harmonization of law regulation. Papers of the International Research Forum. Saratov, 2021.

vices approved by Resolution No. P-6⁶ of the Arbitration Court under the USSR Council of Ministers on 15 June 1965 as well as by the Instruction on qualitative acceptance of capital and consumer goods/services No. P-7⁷ approved by the same body on 25 April 1966. The said instructions, despite being voided, can apply under para 14 of the Higher Arbitration Court (HAC) Plenum Resolution No. 18 of 22 October 1997⁸ as long as the shipment contract contains a reference to them. For decades the goods acceptance procedure prescribed by the instructions played a decisive role and was most frequently used for performance control. While the acceptance of goods/services and regulation of its procedure have remained part of well formulated contractual obligations by tradition, its applied nature prevented them from being discussed in practice except through the lens of the business law [Puginsky B.I., 2009]; [Andreyeva L.V., 2012].

When the mechanisms of government order and then of contractual system are introduced throughout the country, the issues of acceptance virtually failed to be settled despite being repeatedly raised. Thus, while Law 94-FZ⁹ does not contain specific provisions on acceptance as part of performance of obligations, it was mentioned in Article 9 in respect of amendment and execution of the contract. Overall, Article 9 was the only article of that Law to govern the concept of contract and to establish some general provisions on concluding and amending the terms of contract. In practical terms, that Law was to ensure acceptance as part of contractual performance with reliance on what was provided for in the Civil Code. Customers would either refer to the procedure described in the Instructions or would themselves define one in the relevant provisions annexed to the outstanding public (municipal) contract.

Moreover, while Law 94-FZ was in force (2006–2013), acceptance as part of contractual performance was not specifically regulated. On the contrary, the performance enforcement practice emerging in this period showed that the most complex problems in the public procurement system would arise just at the stage of acceptance and its documentation. Despite being widely discussed in both legal and economic studies, procurement efficiency sheds surprisingly little light on the acceptance process as a stage of the customer's efforts to ensure that only quality goods/services are accepted. As L.V. Andreeva wrote back in 2010, the government did not pay adequate attention to the quality of manufactured goods or encourage busi-

⁶ Bulletin of Regulations by Ministries and Departments of the USSR. 1975. No. 2 // SPS Consultant Plus

⁷ Ibid.

⁸ HAC Newsletter. 1998. No. 3 // SPS Consultant Plus

⁹ SPS Consultant Plus.

nesses to improve their quality [Andreeva L.V., 2010: 9]. Today's reform of technical regulation to introduce the digital traceability mechanisms and markings of specific product groups is adding urgency to the quality problem including in the public procurement system. Moreover, the problems of correlation between acceptance and operating efficiency of public and municipal customers as well as those of people's satisfaction with the delivery of goods and services have not been adequately explored. Only a handful of authors underline a need in new approaches for establishing procurement efficiency criteria and a need to define the principles of such efficiency [Shmeleva M.V., 2019]; [Gorokhova D.V., 2020].

Thus, while generally outlined in the legislation, the acceptance procedure in the contractual system was to be governed by customers' bylaws. Acceptance was essentially assumed to be of such general knowledge as make formal regulation in the contractual system excessive. Meanwhile, a lack of the relevant mechanism formalizing the acceptance procedure and reliance on bylaws have shown that it is the stage of acceptance that resulted in negative implications affecting the quality of counterparty performance. In fact, the acceptance process has left unregulated such issues as checking the shipment for adequate quality (understood differently by customers and suppliers); acceptance by installments or parts; acceptance at unit price; methods of acceptance (complete/selective); legal regulation of warehouse operations and of document formalization following acceptance. The same issues were identified for acceptance of services.

Thus, the system of government orders in the formative years was primarily focused at regulating the procedural stage of procurement and at formalizing the basic principles of anti-trust legislation in the contractual system while ignoring the stage of contract execution regarding GS acceptance. This situation is explainable not so much by the problems of emerging procurement system as by the focus on legal provisions determining the stage of planning and organizing the procurement process, and on regulating the budget relationships with regard to procurement.

With the approving of Law 44-FZ, the contract execution procedure with regard to acceptance was finally enshrined in its Article 94. In the original wording of the law, contract execution was defined as a course of action to be taken after the contract date to meet the purpose of procurement through coordination between the customer and the supplier (sub-contractor, provider) including GS acceptance and payment, and through coordination related to the contract's execution, amendment and termination. Introduced for contract execution as Law 44-FZ was taking effect, this terminology allowed to at least get off with contract execution from the perspective of legal regulation. Despite conceptually defining acceptance as

part of contractual performance, the law did not establish what was meant by acceptance. Meanwhile, job descriptions regulating procedures to be followed by procurement managers and other procurement service staff with regard to GS acceptance started to be designed in the procurement document management system. Besides, Article 94 of Law 44-FZ had a wording allowing goods and services to be accepted by a commission. Such a commission of at least five members could be set up by the customer to accept the delivery of goods/services and results of a specific phase of contract execution. While acceptance algorithms were assumed to be prescribed by the relevant provisions, the effective law did not define either the template of such provisions or the need for their adoption. The text of part 6, Article 94 of the Law thus implied that at the acceptance stage the customer could have the delivery of goods/services accepted by either a responsible officer or a commission. In order to be organized, the acceptance procedure required to prescribe the steps to be taken by counterparties under the contract (agreement). For the commission to function, the relevant provision was to be adopted as a bylaw to regulate its proceedings. As regards procurement document flow for acceptance of goods/services at the stage of contract execution, it was assumed that the relevant acceptance algorithms (in-house instructions) would be designed as either annexes to outstanding contracts or as bylaws governing the operations of public/municipal customers. Law 44-FZ thus defined the contract execution process in general terms, with the acceptance procedure and process to be regulated by provisions of the effective civil law and described either in the customer's bylaws in the form of specific provisions or in the text of contracts (agreements).

The process of implementing Law mentioned in respect of contract execution gradually resulted in the approaches that defined GS acceptance mechanisms. Over the first period of roughly 2014–2020, the contract execution practices related to acceptance increasingly started to rely on provisions to be annexed to outstanding contracts. At the second stage (2022 until now) when the contractual system was changed to implement the “result-oriented e-procurement” departmental project,¹⁰ the system switched to e-certification with regard to acceptance of goods/services at the contract execution stage.

2. E-Certification Introduced into the Contractual System: Current Issues

A determinant reference point towards transition to e-certification arguably was President Instruction No. Pr-2472 of 04 December 2019 that

¹⁰ Available at: https://minfin.gov.ru/ru/performance/projects/egovernment_procurement?ysclid=lsc271nbok229405250 (accessed: 20.04.2023)

required from 01 July of 2020 to introduce an e-document for acceptance of goods/services into the document flow between customers and suppliers endorsed with enhanced qualified e-signature by persons acting on their behalf through the use of the UIS. The FT and the FTS later explained this transition and its outlines in joint Letter No. 14-00-06/27476, AS-4-15/26126@ of 18 December 2019.¹¹ A lack of regulatory support of such transition was left out at that time due to a need to get the process going as soon as possible. Over the later period (2020 till the first half of 2021) while the e-certification mechanism was taking shape, these processes were not formalized in regulations either. Moreover, the issues related to e-certification were fairly discussed by both Finance Ministry and Federal Treasury in relevant letters.¹² Such regulatory penury can be explained by the fact that this concept was not adequately refined in legal terms, with no technological norms for e-certification mechanism formalized in the instructions available at the UIS portal. Such a position, questionable from the regulatory perspective, is typical for the digitization process, in particular, of introducing new digital solutions into the contractual system.

It was not before adopting a set of optimization amendments that acceptance was formalized via a process approach. Thus, Article 94 in the wording of Law 360-FZ¹³ defined the acceptance of goods/services as the supplier's action to issue and post to the unified information system an endorsed acceptance certificate to be signed or dismissed with good cause by the customer or acceptance commission members. Despite this procedure prescribed by provisions of Law 94-FZ to be followed by suppliers and customers, the article itself does not define either the concept of acceptance or the conditions to call the final acceptance document an e-certificate. Therefore, in describing the process of certification, this construct only defines the algorithm for a certificate to circulate between the supplier and the customer via the unified information system. That this process is to be interpreted as "e-certification" one can only guess, with the term becoming current only with the Federal Treasury bodies' active support to present it.¹⁴

¹¹ Available at: <https://www.garant.ru/products/ipo/prime/doc/73275257/?ysclid=lfzozy9hty6818597547> (accessed: 20.04.2023)

¹² Federal Treasury Letter No. 95-09-11/10-640 of 28.12.2021 On introducing e-certification from 01 December 2022. Federal Treasury Letter No. 14-00-05/2543 of 08 February 2022 // SPS Consultant Plus.

¹³ Federal Law No. 360-FZ On Amending Specific Regulations of Russia 02 July 2021. Collected Laws of Russia. 2021. No. 27. Article 5188 // SPS Consultant Plus.

¹⁴ Available at: <https://zakupki.gov.ru/epz/main/public/document/view.html?searchString=§ionId=1410&strictEqual=false>; https://goszakupki73.ru/wpcontent/uploads/2022/03/%D0%AD%D0%BB%D0%B5%D0%BA%D1%82%D1%80%D0%BE%D0%BD%D0%BD%D0%BE%D0%B5_%D0%B0%D0%BA%D1%82%D0%B8%D

In noting the importance of e-certification as part of the contractual system, A. Katamadze, deputy head of the Federal Treasury, has pointed out that e-certification contributes to make public procurement less bureaucratic, with contract execution becoming more transparent and traceable through audit trails. In stressing the importance of digital contract execution mechanisms, he underlined the role of joint work by the FT and the FTS to recognize e-certificate as legitimate document linked to payment [Katamadze A.T., 2020: 11].

Thus, the e-certificate mechanism introduced at the contract execution stage underlines, on the one hand, this stage's absolute importance while, on the other hand, the legislator fails to adequately regulate either the concept or legal aspects of the formalized document and only describes the course of action by the supplier and the customer to result in a formal acceptance certificate.

In furtherance of this subject and despite that e-certification was in process of being introduced at public and municipal customers since early 2022, it was not before mid-2022 that this mechanism, including further stages of its development, was formalized in the Federal Treasury's documents. Thus, the Federal Treasury strategic map of 10 June 2022 that outlined the strategic objectives for the period until 2030 defined the e-acceptance functionality of electronic certificates to be issued following the outcome of e-procurement.¹⁵

The whole mechanism to introduce e-certification at the contract execution stage by both suppliers and customers has raised many questions, the most typical being the correlation between the concepts of e-certification and e-acceptance, the legal difference between documentary and actual acceptance from the perspective of terms and rules of procedure, a lack of formal responsibility of those who sign acceptance documents etc. Questions brought forth by the practice largely concern not only understanding the course of action and legally defined rules of procedure but also the mechanisms of responsibility of specialists involved in e-certification. This situation has resulted from impossibility to correlate provisions of Law 44-FZ with the digital solutions adopted when e-certification was introduced. In fact, the whole e-certification mechanism to be used for formalization pur-

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¹⁵ Available at: <https://www.garant.ru/products/ipo/prime/doc/404755067/?ysclid=lf0z8w4plg209104965> (accessed: 15.03.2023)

poses at the contract execution stage has received only digital technological solutions to the maximum extent, with legal regulation only possible in correlation with relevant regulation of the contract execution stage as a whole. Introducing acceptance mechanisms to result in e-certificate has raised the question of stages and methods of such acceptance and of formalizing the relevant algorithms under the effective law.

With the whole process of contract conclusion and execution made digital as part of the structured document flow, there is an absolute urgency to define legal regulation of this whole stage and to introduce a special chapter formalizing this transition.

3. Author's Definitions of Acceptance Usable at the Stage of Performance of Obligations under State (Municipal) Contract

The need to formalize concept of acceptance in the system of contractual relationships suggests that it should be correlated with the contract execution stage, with acceptance to become part of contract performance. There is therefore a need for Law 44-FZ to provide for a concept of acceptance made formal as part of e-document flow using those digital solutions that the customer and the supplier rely upon at the contract execution stage. The concept of acceptance, once defined, requires that its elements are formalized in the structure of public contract. As for the terms of acceptance, they can be treated, according to A. Kirpichev, as those of counterparty protection due to specific nature of contracting parties. The said terms (including those of acceptance) are specific in that they relate to the specific contracting parties since the contract is entered on behalf of a public entity and should not be against public interest [Kirpichev A.E., 2012: 208]. This position, while acceptable, should be, in our opinion, supported — apart from definitions that will follow — by the detailed terms of acceptance of both goods and services to be introduced into regulation of the current contractual system.

The following definitions are proposed: contract execution is the customer's action regulated by federal laws and standards to ensure actual and documentary acceptance of goods and services, with data under the given contract (agreement) to be entered into the relevant information systems. In the contractual system, the acceptance covers both factual and documentary acceptance to result in a formal document (e-certificate). The factual acceptance of goods/services is the customer's (acceptance commission's) action to accept goods/services as described in a public contract and terms of reference as part of the effective accounting for such goods and services

finalized by documentary acceptance. Documentary acceptance ends up with an e-certificate to be issued under the rules of electronic document flow. The action to issue an e-certificate as part of the structured electronic document flow includes generation of data input produced by the customer and the parties to the UIS and regional/municipal information systems. The course of action by the customer and the parties as part of the structured electronic document flow in executing the contract is defined by the standards established by the Federal Treasury bodies. As for the terms of acceptance of goods/services in the contractual system, they can be follows:

- parties involved in the acceptance process;
- items subject to acceptance as per description of procurement;
- defining methods to check the quality of delivered goods/services based on specific items of procurement and in accordance with its description;
- criteria of the customer's satisfaction with the quality of goods/services based on specific items of procurement and strong regulation;
- provision on e-certificate and its structure;
- provision on determining the quantity of goods/services to be delivered;
- rules of procedure for cooperation in the process of accepting goods and services.

In identifying possible elements of acceptance in the contractual system, it is necessary to identify their variability, something that can be done only at the stage of developing contractual terms while at the stage of factual acceptance the terms of acceptance will be binding.

The proposed definitions of acceptance to be distinguished as factual and documentary will thus provide legal certainty to the relevant terminology used in the contractual system. With factual acceptance proceeding in accordance with its identified and formalized elements, the issuance of e-certificate to document the completion of acceptance will provide evidence of the performance of obligations by the supplier/(sub) contractor as a specific feature of electronic document flow in process of such acceptance.

4. Digital Solutions for Acceptance of Goods and Services and Issuance of E-certificates in Contractual System

Defining the mechanisms for introducing e-certified acceptance leaves out the issues of formalizing these digital solutions in the legislation. Designing digital solutions for public contracts to be concluded and executed makes part of a large-scale reform envisaged by the Federal Treasury bodies as a single chain of action extending from standard contractual terms established in the structured, machine-readable form to result in a machine-

readable text. Once such machine-readable contract is signed electronically by the customer and other parties, the system will transfer blocks of information from the relevant data registry to that of contracts, to be later used as blocks of information at the e-certification stage. When the system issues an e-certificate, all information will be posted to the relevant registries for instant digital payment. Such payment, once effected, will terminate the contract's execution from the perspective of legal obligations of all counterparties, and will define the course of action to complete the whole procurement chain as part of the relevant needs. The whole system to control these actions will take place at various stages of the technological chain to ensure an absolutely clear and technologically refined pattern. The technological action to issue an e-certificate as the final step to formalize actual acceptance raises the problem of describing this formalization in the effective regulatory framework governing the contractual system. In describing the possibilities to complete the course of actions both technically and actually, one will want to define possible legal solutions to formalize it. We support the doubts of L.Yu. Vasilevskaya, E.B. Poduzova and F.A. Tasalov as to whether digital solutions can be formalized by the civil law terminology. These authors argue that a study of the digital solutions exclusively from the standpoint of economic analysis of law while ignoring Russia's legal system will amount to rocking the system's "framework" out of balance. Meanwhile, they propose an analysis of new objects and links that will determine enforcement and that the legal profession has not dealt with before [Vasilevskaya L.Yu., Poduzova E.B., Tasalov F.A., 2022: 10–39].

In defining contract conclusion and execution approaches in the contractual system, one has to deal with the problem of calling block chain those solutions that are practiced by public and municipal customers at the acceptance stage as part of the technology allowing to formulate the contract's terms and ensure execution via signing an e-certificate [Shmel'eva M.V., Rodionova O.M., 2020: 25]. As for new digital solutions at the contract execution stage, it is only possible to speak of the likelihood of using the block chain technology. According to L. Yu. Vasilevskaya and her collaborators, if we call a consistent and continuous sequence of any data blocks defined by specific rules a block chain, we have to admit a lack of legal provisions describing this concepts and other ones [Vasilevskaya L.Yu. et al., 2022]. Moreover, the issues of defining and using block chain in the public administration system have been repeatedly raised in both literature and studies including on public procurement [Talapina E.V. et al. 2021]; [Kosyan N.G., Milkina I.V., 2019: 33–41]; [Izutova O.V., 2018: 44–47]. One can accept the position of those who note the ambiguity and legal risks inherent in the use of block chain in the public administration system and for legal regulation of procurement. While some explorers see in the

introduction of block chain into the procurement system a positive thing [Shmeleva M.V., 2019: 15–22], others note its complexity and underlying risks [Truntsevsky Yu.B., 2019: 42–48]. Meanwhile, there are numerous example of how block chain is used in the public administration system and of the problems it entails¹⁶. A promising use of block chain in the public administration system suggests it can be extended to procurement, in particular, at the stage of contract's conclusion and execution. While a review of studies on this technology is beyond the scope of this paper, one can assume that block chain can be used for transition to smart contracts in the procurement system as part of e-certification. Given the specifics of electronic document flow at the stage of e-acceptance and e-certification, there is a need to use, firstly, a protected chain of information blocks authenticated by e-signatures and, secondly, a confirmation of post-acceptance actions with a view to digital payment. Block chain at this stage will automate action by counterparties, improve control over contract execution and security of electronic document flow and, following the e-certification stage, finally enable decentralized customers to make digital payments. Where used at the e-certification stage to finalize contract execution, the block chain technology will ensure payment for performance of obligations in accordance with the terms as confirmed by electronic documents for acceptance of goods/services. A.E. Brom and Z.S. Terentyeva argue that block chain as decentralized transaction ledger embedded into a wider computing infrastructure should support the functions of file storage, communication, service and archiving. The block chain technology is a sequence of inter-related blocks, each containing specific information [Brom A.E., Terentyeva Z.S., 2018: 121]. According to A. M. Kolosov, the technology can be used to conclude smart contracts with counterparties and control contract performance procedures. In discussing possible uses of this technology to ensure the execution of business contracts, this analytic stresses its potential to support the conclusion of smart contracts between counterparties as well as to control contract execution procedures [Kolosov A.M., 2018: 35]. V.A. Bondar notes that block chain can be successfully used as part of e-document flow systems in a number of ways: record management in the document signing and verification system; token-based settlements; logistical chain tracking; and using smart contracts for a variety of transactions. This scope can broaden, once the regulatory framework is improved and technical aspects and other constraints are addressed to ensure fast, reliable and safe e-transactions [Bondar V.A., 2019: 289]. Other specialists, while

¹⁶ Bauer V.P. et al. The potential of using distributed ledger (blockchain) technology in the public administration system. *Fundamentalnye issledovaniya*, no. 12, pp. 248–249.

sharing this view, express some concerns. A.V. Urzhumov, while advocating promising uses and potential advantages of blockchain for the public procurement system, is concerned about regulation [Urzhumov A.V., 2019: 39–47]. Thus, the block chain technology in a wider sense is unlikely to be made part of the current procurement law, unless it is adequately documented and formalized in legal terms. However, one should discuss possible use of this technology for e-certification and payment at the final stage of smart contract execution under the contractual system. One of the core principles of block chain — that of decentralized ledger — correlates with each party and customer data in the single system and is guaranteed by automatic control of financial authorities. Moreover, the technology envisaged to function primarily via decentralized systems could be implemented for smart contracts via a centralized system as demonstrated by the contractual system at this development stage. In this regard, one should accept the view proposed by E.V. Zainutdinova who argues that a transaction-focused regulatory model for smart contracts under the Russian law is sufficient to give rise to legal effects desired by the parties without requiring other confirmation or evidence. This author notes that the transaction-focused regulatory model for smart contracts, in accounting for their technological nature, identifies them as binding instruments to be entered and executed in a specific information system (block chain) [Zainutdinova E.V., 2021: 126–147]. With regard to challenges for the use of smart contracts revealed by analysis of various areas, M. Vakhabava has proposed to develop a universal formal (written) language for correlation of contracts that should be easily interpretable and computer executable [Vakhabava M., 2021: 29]. Thus, in allowing for possible use of smart contracts at the stage of conclusion of public contracts, we should reasonably deal with legal regulation and e-acceptance as the final stage of execution using the technological capabilities already implemented in e-certification. Electronically certified e-acceptance as the final stage of public contract execution (currently embodied in the smart contract technology) can be acknowledged as a model for the use of smart contracts in the contractual system based on the blockchain technology. This approach proposed by different researchers [Shmeleva M.V., 2019]; [Karantova L.G., Kulev A.Yu., 2020: 22– 31]; [Terentyev V.N., 2020: 101–105]; [Truntsevsky Yu.V., Sevalnev V.V., 2020: 118 –147] even before e-certification was introduced is now likely to be realized in practice. Smart contracts in the contractual system could become self-executable, once the Federal Treasury bodies further develop this technology and implement instant digital payments (“cornerstone project”) to digitize public and municipal procurement. With the whole documentary support process implementable on the UIS platform at the stage of contract conclusion and execution, there is a need to discuss how certain legal rela-

tionships will be reflected in the relevant platform solutions. In this regard, N.E. Savenko is arguably right in proposing to establish the provisions of “platform law” for regulating economic activities. She also sees a promise in the development of machine-readable law with prior stock-taking and adaptation of the terminology [Savenko N.E., 2023: 162]. In sharing this idea in principle, we believe it is necessary to identify the development opportunities for the contractual system including the introduction of digital solutions for acceptance of goods and services.

Conclusion

Regulation and adequate procedure of acceptance in the contractual system are thus a quality and performance criteria for both customers and suppliers across the whole procurement chain. In identifying regulatory gaps in respect of acceptance of goods/services and admitting that acceptance is not adequately regulated in the effective law and contractual system, it is necessary to formalize a new approach to contract execution in view of the evolution of contractual system law. In defining e-certification as part of GS acceptance in contractual relationships law, one should distinguish the concepts of actual and documentary acceptance and formalize legal algorithm for e-certificates to determine the data input process for customers and other parties to the UIS and regional (municipal) systems.

While generally accepting the local nature of formalizing the GS acceptance procedure as the completion of contract execution, it is necessary to determine its elements and to provide quality criteria for goods/services based on the customer’s satisfaction with procurement in accordance with the description of the relevant items as defined by the terms of performance.

In formalizing the e-acceptance process via legal provisions of technological nature, it is necessary to provide for the relevant rules of procedure. In identifying the e-certification process as a course of action to be taken by customers and other parties to contractual relationships via building the relevant data, it is necessary to focus on the technological nature of such action without applying legal liability for passing the stages of electronic document flow. As regards digital solutions for e-certification, they need to rely on adequate information support, with the stage of e-certification identified as possible final stage of smart contracts in the contractual system. The research community needs to further discuss the use of block chain in the public and municipal administration system, possible formalization of the terms such as centralized and decentralized data ledger, and correlation of such ledgers’ legal mechanisms with provisions of the contractual system law in accounting for implementation of the e-certification stage. Digitization of

acceptance through the issuance of electronic certificate can be defined as an element introducing digital solutions into the contractual system. E-certification, smart contracts and instant digital payments can be considered one of the main elements of transition towards digital procurement.



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