

**ANÁLISE LINGUOCULTURAL DE CONFORMIDADE, INTERPRETAÇÃO DA
DEFINIÇÃO E PRINCIPAIS FUNÇÕES**

***ANÁLISIS LINGUOCULTURAL DE CUMPLIMIENTO, INTERPRETACIÓN DE LA
DEFINICIÓN Y PRINCIPALES FUNCIONES***

***LINGUOCULTURAL ANALYSIS OF COMPLIANCE, INTERPRETATION OF THE
DEFINITION AND MAIN FUNCTIONS***

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RESUMO: Este artigo busca investigar os aspectos linguoculturais do termo "compliance" e o aparecimento não acidental desse fenômeno em várias esferas da realidade, incluindo jurídica, linguística e econômica. Na realidade russa, não há equivalente a esse fenômeno, e na língua russa não há definição do termo "conformidade". Neste trabalho, procura-se compreender este conceito, as formas de seu funcionamento e compreensão precisamente no quadro da realidade e da língua russas. Os autores identificaram esse fenômeno como procedimentos de conformidade. Os procedimentos de compliance levam em consideração os riscos que uma determinada área de negócio pode suportar, controlando a observância da legislação em vigor, permitem considerar fatores que afetam a implementação de algum tipo de atividade econômica. Os principais princípios de realização do controle de conformidade também são destacados.

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PALAVRAS-CHAVE: Compliance, Atividade empresarial, Idioma, Análise linguocultural.

RESUMEN: *Este artículo intenta investigar los aspectos lingüísticos del término "compliance" y la aparición no accidental de este fenómeno en diversas esferas de la realidad, incluida la jurídica, la lingüística y la económica. En la realidad rusa, no existe un equivalente a este fenómeno, y en el idioma ruso no existe una definición del término "cumplimiento". En este trabajo se intenta comprender este concepto, las formas de su funcionamiento y comprensión precisamente en el marco de la realidad y el lenguaje ruso. Los autores identificaron un fenómeno como los procedimientos de cumplimiento. Los procedimientos de cumplimiento toman en cuenta los riesgos que puede soportar un área de negocio en particular, controlan el cumplimiento de las leyes vigentes, permiten considerar factores que inciden en la implementación de algún tipo de actividad económica. También se destacan los principios fundamentales de la realización del control de cumplimiento.*

PALABRAS CLAVE: *Cumplimiento, Actividad empresarial, Idioma, Análisis lingüístico.*

ABSTRACT: This article makes an attempt to investigate the linguocultural aspects of the term "compliance" and the non-accidental appearance of this phenomenon in various spheres of reality, including legal, linguistics, and economic. In Russian reality, there is no equivalent to this phenomenon, and in the Russian language there is no definition of the term "compliance". In this work, an attempt is made to comprehend this concept, the ways of its functioning and understanding precisely within the framework of Russian reality and language. The authors identified such a phenomenon as compliance procedures. Compliance procedures take into account risks that a particular area of business may endure, control observation of the current laws, they make it possible to consider factors affecting the implementation of some type of economic activity. The main principles of realization of compliance control are also highlighted.

KEYWORDS: Compliance, Business activity, Language, Linguocultural analysis.

Introduction

A new state was formed after 1991– the Russian Federation, which began to actively develop a market economy. The consequence of this was the integration of the state into the world economy, as well as the formation of new legislation regulating entrepreneurial activity as an integral part of the market.

As a warning of risks associated with business, it is worth, first of all, to note compliance – any action performed in accordance with a specific request.

This term is applicable to different areas: medicine, audit, psychology, production. Compliance is of particular importance in the field of jurisprudence: it is often viewed as a mechanism to ensure the implementation of legislation and regulations. However, this

definition is incomplete due to its narrowness and lack of a clear definition of the term in legislative acts.

Problem Statement

The problem of using the term "compliance" in various spheres of human activity, and first of all, in the field of jurisprudence and economics, is considered.

The term "compliance" in Russian reality has no precise definition, but at the same time some tendencies for its functioning and use in certain types of activities are taking shape.

Research Questions

How is it possible today to define the term "compliance" in Russian reality? In what areas is the term "compliance" most commonly used? How is this phenomenon put into execution in the economic and legal spheres?

Purpose of the Study

1. To understand what the term "compliance" means in the legal and economic spheres of Russian reality. 2. To realize how often and in which areas compliance is most commonly used, and how effective the use of it. 3. To find out why the term "compliance" is infiltrating into the Russian reality more and more firmly.

Research Methods

The work uses formal legal, comparative, functional, linguistic methods.

The following documents have been used as material for the analysis: "GOST R ISO 31000-2010. National standard of the Russian Federation. Risk management. Principles and Guidelines", approved and put into effect by the Order of Rosstandart dated 21.12.2010 No. 883-st, the Civil Code of the Russian Federation dated 30.11.1994, Federal Law dated 25.12.2008 No. 273-FZ "On Combating Corruption", Decree of the President of the Russian Federation dated 21.12.2017 No. 618 "On the main directions of state policy for the development of competition ", Federal Law of December 26, 2008 No. 294-FZ " On the

protection of the rights of legal entities and individual entrepreneurs in the implementation of state control (supervision) and municipal control ”and paragraphs 29–33.

The authors in their article, analyzing the use of the term "compliance" in the social and legal sphere, have also relied on the work of such researchers as Davydova (2019, 2020), M. L., Filimonova, N. Y (2020), Usenkov I.A. (2021), Makarov V.O. (2021), who use in their works such a method as linguistic. In addition to the above, the authors of the works have turned to scientific studies, which analyzed such services as tourism, education, as well as the sphere of public services, implemented using digital technologies: Davydova M.L., Mamay E.A., Sharno O.I. (2019) Public Services in the Modern Russian State and Digital World.

The works in which the sphere of legal relations and their transformation under the influence of digital technologies have been considered. Davydova M.L., Makarov V.O., Kononenko D.V. (2019) Transformation of Non-judicial Legal Procedures Under the Influence of the Internet. In: Popkova E. (eds) Ubiquitous Computing and the Internet of Things: Prerequisites for the Development of ICT. Studies in Computational Intelligence, vol 826. Springer, Cham. https://doi.org/10.1007/978-3-030-13397-9_5.

As mentioned earlier, the definition of the term “compliance” is not disclosed in Russian legislation. However, it is actively used in the language of the company's local acts (trading block, performing work and providing services, including educational and touristic, financial, audit services, work with digital assets, as well as services that work with financial instruments, including cryptocurrency).

There is no Russian equivalent to this word; accordingly, the term has been borrowed and has become a neologism in legal terminology. Some Russian counterparts of this word, such as “management”, “accountability”, “security”, “anti-corruption”, cannot compensate for the lexical meaning of the word “compliance”, so borrowing the term is relevant and necessary.

In practice, compliance is implemented by legal departments and economic security services, the term is used in legal and economic relations, and with the development of law, it acquires a new meaning both in the language of jurisprudence and in legal and economic relations.

Results

In accordance with English terminology, the term "compliance" should be considered as the execution of an action on any request or instruction. This interpretation is broader and applicable to various areas.

The term “compliance” is practically not used in legal practice due to the lack of its legal confirmation. Nevertheless, the meaning of this term, namely, the proper or improper behavior of a person in different fields of activity, is taken into account when determining the legal qualification of consequences.

In the economic context, compliance should be considered as a mechanism of economic control and prevention of adverse consequences (Harisov, 2011; Chalov, 2006; Borovkova, 2021; Demichev, 2021; Pogosyan, 2021a,b), corporate control at the enterprise (micro level) (Timoshkin, 2010) and an instrument of state economic policy (macro level). Thus, the key instrument in tax policy is compliance, it is the compliance that becomes the key instrument of formation (Alenikov, 2013).

As previously stated, the definition of the term “compliance” is not disclosed in Russian legislation. However, it is actively used in the language of the local acts of the company (trade block, performance of work and provision of services, including educational and tourist, financial, audit services, work with digital assets, as well as services related to financial instruments, including cryptocurrency).

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Russian counterparts of this word, such as ‘management’, ‘accountability’, ‘security’, ‘anti-corruption’ cannot compensate for the lexical meaning of the word compliance; accordingly, borrowing the term is advisable and necessary.

In practice, compliance is put into action by legal departments and economic security services, the term is used in legal and economic relations and, with the development of law, acquires a new meaning both in the language of jurisprudence and in legal and economic affairs.

Due to the fact that the term “compliance” is absent in Russian legislation, compliance procedures are not mandatory and are not followed. Companies themselves determine the possible risks and fill the concept of "compliance" with a certain content.

In the legal sphere, you can find various definitions, functions and areas of application of compliance: some define this term as follows: this is a so-called form of regulation of entrepreneurial activity based on the current legislation and requirements from the state (Franskevich, 2018), others argue, that this is an economic entity that does not exclude observation of the law, but is based on the internal goals and interests of the organization (Morkovkina, 2005).

Foreign legislation provides a broader definition of the objectives of compliance - this is to ensure not only the current legislation, but also the interests of all persons associated with

the company to maximize the efficiency of entrepreneurship (Ivanova, 2017). These goals stem from the definition of compliance as the management of negative risks while implementing business activities, which is reflected in the aforementioned ISO 19600-2014 standard “Compliance management systems - Guidelines”.

A clear definition of the term “compliance” will allow us to better understand the objects in view and achieve them.

We can assume the following interpretation of the notion “compliance”, based on the Russian and Western definitions of the concept. Compliance is a system implemented by an economic entity of managing the risks of nonconformance to:

- 1) the requirements of the current legislation;
- 2) orders of state bodies;
- 3) law enforcement practice;
- 4) the macroeconomic situation;
- 5) other factors essential for entrepreneurial activity.

The latter include the interpretation of regulations, the requirements of ethics, justice, honesty, traditions and customs in the field of entrepreneurship in a particular country.

As an example, we can consider the actions of an economic entity that do not have direct legal consequences in the form of the emergence of new rights and obligations, but can have a negative impact on the activities of competing enterprises, which will worsen the company's business reputation and can be considered as measures of unfair competition if there are signs of unfair competition described in paragraph 2 of Article 3 of the Competition Law. Situational categories act both as an optional basis for qualifying behavior as competitive, and independent and universal characteristics, to which the behavior of an economic entity must correspond in the absence of legislative regulations and customs.

In this regard, the question arises about the category to which the situational factors must be attributed in the clarification of the FAS of Russia in the order of paragraph 1 of part 4 of Art. 23 of the Law on Competition on the Application of Antitrust Laws, which can act as prescriptions and guidance, and in some cases as a normative legal act.

In this case, compliance procedures should be aimed at determining various factors associated with certain circumstances, since the risks of applying analogy in such situations are very significant.

Thus, it can be concluded that compliance procedures should not only monitor observation of current legislation, but also act as a risk-based model and take into account

factors affecting the implementation of any type of economic activity: entrepreneurial, professional and so on.

Proceeding from this assumption, we must not consider compliance only as a mechanism to ensure observation of the law, which is the definition of the term “compliance” in the field of antitrust regulation (Draft Federal law "on amendments to the Federal law" on protection of competition).

Despite the fact that the law on the protection of competition applies to a fairly large number of areas due to the possibility of expanding the legal assessment of entrepreneurship, from a legal point of view it would be more correct to consider compliance as a protection of competition in the context of the activities of economic entities, including observation of antitrust laws and prevention of their violations.

The document prepared by the Competition Commission of the International Chamber of Commerce (ICC) (ICC Practical guide to antitrust compliance. Practical measures to comply with antitrust laws for small and medium-sized enterprises and large companies) (hereinafter - the ICC Practical Guide) states that antitrust compliance is aimed at reducing the number of antitrust violations.

Since in international practice there is no single action program for antimonopoly authorities to support a business that fully complies with antimonopoly legislation, these recommendations allow businesses to find guidelines for creating and implementing antimonopoly programs that take into account all kinds of risks and use resources at the disposal of economic entities. The development and implementation of compliance in the activities of entrepreneurship should occur naturally, which follows from the definition of entrepreneurship as an activity carried out independently in the presence of risks.

Thus, entrepreneurial activity regulated by the state and having state-enshrined standards of behavior and activity, carried out in special organizational and legal forms established by the state, with the participation of hired personnel, should be considered as an activity that is of primary importance for the implementation of compliance.

As mentioned earlier, entrepreneurial activity is inextricably linked with the possible risks and consequences of the occurrence of risks. Thus, the risk is a common and obvious phenomenon in the implementation of entrepreneurial activity and can lead to the onset of both favorable and unfavorable consequences that can occur for objective and subjective reasons.

Knowing the objective reasons for the onset of adverse consequences, such as natural disasters, emergencies, entrepreneurs should make every effort to eliminate these risks or minimize their negative consequences. Property insurance, creation of reserve funds, and so on

can be such measures. As the subjective reasons for the occurrence of adverse consequences, one can single out the violation of legislation by the entrepreneur and by other economic entities in relation to this entrepreneur. Such risks are more difficult to minimize or eliminate entirely. As possible measures, an entrepreneur should take into account these risks, as well as not violate the legislation and the accepted rules of entrepreneurial behavior, and in case of violation, take the blame and bear responsibility. When doing business, there are many internal and external factors that affect the results of this activity, so it is almost impossible to predict them accurately. As the main external and internal factors, one can consider the activities and professional qualities of personnel, the actions and behavior of competitors and the environment of the company (suppliers, buyers). Therefore, taking into account all the uncertainties, the entrepreneur is forced to take risks, should determine the attitude to risks, and make a decision that will maximize profits and at the same time he must not violate the current legislation, rules of conduct and traditions.

If the action of the management of an economic entity meets the usual conditions of civil turnover, this risk cannot be considered as a reason for bringing these managers to responsibility, but the organization itself is responsible for violations of obligations, unless otherwise provided by the contract. If there are circumstances of force majeure, objective, extraordinary and unavoidable under the given conditions (clause 3 of article 401 of the Civil Code of the Russian Federation), then they can become a justification for exempting the organization from liability.

Provided that the risk does not meet the conditions of civil turnover, responsibility extends not only to the economic entity, but also to the management of this entity (on the basis of the guilt principle - Article 53.1 of the Civil Code of the Russian Federation).

To reduce possible entrepreneurial risks and ensure observation of laws on the part of organizations, besides, to resolve the issue of entrepreneurs' liability on the part of state control and supervisory bodies, it is necessary to implement a compliance system that will determine and distribute the job responsibilities of the organization's employees, implement management accounting and internal control, and also become mitigating circumstance in determining the responsibility of an economic entity. Thus, compliance is a mechanism of both administrative control when putting down antimonopoly and other offenses, and self-control of an economic entity, which allows taking into account risks when implementing professional activities. In one of his interviews, the head of the FAS Russia I. Yu. Artemyev noted that it is necessary to rely on the global practice that defines compliance as optional in the field of antimonopoly regulation, which allows companies to independently decide on its implementation and

realization (Association of Antimonopoly experts FAS Russia's Work on changing legislation in the field of Antimonopoly activities).

Undoubtedly, in some areas in which compliance is a necessary tool, for example, in the banking and insurance industries, its implementation should be a prerequisite for the existence of an organization, which is an exception to the general rule existing in the world practice. In Russia, however, it is proposed to introduce antimonopoly compliance even in state corporations (Bokareva & Karaivan, 2018; Popov & Podoplekin, 2021).

However, the need to implement compliance procedures should be based on possible risks and a special method of implementation of internal control, which allows the organization to be classified into a certain risk category, which takes into account the scale and severity of the consequences of this risk, and the likelihood of adherence to the relevant requirements. This position can be confirmed by the risk-oriented approach, approved by the Decree of the Government of the Russian Federation of August 17, 2016 No.-806 "On the application of the risk-oriented approach when organizing certain types of state control (supervision) and amending some acts of the Government of the Russian Federation", used by state control and supervisory bodies when implementing antimonopoly regulation in accordance with the Federal Law of December 26, 2008 No. 294-FZ "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control" and paragraphs 29–33 of the List of types of state control (supervision). The risk-based approach is based on an assessment of potential risks affecting and associated with antitrust regulation and control. In addition, the obligation to apply compliance procedures should be commensurate with at least the severity of the potential negative effects for competition. Thus, the presence of compliance procedures would be useful for state corporations, state-owned companies, natural monopolies, organizations carrying out regulated activities in the field of electricity, gas, heat, water supply, sewerage, wastewater treatment, processing, utilization, neutralization and solid municipal waste destruction. These organizations, due to their specific sphere, are dominant organizations, which can lead to monopolization of the industry and nonobservance of antitrust laws. Compliance cannot be obligatory for state and municipal unitary enterprises, constituent entities of the Russian Federation, municipalities, as well as autonomous institutions and business entities with a share of state participation, since in this case the determining factor is not the share of the organization in the market in its sphere, but the share of publicly - legal entities in their authorized capital (funds), which is not a threat of monopolization and nonobservance of antimonopoly legislation.

The rules related to the implementation of compliance cannot be established, since in the Russian Federation there are no clear instructions on the obligation of antimonopoly compliance.

In this regard, the internal control of compliance with antimonopoly legislation, which represents the relationship and interaction of various elements, tools, as well as organizational and legal measures determined by local documents of organizations, the purpose of which is to observe the current legislation and eliminate possible risks, is established in the form of guidelines for implementation of internal control over adherence to antimonopoly legislation, legislation on state defense order and legislation regulating procurement activities. Compliance control should apply not only to a legal entity and its structural elements, but also to a group of people. This group does not have legal capacity, but the parties composing it have similar economic and other interests, they are dependent on each other and bear certain risks. In this regard, the parent company of a group of people should be responsible for the effectiveness of the organization of compliance control, as well as ensure the unity of approaches in its organization.

Thus, it should be noted that compliance control should meet the basic principles of its implementation:

- conformity of the compliance control system and the factors important for entrepreneurial activity;
- competent correlation of compliance control and possible risks;
- efficiency, regularity of implementation of compliance control and related procedures; the onset of responsibility.

Conclusion

The introduction of compliance control is important not only for business entities, but also for state control and supervisory organizations, since compliance control allows determining the conscientiousness of entrepreneurship in carrying out commercial activities, besides it is a mitigating circumstance in determining liability and punishment. Compliance should be considered not only as a mechanism of administrative control carried out under antimonopoly regulation, but also as a way of an entrepreneur's self-control for foreseeing risks and minimizing their negative consequences.

It is also worth relying on global legal practice, which defines compliance as a voluntary decision of an organization that independently determines the need for its implementation.

Some areas, such as insurance and banking, may become an exception to this rule, and companies from these industries and other industries associated with economic risks will be required to implement compliance in their activities. Compliance control, in its turn, must comply with the basic principles of its implementation: conformity between the compliance control system and the factors important for entrepreneurial activity; competent correlation of compliance control and possible risks.

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