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## THE IMPACT OF SOFT LAW ON THE REGULATION OF SUSTAINABLE INVESTMENT IN THE ARCTIC REGION

**Abstract:** The article discusses the issue of regulating sustainable and responsible investment in the Arctic region. The execution of large-scale investment initiatives in this region will require substantial capital, including foreign ones, as well as a large-scale impact on the ecology of the Arctic region. The work emphasizes the importance of making sustainable investments, which in the long term will not harm either the environment or indigenous and small-numbered peoples living in the project areas. The purpose of the work is to study how soft law instruments affect the regulation of investment in the Arctic using narratological methods. Currently, there is a clear lack of international legal regulation of sustainable investment, and the legislation of different states on relevant issues follows different approaches. When investment relations are not properly regulated, it can be difficult to implement sustainable and responsible investment, which will also have negative economic consequences. In this regard, the author concludes that currently the norms of the so-called “soft law” play the most important role in regulating investment activities. An analysis of so-called ESG investing is being carried out. The work presents an overview of some of the most significant sources of soft law and classifies soft law norms depending on their source of origin. Explanatory examples demonstrate how investors and enterprises implementing investment projects apply soft law in their activities. The author concludes that the concept of soft law is a reflection of the way in which entrepreneurs’ narratives can influence the behavior patterns that will be adopted by the relevant association of entrepreneurs. The article gives examples to examine the impact of narratives on the creating and implementation of soft law provisions, and further analyzes these methods of influence.

**Key words:** investment, the Arctic Region, narrative, source of law, soft law

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## Introduction

The Arctic region includes the water area of the Arctic Ocean, as well as conterminal parts of the Pacific and Atlantic Oceans and, as researchers have observed, it is increasingly attracting the attention of the international community each year (Avkhadeev, 2020). The so-called boundaries of the “Arctic circle” include the territories of Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. These states can be conditionally called “Arctic states”. The possibility of a conflict of interests between these countries raises the need for detailed legal regulation of both the international legal status of the Arctic region and certain aspects relating to this region. The Arctic zone of the Russian Federation is a vast territory that includes the Murmansk Oblast, the Nenets Autonomous Okrug, the Yamalo-Nenets Autonomous Okrug, the Chukotka Autonomous Okrug and the northern municipalities of the Arkhangelsk Oblast, the Komi Republic, the Krasnoyarsk Krai, the Republic of Sakha (Yakutia), as well as lands and islands located in the Northern Arctic Ocean and part of the Russian Federation. Therefore, effective and safe development of the Arctic region is one of the main national priorities of Russia.

The significance of the Arctic for the Russian Federation is further underscored by the distinct mention of the Arctic regional direction in the fundamental program documents, particularly in the Decree of the President of the Russian Federation of July 31, 2022 No. 512 "The Maritime Doctrine of the Russian Federation," which acknowledges the growing significance of the Northern Sea Route in the global transport communications system and the transformation of the Arctic into a region of global competition, including from an economic standpoint. In this regard, the President highlighted the following directions for the development of the Arctic region - the comprehensive development of the Northern Sea Route in order to transform it into a safe year-round and competitive national transport communication of the Russian Federation in the world market; ensuring the immutability of the historically established international legal regime of internal sea waters in the Arctic straits of the Northern Sea Route, improving the navigation management system in its waters, and comprehensive development of port and coastal infrastructure; widespread development of natural resources, primarily fuel and energy, in the exclusive economic zone and on the continental shelf in the Arctic zone of the Russian Federation, creation of favorable conditions for the Russian oil and gas production and gas transportation companies, etc. Not less significant is “The Decree of the President of the Russian Federation No. 164 of 2020 on the Fundamentals of State Policy of the Russian Federation in the Arctic until 2035” dated 05.03.2020, which establishes the need for the development of the Northern Sea Route, the Arctic zone of the Russian Federation as a whole, including from the point of view of rational resource use.

To implement the above acts, the large-scale projects will require significant investments, including foreign ones, as well as a large-scale impact on the ecology of the Arctic region. At present, the predominant viewpoint regarding investing in the Arctic region and in general is the setting of objectives - “investing for sustainability impact” (IFSI). The IFSI says that when making investment decisions, investors and entrepreneurs should try to make investments that will benefit both the investor and the environment (including communities of indigenous and small-numbered peoples living in the regions where investment projects are implemented), but also in the long term will lead to a reduction in the negative impact of the project. Moreover, research shows that organizations that con-

sider environmental, social, and economic factors when implementing responsible investment demonstrate better operating business (Clark, Feiner, & Viehs, 2015). Certain international agreements, such as the 2015 Paris Climate Accords, explicitly acknowledge the necessity for a transition towards environmentally-friendly and climate-friendly investments. However, the significance of the Paris Climate Accords cannot be over-emphasized, as it is the first-ever legally binding document that brings countries together in pursuit of a common goal to combat and adapt to climate change. At the same time, international treaties require appropriate implementation in national legislation, which is not always uniform in different jurisdictions.

It should be noted that despite certain differences in the legislation of different countries, the approaches to regulating investments, including from the point of view of implementing the IFSI provisions, are similar: requirements for the implementation of investment projects have been specified; requirements for the implementing investment projects have been established; in some cases, restrictions are established on the types of activities during the implementation of an investment project. For example, in the People's Republic of China, the concept of "Ecological Civilization" was developed, which was included in the Constitution of the People's Republic of China in 2018, and numerous legal acts were adopted regulating the so-called "green investments". In Russia, the Federal State Statistics Service publishes part of the information on environmental protection in the statistical bulletin "Main Indicators of Environmental Protection," which reflects the main indicators characterizing the state of the environment in the Russian Federation. According to Russian researchers, the information accessible to the government authorities regarding environmental hazards is notably insufficient and fails to keep pace with the latest international norms and regulations, as the collection of this type of information presents distinctly subjective challenges (Levin, 2022). Some subordinate legislation requires the provision of a business plan with an assessment of the environmental safety of the investment project and other risks associated with it, but do not contain any specific requirements.

Hence, one of the primary obstacles in regulating investment activity in the Arctic region is, undoubtedly, the absence of adequate legal regulation in this domain at the international level. Furthermore, there are often divergent approaches to regulating investment activity in the national legislation of countries interested in investing in the Arctic, a certain drawback of "hard law" being evident. It is also indicated in the literature that it is necessary to supplement international acts and regulations of national legislation with additional tools to influence the behavior of investors and individuals implementing investment projects (Efimovskaya & Mamedova, 2022).

## **Materials and Methods**

The objective of the research is to examine the impact of soft law instruments on the execution of investment activities and the implementation of investment projects. The following tasks were assigned: to consider the types of soft law instruments that have an impact on sustainable investment and to classify them; and to study how social relations influence the evolution and application of soft law.

In this study, a narratological approach was selected to explicate precisely how narratives can exert an impact on soft law regulations governing investment activities. From the perspective of narratology, the law is intertwined with non-legal regulators of rela-

tions, such as economics, psychological feelings of individuals or groups, morality, and religion (Goncharova et al., 2022). The narrative approach is used in legal research to understand and explain how law is applied in real life, how it interacts with other social phenomena, and how it is formed and changes over time under the influence of those stories that develop during the implementation of the relevant rules of law. Considering legal phenomena in the context of a narrative allows for a deeper understanding of their meaning, value and impact on society. The notion of narrative development of sources of law in this manner is based on the concept that sources of law, along with other instruments of influence on the conduct of law subjects, evolve within the context of their application, specifically the concrete results of the impact of law on the behavior of law subjects and their communities, whose external manifestations will be the stories of these subjects. A key feature of narrative legal research is the exploration of how the stories of participants in legal relationships influence and create the law. Narrative legal understanding is based on the fact that the source of law is not a simple set of legal norms arranged in a logical order, but a reflection of the stories of those subjects under whose influence the law is created. This perspective on the origins of law holds particular significance for nations belonging to the Anglo-Saxon legal system, wherein the legal framework heavily relies on the narrative of society in general and the highest courts in particular (Griffin, 1993). Changes in the legal system and the position of the courts are what narratology focuses on, as well as finding out what factors and stories influenced the relevant decision, how the work and life histories of judges influenced their legal argumentation, eligibility evaluation and legal consciousness in general.

## **Results**

A significant role in ensuring rational investment is attributed to the so-called "soft law" - acts and documents that, as researchers have noted, possess moral and political influence rather than legal force (Davydov, 2022). Soft law sources include recommendations, codes of conduct, and international standards, which do not have the legal force inherent in the rules of law, but can influence the decision-making and activities of economic agents. The application of soft law does not necessitate its recognition or incorporation into the legislative framework of a specific state. The interested subjects are empowered to determine the significance and prospects of implementing soft norms of conduct, including those states that are guided by moral and political considerations rather than by the specific legal force of the norms. (Shelton, 2003). At the same time, the provisions of soft law can be further enshrined in the national legislation of countries, that is, they can move from the category of soft law to hard law.

The soft law is a rather interesting tool from a legal standpoint, as it can influence the conduct of investment subjects. As a general rule, it is created by the subjects involved in investment activity themselves; however, it can also be developed at the interstate level, including international organizations, and is the outcome of a lengthy process of establishing a model of behavior and the so-called "best practices" that will be incorporated into the soft law being developed. At the same time, adherence to the model of behavior that was developed by the relevant participants is ensured not by the forces of state coercion, but by the authority of the community that created the relevant soft law instrument. The most famous example of soft law, widely used in international trade, is the Incoterms set of trade terms, which is traditionally classified as soft law (Gabriel, 2009). Indeed, while not being a

rule of law, i.e., a generally binding rule of behavior, Incoterms are used in almost all foreign trade transactions, since they are a convenient tool for facilitating the negotiation process.

Soft law has recently gained considerable popularity in the realm of investment, particularly in regions inhabited by indigenous and small-numbered peoples, such as the Arctic region. Soft law can be developed and applied both internationally and nationally.

At the 2015 International Economic Forum, as a sign of the necessity for appropriate regulation of responsible investments in the Arctic regions, the Arctic Investment Protocol (AIP) was developed and adopted. This protocol laid the foundations for the "responsible development" of the Arctic, as enshrined in six fundamental principles addressed to all participants in the investment process (ranging from authorized bodies to enterprises directly implementing investment projects):

1. Creating a sustainable society through economic development. The implementation of this principle necessitates the implementation of a long-term investment strategy, including the advancement of the regional economy, as well as the job creation for residents of the Arctic region, including through collaboration with Arctic communities.

2. Respect for the rights and involvement of indigenous people in investment projects. This implies not only the inclusion of the indigenous population in the execution of investment projects and the job creation for them, but also the preservation of their traditional lifestyles by minimizing the impact on the environment, and involving them in consultations regarding the implementation of relevant projects.

3. Taking measures to protect the Arctic environment. The concerns regarding the sustainability of the planet's future are presently justified in all sectors of the economy, and consequently, they impact the investment activity as well. The implementation of this principle includes an assessment of the investment potential of the Arctic region, taking into account the necessity to balance economic benefits and environmental impacts, as well as acknowledging the direct correlation between the state of the Arctic biosphere and the livelihoods of the indigenous population. In addition, it is also important to take all necessary and reasonable measures to prevent or mitigate the impact on the environment and, as a result, the impact on public health.

4. Practice of responsible and transparent business practices. This is a traditional principle for investment activities that comprises the need for responsible and transparent business transactions, taking into account the need to get a balance between the private interests of investors, indigenous populations, and the state.

5. Usage of scientific achievements and their integration with traditional environmental knowledge. In order to adhere to this principle, it is important for the investor to conduct appropriate scientific research in order to comprehend the impact of the investment project on the economic and environmental conditions in the Arctic region.

6. Strengthening interaction between countries and disseminating best investment practices. States ought to promote public-private partnerships and engage in dialogue to develop, adopt, and apply international standards for investment in the Arctic region, in order to maximize the environmental, social, and financial advantages of the region's development in accordance with all international laws.

The Arctic Investment Protocol is an example of internationally developed soft law. Although it was created with the participation of states, it is not universally binding and has not been implemented as an international treaty, including in the Russian legal system, i.e. it has not become a legal standard.

The Arctic Economic Council (AEC) is the foremost organization that not only provides comprehensive support to businesses, but also generalizes positive investment practices, including in the Arctic region. The AEC was established by the Arctic Council in 2014, when Canada was the Chairman of the Council (Vylegzhanin, Korchunov, & Tevatroshyan, 2020). One of the areas that can be utilized to generalize best investment practices is, undoubtedly, the implementation of environmentally and resource-efficient investing strategies in the Arctic region. It is considered to be an indicator of the conscientiousness of an investor or an enterprise implementing an investment project if they conduct a proper environmental impact assessment (EIA). This obligation is enshrined in the national legislation of almost all countries. For instance, in Russia, the obligation to conduct an environmental impact assessment is enshrined in Article 32 of the Federal Law of January 10, 2002 No. 7-FZ "On Environmental Protection". This law stipulates that an environmental impact assessment is conducted in relation to planned economic and other activities that may have a direct or indirect impact on the environment, irrespective of the organizational and legal forms of ownership of legal entities and individual entrepreneurs.

The AEC cites the Yamal LNG and Sakhalin-2 projects as examples of best practices. An exemplary environmental impact analysis is presented in the Yamal LNG project, which produced a report that comprehensively assessed the potential impacts on the environment and society as a whole, and the monitoring and evaluation of those impacts throughout the project.

The second category of soft law is referred to as soft law, as it is not created by international organizations or authorized government bodies, but rather by associations of investors and entrepreneurs who voluntarily assume the responsibility of adhering to the regulations established by them. The self-regulation in the business sphere plays a significant role in the execution of investment projects in the Arctic region, surpassing the confines of the formation of self-regulatory organizations. One of the most prominent and extensive instances of such an organization is the "Principles for Responsible Investment" (hereinafter referred to as the Principles), a UN-supported association of major investors who are engaged in summarizing the so-called "best practices" of responsible investment. As of 2023, this association of entrepreneurs includes more than 5,000 signatories, who in total manage assets worth more than 123 trillion USD (Quarterly signatory update, n.d.). The Principles have developed 6 rules for responsible investment, which are adhered to by signatories of this document and which integrate environmental, social and corporate governance factors (ESG factors) into investment decision-making to better manage risk and sustainability in investment planning. Investors who sign these Principles undertake voluntary obligations to follow these rules and apply them in investment practice.

A noteworthy illustration of the implementation of these regulations is provided by Schroder Investment Management, which provides its clients with the opportunity to establish a "sustainable development budget" by investing in green initiatives as a component of diversifying their investment projects (Case study by Schroder Investment Management, 2020). Hence, indirectly, investors are encouraged to invest in environmentally-friendly and clean enterprises, and entrepreneurs are encouraged to implement projects that consider

ESG factors when making decisions. Other organizations, such as The Scott Trust Limited, note that they, like other investors, are more likely to invest in a new venture that has a working ESG policy (Case study by The Scott Trust Limited, 2020). Another organization, KfW Capital, which invests in venture funds, has developed a system for evaluating compliance with ESG investing regulations, particularly among start-ups. After conducting internal due diligence, they have developed a scorecard that enables them to evaluate the efficacy of using ESG factors in the investment planning process of venture funds, which KfW Capital intends to invest in. Furthermore, in the event that the assessment outcome is unsatisfactory, it may lead to a denial of investment. KfW Capital can also recommend that the venture capital fund enhance their ESG policy, develop their own mechanisms for evaluating compliance with the Rules by enterprises in which investments are made, enhance the educational activities of managers, and, taking into account these modifications, make investment decisions (Case studies: Responsible investment in venture capital: KfW Capital: Paving the way for a more sustainable venture capital ecosystem, 2022). Furthermore, in certain instances, particularly when implementing buy-and-hold investments, investors conduct an analysis of the ESG factors considered by the entity in which they intend to invest as a part of their own due diligence procedures (Case study: Applying an ESG methodology to a European infrastructure debt fund, 2019).

## **Discussion**

As a result of the study, the main directions of the impact of narratives on soft law in all areas of business, including investment, activity were identified.

**Legitimation.** Narratives can help legitimize soft law instruments by providing an explanation of why a particular group of entrepreneurs or an international organization decided to create certain soft law instruments. In the process of legitimation, narratives also serve the purpose of defining the issue that the development of soft law provisions aims to address.

**Implementation.** Narratives have the potential to facilitate compliance with soft law provisions. As previously mentioned, organizations that incorporate environmental, social, and economic factors into their responsible investment initiatives demonstrate superior operating activities. Consequently, given the widely reported experiences of such organizations, a greater number of stakeholders are likely to join organizations that devise appropriate investment regulations and mechanisms. Furthermore, the stories of economic agents can not only aid in adhering to the regulations of soft law as a foundation for conduct, but also in enhancing their effectiveness, thereby generating novel narratives, commonly referred to as "success stories" or "best practices".

**Expansion.** Narratives as a reflection of entrepreneurial practices demonstrate, as a rule, the advantages of using soft law by entrepreneurs in their activities, and contribute to the inclusion of a wide range of subjects in their application. The expansion of soft law can also be facilitated by stories about the refusal to provide investment to those organizations that do not fully comply with the requirements imposed by the provisions of soft law in a certain field of activity, for example, investment.

**Estimation.** Narratives are excellent tools for assessing the effectiveness of certain soft law provisions. For example, if any provisions of the investment policy are ineffective, they are excluded from use or replaced with others. It should be noted that narratives may not always have a positive impact on soft law - if the latter are ineffective, economic

agents may refuse to apply these provisions to the point of contestation, for example, certain terms of the treaty that are formulated using soft law. Soft law provisions can also create monitoring and reporting mechanisms during their implementation, which, in addition to assessing their effectiveness, will make the activities of entrepreneurs in certain areas more transparent.

**Development.** This type of impact of narratives is closely related to the previous one, since its evolution occurs based on the assessment of the effectiveness of soft law. Stories of entrepreneurial activity, when repeated several times, may lead to adjustments to the provisions of soft law.

**Dispute avoidance.** If soft law provisions may be difficult to interpret, repeated application of them in one way may lead to the fact that such application will be considered correct, which may reduce the likelihood of parties approaching jurisdictional authorities to resolve a dispute regarding the application of these provisions. For example, Incoterms 2020, in addition to the rules for the interpretation of terms, in the preamble also contains “best practices” for their application. Following these will help the parties avoid disputes regarding the content of the contract, as well as the rights and obligations of the parties.

**Development into legal norms.** The use of narratives can encourage states to implement soft law provisions into legislation, giving them a general binding character on the territory of the state. The most prominent instance pertains to the ratification of the 2015 Paris Climate Agreement, which explicitly enshrines the necessity for a transition towards environmentally-friendly and climate-friendly investments. In fact, its adoption was the reaction of states to the development of soft law as a tool for influencing investors and enterprises implementing investment projects.

**Changing legal culture and legal awareness.** As the narratives that emerge during the implementation of soft law influence attitudes towards it and the desired law, they have the potential to influence the legal culture of society. For instance, until recent times, the environmental agenda was not as prevalent among entrepreneurs. Nonetheless, the establishment of a soft law and its implementation in the entrepreneurial activities resulted in a recognition of the necessity for rational and responsible investment, exemplified by the adoption of the Paris Agreement, among other things.

## **Conclusion**

An examination of existing regulations and case studies revealed that soft law plays a significant role in the formation of sustainable and responsible investment projects, while producing a more favorable balance of financial interests and the need to protect the environment and the rights of indigenous populations.

At present, organizations are gradually inclining towards the utilization of soft law instruments in the execution of investment projects and the formulation of investment policies. Although laws and regulations play a significant role in regulating and ensuring responsible and environmental investment, they are of lesser importance compared to the soft law instruments that prevail in the investment field. The soft law instrument can be adopted at any level, including international or state level, as well as business associations.

The role of narratives, or stories, has also been recognized as an important factor in the development and application of soft law. Narratives possess the potential to signifi-



cantly influence the development of soft law in numerous ways, ranging from defining its content and increasing scope of application to influencing the process of creating legal norms when soft law provisions are transferred into national or international legal acts. Success stories and best practices that demonstrate the effective implementation of sustainable and responsible investing principles can encourage other market participants to adapt and apply similar approaches in their operations.

It appears necessary to carry out a gradual integration of soft law with hard law. This process could include the incorporation of efficient soft law norms into the national legislation of countries in the Arctic region, thereby enhancing the legal foundation for sustainable development and ensuring a stricter control over observing these regulations. The transition from soft law to hard law can serve as a means to enhance legal certainty and predictability for investors, while also safeguarding the interests of the environment and indigenous peoples.

However, in order to strengthen the role of soft law in regulating investments in the Arctic region, it is necessary to further develop international cooperation and dialogue between states, international organizations, the business community and representatives of indigenous peoples. It will require coordinated efforts from all levels and the involvement of a wide range of interested persons in order to create an effective and adaptive legal framework capable of meeting both current and future challenges to the sustainable development of the Arctic region.

In order to achieve the best results, it is necessary to further investigate this area, as well as develop and implement new soft law tools that can adequately reflect the changing conditions and requirements of sustainable development. Further research into the impact of soft law on the regulation of sustainable investment in the Arctic should include an analysis of specific examples of the successful use of soft law instruments, as well as the development of recommendations for improving international and national legal regulation. This will help create a stronger and more effective legal framework to support the sustainable development of the Arctic region, while ensuring the protection of its unique ecosystem and cultural heritage.

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