Это СЕПРА

Increasing the Efficiency of Budget Expenditure on Funding Public Institutions and Management Of Public Unitary Enterprises

Increasing the Efficiency of Budget Expenditure on Funding Public Institutions and Management Of Public Unitary Enterprises

Volume I

Perfection of the System of Management and Funding of Budget Institutions

Moscow
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The first volume contains a detailed analysis of the current legal regulation of functioning of state agencies, legislative basis of their budget financing. In this volume specific features of these issues in social sphere are analyzed, as well as recommendations on reorganization of the management system and financing of state agencies, and on reform of organizational and legal forms of their performance are provided.

Analysis of the current organizational and legal forms and specific instruments of management of public unitary enterprises, analysis of the mechanism and funding issues and the ways of reorganization of the system of public unitary enterprises as well as development of policy proposal represent major tasks in the second volume.

Obtained findings can be applied as part of a legislative basis of state regulation (including for amendments to the current normative and legal acts and for the drafting of new normative and legal documents); for development of economic programs for Russia; as specific element for a concept of long-term development of the national corporate model.

Volume I. Perfection of the System of Management and Funding of Budget Institutions

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Volume II. Management Issues and Tasks of Regulation in the Sphere of Public Unitary Enterprises

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The present paper is an intermediate report on the CEPRA project " **INCREASING THE EFFICIENCY OF BUDGET EXPENDITURE ON FUNDING STATE INSTITUTIONS (AGENCIES), MANAGEMENT OF PUBLIC UNITARY ENTERPRISES, AND THE GOVERNMENT SHARES IN THE MIXED SECTOR OF THE ECONOMY** ". It contains a detailed analysis of the existing legal regulation pertaining to the activity of state institutions and state-owned unitary enterprises as well as of the legal bases of their budgetary financing; consideration is also given to the specific features of these problems existing in the social branches. The report comprises certain recommendations regarding the reorganization of the system for management and financing of state institutions and state-owned unitary enterprises and the reforming of organizational and legal forms of their functioning.

It should be noted that the recommendations concerning this reforming are presented in the shape of a set of options, with due regard given to the various distinctive characteristics of functioning of the state-owned sector of the economy. The devised concepts of the future activity will subsequently form the basis for work on the proposals concerning the budgetary policy including the proposals on the draft federal budget for the year 2003 and a full-scale set of amendments to the laws regulating the problems of functioning of state institutions and state-owned unitary enterprises.

1. An analysis of legislation regulating the legal status of state institutions

1.1. General issues of legal regulation of state institutions in the Russian Federation

1.1.1. General provisions

The general provisions on institutions are contained in the Civil Code of the Russian Federation and Federal Law of the Russian Federation № 7-FZ of 12.01.1996 "On Non-Profit Organizations" (with alterations and amendments as of 08.07.1999), while the distinctive features of the legal status of individual types of institutions are determined by the special laws and other legal instruments. Thus, at the present time, there exist:

- Law of the Russian Federation №3266-1 of 10.07. 1992 "On Education" (with alterations and amendments as of 13.02.2002);

- Federal Law of the Russian Federation №125-FZ of 22.08.1996 "On Higher and Post-graduate Professional Education" (with alterations and amendments as of 30.12.2001); Federal Law of the Russian Federation №127-FZ of 23.08.1996 "On Science and the State Policy on Science and Technology" (with alterations and amendments as of 30.12.2001);

- Federal Law of the Russian Federation №78-FZ of 29.12.1994 "On Librarianship";

- Federal Law of the Russian Federation №54-FZ of 26.05.1996 "On the Museum Stock and Museums in the Russian Federation";

- Federal Law of the Russian Federation №77-FZ of 14.04.1999 "On the Extra-Institutional Security Service";

- Law of the Russian Federation №3612-1 of 09.10.1997 "The Basic Principles of the Russian Federation's Legislation on Culture" (with alterations and amendments as of 30.12.2001);

- Law of the Russian Federation №1499-1 of 28.06 1991 "On Health Insurance of Citizens in the Russian Federation" (with alterations and amendments as of 01.07.1994);

- Law of the Russian Federation №5487-1 of 22.07.1993 "The Basic Principles of the Russian Federation's Legislation on Citizens' Health Protection" (with alterations and amendments as of 02.12.2000).

Among the multitude of institutions created by the owners, these institutions are mainly created by the State or municipal bodies - the so called budgetary institutions.

Proceeding from the afore-said, it is possible to single out such types of institutions as the educational, cultural, medical, social assistance, scientific and extra-institutional security ones.

These institutions conduct their activity in accordance with the Standard (approximate) provisions concerning a certain type of institutions (*Table 1*) which are authorized;

at the federal level - by a decree of the RF Government or by a decree (order) of a corresponding body of executive authority - the Ministry (department), or by decrees of the RF President;

at the regional level - by a decree (decision) of the oblast, krai or regional administration;

at the municipal level - by a decree (decision) of the administration of a given municipal formation.

Table 1

Types of budgetary institutions

	Federal level	**Regional level**	**Municipal level**
Health care	1) General provision on medical insurance organizations; approved by Decree of the RF Govt №41 of 23.01.1992 2) The Statutes of the Federal Fund of Compulsory Medical Insurance, approved by Decree of RF Govt №857 of 29.07.1998 3) Provision on the Territorial Fund of compulsory medical insurance, approved by Decree of RF Govt №4543-1 of 24.02.1993 4) Classification of institutions of health care, approved by Order of Russia's Ministry of Health Care №395 of 3.11.1999 5) Tentative Charter of a state (municipal) institution. Appendix to Joint Letter of the Russian Federation's Ministry of Health Care of 31.12.1993 №04-16/74-16 and the Russian Federation's State Committee for Management of State Property of 13.01.1994 №0K-6/234	1) Provision on medical insurance organizations, approved by Decree of Volgograd Oblast' Administration №248 of 20.08.1992 2) Charter of Tomsk territorial fund of compulsory medical insurance, approved by Decree of Tomsk Oblast' Administration №20 of 25.01.1999 3) Tentative Charter of the municipal medical institution "Ambulatory" (general/family physicians), approved by Decree of Altai Krai Administration №379 of 25.09.1995 4) Tentative Charter of a state pharmacy institution, approved by Decree of the Head of Administration of Omsk Oblast' №33-p of 22.01.1997	1) Standard charter of a municipal medical institution, approved by Decree of Volgograd City Administration №109 of 26.02.1996 2) Standard charter of a municipal health care institution, approved by Decree of Kemerovo City Administration №65 of 07.05.1998 3) Standard charter of a municipal medicoprophylactic institution, approved by Decree of Nizhnii Novgorod City Administration №76 of 26.11.1997
Social sphere	1) Tentative provision on a Center for social servicing of elderly citizens and disabled persons, approved by Decree of the RF Ministry of Labor and Social Development №36 of 8.07.1997 2) Tentative provision on the establishment of social assistance to persons without a permanent place of residence and work, approved by Decree of RF Govt №670 of 8.06.1996 3) Tentative provision on a social rehabilitation center for minors, approved by Govt Decree №896 of 27.11.2000 4) Tentative provision on a social shelter for children, approved by Govt Decree №896 of 27.11.2000	1) Charter of the Fund for social assistance of the Population of Tomsk Oblast', approved by Decree of Omsk Oblast' Administration №270 of 26.09.1996 2) Tentative provision on a complex center for social assistance of the population, approved by Decree of the Head of Vladimir Oblast' №424 of 05.07.1997	1) Charter of municipal institution "Tomsk City Center for Benefits and Subsidies", approved by Decree of Head of Tomsk City Administration №393 of 8.06.1999 2) Charter of "Fund for social support for Volgograd City's population", approved by Decree of Head of Volgograd City Administration №222 of 23.02.2000 3) Charter of the municipal

	5) Tentative provision on a center for children left without parental care, approved by Govt Decree №№ 896 of 27.11.2000		institution “Center for social assistance”, approved by Decree of Kaliningrad City’s Mayor №3125 of 26.11.1997
Education	1) Standard provision on an educational institution for secondary vocational education (secondary specialized educational establishment), approved by RF Govt Decree №160 of 3.03.2001 2) Standard provision on an educational institution for higher professional education (higher professional educational establishment) РФ, approved by RF Govt Decree №264 of 5.04.2001 3) Standard provision on a military educational institution for higher vocational education, approved by RF Govt Decree №650 of 18.06.1999 4) Standard provision on an educational institution for further vocational education (qualification upgrading) for specialists, approved by RF Govt Decree №610 of 26.06.1995 5) Standard provision on an educational institution for further education of children, approved by RF Govt Decree №233 of 7.03.1995 6) Standard provision on a cadet school (cadet boarding school), approved by RF Govt Decree №1427 of 15.11.1997 7) Standard provision on an inter-school educational combine, approved by RF Govt Decree №1437 of 30.12.1999 8) Standard provision on branches of higher educational establishments subordinated to the federal bodies of executive authority, approved by Order of Ministry of Education №643 of 16.03.1999 9) Standard provision on a general educational school with an initial summer training, approved by RF Govt Decree №1046 of 5.09.1998 10) Standard provision on an educational institution for children in need of psychologo-educational and socio-medical assistance, approved by RF Govt Decree №867 of 31.07.1998 11) Standard provision on an educational institution for children of pre-school and junior school age, approved by RF Govt Decree №1204 of 19.09.1997 12) Standard provision on a pre-school educational institution, approved by RF Govt Decree №677 от 1.07.1995 13) Standard provision on an educational institution for orphans and children without parental care, approved by RF Govt Decree	1) Standard provision on a general educational institution with an in-depth learning of foraign languages, approved by Order of Agency for popular education of Primorskii Krai Administration №330-a of 28.08.1996 2) Provision on a close-type republican specialized general educational school for children with deviant behavior, approved by Decree of Govt of the Rep. of Sokha (Yakutia) №340 of 24.07.1998	1) Charter of municipal educational institution for higher and secondary vocational education “The P.A.Serebrekov Institute of the Arts of Volgograd City”, approved by Decree of the Head of Volgograd City Administration №1535 of 23.11.2000 2) Provision on a municipal experimental site in the educational system of Archangelsk City, approved by Decision of Archangelsk City Council of Deputies №71 of 11.04.2000 3) Provision on the organization of work of lycee and gymnasial classes in general educational institutions of the city, approved by Decree of the Mayor of Archangelsk City №255 of 31.10.2000 4) Provision on a municipal educational institution within the secondary general educational school №44, approved by Decision of Ivanovo City Duma №242 of 25.05.1999

	№676 of 1.07.1995 14) Standard provision on a general educational boarding school, approved by RF Govt Decree №612 of 26.06.1995 15) Standard provision on an evening (in shifts) educatonal institution, approved by RF Govt Decree №1237 of 3.11.1994 16) Standard provision on branches of State educational enterprises of secondary vocational education, approved by Order of Ministry of Education №2311 of 25.07.2000		
Culture	1) Provision on theater in RF approved by RF Govt Decree №329 of 25.03.1999 2) Provision on the basic principles of economic activity and financing of cultural and artistic organizations, approved by RF Govt Decree №609 of 26.06.1995	1) Provision on basic principles of economic activity and financing of cultural and artistic organizations in the Krai, approved by Decree of Altai Krai Administration №2 of 03.01.1996 2) Statute of the regional state-owned TV and radio broadcasting company "Murman", approved by Decree of the Head of Murmansk Oblast' Administration №170 of 23.05.1996	1) Provision on the basic principles of economic activity and financing of cultural and artistic organizations, approved by Decree of Tomsk City №351 of 06.09.1995 2) Statute of the municipal cultural institution "Symphonic Orchestra", approved by Kaliningrad City Mayor's Decree №2335 of 23.07.1998
Science	1) Procedure for granting the status of a State Research Center of RF, approved by Decree of RF President №№ 939 of 22.06.1993	1) Charter of the scientific research bureau "Cyclone" for examinations of problems of functional stability and protection of objects, approved by Decree of the Head of Lipetsk Oblast' Administration №210 of 05.05.1995 2) Provision on the Center for scientific back-up of the agroindustrial complex of Amur Oblast', approved by Decree of the Head of Administration of Amur Oblast' and the Far Eastern Section of the RAS №118 of 13.03.1995	
Extrainstitutional Security	1) Provision on extrainstitutional security service at the internal security organs of RF, approved by RF Govt Decree №589 of 14.08.1992	1) Provision on the Department of extrainstitutional security service at the Department of internal security of Vologda Oblast', approved by Decree of Vologda Oblast' Administration №72 of 5.02.1997	

The Budgetary Code of the Russian Federation came into force on January 1, 2000 (RF Federal Law №l45-FZ of 31.07.1998 with the alterations and amendments

of 30.12.2001) with the aim of introducing clarity in the legal status of budgetary institutions, and first of all into the legal capacity of budgetary institutions as the subjects of civil law, but the clarity is still missing, and a number of norms of budget legislation contradict the norms of civil law.

1.1.2. The concept of budgetary institution

The legal definition of the term "institution" is contained in Article 120 of the Civil Code of the RF and Article 9 of the Federal Law On Non-Profit Organizations". In accordance with these norms, an institution is a non-profit organization created by the owner in order to effectuate management, socio-cultural or other functions of a noncommercial character and financed by this owner wholly or partially.

The definition of a budgetary institution is given in Article 161 of the RF Budgetary Code, defining a budgetary institution as an organization created by bodies of state authority or by bodies of local self-government in order to effectuate management, socio-cultural, scientific and technological, or other functions of a non-commercial character, and the activity of which is financed from the corresponding budget or from the budget of the State extra-budgetary fund on the basis of an estimate of revenues and expenditures.

Thus, a budgetary institution is a recipient of budgetary means which possesses the right to receive these means in accordance with the budget revenue and expenditure for the corresponding year (Article l62 of the Budgetary Code of the RF). The estimate is a financial plan of a certain institution, the expenditure of means for the sake of which takes place in accordance with their specific task.

Proceeding from this fact, one could come to a conclusion that a budgetary institution is an institution characterized by the sum of the following features: 1) it is created by the bodies of state authority or local self-government, 2) it is created to implement some functions of non-profit nature and 3) it is financed from the budget or by the means of an extra-budgetary fund on the basis of the estimate of revenues and expenditures.

However, the fact of budgetary financing is not an obligatory condition, because, for example, the units of extra-institutional security service are not financed from the budget.

1.1.3. The legal status of budgetary institutions

Institutions are created by the property owners including the State, municipal formations, juridical and physical persons in order to effectuate certain activity of a noncommercial character. An institution can be created by a group of several owners (e.g., Item 1, Article 11 of the RF Law "On Education").

A state institution as a juridical person emerges on the basis of a deed issued by a body of state authority or governance.

On behalf of the Russian Federation or the subjects of the Russian Federation, the decisions on establishing a budgetary institution are taken by the corresponding empowered government bodies, while on behalf of municipal formations - by the bodies of local self-government.

Thus, in accordance with Decree of the Government of the Russian Federation №96 of 10.02.1994 "On the delegation of the RF Government's authority for the

control and management of objects in Federal possession", the right to act on behalf of the Russian Federation as the founders of institutions financed by their owners is invested in the Federal bodies of executive authority entitled to coordinate and regulate the activity in the corresponding branches (spheres of management), while the task of transferring the property to an institution is addressed to the Russian Federation's State Committee for the Management of State Property - the Ministry of property Relations of the RF (Decree of the President of the RF №867 of 17.05.2000 "On the Structure of the Bodies of the Federal Executive Authority").

In accordance with Item 2 of Article 2 of the Federal Law "On Non-Profit Organizations", institutions can be established in order to achieve social, charitable, cultural, educational, scientific and managerial aims, to protect citizens' health, promote physical culture and sports, to satisfy spiritual and other non-material requirements of the population, to protect the rights and legal interests of citizens and organizations, to solve disputes and conflicts, to render juridical assistance, and also to further other ends aimed at achieving social benefits.

The legal basis of an institution's activity is its constitutive documents.

A constitutive document of an enterprise is, as a rule, its charter approved by the owner (in case of a joint foundation - by all the owners). In such cases when it is planned to found several institutions carrying out functions of the same category, it becomes possible to approve a model charter. Thus, Decree of the RF Government №1233 of December 13, 1995, approves the Model statute of a regional TV and radio broadcasting organization. An institution can also act on the basis of a general provision on the organizations of this type (Item 1 of Article 52 of the Civil Code). At the present time there exist model provisions on founding primary vocational education (Decree of the RF Government №650 of 05.06.1994-), on a general educational enterprise (Government Decree №1008 of 31.08.1994), on an educational enterprise for secondary vocational education (Government Decree №1168 of 14.10.1994) etc.

1.1.4. Legal capacity of budgetary institutions

In accordance with Article 49 of the RF Civil Code, legal capacity of a juridical person is understood as a capacity to have civil rights corresponding to the purposes of the activity provided for in its constitutive documents and shall bear the duties connected with such activity.

Legal capacity of a juridical person emerges at the moment the latter is created (Item 2 of Article 51 of the RF Civil Code) and is terminated at the moment the liquidation of this juridical person is completed (Item 8 of Article 63 of the RF Civil Code).

As regards institutions, legislation follows the principle of a strictly special legal capacity.

The content of legal capacity of budgetary institutions is defined in accordance with the law, the charter or the corresponding statute (provision) by the specific purposes for which they have been established, and therefore the legal capacity of budgetary institutions is special by nature.

Within the framework of special legal capacity of budgetary institutions whose major activity is aimed at achieving social, cultural, educational and scientific

objectives, at promoting physical culture and sports, at satisfying spiritual and other non-material needs of the population, as well as at furthering other ends aimed at achieving social benefits, they can be entitled by their constitutive documents to the right to carry out business activities yielding a profit. Business activities can be carried out by an enterprise only as far as these activities serve the purposes for which it has been established.

The Federal Law "On Non-Profit Organizations" defines the possible lines of business activity of institutions, including:

- profit-yielding production of goods, services and works corresponding to the purposes of activity of non-profit organizations;

- acquisition and realization of securities, property and non-property rights;

- participation in economic unions and participation - in the role of an investor - in partnerships based on trust.

Business activity of certain types of institutions can be restricted by special normative acts on certain types of institutions.

It can be said that budgetary institutions cannot carry out such types of business activity as:

- commercial representation,

- financing which envisages a concession of monetary claim,

- trust management of property,

- participation in an agreement on commercial concession. For all the afore-said cases, the Code envisages special subjects entitled to the right to carry out these types of activity (the banks, the citizens registered as entrepreneurs without a creation of a juridical person, the non-profit organizations, etc).

1.1.5. The rights and responsibilities of budgetary institutions

Item 1 of Article 163 of the RF Budgetary Code stipulates the rights of budgetary institutions. The recipients of budgetary means have the right to:

- a timely reception and use of budgetary means in accordance with

the amount authorized under the budget estimates of revenues and expenditures with an allowance for reduction and indexation,

- a timely reception of notifications regarding the budgetary allocations and the limits of budgetary liabilities,

- a compensation in case of underfinancing.

Item 2 of this Article determines the duties of budgetary institutions. The recipients of budgetary means are obliged:

- to timely file budgetary applications for certain documents corroborating their right to receive budgetary means;

- to efficiently use budgetary means in accordance with their specific tasks;

- to timely and completely return the budgetary means received on a condition of their return;

- timely and completely pay for the use of budgetary means allocated on a condition of compensation;

- to timely submit a report or other information on the use of budgetary means.

Also, an institution shall not have the right to alienate or by other means to dispose of property consolidated to it and property acquired at the expense of assets allotted to it under the estimate (Item 1 of Article 298 of the RF Civil Code).

That means that according to the general rule, an institution does not have the right to independently dispose of (to lease out, mortgage, sell, etc.) property consolidated to it by the owner or acquired at the expense of assets allotted to it under the estimate by the owner. It has the right to use only the monetary means allotted under the estimate, and to do this only in strict accordance with their specific tasks. Nevertheless, there are certain exceptions from this rule. Thus, in accordance with Item 4 of Article 27 of RF Law "On Higher and Post-Graduate Vocational Education", a higher educational establishment has the right to act as a lessor of property consolidated to it. In particular, state and municipal higher educational establishments have the right to lease out such property without the power of redemption - by consent of the Academic Board of an educational establishment, and to do this at a price not lower than those typical of that region. No consent of the owner is required in this case.

However, during the last few years, freedom enjoyed by institutions in disposing of the means acquired through leasing out state-owned property has been restricted by the laws on the budget.

For example, Article 21 of the Federal Law "On the Federal Budget for the Year 2001" stipulates that in the year 2001, the income from leasing out property in Federal possession and committed to operative management of scientific, and educational institutions, health-care institutions, state institutions of culture and the arts, state archival institutions, organizations of the Ministry of Defense of the Russian Federation and the Ministry of Communications of the Russian Federation as well as of the organizations servicing the Russian Academy of Sciences and the branch academies of sciences having a state status and financed from the Federal budget under the estimates of revenues and expenditure, are completely accounted for in the revenues of the Federal budget and are reflected in the estimates of revenues and expenditures of the said institutions and organizations.

The incoming means are reflected in the personal accounts of the said budgetary institutions opened with the bodies of the Federal Treasury, and then are allocated in order to maintain these institutions, thus representing an additional source of budgetary financing aimed at maintaining and developing their material and technical base in excess of the amounts stipulated in the Federal budget.

Article 118 of the RF Budgetary Code stipulates just another limitation: budgetary institutions have no right to obtain credits from credit establishments and other physical and juridical persons with the exception of loans from budgets and state extra-budgetary funds. The only exception from this rule is envisaged by Article 257 of the RF Budgetary Code; it is permitted only in the case when an institution is underfinanced from the budget to the extent of 25% and more, or when the delay in financing exceeds two months.

As noted above, the restriction imposed on budgetary institutions as regards the attraction of assets from credit establishments and other juridical and physical persons

has been introduced by the RF Budgetary Code. Special normative acts regulating the legal status of individual types of institutions, as a rule, envisage a possibility of bank crediting (e.g.. Article 32 of the RF Law "On Education", Article 28 of the Federal Law "On Higher and Post-graduate Professional Education"). But as far as budgetary institutions are concerned, the norms of the Budgetary Code are of priority importance as the norms of social character.

1.1.6. Taxation of budgetary institutions

In accordance with the existing laws, budgetary institutions, as a rule, do not pay taxes and levies. However, in the case of certain taxes, budgetary institutions can be considered to be taxpayers.

Thus, when a budgetary institution carries out some business activity, it becomes a subject of general tax regulations, and it becomes liable to calculate, to submit the accounts of, and to pay the VAT, the highway tax and the profits tax.

In accordance with Instruction of the State Tax Service of the RF №48 of 20.08.1998 (with alterations and amendments as of 12.01. 1999) "On the Procedure of Calculation and Payment of the Profits Tax to the Budget by Budgetary Organizations (Institutions) and Submitting the Accounts to Taxation Bodies", budgetary organizations having income from business activities shall pay the profits tax from the amount by which their income exceeds their expenses.

Nevertheless, there is an exception from the general rule as regards budgetary institutions, which results from the definition of the concept "business activities" in the spheres of education and culture.

Thus, for example, if the income from rendering paid services and the expenditures other than those on selling effort as incurred by budgetary institutions working in the spheres of education and culture do not exceed expenditures on the needs of an educational establishment, such activities are not considered business and are not levied with the profits tax.

Additional benefits concerning health care are also envisaged in Moscow legislation. In this case they deal with the profits tax allowances aimed at supporting charity and the investment activity, as envisaged in the Law of Moscow City №39 of December 22, 1999 "On the Rates of and Allowances on the Profits Tax". In accordance with Point 1, Article 5 of the Law, the taxable profit reduces (within the limits of 5 per cent) by the amount of charitable contributions rendered to institutions, establishments and organizations working in the sphere of health care. It is obligatory that the recipients of these assets shall be Moscow-based organizations which have recieved state registration and have registered themselves at the taxation bodies of the city.

As far as the value added tax is concerned, the Tax Code of the RF does not operate with the concepts of "budgetary institutitons", "purpose-oriented funds" and "business activities", while containing a strictly specified list of works and services exempted from the VAT (Article l49). They include:

- medical items - both domestic and foreign - by the list, approved by the Government of the Russian Federation;

- medical services rendered by medical organizations (institutions);

- Nursing services rendered to the sick, the disabled and the eldery by state and municipal institutions of social protection;

- services relating to the keeping of children at pre-school facilities, and in the conduct of activities with children at circles, sections (including the sportive ones) and studios;

- services in the sphere of education aimed at vocational training (in accordance with the lines of principal and additional education stipulated in the license) or upbringing as performed by non-profit educational institutions, with the exception of consulting services and services regarding the lease-out of premises;

- realization of food-stuffs directly produced by school and college canteens, canteens of other educational institutions, canteens of medical organizations and pre-school institutions;

- services at maitaining, replenishing and running the archives as rendered by archival institutions and organizations;

- services which are levied with state duties and are rendered by persons with a-special authorization, all types of licence, registration and patent fees and duties, as well as fees and duties exacted by state bodies, bodies of local self-government and other authorized bodies and officials while investing organizations and physical persons with certain rights;

- services rendered by cultural and artistic institutions in the sphere of culture and the arts;

- selling of pay-bills at the performances and concerts, selling of catalogues and booklets;

- selling of entrance tickets and abonements for thetre plays and performances, educational and recreational events;

- etc.

Thus, as far as taxation with the VAT is concerned, the law excempts from taxation the primary educational activity of educational, and medical institutions as well as cultural institutions.

In accordance with Point “a”, Article 4 of RF Law №2030-1 of 13.12.1991 "On the Tax on Property of Enterprises", this tax is not levied on property of budgetary institutions. This benefit is one of the major benefits envisaged by tax legislation; it is also used in such cases when budgetary institutions carry out business activities and acquire property at the expense of their income from business activities.

Quite a different situation emerges in connection with the highway tax. RF Law №1759-1 of l8.10.1991 “On Highway Funds in the Russian Federation” does not contain a norm envisaging the exemption of budgetary institutions from the highway tax. However, taking into account the fact that the object of taxation in this case is the profit obtained from the realization of products (works, services) and the amount of the difference between the trade- and the -purchase values of the product realized as a result of the procurement, supplying and selling as well as commercial activities, the budgetary organizations carrying out onie such an activity which is financed by the budgetary means under the estimates of revenues and expenditure (budgetary estimates) are not obliged to pay this tax. In the cases when a budgetary organization conducts works or renders services in accordance with the contracts, the means

incoming as payments envisaged by such contracts are considered profit, thus forming the object leviable by this tax.

Budgetary institutions are not exempted from the tax imposed on the owners of vehicles and from the vehicle acquisition tax; these taxes shall be paid by them on a regular basis. Ho exception for budgetary institutions was envisaged, in Federal Law №l4l-FZ of 08.07.1999 "On the Tax on Individual Types of Vehicles", according to which budgetary institutions were to pay tax on individual types of vehicles with the engine volume exceeding 2500 cubic centimetre. At the present time, Law №141-FZ is invalidated because of the introduction of the Second Part of the RF Tax Code.

As regards the questions of payment of regional and local taxes and duties, budgetary institutions are guided by the concrete decisions on the procedure of their calculation and payment as well as on the rendition of allowances concerning these taxes, which are taken by the bodies of state authority of the RF subjects and local self-government.

1.1.7. The conclusion of contracts by budgetary institutions

Budgetary institutions participating in civic turnover have the right to conclude on their own behalf the contracts of purchase, work (e.g., to repair or build some premises) provided that there are no restrictions envisaged by the law, and to pay the corresponding arrears by the means received from the budget or by any extra-budgetary means. The volume of contractual liabilities which can be shouldered by an enterprise at the expense of financing from the budget, is determined by the volumes of expenses envisaged by the estimates, authorized within the limits of annual allocations in accordance with the Law on the budget for the current fiscal year.

In accordance with Item 4 of Article 161, when the authorized bodies of state authority reduce in the prescribed way the purpose-oriented funds of a corresponding budget which have been allotted to finance the contracts concluded by a budgetary institution, this budgetary institution and the other party of such contract shall agree on a, new timing, and if necessary on other terms of the contract. The parties have the right to demand from the budgetary establishment not more than to compensate them for the actual damage caused by the change in contractual terms.

When institutions conclude contracts for the purchase of goods, conduct of works or rendering services, the Budgetary Code envisages a number of conditions.

1. Obligatory keeping of a register of purchases.

In accordance with Article 75 of the RF Budgetary Code, budgetary institutions are obliged to keep registers of purchases.

Budgetary institutions purchasing goods, works and services for the amount not exceeding 2000 minimum nominal salaries for one item of goods or services (for one contract) shall keep registers of purchases containing the following information:

- brief name of the purchased goods, works and services;
- name and address of the suppliers, contractors and performers of services;
- price and date of the purchase.

2. The conclusion of a government (municipal) contract

In accordance with Chapter 1 of the RF Budgetary Code, all purchases of goods, works and services for the amount exceeding 2000 minimum nominal salaries shall be conducted only on the basis of government and municipal contracts.

In accordance with Article 72 of the RF Budgetary Code, any government or municipal contract is an agreement concluded by a body of state authority or a body of local self-government, a budgetary institution, an authorized body or organization acting on behalf of the Russian Federation, a subject of the Russian Federation or a municipal formation with physical and juridical persons in order to satisfy the government or municipal needs envisaged in the budget as expenditure.

Government and municipal contracts are placed on a tender basis as envisaged by Federal Law №97-FZ "On the tenders for the placement of contracts for supply of goods, conduct of works, rendering of services required by the State".

1.2. Legal regulation of medical institutions

1.2.1. The general provisions on health care institutions

Health care institutions pursue their activity on the basis of Law of the RF №1499-1 of 28.06.1991 (in the version of 01.07.1994 г.) “On Medical Insurance of the Citizens in the Russian Federation”, Law of the RF №5487-1 of 22.07.1993 (in the version of 02.12.2000) “The Basic Legislation of the Russian Federation on Protecting the Citizens’ Health”. Besides, health care institutions are guided in their activity by the General regulations on medical insurance organizations approved by Decree of the Government of the RF №41 of 23.01.1992.

The types of health care institutions are specified in the Classification of health care institutions approved by Order of the Ministry of Health Care of Russia №395 of 3.11.1999.

The system of state health care consists of:

- medical institutions providing free-of-charge care to the population,

- the system of state compulsory medical insurance, with its federal and territorial funds and their affiliations.

In accordance with the Law of the RF “On Medical Insurance of the Citizens in the Russian Federation”, the medical institutions within the system of medical insurance are licensed medicoprophylactic institutions, research and medical institutes, other institutions providing medical care, as well as individuals pursuing medical activity of an individual or collective basis.

The network of medical institutions is sufficiently large and is represented by the institutions of federal, regional and municipal levels.

1.2.2. The rights and responsibilities of medical institutions and a medical insurance organization

Medical care in the medical insurance system is provided by medical institutions with any form of ownership accredited in accordance with the established procedure. They are independent economic subjects and organize their activity on the basis of contracts with medical insurance organizations.

On their licenses, medical institutions implement the programs of voluntary medical insurance, without any detriment to compulsory medical insurance programs.

Medical institutions operating on the medical insurance programs have the right to provide medical care also outside the medical insurance system.

The medical institutions within the medical insurance system have the right to issue documents confirming temporary incapacity for work of insured persons.

Medical institutions in accordance with the Russian Federation's legislation and the provisions of a contract bear the responsibility for the volume and quality of the medical services rendered and for a refusal to provide medical care to an insured party. In cases of a medical institution breaching the provisions of a contract, a medical insurance organization has the right to partially or fully abstain from reimbursing the costs of medical services.

A medical insurance organization has the right to:

- freely choose medical institutions for providing medical care and services in accordance with medical insurance contracts;

- to participate in accrediting medical institutions;

- to set the size of insurance contributions for voluntary medical insurance;

- to participate in setting the tariffs for medical services;

- to bring legal suits against a medical institution and (or) medical professional for material compensation for physical and (or) moral damages inflicted on an insured person through their fault.

A medical insurance organization has no right to refuse to make a contract with a person to be insured on compulsory medical insurance compatible with the existing terms of insurance.

A medical insurance organization is obliged:

- to carry out the activity on compulsory medical insurance on a non-commercial basis;

- to make contracts with medical institutions for providing medical care to those insured in accordance with the terms of compulsory medical insurance;

- to make contracts for providing medical, health-improving and social services to citizens according to the terms of voluntary medical insurance with any medical or other institutions;

- from the moment of making a contract on medical insurance, to issue medical policies to the insurant or the insured;

- to ensure repayment of a part of the insurance premium to the insurant or the insured if this is provided for in the contract on medical insurance;

- to control the volume, the duration and the quality of medical care in accordance with the terms of a contract;

- to protect the interests of the insured.

Medical insurance organizations, in order to ensure the stability of the insurance activity, create reserve funds.

1.2.3. The compulsory medical insurance funds

The compulsory medical insurance system (CMI) consists of the Federal fund and the territorial funds of compulsory medical insurance.

The status of the Federal compulsory medical insurance fund (FCMIF) and the territorial compulsory medical insurance funds (TCMIF) is defined in the Charter of the Federal compulsory medical insurance fund and the Provision on a Territorial compulsory medical insurance fund (*Table 1*) as that of independent noncommercial financial and credit institutions and legal entities.

In accordance with the RF's Law "On Medical Insurance of the Citizens in the Russian Federation", the purpose of the compulsory medical insurance funds is to accumulate the necessary financial resources to cover compulsory medical insurance, to ensure the financial stability of the state compulsory medical insurance system and to even out the financial resources needed for its smooth running.

The essence of CMI is as follows:

- compulsory medical insurance of the working population is covered by the contributions paid by the employers, and of those who do not work or work in the budgetary sphere – by the allocations from the budgets of the RF's subjects and local budgets;

- the terms and the volume of the free-of charge medical care provided within the framework of CMI are defined in a basic CMI program approved by the Government of the RF and in territorial programs developed on the basis of the basic program by the territorial power bodies;

- the insurers in the CMI system are medical insurance organizations – state-owned and non-state, commercial and noncommercial.

The activity on compulsory medical insurance is to be carried out on a noncommercial basis.

Beginning with January 1, 2001 the contributions to the compulsory medical insurance funds amounting to 3,6% are to be paid within a single social tax (contribution), the procedure for calculating and paying this tax being defined in Article 24 of the Tax Code of the RF.

The principal functions of the FCMIF, as outlined in the Charter, are as follows:

- to even out the financial conditions of the activity of territorial compulsory medical insurance funds within the framework of the basic compulsory medical insurance program;

- to develop and submit, according to the established procedure, the propositions as to the size of the contributions for compulsory medical insurance;

- to carry out the organizational activities and to develop the methodology to ensure the functioning of compulsory medical insurance;

- to accumulate, in accordance with the established procedure, the financial resources of the Federal fund;

- to allocate, in accordance with the established procedure, financial resources to the territorial compulsory medical insurance funds, including those on a returnable and non-returnable basis, for implementation of territorial programs of compulsory medical insurance;

- to fulfil some other functions.

In accordance with the Provision on a Territorial compulsory medical insurance fund, it fulfils the following functions:

- accumulates the financial resources of the Territorial fund to cover the compulsory medical insurance of citizens;

- finances the compulsory medical insurance effected by the licensed medical insurance organizations that have signed contracts on compulsory medical insurance according to differentiated per capita standards set by the board of directors of a Territorial fund;

- carries out the financial and crediting activity to ensure the functioning of the compulsory medical insurance system;

- evens out the financial resources of cities and regions allocated for compulsory medical insurance;

- grants credits, including those on privileged conditions, to insurers when the latter suffer a substantiated shortage of financial resources;

- accumulates the financial reserves needed to ensure the stability of the compulsory medical insurance system;

- develops the rules for the compulsory medical insurance of the residents of a particular territory;

- also fulfills some other functions.

The financial resources of a Territorial fund are state property of the Russian Federation, are not included in budgets or other funds, are not subject to withdrawal and are formed at the expense of:

- a part of the insurance contributions of enterprises, organizations, institutions and other economic subjects, irrespective of their forms of ownership, due to the compulsory medical insurance in the established amounts, as well as of the resources allocated in the bodies of executive authority in the corresponding budgets for the compulsory medical insurance of the non-working population;

- the revenues coming from utilization of temporarily free financial resources and the fixed insurance reserve of the financial resources of a Territorial fund;

- the financial resources recovered from insurants, medical institutions and other legal entities and natural persons as a result of recourse claims;

- voluntary contributions of juridical and natural persons;

- other revenues not prohibited by the legislation of the Russian Federation.

The financial resources are transferred to the funds by enterprises, organizations, institutions and other economic subjects, irrespective of their forms of ownership, as well as by the executive bodies in accordance with the Provision on the procedure of the payment of insurance contributions to the Federal and territorial compulsory medical insurance funds.

The financial resources of a fund which are not spent in a current year are not subject to withdrawal and are not taken into account when the allocations from the budget due for the next year are being approved.

The revenues coming from utilization of temporarily free financial resources and the fixed insurance reserve of the financial resources of a fund can be spend only on the items specified in the fund’s charter.

1.2.4. Medical institutions

Since Soviet time, the organizations providing the population with medical care have been named medicoprophylactic, or medical, institutions. This name is still in use in the language of state statistics but is applied as a synonym of "organization" and is not a characteristic of an organizational and legal form. The quantitative characteristics of the network of medicoprophylactic institutions are presented in *Table 2*. In the year 2000 in the Russian Federation there were 107,000 hospitals with a total of 1,672,000 beds, 212,000 outpatient (polyclinic) institutions staffed with physicians with a total capacity of 3,534,000 visits per shift[1].

Table 2

The network of medicoprophylactic institutions in Russia

	1990	**1995**	**2000**
Number of hospitals	12762	12064	10704
State (municipal)	12762	12035	10617
Non-state	no data	29	87
Number of outpatient (ambulatory-polyclinic) institutions (independent and incorporated in other institutions)	21527	21071	21254
State (municipal)	no data	20368	19044
Non-state	no data	703	2210
Number of midwifery stations, thousands	47.7	45.8	44.6
State (municipal), thousands	no data	45.7	44.4
Non-state	no data	47	183

Source: Health Care in Russia. Stat. Col. M.: Goskomstat of Russia, 2001, pp. 202, 207.

The main types of medical institutions (organizations) in the Russian health care system are as follows:

Midwifery stations (45,000)[2]

Ambulatory-polyclinic institutions:

- medical rooms (clinics) (4261)[3];
- polyclinics (1266);
- children's polyclinics (491);
- dental care (908);
- diagnostic centers (52).
- Stations (departments) of emergency medical care (3142).

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[1] Health Care in Russia. Stat. Col. M.: Goskomstat of Russia, 2001, pp. 202, 207.

[2] *Hereinafter the data for the year 1999 are cited. Source: Health Care in Russia. Stat. Col. M.: Goskomstat of Russia, 2001; Zdorovie naseleniia Rossii i deiatelnost' uchrezhdenii zdravookhraneniia v 1999 gody (statisticheskie materialy) (The health of the population of Russia and the activity of health care institutions in the year 1999 (statistical materials)). M.: Ministerstvo Zdravookhraneniia RF, 2000.*

[3] These exist in the country and at state enterprises.

- Hemotransfusion stations (197).
- Hospital-type institutions:
- General hospitals:
  - district (3474);
  - country regional (2011);
  - city (1840);
  - children's, city (316);
- oblast, krai, republican (92);
- children's oblast, krai, republican (63).
- Specialized hospitals: medical rehabilitation, infections, ophthalmologic, psychiatric, tuberculosis, narcological, etc. (686);
- maternity (247).
- nursing care hospitals (109);
- medical and sanitary units[4].

Dispensaries: tuberculosis, oncologic, dermatovenerologic, psychoneurologic, narcological, medical exercises, etc. (1561).

Clinics at higher medical educational establishments and medical research organizations (118).

Sanatorium-and-spa institutions (4976).

The health care system also includes institutions of the so-called special type: leprosaria (2), hospices (12), centers for prevention and control of AIDS (71), etc.

A great majority of medical institutions are state and municipal ones. The notion of an institution in the form of a juridical person is defined in the CC of the RF (Article 120). However both in this law and in the law "On Non-Profit Organizations" the rights and responsibilities of institutions are characterized only in a most general way. Articles 120 and 296 of the CC of the RF state that an institution enjoys the right of operative management as regards the property consolidated to it. The description of the right of operative management lacks completeness and precision. Item 1 of Article 296 states that an institution, as regards the property consolidated to it, effectuates the rights of ownership, usage and management within the limits established by a law and in accordance with the purposes of its activity, the planning tasks of the owner and the rights of possession, use, and disposition of the property in question. The existing federal laws do not establish precisely the limits within which state and municipal institutions may exercise their right of operative management of property. The notion of "in accordance with the planning tasks of the owner" is not explained anywhere.

The federal laws regulating the activity of the health care system do not contain any norms with more precise statements as to the legal situation with medicoprophylactic institutions. In Federal Law "On Medical Insurance of the Citizens of the Russian Federation" of June 28, 1991 №1499-1 it is pointed out that the medical institutions within the medical insurance system are independent

[4] They exist, as a rule, as incorporated entities within state enterprises and organizations belonging to the power structures.

economic subjects and develop their activity on the basis of contracts with medical insurance organizations (Part 1 of Article 20). However there is no further definition of the notion "independent economic subject". "The basic legislation of the Russian Federation on the citizens' health care" of June 22, 1993 №5487-1 stipulates that state and municipal medicoprophylactic institutions are legal entities but does not elaborate on any further peculiarities of the legal status of medical institutions (Part 2 of Article 12, Part 1 of Article 13).

In practice, the legal status of state and municipal medical institutions is defined by their constituent documents (charters, regulations) approved by the state authorities and local administrations – the founders of the organizations in question. The Ministry of Health Care of the RF and the State Committee of the RF for state property in 1994 approved a tentative version of a state (municipal) institution within the health care system and recommended this version to be adopted by the managing bodies of the health care system and committees property of the RF's subjects[5].

This document contains some standards that differ from those contained in the CC of the RF which was enacted later. Thus, according to Item 10 of the tentative charters, the property of an institution "purchased at the expense of the revenues from independent activity is included in the property consolidated to the institution with the right of operative management". This means that an institution has the right to manage the earned property on the same basis as that received from the state. In particular, they must coordinate with the corresponding managing bodies the questions associated with handing over for temporary use or leasing their earned property (Item 11 of the Regulation). At the same time Article 298 of the CC of the RF states that the income earned by an institution as a result of the activity envisaged in its charter can be managed by the institution independently and taken into account on a separate balance sheet. According to Item 11 of the tentative charter, an institution has the right to lease and hand over for temporary use the movables conslidated to this institution with the right of operative management. And Item 1 of Article 298 of the CC of the RF states that an institution has no right to alienate or by other means to dispose of the property consolidated to it and property acquired at the expense of assets allotted to it under the estimate. But since the legal acts enacted prior to the enactment of the CC of the RF are to be applied only inasmuch as they do not contradict the norms established by the CC of the RF the abovesaid provisions of the tentative charter must not be applied as regards medicoprophylactic institutions.

The main feature of the legal status of state and municipal medicoprophylactic institutions is that they may pursue their activity only after they have obtained a license for this particular type of activity. According to Article 15 of "Basic Legislation of the Russian Federation on Citizens' Health Care", enterprises, institutions and organizations of state, municipal and private health care systems are to be licensed on the basis of a certificate of conformance with the established standards. In cases when medical care is provided for several specialties, each specialty is stated separately in the license.

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5 Ustav gosudarstvennogo (munitsipalnogo uchrezhdeniia. Prilozheniie k sovmestnomu pis'mu Ministerstva zdravookhraneniia Rossiiskoi Federatsii ot 31.12.1993 №04-16/74-16 i Gosudarstvennogo komiteta Rossiiskoi Federatsii po upravleniu gosudarstvennym imushchestvom ot 13.01.1994 №0k-6/234 (The Charter of a state (municipal) institution. Appendix to Joint Letter of the Ministry of Health Care of the Russian Federation of December 31,1993 No 04-16/74-16 and the State Committee of Russian Federation for managing the state property of January 13, 1994 No 0K-6/234.

There are no other norms in the federal legislation which could be qualified as applicable to establishing the details of the legal status of medicoprophylactic institutions.

Though the existing legislation unequivocally establishes that state and municipal medicoprophylactic institutions (MPI) are juridical persons, in reality a large proportion of hospitals and polyclinics do not have the status of a juridical person. The following situations are the most typical ones:

- In cities, the rights of a juridical person are enjoyed by hospitals, large dispensaries, diagnostic centers, some polyclinics. Many polyclinics do not have the rights of juridical persons and are either structural divisions or hospitals or still preserve the same status as formerly under the administrative-command system: all financial operations are carried out through the accounting department of a health care managing body and are lucky if they possess a subaccount where the revenues from paid services can be transferred. The budgetary resources are spent on the orders of the top officials of health care managing bodies.
- In the country districts the rights of a juridical person are granted only to a central regional hospital or territorial medical association incorporating all the other MPIs which are municipal property. District hospitals, polyclinics, dispensaries receive and spend their funds through the accounting department of a central regional hospital (CRH) or territorial medical association (TMA). Sometimes the country MPIs, being structural divisions of a CRH or TMA without the status of a juridical person, are serviced by the accounting departments of the local administrations.

The existing normative base has no distinct definitions as to which structural units of the existing network of state and municipal MPIs are to be regarded as institutions in the sense of the CC of the RF, i.e. as juridical persons, and which are to act as territorially or organizationally separate subdivisions of larger organizations. In the legislation it is not specified to which particular organizational units of the state and municipal health care systems the norms relating to a medical institution as a juridical person are to be applied. This allows the top officials of the health care authorities to decide at their own discretion which of the existing MPIs can be granted the status of a juridical person.

The fact that many MPIs have no rights of a juridical person and function within complexes of medical institutions serves to maintain the expense type of economic management and precludes any development of competition.

1.2.5. Licensing and accreditation of medical institutions

All medical institutions, irrespective of the form of ownership, are subject to licensing.

Licensing means issuing a state permission for a medical institution to pursue certain types of activity and provide services according to the programs of compulsory and voluntary medical insurance. Licensing is carried out by licensing boards created under the bodies of state administration, city and district local administration, staffed by the representatives of health care managing bodies, professional medical associations, medical institutions, public (non-state) organizations (associations).

The procedure of and the conditions of licensing are established by Decree of the Government of the RF №402 of May 21, 2001 in the Regulations on licensing medical activity.

Accreditation of medical institutions means establishing their conformance to the existing professional standards. All medical institutions, irrespective of their form of ownership, are subject to accreditation. To an accredited institution, a certificate thereof is issued.

Accreditation of medical institutions is carried out by accrediting boards staffed by the representatives of health care managing bodies, professional medical associations, medical insurance organizations.

The procedure and the conditions of accreditation are established by Order of the Ministry of Health Care of the RF №93 of March 20, 1992 in the Temporary Regulations on the accreditation of medical institutions and persons within the system of medical insurance of the citizens of the Russian Federation.

1.3. Legal regulation of educational institutions

1.3.1. General provisions on an educational institution

An educational institution is an institution carrying out an educational process, i.e. implementing one or several curricula and (or) ensuring boarding and education of students or boarders.

Educational institution pursue their activity on the basis of the Law of the Russian Federation №3266-1 of 10.07.1992 “On education” (with amendments and supplements as of 13.02.2002) and are guided by the Provisions on a particular type of educational institution approved by appropriate executive bodies.

1.3.2. The peculiarities of the status of an educational institution

Russia possesses a well-developed network of educational organizations (*Tables 3, 4*). Despite the rapid development, in the past decade, of non-state educational organizations, primarily in the sphere of professional education, the basis of the educational system is still constituted by state and municipal educational institutions.

As educational, the institutions of the following types are categorized:

1) pre-school (nurseries, kindergartens, family kindergartens, schools/kindergartens, kindergartens/boarding schools, orphanages);
2) comprehensive education (primary comprehensive, basic comprehensive, secondary (full) comprehensive education);
3) the institutions providing primary vocational, secondary vocational, higher professional and postgraduate professional education;
4) the institutions for further education of adults;
5) special type (correctional) for students or boarders with special needs;
6) the institutions of further education;
7) the institutions for orphans and children left without parental (or that of the latter’s legal representatives) care;

8) the institutions for further education of children;

9) other institutions involved in the educational process.

Table 3.

The main indices of the development of the sphere of education in Russia

	1990	**1995**	**2000**
Pre-school institutions for children, thousands	87.9	68.6	51.3
Students therein, mln	9.0	5.6	4.3
Daytime comprehensive schools, thousands	67.6	68.4	67.0
Students therein, thousands	20328	21521	20074
Non-state comprehensive schools	-	525	607
Students therein, thousands	-	45.8	60.6
Primary vocational educational institutions	4328	4203	3893
Students therein, mln	1.9	1.7	1.7
Secondary vocational educational institutions	2603	2634	2703
Students therein, thousands	2270.0	1929.9	2360.8
State higher educational establishments	514	569	607
Students therein, thousands	2966.1	2655.2	4270.8
Non-state higher educational establishments	-	193	358
Students therein, thousands	-	135.5	470.6
Number of students of higher educational establishments per 10,000 of population	190	189	294

Source: Rossiiskii statisticheskii ezhegodnik (Russian statistical yearbook) M.: Goskomstat Rossii, 2000, pp. 181, 199.

Table 4

Some indices of the activity of general educational establishments, secondary vocational and higher educational establishments in the years 2000-2001

	2000	**2001**
State daytime comprehensive establishments	66428	66171
Including Gymnasia	1094	1141
Lycees	774	795
Students therein, thousands	20013.3	19363.2
Including those in Gymnasia	869.6	877.4
Lycees	518.7	521.4

Non-state daytime comprehensive establishments	635	662
Students therein, thousands	60.6	65.9
State secondary vocational educational establishments	2589	2621
Students therein, thousands	2308.6	2409.9
Enrollment, thousands	842.4	850.8
State higher educational establishments	607	621
Students therein, thousands	4270.8	4797.4
Enrollment, thousands	1140.3	1263.4
Non-state higher educational establishments	358	388
Students therein, thousands	470.6	629.5
Enrollment, thousands	152.2	198.2

Source: Ministry of education of the RF.

In accordance with Provisions on a particular type of educational institution, a charter is developed that regulates the institution's activity. The Charter is adopted by the top body of an educational establishment and approved by a managing body on education.

As is known, the Civil Code of the RF allows for the possibility to regulate the peculiarities of the legal status of certain types of state-owned and other institutions on the basis of special laws and other legal acts (Article 120 of the CC of the RF). The peculiarities of the legal status of educational institutions are primarily regulated by Law of the Russian Federation "On Education" №3266-1 of 10.07.1992 (with amendments and supplements as of 07.08.2000).

The principal feature of an educational institution is the possibility to have several founders. According to Article 11 of the Law "On education"", "the founder (founders) of an educational institution … can be:

1) the state authorities, the local authorities;
2) domestic and foreign organizations with any forms of ownership, their associations (associations and unions);
3) domestic and foreign public and private funds;
4) public and religious organizations (associations) registered on the territory of the Russian Federation;
5) the citizens of the Russian Federation and foreign citizens.

Joint founding of educational institutions can also be possible.

A change in the list of the founders of active state and municipal educational institutions is possible in the cases envisaged by the legislation of the Russian Federation".

According to Article 3 of the Federal Law of the RF "On preserving the status of state and municipal educational institutions and a moratorium on their privatization" (№74-FZ of 16.05.95) any changes in the list of the founders of state and municipal educational institutions are admissible only in the cases of including therein other

founders from representative and executive bodies of state authority of the RF's subjects or local self-government. At the same time a non-state educational institution is allowed to change the make-up of its founders without any limitations.

The essence of the problem here is that the provisions of Article 11 of the Law on education allowing for joint founding of educational institutions contradict the definition of an institution contained in Article 120 of the CC of the RF: "An institution shall be deemed to be an organization created by the owner in order to effectuate management, socio-cultural, or other functions of a non-commercial character and financed by it wholly or partially". As we can see, only one owner creating an institution is mentioned here. In accordance with the provisions of the CC defining the property rights and their subjects, the presence of several founders of an institution becomes possible only in two instances: 1) the founders are exclusively the state authorities that are, within their competence, the owners of the property owned by the Russian Federation and the subjects of the Russian Federation; 2) the founders are exclusively the local authorities that are, within their competence, the owners of the property owned by the municipality. In all other instances a founder of an institution can be only one juridical person or citizen. As of today, this problem has not been resolved in a constructive way. A solution may be found in making the legislation on noncommercial organizations more precise.

An educational institution acquires the status of an independent juridical person after having undergone the registration procedure (submitting an application) according to the RF's legislation.

Similarly to medical institutions, state and municipal educational institutions can pursue their activity only after having been licensed for carrying out the educational activity by a state body managing the sphere of education or a body of a local self-government endowed with an appropriate power by the legislation of a RF's subject. Licensing, according to the Temporary provision "On licensing the instituions for secondary, higher, postgraduate professional specialized further education in the Russian Federation" approved by the Order of the Goskomvuz of Russia №108 of 7.02.94 is understood as "the procedure that includes carrying out an expertise, decision-making, making out and granting to an institution of professional education a license with the latter's right to carry out educational activity on certain areas (specialties), levels of professional education and the programs of corresponding further education".

In the sphere of education, the mechanism of state accreditation of educational organizations is also applied. In accordance with the Temporary provision "On state accrediting of the instituions for secondary and higher professional education in the Russian Federation" approved by the Decree of the Goskomvuz of Russia №6 of 30.11.94, "state accrediting is the procedure of recognising the state status (type and kind) of an educational institution. By the positive results of state accreditation, an educational institution receives a certificate of state accreditation". State accreditation grants to educational institutions the right of issuing to their alumni documentation confirming their completed education according to the state standards. Besides, state accreditation of general educational institutions endowes them with the right to receive budgetary financing.

1.3.3. The educational system in the Russian Federation

The educational system in the Russian Federation, according to the existing legislation, represents an entity of the following interacting components:

- successive curricula and state educational standards of different levels and purposes;

- a network of educational institutions implementing them, irrespective of their organizational and legal forms, types and kinds;

- the bodies governing the sphere of education and the institutions and organizations reporting to these bodies.

A curriculum defines the content of the education of a certain level and purpose. In the Russian Federation the curricula are being implemented which are subdivided into:

1) comprehensive education (mainstream and further);

2) vocational (mainstream and further).

The comprehensive curricula include:

- pre-school education;

- primary comprehensive education;

- basic comprehensive education;

- secondary (full) comprehensive education.

The professional education curricula include:

- primary vocational education;

- secondary vocational education;

- higher professional education;

- postgraduate professional education.

The comprehensive curricula are aimed at solving the problems of developing the general culture of a personality, adapting a person to social life, to creating a basis for a conscious choice and learning of professional educational programs. The professional educational programs are aimed at solving the problems of successive improvement of the professional and general educational levels, cultivating the professionals of appropriate qualification.

1.3.4. The peculiarities of the rights and the responsibilities of educational institutions relating to their activity

Some peculiarities of the regulation of the rights and the responsibilities of educational institutions relating to the use of their property were already addressed in the section “An analysis of the legislation regulating the legal status of state institutions”. Here we are going to make some additions to this analysis.

According to Article 47 of the Law “On Education”, an educational institution has the right to pursue an entrepreneurial activity envisaged in its charter. The entrepreneurial activity of an educational institution involves:

1. realization and leasing of the capital assets and property of an educational institution;
2. sale of purchased goods and equipment;

3. rendering the services of an intermediary;
4. shared participation in the activity of other institutions (including educational) and organizations;
5. purchasing of shares, bonds, other securities and obtaining the revenues (dividends, interest) on these securities;
6. carrying out other revenue-generating non-realizational operations that are not directly connected to their own production of products, works, services envisaged in their charters and the realization of the former.

The last item in this list allows educational institutions to pursue almost any kind of economic activity not prohibited by the legislation.

The notion of an entrepreneurial activity as explained in the Law "On education" does not fully correspond to the definition contained in the CC of the RF. According to Item 2 of Article 46 of the Law, making an income from rendering paid educational services minus the share of the founder (owner) when this income is reinvested in this particular educational institution is not categorized as an entrepreneurial activity. But according to Article 2 of the CC of the RF, an entrepreneurial activity is an independent activity pursued at an institution's own risk and aimed at systematic generation of profit from utilization of property, sale of goods, carrying out works or rendering services by persons registered under this category according to the procedure established by the law.

Now let us consider the peculiarities of the rights and responsibilities of educational institutions as to the matters of pursuing their basic activity. The following activities fall within the competence of educational institutions as described in detail in Item 2 of Article 32 of the Law "On education":

1. material and technical provision and procurement for the educational process, equipment of premises in accordance with the state and local standards and demands carried out within the capacity of their own financial resources;
2. submitting to the founder and the general public an annual report on revenues and spending of financial and material resources;
3. establishing the structure of managing the activity of an educational institution, its staff list, the distribution of personnel responsibilities;
4. setting the rates of salaries of the staff of an educational institution within the limits of its own financial resources and taking into account the limitations set by the federal and local standards;
5. to set the increments and extra payments to the scheduled salaries of the staff of an educational institution, the procedure and rates of bonuses;
6. independent enrollment of students or boarders within the quota set by the license if not otherwise envisaged in the standard provision on an educational institution of a particular type and kind and the present Law;

In the Law on higher education (item 3 of Article 8), in addition to the abovesaid provisions, is it specified that higher educational establishments independently form their structure, with the exception of their affiliations.

An educational institution has the right to:

- create educational associations (associations and unions) including those with the participation of institutions, enterprises and social organizations (associations).

The registration procedure and the activity of educational associations is regulated by the law.

- to act as the lessor and the lessee of property;

- to participate in the statutory funds of companies (joint-stock companies) and other organizations only within the limits of their property;

- to render paid additional educational services to the population, enterprises, institutions and organizations (teaching according to advanced curricula, teaching special courses and disciplines, provide additional tutoring, in-depth teaching of certain disciplines and other services) not included in the corresponding curricula and the state educational standards.

- with the consent of the owner, to utilize the allotted financial resources and other types of property in an institution's activity aimed at generating an income. In this case the owner has the right for a part of the income from its allotted assets within the limits defined by a contract between the owner and the educational institution.

The rights and the responsibilities of the institutions providing further education as envisaged by the legislation of the RF also involve the social organizations (associations) whose principal chartered goal is to carry out education activity, only as far as the realization of additional curricula is concerned.

The rights of an educational institution for issuing to its alumni a document compatible with the state standards confirming a certain level of education, for using an official stamp with the state coat of arms of the Russian Federation, as well as the right of an educational institution to be included in the system of centralized state financing, emerge from the moment of state accreditation confirmed by a certificate of state accreditation.

An educational institution is obliged to ensure the upkeep of the buildings, facilities, equipment and other property applicable for consuming, social, cultural or other purposes consolidated to it or owned by it, at a level not below that defined by the standards existing on a particular territory.

1.3.5. The relations concerning the ownership of capital assets and the results of the activity of budgetary institutions in the sphere of education

To an educational institution, in order to ensure its educational activity in accordance with its charter, the promoter consolidates certain property (land, buildings, facilities, movables, equipment, as well as other property for consuming, social, cultural or other purposes) owned or leased by the founder from third parties (owners).

Plots of land are consolidated to state and municipal educational institutions for unlimited free-of-charge use.

The property consolidated by a founder to an educational institution are subject to the latter's operating management.

An educational institution is responsible to the owner for the security and efficient use of the property consolidated to the institution in question. The control over an educational institution's activity in this area is exercised by the founder or other juridical person delegated by the owner.

The state and (or) municipal property consolidated to an educational institution can be alienated by the owner according to the procedure and on the terms established

by the legislation of the Russian Federation, the legislation of the Russian Federation's subjects and the legal acts of the bodies of local self-government approved within the latters' authority.

Withdrawal and (or) alienation of the property consolidated to an educational institution is admissible only after the expiry of the term of a contract between the owner (a juridical person delegated by the owner) and an educational institution, or between the owner (a juridical person delegated by the owner) and a founder, if not specified otherwise by the contract in question.

An educational institution has the right of ownership over financial assets, movables and other objects of property transferred to it in the form of a gift, contribution or legacy, over the products of intellectual and creative work resulting from its activity, as well as over the revenues from an educational institution's own activity and the objects of property purchased at the expense of those revenues.

Leasing by a state or municipal educational institution of the property objects assigned to it, as well as of land plots, is effected without the right of purchase, with the consent of the educational institution's council, at prices not below those prices that exist in that particular region.

The resources obtained by an educational institution as the rent are to be utilized for the procurement and development of the educational process in that particular educational institution.

1.3.6. The peculiarities of the management of educational institutions

According to Article 32 of the Law "On Education", an educational institution is independent as far as the educational process, the selection and distribution of its personnel, research, financial and economic or other activity are concerned, within the limits set by the Russian legislation, the standard provision on an educational institution, the charter of an educational institution.

The management of an educational institution is based on the principles of one-person management and self-government that supplement one another. The direct management of a state or municipal educational institution is carried out by a specially accredited director of a school, a rector of a higher educational establishment or another top manager of an educational institution. Item 4 of Article 35 of the Law "On education" established several possible ways for selecting the managers of educational institutions:

1. election by the staff of an educational institution;
2. election by the staff of an educational institution with preliminary coordination of the candidate by a founder;
3. election by the staff of an educational institution with subsequent approval of the candidate by a founder;
4. nomination by a founder, with granting to the council of the educational institution the right of a veto;
5. nomination by a founder;
6. hiring by a founder.

The status of the top manager of a state educational institution of the federal subordination is approved by an appropriate governmental decree. Thus, according to

the Decree of the Government of the RF of 11.06.96 №695 "On approving the Provision on the status of a rector of a state higher educational establishment of the RF of the federal subordination", it is not admissible to nominate a rector because the person to occupy this position is to be elected.

1.3.7. The peculiarities of the management of comprehensive educational institutions

The forms of self-government of an educational institution are represented by the pedagogical council of an educational institution, its board of trustees, the general assembly, the faculty meeting. The procedure for the election of the self-government bodies of an educational institution and their competence are defined by the charter of the educational institution.

An importance state in the development of the social-state forms of governance and in the organizational and economic consolidation of the financial base of the activity of school establishments has become the signing, on August 31, 1999, of Decree of the President of the RF №1134 "On additional support to the general educational establishments of the Russian Federation". Considering that in the nearest perspective it is unlikely to expect any dramatic increases in the budgetary financing of schools from the local budgets, while extrabudgetary cash flows has become prominent in the activity of schools, the decree has set the goal of mass-scale creation of schools' boards of trustees. The boards of trustees as a social-state body of governance are meant to promote an inflow of additional extrabudgetary financial resources to schools and to ensure control over their targeted spending.

However by the beginning of the year 2000 the boards of trustees in Russia had already existed, according to the data provided by the Ministry of Education of the RF, only in 8% of all schools, at most. Such a low level can be explained, firstly, by the absence of clearly written normative and legal base for the activity of such boards; secondly, by weak economic stimuli for the sponsors to invest their resources in the schools' activity; thirdly, by an absence of appropriate organizational support on the part of local and regional authorities; fourthly, by considerable discrepancies in the capacities of the students' parents to materially support the boards of trustees.

Within the framework of implementing the presidential decree, the Ministry of education of the RF has developed a draft tentative provision on a board of trustees of a state or municipal educational institution. The provision contains, in essence, only a description of the basic functions and possible areas of the activity of a board of trustees. An exact procedure of electing the members of a board of trustees and the limits of its power should be established by the school's charter considering the peculiarities of the activity of a particular general educational institution. In this connection, the charter must define the forms and methods of the control exercised by the board of trustees over spending the extrabudgetary revenues transferred to the school's bank account, the mechanisms of coordination and interaction with the local managing bodies and financial structures in the sphere of education, the procedure ensuring transparency and availability for the public of the reports on the results of the boards of trustees' activity.

For the boards of trustees to become really active bodies of social management, it is necessary:

1) to state in the charter of every school as to exactly which body of social self-government is to be attached to it, as well as the former's functions and powers; this would make it possible to avoid unnecessary duplicating of the activity of boards of trustees, parental committees, school boards, etc.;

2) on the municipal and regional levels, to develop and implement a complex of economic measures for promoting sponsors' contributions and other contributions to cover a school's needs;

3) considering the different capacity of schools to organize the activity of their boards of trustees, the local and regional authorities should provide organizational and methodological support to schools, envisaging the possibilities of (a) including in the boards of trustees, together with parents, the representatives of local authorities, employers, sponsors, etc.; (b) to create regional boards of trustees, e.g. for several small village schools, etc.

1.3.8. The peculiarities of the management of higher educational stablishments

The general management of a state or municipal higher educational establishment is executed by its top representative body – the academic council. It includes, by way of position, the rector and the prorectors, while the other members of the academic council are elected by the general assembly (conference) out of the representatives of all the categories of the personnel of a higher educational establishment. In accordance with the Law "On higher and postgraduate professional education" and other normative and legal acts, the sphere of authority for an academic board is as follows:

1. decision-making on the issues of any alterations to the organizational and managerial structure of a higher educational establishment;
2. defining the directions for the educational activity;
3. approving the plans of economic, financial and social development of a higher educational establishment;
4. approving the form and the system of payroll;
5. deciding on the issues of filling the offices of professors and faculty, and of further education of the personnel;
6. developing the procedures for the development and approval of curricula and programs, the plans as regards the publishing activity;
7. decision-making on all important issues dealing with the organization of the educational process, scientific research, international connections and economic activity.

According to the charter of a higher educational establishment, the functions of an academic council may also include the issues of utilizing the budgetary and extrabudgetary resources, including the share thereof allocated on the salaries and bonuses paid to the staff of a higher educational establishment.

1.3.9. The peculiarities of the state control over the activity of higher educational establishments

According to item 2 of Article 3 of the Law "On higher and postgraduate professional education", "the control over the complience of the activity of a higher educational establishment with the goals outlined in its charter, is exercises, within the limits of their competence, by the founder (founders) of a higher educational establishment and the state body managing the sphere of education that has granted the license for carrying out the educational activity". All higher educational establishments, irrespective of their organizational and legal form and departmental subordination, report to the federal (central) body for the management of higher professional education (the Ministry of Education of the RF) on the following issues:

- licensing and state accreditation;
- budgetary financing;
- coordination of the activity of higher educational establishments relating to the definition of the volumes and structures of educating particular specialists[6];
- answering the demands of the legislative and normative documents in the sphere of higher professional education.

According to Article 26 of the Law "On higher and postgraduate professional education", the state control over the quality of higher and postgraduate professional education is aimed at ensuring a uniform state policy in the sphere of higher and postgraduate professional education, improving the quality of training, rational utilization of the federal budget's resources allocating on financing the sphere of higher and postgraduate professional education.

It should be noted that the practical implementation of the Law on Education, the Law on Higher and Postgraduate Professional Education and other legislative and normative acts is associated with some difficulties due to the lack of coordination between these acts and with other standards established by the existing legislation. Besides, their uniform understanding and implementation is hindered by the lack of detailed comments on the legislative acts and a description of the general practice of their implementation, as well as the presence of certain notions and terms without any definition or defined only in an oblique way.

1.4. Main Indicators of Education in Russia

1.4.1. The System of Education in the Russian Federation

Under the law, the system of education in the Russian Federation is a set of interacting:

continuous education programmes and public education standards of different level and orientation;

networks of related education institutions irrespective of incorporation, type and form;

administrative agencies and subordinated institutions and organisations.

[6] The RF Ministry of Education controls the activity in the sphere of education carried out by other Ministries and departments which have educational institutions incorporated in their systems; this is done through the development and approval of tentative curricula and programs, as well as through the approval of the schedules of publishing as regards textbooks, etc.

An education programme defines the contents of education of a particular level/orientation. The Russian Federation is implementing education programmes divided into:

1) general education (principal and auxiliary);
2) vocational education (principal and auxiliary).

General education programmes include:

- pre-school education;
- primary general education;
- basic general education;
- secondary (full) general education.

Vocational education programmes include:

- primary vocational education;
- secondary vocational education;
- higher vocational education;
- post-graduate vocational education.

General education programmes are called to address the problems of shaping general character of the individual, adapting the individual to social life and laying a foundation for informed choice and mastering of vocational education programmes. Vocational education programmes are called to address the problems of consistently raising occupational and general education standards, training specialists of relevant qualifications.

1.4.2. Rights and Responsibilities of Education Institutions and Their Specific Character

Regulation of rights and responsibilities of education institutions as regards disposal of their assets has already been discussed in some detail in the section "The Analysis of Regulations Governing the Legal Status of Public Institutions". We will add certain points to this analysis.

Under Article 47 of the Law of Education, an education institution may engage in entrepreneurial activities as provided for in its statute. Entrepreneurial activities of an education institution include:

- sale and lease of fixed capital and assets of an education institution;
- trade in purchased goods and equipment;
- agency services;
- participation in the capital of other institutions (including education) and organisations;
- purchase of shares, bonds and other securities bringing the relevant income (dividends, interest);
- other non-operating gainful operations not directly related to principal production/sale of products and services as provided for in the statute.

The last item of this list would allow education institutions to engage in any (or almost) economic activity not prohibited by the law.

The notion of entrepreneurial activities specified in the Law of Education does not fully fit into the definition established in the Civil Code. Under clause 2, Article 45 of the Law, entrepreneurial activities do not include reinvestment of income from paid education services minus the founder's (owner's) share into this particular education institution. Meanwhile, under Article 2 of the Civil Code, entrepreneurial activities are independent risk-taking operations aimed at regular generation of profit from disposal of assets, sale of goods or provision of services by persons registered in this capacity as provided for in the law.

Let us discuss in some detail the rights and responsibilities of education institutions with regard to their principal operations. The competence of education institutions specified in clause 2, Article 32 of the Law of Education would include:

- physical procurement and equipment of education process, equipment of premises in compliance with public and local standards and norms, to be done within the amount of funds available to these institutions;
- annual cashflow reporting to the founder and the public;
- establishing an administrative structure of the education institution, staffing specifications, delegation of functional authority;
- setting wages rates and salaries for employees of the education institution within the available amount of funds and taking into account any restrictions imposed by federal and local standards;
- setting wage and salary supplements for employees of the education institution and establishing a procedure and amounts of bonus payments
- independence in recruiting students within limits set by the quota stipulated in the license, unless otherwise provided for in the standard provisions of education institutions of particular type and form, and this Law.

In addition, the Law of Higher Education (clause 3, Article 8) rules that higher education institutions (but not branches thereof) have a discretion in defining their structure.

Education institutions may:

- set up education associations (unions) including with participation of institutions, enterprises and civil society organisations (associations). The procedure for registration and operations of education associations is regulated by the law.
- act as a lessor and lessee of assets;
- contribute their assets to the share capital of joint-stock companies and other organisations;
- provide paid additional education services to individuals, enterprises, institutions and organisations (education under additional education programmes, special courses and training cycles in special subjects, tutorship, classes for in-depth studies of subjects and other services) not provided for in the respective education programmes and public education standards;
- as agreed with the owner, use his financial and other assets in their gainful operations. Moreover, the owner becomes entitled to a part of

income generated by his assets in the amount agreed in a contract of the owner with the education institution.

The rights and responsibilities of institutions of auxiliary education provided for in the Russian law would also apply to civil society organisations (associations) engaged primarily in education operations under their statutes but only to the extent they implement additional education programmes.

The rights of education institutions to issue relevant public education certificates to their graduates, use a seal representing the national emblem of the Russian Federation, and the right of general education institutions to be made part of the centralised public financing system arise from the date of their accreditation by public agencies as confirmed by the relevant certificate.

An education institution is required to ensure proper (in compliance with standards effective in the given territory) maintenance of assets, buildings, facilities and equipment, as well as household, social, cultural or other property assigned to or held by it.

1.4.3. Holding of Fixed Capital and Performance of Budgetary Unit in the Area of Education

For the purpose of ensuring education operations in accordance with the statute, the founder would assign to an education institution a title to property (land, buildings, facilities, equipment, as well as household, cultural and other property) which the founder holds or leases from a third party (owner).

Land plots would be assigned to public and municipal education institutions to be used free of charge for an indefinite term.

Assets assigned by the founder to an education institution would be administered by this institution.

An education institutions will be liable to the owner for security and efficient use of assets assigned to this institution. In this regard, operations of the education institution are controlled by the founder or other legal entity authorised by the owner.

Public and/or municipal property assigned to an education institution may be disposed of by the owner as provided for in the law of the Russian Federation, law of constituent territories of the Russian Federation and regulations of local governments adopted within their respective competence.

Assets assigned to an education institution may be collected and/or disposed of only upon expiration of the contract between the owner (a legal entity authorised by it) and the education institution, or between the owner (a legal entity authorised by it) and the founder, unless otherwise provided for in this contract.

An education institution would hold title to cash, property and other assets transferred to it by individuals and/or legal entities as a grant, contribution or estate, intellectual and creative products resulting from its operations, and income from the education institution’s operations and assets purchased with this income.

Assets and land assigned to public or municipal education institutions may be leased without the right of repurchase upon consent of the education institution’s board at prices not below those existing in the particular region.

Proceeds from lease received by the education institution should be used to maintain and develop the education process in the particular education institution.

1.4.4. Details of Administration of Education Institutions

Under Article 32 of the Law of Education, an education institution shall have a discretion in ensuring the education process, selecting and nominating personnel, engaging in research, financial, economic and other operations to the extent that they are specified in the Russian law, standard provisions of education institutions and statutes of education institutions.

An education institution is administered on the basis of sole management and independence which are mutually supportive. A school director, higher education institution rector or other manager of an education institution, once they have been specifically certified, ensure administration of a public or municipal education institution. Under clause 4, Article 35 of the Law of Education, there may be several options for nominating managers of education institutions:

- nominated by the personnel of the education institution;
- nominated by the personnel of the education institution with prior consent of the founder;
- nominated by the personnel of the education institution with subsequent approval of the founder;
- nominated by the founder with the right of the education institution's board to veto the nomination;
- appointed by the founder;
- hired by the founder

The manager of a public education institution of the federal level would be approved in office position by the respective resolution of the government. Under the Russian Government Resolution No. 695 "On Approving the Provisions of the Rector's Office of Higher Education Institution of the Federal Level" dated June 11, 1996, a rector cannot be appointed as this is elective office.

1.4.4.1. Details of Administration of General Education Institutions

An education institution is administered by the educational institution's board, guardianship board, general meeting and teachers' board. The statute of the education institution will define a procedure for electing administration bodies of the education institution.

The President of Russia's Decree No. 1134 "On Additional Support to General Education Institutions in the Russian Federation" dated August 31, 1999 became a landmark in developing civil society/public forms of administration and enhancing economic and financial framework of education institutions. Based on the assumption that local budget financing of schools is unlikely to increase dramatically over the next few years while extrabudgetary flows are increasingly important for operations of schools, the decree aims at instituting guardianship boards at every school. These boards, being civil society/public governance bodies, are called to encourage inflows of additional extrabudgetary funds to schools and ensure control over their designated use.

However, according to the Ministry of Education, in early 2000 guardianship boards in Russia existed only in 8 percent of schools. This low performance was due,

firstly, to a lack of a clear regulation for operations of these boards, secondly, weak economic incentives of sponsors to provide funds for school needs, thirdly, lack of relevant organisational support by local and regional public authorities, and, fourthly, sizeable differentiation of financial abilities of students' parents to provide financial support to guardianship boards.

As part of implementing the President's Decree, the Ministry of Education has developed a draft of sample provisions of guardianship boards of public/municipal educational institutions. These provisions essentially describe the main functions and possible areas of operations of guardianship boards as part of the administrative structure of schools. A specific procedure for electing members to the guardianship board and its competence should be detailed in the school's statute on the basis of specific situation of the particular education institution. Moreover, the statute should detail the forms and methods of control by the guardianship council of expenditures of extrabudgetary funds by the school, arrangements for coordination and interaction with local education authorities and financial agencies, and procedure for ensuring transparency and accessibility to the public at large of reports on operations of guardianship boards.

In order to transform guardianship boards into effective governance bodies of civil society, we need:

1) specify in the statute of each school what particular civil society control body operates in it, what are its functions and competence; this would help to avoid unreasonable duplication of functions of guardianship boards, parents' committees, school boards etc.;
2) at the municipal and regional levels develop and adopt economic measures to encourage sponsors to make contributions and grants for the school's needs;
3) as schools have a different potential of organising operations of boards, regional and local authorities should provide schools with organisational and methodological support while envisaging to (a) include representatives of local authorities, employers, patrons etc. into guardianship boards along with parents; (b) set up regional guardianship boards, for example, for a number of low-capacity village schools etc.

1.4.4.2. Details of Administration of Higher Education Institutions

The academic council as a highest representative authority is competent to ensure general administration of a public or municipal higher education institution. The academic council should include the rector and his nominees while other members are elected by the general meeting (conference) from representatives of all categories of employees of the higher education institution. Under the Law of Higher and Post-Graduate Vocational Education and other regulations, the academic council is competent to:

- pass decisions to change the organisational and administrative structure of the higher education institution;
- define areas of education activities;
- approve plant of economic, financial and social development of the higher education institution;

- approved forms and system of wage payment;
- discuss the issues of hiring professors and teachers and improving skills of employees;
- define a procedure for development and approval of academic plans and programmes, publishing plans;
- pass decision on important issues of organising the academic process, research, international relations and economic operations.

Under the statute, the academic council may also be competent to establish a procedure for use of budgetary and extrabudgetary funds, including the share to be allocated for wage and bonus payments to employees of the higher education institution.

1.4.4.3. Details of Public Control over Operations of Higher Education Institutions

Under clause 2, Article 3 of the Law of Higher and Post-Graduate Vocational Education, "control of compliance of operations by a higher education institution with purposes stated in its statute, shall be effected, within their respective competence, by the founder(s) of the higher education institution and the public education authority which issued a license for education activities". All higher education institutions, irrespective of their incorporation and subordination, are accountable to the federal (central) governance authority in the area of higher vocational education (Ministry of Education) on the following issues:

- public licensing and accreditation;
- budgetary financing;
- coordination of operations of higher education institutions to define the extent and structure of training of specialist;[7]
- compliance with requirements of the law and regulations in the area of higher vocational education.

Under Article 26 of the Law of Higher and Post-Graduate Education, public control over quality of higher and post-graduate vocational education is called to ensure consistency of public policies in the area of higher and post-graduate vocational education, improve quality of training of specialist, ensure rational use of federal budget funds allocated to finance the system of higher and post-graduate vocational education.

It is noteworthy that practical application of the Law of Education, Law of Higher and Post-Graduate Vocational Education and other regulations is fraught with difficulties due to a number of inconsistencies both between themselves and other provisions of the effective law. In addition, lack of detailed comments to regulations, lack of description of generally accepted practice of their application, as well as abundance of obscure notions and terms either not defined at all or defined only indirectly, would prevent their unambiguous interpretation and application.

[7] The Ministry of Education coordinates education activities of other federal ministries and agencies which have education institutions subordinated to them through development and approval of sample academic plans and programmes, approval of programmes for publication of academic literature etc.

1.5. Legal regulation of cultural institutions

1.5.1. General provisions

Cultural institutions pursue their activity on the basis of Law of the RF "Russian Federation's Basic Legislation on Culture" №3612-1 of 09.10.1992 [the Basics] (with amendments and supplements as of 30.12.2001) and the Provision on the basic principles of economic activity and financing of cultural and artistic organizations, approved by Decree of the Government of the RF №609 of 26.06.1995.

The goals of cultural institutions are as follows:

- ensuring and protecting the constitutional rights of the citizens of the Russian Federation as regards cultural activity;

- creating the legal guarantees for the free cultural activity of associations of citizens, peoples and other ethnic entities of the Russian Federation;

- defining the principles and legal norms for the relations of the subjects of the cultural activity;

- defining the principles for the state policy as regards culture, the legal norms for the state support of culture and the guarantees for the state's noninterference with the creative processes.

1.5.2. The rights and the peculiarities of the legal status of cultural institutions

The Russian Federation's basic legislation on culture" regulates the cultural activity in the following areas:

- revealing, studying, protecting, restoring and utilization of the memorials of history and culture;

- belle-lettres, cinematography, scenic, plastic, musical arts, architecture and design, photography, other kinds and genres of the arts;

- artistic folk crafts and trades, folk culture in the form of languages, dialects and vernacular, traditions and rituals, historic place-names;

- non-professional (amateur) creative arts;

- museums and collections;

- publishing of books and the librarianship, as well as other cultural activities associated with the printed matter, its distribution and utilization, the archival activity;

- television, radio and other audiovisual media as regards creation and distribution of cultural valuables;

- esthetic upbringing, artistic education, the pedagogical activity in this sphere;

- research in the sphere of culture;

- international cultural exchange;

- manufacturing the materials, equipment and other means for preserving, creating, distributing and consuming cultural valuables;

- other activity resulting in the preservation, creation, distribution and consummation of cultural valuables.

According to the Basics, cultural organizations can be founded by:

- the federal bodies of state power and governance;

- the bodies of state power and governance of the Republics within the Russian Federation, autonomous oblast, autonomous districts, krais, oblasts, as well as the cities of Moscow and St. Petersburg;

- the local management bodies;

- social and religious organizations, foundations and other social associations;

- other persons, including foreign juridical as well as natural persons.

The cultural organizations founded in accordance with the Basics, are obliged to register according to the registration procedure established by the legislation of the Russian Federation.

The great majority of state and municipal cultural institutions are subordinated to the managing bodies at the federal, regional and local levels. In the state statistics, the whole bulk of such institutions is included in the notion of "organizations of the system of the Ministry of culture of the Russian Federation". By early 2001, this system consisted of 104,470 cultural and artistic organizations[8]. Among these, there were:

- Cultural and enlightening institutions (101,099, comprising 97% of the total number of cultural and artistic organizations):
- libraries (48,820);
- institutions of the recreational type: clubs, houses of culture, recreation centers, etc. (52,279);
- museums (1,964, including 656 affiliations);
- recreation parks (542);
- zoos (20);
- organizations of the entertaining arts:
- theaters (518);
- concert organizations (264, including 138 independent groups);
- circuses (63, including 59 united within the "Rosgostzyrk" company).

Most of these mass-oriented cultural institutions are municipal and are financed from the local budgets. Museums, organizations of the entertaining arts, large libraries are subordinated to the regional authorities and are financed from the budgets of the RF's subjects. In the federal subordination, there were 157 organizations: 23 theaters, 27 concert organizations and groups, 2 circuses, 96 museums, 9 libraries. Some of these organizations have the status of especially valuable objects of Russia's cultural legacy.

The federal laws regulating the legal relations in the sphere of culture, have established certain peculiarities of the legal status of cultural institutions. According to Article 42 of Law of the RF "Russian Federation's Basic Legislation on Culture" of October 9, 1992 №3612-I, the relations between the founder (founders) and a cultural organization are regulated by a contract. This contract established the mutual responsibilities of the parties, the terms and procedures of utilizing their property, the

[8] Apart from the organizations working in the sphere of culture and the arts, the system of the Ministry of Culture includes scientific and educational institutions, restoration and repair workshops, industrial enterprises, etc.

procedures of financing the activity of a cultural organization by its founder (founders), the material liabilities of the parties, the grounds for and the conditions of terminating a contract, the settling of social issues. The appearance of this norm was preconditioned by the desire to establish a mechanism for establishing the responsibilities of the founders of a cultural organization as regards financing the latter's activity and a more precise distribution of the rights and responsibilities of an organization as regards the utilization of property. It should be noted however that in the CC of the RF it is not envisaged that a contract must be made between the founders and the juridical persons that they have founded, in particular as regards institutions. Thus, the abovesaid norm is to a certain extent arbitrary.

Cultural institutions have the right to:

- hold festivals, exhibitions and other similar events;

- to promote the organization of national studies of local lore, history and economy, the protection of national historic and cultural memorials, the creation of ethnographic and other museums;

- to take abroad exhibitions and other forms of public display;

- to establish associations, creative unions, guilds or other cultural associations according to the procedure specified by the legislation on social associations;

- to carry out entrepreneurial activity as envisaged in their charters;

- to receive budgetary financing;

- to receive non-returnable contributions (gifts, subsidies) from domestic and foreign juridical and natural persons, international organizations;

- to independently set the prices (tariffs) on their paid services and products, including the prices of tickets;

- to make use of the credits of domestic and foreign banks, to sell and buy foreign currencies in accordance with the procedure established by the legislation of the Russian Federation;

- to carry our external economic activity, specialized trade, including auctions, of objects of art, folk crafts, fine arts, antiques in accordance with the procedure established by the legislation of the Russian Federation..

Cultural organizations have an exclusive right to use their own symbols (official and other names, trade marks, emblems) for promotion and other purposes, as well as to allow other juridical and natural persons such usage on a contractual basis.

"The Basics" endow cultural organizations with the right to independently set the level of salaries, differentiated bonuses to the salaries paid to their employees, to apply different progressive forms of organization, payment and stimulation of labor within the available wages funds (Article 54).

"The Russian Federation's Basic Legislation on Culture" contains a number of standards regulating the entrepreneurial activity of state and municipal cultural organizations (Article 47). However some of these standards do not limit the rights of cultural organizations to pursue entrepreneurial activity, in contrast to the standards contained in the CC of the RF and the Law "On Non-Profit Organizations", but, on the contrary, grant cultural organizations with wider rights as regards these issues. Thus, "The Basics" grant to state and municipal cultural organizations the right to realize and lease their capital assets and property for purposes not relating to cultural activity. At the same time, as it was already stated more than once, Item 1 of Article

298 of the CC of the RF does not allow these institutions to alienate or by other means to dispose of property consolidated to them and property acquired at the expense of assets allotted to them under their estimated budget. “The Basics” in fact allow cultural organizations to carry out profit-making production of goods, services and works if they are compatible with the goals of the activity of a non-commercial organization. Obviously, in these instances the standards set by “The Basics” have no legal force as being contradictory to the legislation on noncommercial organizations.

“The Basics” do not require that cultural organizations necessarily list in their charters all the kinds of entrepreneurial activity that can be pursues by a cultural organization. Item 8 of Article 47 grants to cultural organizations the right to carry out profit-making operations, works, services not envisaged in their charters. This provision does not contradict the legislation on nonprofit organizations.

Another important difference in explaining the notion of entrepreneurial activity should be pointed out here.

In the CC of the RF and in the Law “On Non-Profit Organizations” it is pointed out that a noncommercial organization has the right to pursue entrepreneurial activity, the limitations imposed of this activity are outlined, but there is no clear distinction between the basic and the entrepreneurial activity of a noncommercial organization. In particular, there is no clear statement that the principal activity envisaged in the charter of a nonprofit organization cannot be qualified as entrepreneurial even it is profit-making. “The Basics” do contain such a provision. Item 10 of Article 47 of “The Basics” states that paid forms of cultural activity of cultural and enlightening institutions, theaters, philharmonics, folk groups and individual entertainers are not to be regarded as entrepreneurial activity if the income generated by these forms is fully spent on their development and improvement. Item 9 of Article 47 states that the activity of nonprofit organizations relating to the realization of their chartered products, works and services is to be classified as entrepreneurial only inasmuch as the income generated by it is nor invested directly in this particular organization to cover the needs of procuring for, developing and improving its principal chartered activity.

While Item 10 does not contradict the CC of the RF and the Law “On Non-Profit Organizations”, the content of Item 9 does contradict them since specifying certain kinds of activity in the charter of an organization is not equal to recognizing it as a principal activity. “The Basics” aspire that as entrepreneurial activity only that part of an organization’s activity is to be recognized the income from which is not spent on carrying out its principal chartered activity. This approach represents a broad construction as compared to the norms contained in the CC of the RF and the Law “On Non-Profit Organizations”, and therefore its application is not legitimate.

At the same time, “The Basics” also contains certain norms limiting the legal capacity of cultural organizations as compared to the CC of the RF and the Law “On Non-Profit Organizations”. “The Basics” grant to the founder or the body that has registered a cultural organization with the right to suspend the latter’s entrepreneurial activity if it detriments the chartered activity until a court decision is taken on this issue.

“The Basics” contain a number of limitations as to the use of the property of a state (municipal) cultural organization being liquidated. According to Article 41, such property is transferred to its legal successors or is realized on the basis of a tender (with the exception of the objects of cultural legacy), with compulsory usage of the

resulting resources in the sphere of culture. In this connection, the state enjoys an exclusive right to purchase the property of a liquidated cultural organization. The liquidation of a cultural organization should be coordinated with the staff of the owner of this organization, the trade union and the local self-government body.

"The Basics" considerably limit the possibilities of privatizing cultural objects. Article 44 establishes that the cultural legacy of the peoples of the Russian Federation, including the cultural valuables kept in the funds of state and municipal museums, archives and libraries, picture galleries, in the exhibition halls of the enterprises of the artistic industry and traditional folk crafts, including the premises and buildings where these are located, are not to be privatized. Privatization of other cultural objects is admissible according to the procedure established by the legislation of the Russian Federation on the following conditions: preserving cultural activity as the basic kind of activity; preserving specialty services; organizing the servicing of privileged categories of population; maintaining the existing number of jobs and social guarantees to the personnel (for the term of up to one year).

The legislation on culture establishes certain peculiarities of the legal status of certain kinds of cultural organizations. Thus, Federal Law "On Librarianship" №78-FZ of 29.12.1994 limits the rights of libraries to pursue economic activity by the clause that the latter should not detriment their basic activity (Article 13).

Article 22 demands that in a library's charter its sources of financing, the conditions of its availability, the property relations between the library and its owner, and the management procedures for the library be specified.

The law contains the norms specifying the owner's right to withdraw the property transferred to the library on the terms of operative management. According to Article 16, in case a library does not provide the conditions necessary for safe upkeep and availability of the library fund categorized as a historic and cultural memorial, this fund can be withdrawn and transferred to another library by force of the decision of the fund's owner, on demand of a specially authorized state body for the protection of historic and cultural memorials.

Liquidation of libraries whose funds are registered as historic and cultural memorials can be enacted by the libraries' owners only with the permission of a specially authorized state body for protecting historic and cultural memorials, with ensuring subsequent safety and usage of these funds. When a library is liquidated, the privileged right to purchase its fund is enjoyed by the state authorities of all levels, local self-government bodies and libraries of appropriate specialty. Denationalization or privatization of state and municipal libraries is not allowed, including that of the premises and buildings where they are located (Article 23).

Federal Law "On the Museum Fund and Museums in the Russian Federation" №54-FZ of 26.05.1996 allows a state museum to have founders other than the federal executive authorities or the executive authorities of the Russian Federation's subjects (Article 29). In this instance, a museum is registered as a state institution if more than 50% of its activity is financed from the resources of the corresponding budgets.

According to Article 34, museums in the Russian Federation may pursue their activity only on the basis of a special permission (license) on the following conditions:

- the presence of museum articles and museum collections whose quantity and historic and cultural value allow for their public display in the form of museum exhibits;

- availability of premises suitable for the storage and public display of museum articles and museum collections;
- availability of permanent sources of financing for the activity of the museums being created.

The Law sets limitations upon the use of museums' property. In case of leasing out the real estate consolidated to state museums with the right of operative management the rent is left at a museum's disposal and is to be spent exclusively on the technical maintenance of the real estate in question (Item 4 of Article 29).

In case of a liquidation of state museums, the museum articles and museum collections kept at those museums are transferred to other state museum(s) (Item 3 of Article 32).

1.5.3. The relations of ownership as regards capital assets and the results of the activity of budgetary institutions in the sphere of culture

In the Russian Federation, the property (buildings, facilities, property complexes, equipment) of cultural organizations is owned by their founders by whose decision it can be transferred into ownership, economic supervision of operative management executed directly by the cultural organizations.

The management and governance of state property in the sphere of culture is carried out by the executive authorities and on their order – by specially authorized state bodies or organizations.

The state and municipal property including the land plots assigned to cultural organizations can be withdrawn by the owner according to the procedure and on the conditions established by the legislation of the Russian Federation, the legislation and legal acts of the federation's subjects, the acts approved by the local self-government bodies within the limits of their authority.

1.6. Legal regulation of scientific institutions

1.6.1. The notion of a scientific organization and a scientific institution

Scientific institutions pursue their activity on the basis of Federal Law of the RF №127-FZ of 23.08.1996 "On Science and State Policy on Science and Technology" (in the version as of 29.12.2000, with amendments as of 30.12.2001).

The general terminology relating to the sphere of scientific activity was introduced in the Federal Law "On Science and State Policy on Science and Technology " (No127-FZ of August 23, 1996) (later in the text – "The Law on Science"). Since this law is not a normative act of direct action, it was intended that later its separate provisions would be further expanded and supplemented by by-laws. "The law on science" was being developed at the same time as Parts I and II of the Civil Code of the RF and therefore was adopted with a number of definitions contradictory to the norms established by the CC of the RF. During the years 1998-2000 this Law was amended and supplemented four times, in the form of Federal laws (No111-FZ of 19.07.1998, No189-FZ of 17.12.1998, №41-FZ of 03.01.2000, №168-FZ of 29.12.2000). The last amendments were introduced on 30.12.2001. by Federal law №194-FZ. However, even now the Law contains a number of provisions that contradict those stipulated by other laws.

The main notion in “The law on science” is that of a scientific organization. According to Article 5 of “The law on science”, “a scientific organization is recognized as a juridical person irrespective of its organizational and legal form and the form of ownership, as well as a social association of researchers pursuing as their principal activity research and (or) research and technological development, education of researchers, and acting in accordance with the constitutive documents of a scientific organization”. The recognition of an organization as a scientific one (irrespective of its organizational and legal form) is done on the basis of its accreditation which in its turn is the basis for granting tax and other privileges.

Scientific organization are subdivided into:

- research organizations,

- scientific organizations of educational institutions providing higher professional education,

- experimental-engineering, project- engineering, project-technological and other organizations pursuing research and (or) research and development.

In “The Law on Science” there is no single definition as to which organizational and legal forms can be adopted by scientific organizations, as well as no limitations imposed on the choice of an organizational and legal form.

Lack of precision and completeness of notions and definitions can be observed also when one attempts to establish the number and the composition of scientific organizations. In accordance with the law, only a juridical person can be recognized as a scientific organization which leaves outside this sphere a large proportion of science based on higher educational establishments. One of the defining features of a scientific organization is recognized as pursuing research and (or) research and development as a principal activity. However, in this connection no distinction is made between separate kinds of this activity which are very versatile (from research and development carried out by museums and botanical gardens, standardization and quality control to research and development consulting and patenting and licensing activity). This results in unmotivated expansion of the scope of the research activity proper. Another feature – education of the researching staff – on the contrary, makes it difficult to classify those institutes (engaged in project, design and development activity) that do not have postgraduate and/or doctorate courses as scientific organizations.

In the presently existing system of statistical registration of scientific activity the terms and notions are applied that differ from those operative in “The law on science”. The objects of statistical observation are not scientific organizations as such but only those that carry out research and development (RD). Though the distinction of this particular area of science and technology is quite justified and reasonable the scope of state statistics as regards science turned out to be narrower than the scope of science as defined by the federal law on science.

The main role in the network of scientific organizations is still being played by research institutes (see *Table 5*) whose number has increased more than by one half in the period since the collapse of the USSR. This growth occurred mainly through granting a higher status to the structural subdivisions of the already existing (as a rule, budgetary) research institutions. As regards the organizations of various types engaged in RD, the share of state institutions is the highest (over 70%) especially among the

research organizations that predominantly preserved their status of state institutions since the time of the USSR.

Out of the total number of scientific organizations, now more than 2/3 (2755 organizations) are in federal ownership. The share of the organizations that are federal property, has changed only slightly since the mid-1990s despite several attempts at carrying out an inventory and accreditation of scientific organizations; thus, in the year 1995 the proportion of the scientific organizations in federal jurisdiction was 68.6%, in 2000г. – 67.2%.

Table 5

The number and composition of organizations engaged in research and development (R&D) (as of the end of the year).

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
Scientific organizations - total	4 646	4 564	4 555	4 269	3 968	4 059	4 122	4 137	4 019	4 089	4 099
including research organizations	1 762	1 831	2 077	2 150	2 166	2 284	2 360	2 528	2 549	2 603	2 686
including academic organizations (RAS, RAMS, RAAS)	535	586	729	746	764	787	800	804	775	782	807
Higher educational establishments	453	450	446	456	400	395	405	405	393	387	390

Source: “Nauka v Rossii”. Statisticheskii sbornik (“Science in Russia”. A Collection of Statistics). M.: Goskomstat of the RF, 2001.

The number of higher educational establishments engaged in research and development has reduced. In the structure of higher educational establishments, independent research is conducted also by research institutes that may or may not have the status of a juridical person. For a long time the number of research institutes attached to higher educational establishments did not exceed 50, but in the mid-1990s their number surged upward due to less strict departmental regulations specifying the terms of their creation, and also as a result of a transformation of the research departments of higher educational establishments into independent institutes. The organizations engaged in science within the system of higher educational establishments operate, with only a few exceptions, under the organizational and legal form of state institutions.

Among research organizations, the institutions belonging to the systems of the Russian Academy of Sciences (RAS) and other state scientific academies (the Russian Academy of Medical Sciences (RAMS) and the Russian Academy of agricultural sciences (RAAS)). Their number has been growing at the same high rate as that of research organizations. As of today, according to its Charter and the Law on Science, the RAS represents a unique organizational and legal form which is essentially closest to the form of an institution.

1.6.2. Limitations and licensing of certain types of scientific activity

According to the Law, the Government of the Russian Federation has the right:

- to establish the procedure for conducting research and utilization of the results of scientific research and (or) scientific and technological work which might create a threat to the security of the Russian Federation, the citizens' health and the environment;

- to license certain types of scientific research and (or) scientific and technological work;

- to introduce, in the instances envisaged by the legislation of the Russian Federation, limitations on the right to apply certain scientific and (or) scientific and technological results, imposing upon them the secrecy regime and ensuring that it be observed;

- to introduce certificate and metrology requirements to certain kinds of scientific and (or) scientific and technological results.

1.6.3. The basic rights and responsibilities of scientific organizations

A scientific organization owns, uses and manages the property transferred to it by its founder for the purposes of the activity envisaged in the constitutive documents.

The subjects of scientific activity have the right to exchange information, with the exception of the information containing data categorized as state, professional or commercial secret; to pursue entrepreneurial activity in the field of science and technology which is not forbidden by the legislation of the Russian Federation.

State scientific organizations founded by the Government of the Russian Federation or the federal executive authorities have the right to lease out, with the consent of the owner, without the right of purchase, the federal property, including real estate, that they are temporarily not using. The size of the rent is defined by a contract and should not be smaller than the average rent usually paid for the lease of property in the localities of the institutions in question.

A scientific organization is obliged to maintain and develop its base for research, pilot studies and experiments, to renew its production assets.

1.6.4. State accreditation of scientific organizations

Scientific organizations have a number of privileges granted to them as a result of state accreditation. State accreditation of scientific organizations is carried out according to the Decree of the Government of the RF "On state accreditation of scientific organizations" (No1291 of 11.10.1997). This decree reflects the provisions of the Law on science as regards the organization of state accreditation of scientific organizations. The main state body that carries out the methodological guidance of the accreditation of scientific organizations and on behalf of the Government of the RF issues a certificate thereof was the Ministry of Science and Technologies of the RF (now - the Ministry of Industry, Science and Technologies of the RF).

The certificate of state accreditation is issued to a scientific organization irrespective of its organizational and legal form and the form of ownership, providing the followings requirements are satisfied:

1. scientific and/or scientific and technological activity is the basic activity of an organization;

2. the volume of this activity is on the average at least 70% of the total volume of completed works for the three past years (or for the whole period of operation, if the organization has existed for a term less than three years);
3. the charter of the organization envisages the existence of an academic (scientific, technological, scientific and technological) council as one of its managing bodies.

In one of the amendments to the Law on science ("On introducing amendments to the Law "On science and state policy as regards science and technology" of 03.01.2000 №41-FZ) the standard for defining the share of scientific product to be taken into account during the accreditation of scientific organizations is specified in more detail. It widened the range of potential recipients of the state accreditation certificate: "the volume of the products (goods, works and (or) services produced by a scientific organization while pursuing its non-principal types of activity, with the use of the scientific and (or) scientific and technological results obtained by this organization and the profit therefrom being spent on financing the scientific and (or) scientific and technological activity of the said organization, is not to be taken into account within the total volume of the work completed by the said organization when defining the share of the scientific and (or) scientific and technological activity in this total volume according to the procedure established by the Government of the Russian Federation " (Item 2 of Article 5 of the Law on science). Thus it becomes possible to obtain accreditation as scientific organizations and to make claims for tax and other privileges for organizations whose production base is steadily increasing while the scientific base is decreasing, as well as for organizations with a negligible share of their own research and development.

Besides, a relief on the enterprise assets tax can be granted to an organization whose volume of the revenues from realization of scientific and technological products (works, services) is less than 70% even in those cases when the latter does not have a state accreditation certificate. According to Item "k" of Article 4 of the Law of the Russian Federation "On the enterprise assets tax" this tax is not imposed of the property of state scientific centers as well as on research and design institutions (organizations), pilot and pilot-and-experimental enterprises, irrespective of their organizational and legal forms and forms of ownership, in whose volume of production the research, design and experimental works comprise at least 70%.

Proceeding from this standard, the main requirement for granting the relief is the presence, within an organization's volume of work, some share of research, pilot design and experimental works as defined by the law, and not the presence of a state accreditation certificate granted to the scientific organization. The substantiation in this case is Letter of the Ministry of Finance of the RF of April 18, 2001 №04-05-06/23.

Simultaneously, the Letter of the RF Ministry of taxes and dues is operative (of 26.09.2000, №01-1-03/1160) stating that "the state accreditation certificate is the basis for granting to a scientific organization tax relieves as envisaged by the tax legislation of the Russian Federation and other privileges granted to scientific organizations by the legislation of the Russian Federation".

There are also some difficulties associated with the practical implementation of this provision. In particular, within the framework of the existing system of accounting it is not possible to register the profits separately from the basic and non-basic activities of a scientific organization.

1.6.5. Agreements (contracts) for creation, transfer and use of scientific and (or) scientific and technological products

The principal legal form for the relations between a scientific organization, a client and other consumers of scientific and (or) scientific and technological products, including ministries and other federal executive authorities are agreements (contracts) for creation, transfer and use of scientific and (or) scientific and technological products, rendering scientific, scientific and technological, engineering and consulting and other services, as well as other contracts, including those for cooperative scientific and (or) scientific and technological activity and distribution of profit.

On the basis of these agreements (contracts), scientific research and experimental developments for state purposes are carried out. In such cases the agreements (contracts) are made between a state body - the consumer and the organization - contractor.

The Government of the Russian Federation and the executive authorities of the Russian Federation's subjects - the founders of state scientific organizations - have the right to place compulsory state orders for scientific organizations to carry out research and experimental developments.

1.6.6. Organization and conduct of the appraisal by experts of scientific and (or) scientific and technological activity

The bodies of state power of the Russian Federation and the bodies of state power of the Russian Federation's subjects organize an appraisal by experts of scientific and (or) scientific and technological programs and projects financed from a corresponding budget.

The appraisal is conducted by organizations for independent appraisal, other organizations, as well as by experts with the participation of the representatives of the Russian Federation's subjects financing the scientific and (or) scientific and technological activity, when:

- the priority directions for the state policy in the field of science and technology, as well as for the development of science and technology are being chosen;

- scientific and (or) scientific and technological programs and projects are being developed;

- tenders for the participation in scientific and (or) scientific and technological programs and projects are being conducted, with control over their implementation and the application of the obtained scientific and (or) scientific and technological results in the state economy.

No specialist personally interested in the results of experts' examination of scientific and (or) scientific and technological activity may participate in it.

Judging by the results of the experts' examination of scientific and (or) scientific and technological programs and projects, the executive authorities of the Russian Federation and the executive authorities of the Russian Federation's subjects are obliged in advance to inform the population of the safety, including economic safety, of the economic and social significance of the enterprises and projects to be

developed and implemented with the application of the achievements of science and technology.

In cases envisaged by the legislation of the Russian Federation, according to the established procedure, a compulsory state appraisal by experts of scientific and technological programs and projects is carried out.

1.6.7. Property relations occurring in the process of the activity of scientific institutions

Institutions are limited in their rights for alienation of property. Withdrawal of property, against the desire of an institution itself, is admissible only according to the same procedure and on the same terms as the withdrawal of property from its owners. Institutions have no right to discontinue their authority by means of a rejection of the rights for the property in question according to the procedure described in Article 236 of the CC because this is a violation of the right of ownership of the founder as regards the property in question. This special procedure for the alienation of property is applicable also for the objects of intellectual property and therefore is especially important as regards scientific activity.

Obtaining a patent automatically involves acquiring a special right of ownership as regards the objects of intellectual property. This right is not to be alienated by the founder or the owner of an institution without the will of a patent-holder. At the same time, if the research work was conducted at the expense of the financing provided to an institution by its owner, the owner-founder of the institution must become the patent-holder. The owner-founder of an institution is often a body of state power (ministry, department). The founder acts of behalf of the state. However today there is as yet no mechanism of involving in a turnover the state-owned intellectual property - neither in terms of legislation nor by a precedent of the practical activity of ministries or departments. Thus a legal collision evolves for which no solution has been found yet. Now let us discuss the peculiarities of the legal status relating to the functioning of various types of budgetary institutions in the sphere of science, that is state scientific centers, research institutes attached to higher educational establishments and research divisions at higher educational establishments, as well as scientific institutions within the RAS system.

1.6.8. Research institutes attached to higher educational establishments and research divisions at higher educational establishments

Among the most important problems relating to legal regulation of the research activity at state higher educational establishments (with the status of institutions), the following should be mentioned: the problems of the legal status of research divisions at higher educational establishments and research institutes attached to higher educational establishments; the problems of financing research activity at higher educational establishments, the problems of property management.

In the Federal Law “On higher and postgraduate professional education” (Items 2-4 of Article 9) there is a provision obliging all higher educational establishments - universities, academies, institutes - to conduct research activity. To conduct research, higher educational establishments organize “within themselves” research divisions, sectors, laboratories and other structures without obtaining the status of a juridical person. The legal status of such subdivisions is not specified anywhere.

Besides, in the system of higher and postgraduate professional education, research and design institutes whose activity deals with education and is aimed at educational purposes can be created and operate (Article 13 of the Federal Law "On higher and postgraduate professional education").

Nevertheless, an educational establishment cannot be recognized as a scientific organization. In accordance with the law, scientific activity is not its principal occupation - neither is education of researchers.

At the same time, according to Item 1 of Article 5 of the Federal Law "On science and state policy on science and technology", scientific organizations at educational establishments of higher professional education are included in the register of the types of scientific organizations. However at the same time their organizational and legal form, as well as their legal status, is not specified. Therefore all the provisions of the Federal Law "On science and state policy on science and technology" can be automatically applied to higher educational establishments. Thus, research divisions at higher educational establishments have no legal status in the state accreditation system and, consequently, have no right for privileges or tax preferences.

Research institutes attached to higher educational establishments are in an equally difficult situation. Presently, research institutes attached to higher educational establishments differ in their legal status. Some of them have the capacities of a juridical person, with independent bank accounts and charters. These, as a rule, were created by special decrees of the Government as independent scientific institutions of the Ministry of Education. A legal collision emerged following the adoption of the new Civil Code where it is specified that one juridical person (in this instance – a research institute) cannot be part of another juridical person (a higher educational establishment).

Many academic councils at higher educational establishments have decided that research institutes should be attached to higher educational establishments. However the Ministry of Education did not have the authority to approve these decisions. Since the majority of research institutes were established by special decrees of the Government and not only by the Ministry of Education, only the Government has the authority to recall the decisions as to independent existence of research institutes. At the present moment the documentation is being discussed by the government, and a situation where the government can delegate its power to the ministry is theoretically possible.

At the same time it should be taken into account that such reorganization would involve the loss of a license for certain types of activity issued to a research institute because the latter will no more have the status of a juridical person. As an intermediary stage, one may consider creation of university complexes where it has been suggested to solve the problem of research institutes attached to higher educational establishments within the framework of associations. In this instance the role of a higher educational establishment can be a priority.

A special Decree of the Government, "On university complexes" (№676 of 17.09.2001) supplemented the Standard provision on an educational establishment of higher professional education in the Russian Federation with a stipulation providing for the creation of university complexes. University complexes are created on the basis of universities or academies with the purpose of improving the efficiency of the educational process and conducting research in priority areas in the development of education and science. University complexes are juridical persons including

educational institutions of different levels as well as other institutions, nonprofit organizations or separate structural subdivisions.

The financing for the educational and research activity of federal university complexes comes from the federal budget according to state orders for education of specialists, retraining and further education of personnel. A complex is financed as a single structure, with a single accounting department, the budgetary financing is transferred to the university's account, and the institutions that are part of the complex operate by warrants issued to them by the university. They independently spend the money allocated to them within the framework of budgetary financing.

1.6.9. Scientific institutions of the academies with a state status

A special problem is represented by the status of state academies of sciences and, consequently, that of the scientific institutions subordinated to these academies. Academies are state self-administering organizations operating according to their own charters which do not fully correspond to the existing legislation (in particular, the Budget and the Civil Codes). They also allocate resources to the research institutes that are part of their system, which can be done at their own discretion.

The Law on science has no stipulations concerning the organizational and legal form of the academies of sciences; it only specifies that they are nonprofit organizations (institutions) with a state status (Item 1 of Article 6), though there is no definition of this form in civil legislation.

On the basis of the distinctive features specified by the law, a typical state academy can be defined as a state institution. The same is written in Article 1 of the Charter of the Russian Academy of Sciences: "The Russian Academy of Sciences is founded by the state as Russia's supreme scientific institution". The Charter of the RAS was approved by the General Assembly of the RAS on December 23, 1992, with later amendments made in 1994-1998. At the present time a new version of the Charter is to be approved by the General Assembly in May 2002.

The existing Charter of the RAS does not specify to which type of the organizations enumerated in the civil Code belong the notions of a "research institute of the RAS", "division of the RAS", "the General Assembly of the RAS", "the presidium of the RAS" that are contained in the Charter. Each of these organizations has a seal with the coat of arms of the Russian Federation (Article 57 of the Charter of the RAS) and is referred to in the Charter as "an institution".

The Charter of the RAS specifies the RAS as a scientific institution which means that the Academy belongs to the category of scientific organizations. At the same time, the existing organizational structure of the RAS does not allow it to undergo the established procedure of state accreditation and, consequently, to have the right for privileges. According to the law, the certificate of state accreditation can be issued only to scientific organizations whose charter envisages the existence of an academic council as one of their managing bodies (Item 2 of Article 5 of the Law on science). The RAS represents an intricate hierarchical system incorporating a great number of academic councils of various types but none of those operates as the managing body of the RAS as a whole. Therefore the tax relieves and other privileges granted to the RAS can be preserved only through implementing separate federal laws specifying targeted privileges for the RAS.

Along these lines is in fact developing the whole legal activity as regards the RAS. By a special decree of the President of the RF РФ (of April 15, 1996, №558) the RAS was defined as "an all-Russian self-administering nonprofit scientific organization", whereas in the Law on science is named as "a self-administering organization". Moreover, the budgetary financing for the RAS is carried out under the regime of most favored treatment, in accordance with the same presidential decree (№558, in the version of Decrees of the President of the RF of 25.07.1996, №1091, of 02.04.1997 №277, of 06.04.2000 №634), beginning with the year 1997, the resources from the state budget are allocated to the RAS, its regional branches including, as a separate budget item. In 1997 the RAS was granted the status of a juridical person (which was reflected in the Law on Science) and was accredited by the Ministry of science and technologies as a scientific organization, despite all the abovesaid contradictory statements contained in its Charter.

As for the institutes of the RAS, their charters have not yet been made uniform, there are still many discrepancies which often leads to problems in dealings with the taxation bodies. It is intended to complete the revision of the charters of the RAS's institutes by the end of this year.

The vagueness of the legal status of the RAS is associated also with the fact that there is no as yet any federal law regulating the procedures for creating or reorganizing the RAS, while the Charter of the RAS contains no provisions as to liquidation or reorganization of the RAS. According to the Law on science (Item 1 of Article 6) "the academies of sciences with the state status shall be created, reorganized and liquidated in accordance with the federal law by order of the President of the RF or the Government of the RF". And thus, at the present time this requirement as regards the RAS has not been satisfied.

The structure and the mechanism of the operation of the RAS also give rise to many questions. The supreme administering body of the RAS is the General Assembly of the RAS. The General Assembly of the RAS may be convoked only by a decision of the presidium of the RAS. The issues to be discussed at the General Assembly of the RAS are specified by the presidium of the RAS. No other procedure is envisaged in the Charter of the RAS. So, if the presidium of the RAS does not make a decision as to convoking the General Assembly of the RAS or does not prepare a list of issues to be discussed, the supreme administering body of the RAS – the General Assembly of the RAS – will not be able to operate. On the other hand, reelection of the members of the presidium of the RAS can be done only by the General Assembly of the RAS. Therefore the presidium of the RAS if consisting of negligent members of the RAS may stay in office for an unlimited period of time - much longer than that represented by diligent individuals. The Charter of the RAS has no provisions specifying the duties of a member of the RAS elected according to the established procedure to carry out the duties of a member of the presidium of the RAS. Consequently, inactivity of the members of the presidium of the RAS is neither a violation of the requirements of the Charter of the RAS nor the grounds for rotation.

The RAS as a state institution cannot own property. According to Item 5 of Article 6 of the Law on science (in the version of the Federal law of 19.07.1998 №111-FZ), "scientific organizations, organizations for scientific servicing and the social sphere of the Russian Academy of Sciences, its regional branches and branch academies of sciences own, use and manage federal property transferred to the said organizations for operative management or economic supervision in accordance with

the legislation of the Russian Federation, the present Federal law and charters. The registers of federal property transferred to the said organizations for operative management or economic supervision are approved by the corresponding academies of sciences". Besides, "scientific organizations, organizations for scientific servicing and the social sphere of the Russian Academy of Sciences and branch academies have the right to lease out, without the right of purchase, the federal property, including real estate, that is temporarily not used by the said organizations, on the basis of a decision of a corresponding academy of sciences which is to be coordinated with a corresponding federal body of executive authority entitled by the Government of the Russian Federation to manage and dispose of the objects of federal property". The revenues from leasing out the federal property are in full accounted for in the revenues of the federal budget and are made use of by the said organizations as a source of additional budgetary financing for the upkeep and development of their material and technical base.

At the same time, Article 7 of the Charter of the RAS stipulates that "the Academy of Sciences holds, with the rights of operative management, economic supervision or ownership, buildings, facilities, vessels of the research fleet, equipment, appliances, means of transportation, means of communication and other property".

On March 19, 1998 an agreement was signed between President of the RAS Yu. Osipov and Minister of the Ministry of State Property F. Gazizillin "On cooperation in the sphere of the management and disposal of the federal property supervised by the RAS", according to which a specialized state institution known as the "Agency for managing the property of the RAS" was to be created. It was to be endowed with the power of a territorial body of the Ministry of State Property. To this body, all the powers as regards managing the property of the RAS were transferred. The Agency compiled a register of the property of the RAS (on Order of the Government of the RF №1134-r of July 15, 1999), revised the existing leasing contracts and issued an order limiting to three years the term of leasing the Academy's premises to alien organizations. One of the reasons for the appearance of this order was the widely spread practice of making leasing contracts for the terms of 15 years and more (with a precedent of a leasing contract for the term of 49 years[9]). Besides, by the order of the Ministry of State Property of the RF (№558-r of April 15, 1999) any leasing contracts made by the institutes of the RAS are not to be coordinated with and approved by the Agency. This order also specified that up to 10% of deductions from the rent can be transferred to the Centralized fund for supplementary financing which had been created within the structure of the RAS for utilizing these resources as a source of additional budgetary financing for the upkeep and development of the material and technical base of the RAS. Thus, in all leasing contracts it is to be specified which part of the rent is left at the disposal of the institute of the RAS, which part is to be accumulated in the Clerical Office of the RAS, and which part is to be transferred to the Centralized fund - to partially compensate those institutes of the RAS which do not have their own premises for the lack of rent revenues[10].

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[9] "Poisk", No 45, 7-13.11.1998, p.2.

[10] E.G., in Moscow, the RAS is leasing 80,000 square meters of municipally-owned floor space. ("Poisk", No 38, September 24, 1999, p.3.).

The principal distinction of the RAS from other state institutions is self-governance. This term is rather broad. The RAS has two supreme bodies of collegial management – the General Assembly of the RAS and the presidium of the RAS. The functions and powers of the General Assembly of the RAS and the presidium of the RAS are specified in the Charter as a close list which does not allow any broad interpretations. It is noteworthy that both the General Assembly of the RAS and the presidium of the RAS have the power to address only the issues of basic budgetary financing. Basic budgetary financing does not include additional sources of financing for the RAS, such as revenues from publishing, the exploitation of hotels, pensions and sanatoria of the RAS, deductions from contractual activity, etc. All such revenues are directly controlled by the President of the RAS. The President of the RAS is granted with the right to manage "the financial resources of the RAS according to the procedure defined by the presidium of the RAS " and simultaneously carries out the basic supervision of the work of the presidium of the RAS " (Article 30 of the Charter of the RAS). At the same time, the Charter does not regulate the ways and principles of the supervision of the work of the presidium of the RAS. On the whole, the greatest part of the Charter of the RAS is devoted to the description of the procedure of electing full and corresponding members of the RAS and only briefly touches upon the relations between the management of the RAS and the institutes of the RAS. The Charter also introduces the notion of "advisers of the RAS", without specifying their particular rights and responsibilities.

At the present time, the legislative activity as regards the RAS develops along the lines of further elaboration and alteration of the procedure of electing of full and corresponding members of the RAS, the composition of the presidium of the RAS, the optimizationvof the structure and quantity of the departments of the RAS, changes in the functions of academicians-secretaries of the RAS, introducing a new post in the institutes of the RAS – that of a scientific manager who is to administer the institutes together with directors. At the same time, little attention is paid to more important issues of the organizational and legal status of the RAS within the existing system of legislation. The top management of the RAS insists on preserving the unique status of the RAS which is in fact put down in the Law on science, and this provides the grounds for their allegiance to the traditional definition of the RAS as a state noncommercial self-governing institution[11].

Thus, today the RAS represents a juridical person of a specific kind whose legal status has no clear definition in the civil legislation.

A way out of the present situation may be found within the framework of the existing legislation. Russian civil legislation allows to abandon the traditional structure of the academies of sciences as a uniform centralizad system and to organize their activity as that of associations of scientific, scientific-and-technological and auxiliary organizations and enterprises. The activity of such juridical persons is regulated by the Civil Code and the law "On Non-Profit Organizations". Granting to the RAS the status of an association will remove the problem of the subject of the

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[11] See, e.g., Academician Nikolai Plate, "Uniqueness is nor a sin" (Poisk, No 1-2, January 11, 2002, p.3); Academician Gennadii Mesiats "The incredible changes have taken place" (Izvestiia-Nauka, No 2, January 18 2002, p.1).

ownership right for the property of the Academy itself and that of its constituent organizations. This legal form is acceptable for the Academy also because, according to civil legislation, the juridical persons when united into an association (union) still preserve their legal independence.

Another organizational and legal form to a certain extent acceptable for the Academy of Sciences can be non-profit partnership – a membership-based organization founded by citizens and/or juridical persons for achieving social, charitable, cultural, educational, scientific and managerial goals, for protecting the rights and interests of citizens and organizations and for other purposes associated with the achievement of public benefits" (Item 2 of Article 2 of the Federal Law "On Non-Profit Organizations").

1.6.10. State research centers of the RF

The program for establishing state research centers (SRC) which was actually started in 1991 (the first SRC – "the Kurchatov Institute" – was created by Decree of the President of the RF №230 of 21.11.1991) represents a special form of state support for the best research groups. Through SRCs, the strongest, the most advanced research groups and at the same time – priority areas of the development of science and technology are promoted.

According to the Decree of the President of the RF "On state research centers of the Russian Federation" (of 22.06.1993 №939) the status of such a center can be granted to scientific enterprises, institutions and organizations possessing unique pilot and experimental equipment and highly qualified personnel, the results of their research being internationally acclaimed. The advantages of this status are that such centers have been receiving additional budgetary financing – approximately by 40% higher than without this status, as well as reliefs as regards the payments for public utilities.

By the Government's decision, the status of a SRC is granted for the term of two years with the purpose of promoting fundamental and applied scientific research. By the present moment, the status of a SRC has been confirmed by 58 organizations; these are predominantly former branch organizations of departmental subordination. Among the SRCs there are no institutions of the RAS.

The status of a SRC is also stipulated in the Law on science (Item 2 of Article 5).

By their organizational and legal form the great majority of SRCs are state unitary enterprises: out of a total of 58 SRCs, 49 are state unitary enterprises, 7 are federal state institutions, and 2 operate in the form of joint-stock companies.

Within the framework of the implementation of the President's Decree on the creation of SRCs, a procedure for the interaction between the State and these organizations was developed. In the provisions regulating the granting of the status to scientific organizations, the latter were invested with the following functions:

1. Carrying out, in accordance with the approved programs, fundamental, applied research, design-and-development and technological works in key areas of science and technology,

2. Participation in fulfilling the obligations envisaged by interstate, intergovernmental, interdepartmental agreements, contracts and other documents on cooperation in the sphere of science and technology,

3. Education and retraining of highly qualified research personnel in the corresponding fields.

The Government of the RF in this connection ensures priority financing from the resources of the federal budget and via the Ministry of Science and Technological Policy of the RF (presently the Ministry of Industry, Science and Technologies of the RF) for the development of priority areas of research, the measures aimed at preserving and using the unique equipment which is part of the base for research and design works (as defined by the annual registers compiled by the Ministry of Sience and the Ministry of Economic Development), informational support and other functions.

Besides, the government took am obligation to allocate to the centers - under a separate item and as a priority - the quotas of centralized capital investments allocated within the financing for state programs. It should be noted that the Decree introduced no changes into the organizational and legal forms of the centers (i.e. the institutes remained state institutions or state unitary enterprises and did not change their form of ownership), as well as envisaged no mutual obligations between the department to which directly reported a particular SRC, and the SRC itself.

The budgetary financing for the SRCs was organized within the Program of the development of SRCs which represents an independent subdirection of the federal scientific and technological target program (FSTTP) known as "Research and development on priority directions of the development of science and technology for civilian application". The centers do not participate in the tenders for receiving financing within the framework of other directions of the FSTTP. The themes on which budgetary financing within the program for the development of SRCs is allocated are selected at the first stage by the institutes on the basis of an "internal competition". As a rule, the main criterion for selection at such competition is the previous experience of the applicants' participation in similar projects. An applicant was to prepare and submit the reports on the completed work in a timely fashion.

In this connection, for each of the SRCs a particular quota of resources has been established on the basis of the existing practice. The proportional shares for the distribution of resources among the SRCs were set in 1993 and in fact has remained unchanged since then.

After each SRC submits to the Ministry of Industry, Science and Technologies a "package of projects", the Ministry itself, as a rule, introduces no corrections into the list of themes. Up to 30% of the submitted projects can be fundamental studies, the rest - applied developments. The possibility to receive budgetary financing for fundamental studies is one of the privileges granted by the status of a SRC. This in fact makes them equal to scientific institutions in the system of state academies.

The share of financing for the SRCs from the resources of the federal budget reached its maximum in the year 1995 - 15% of the allocations under Section 06 of the state budget entitled "Fundamental research and promotion of the progress in science and technology". From the year 1999 onward, the share of financing for the

SRCs has been reducing steadily: in 1999 it was 6.9%, in 2000 – 5.9%[12] of the allocations from the budget under Item 06.

The existing provisions on the SRCs state that the Government of the RF is responsible for the utilization of the results of the developments carried out by the Centers at the expense of the budget, as well as the control over the correctness and efficiency of the use of the allocated resources.

All the rights for the intellectual property created as a result of the work on the program of the development of SRCs belong to the state. However, presently the mechanism to be used for putting into practice the results of the intellectual activity has not been defined yet, therefore all the results owned by the state in fact are not being commercialized.

SRCs in their practical activity may find a way out of the existing situation by investing their own resources in the improvement of the products created at the expense of budgetary resources or through a situation when the head developers quit the institute in question on the eve of the final completion of the project. The result is that the thus improved intellectual property belongs to the organization and not to the state. In this case it is assumed that the intellectual product has been created at the expense of resources other that budgetary.

In the process of granting the status of a SRC, the charters of the Centers were revised, adopted in a new version and approved by the corresponding agencies. The Charters regulated the property relations, the organizational and economic status of SRCs, as well as the guarantees for their operation.

The problems of organizational reforming of SRCs have been discussed for several years. At the moment of their creation, the status of a SRC incorporated some very different scientific orgaizations for whom it was impossible to develop a uniform normative base. Since then the process of diversifying SRC has been going on incessantly, and presently special state support must be provided on the basis of criteria quite different from those that were utilized at a time when there was a urgent need for salvation and preservation the country’s scientific potential.

At least three main forms for the further existence of SRC are possible. Firstly, something similar to interbranch complexes of science and technology (ICST) can be created. Some of the SRCs may become the nuclei of these ICST. Secondly, some of the SRCs that have proved that they can fully operate as fundamental institutes can be granted an appropriate normative base. Thirdly, some SRCs may become joint-stock companies and be incorporated in financial and industrial groups and the federal centers for science and high technologies that are now being created.

Since reorganization is a lengthy process, at the present time is would be feasible to allocate budgetary financing predominantly for the maintenance of the unique equipment of SRCs, capital construction and informational and telecommunications infrastructure.

When restructuring the system of SRCs, the following principal goals should be achieved:

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[12] Nauka Rossii v tsifrakh-2000 (Russia's science in figures-2000). Statisticheskii sbornik ("Papers on statistics). M., TsISN, 2000, p.47.

1. To define the terms for the state support of SRCs, with the application of a target method of financing;

2. To revise and make more precise the criteria by which scientific institutions are to be classified as belonging to the leading group aspiring for the status of SRCs and to define more precisely the procedure of granting this status;

3. To develop the relations based on civil legislation between SRCs and the federal executive authorities, primarily the Ministry of Industry, Science and Technologies of the RF.

1.6.11. The peculiarities of the financial and economic activity of scientific institutions: an analysis of their charters

At the present time there is no standard charter for scientific institutions. Moreover, there is no even a standard structure of such a charter despite the fact that the basic legal documents for all scientific organizations are the Constitution of the RF, the Civil Code, the Federal Law "On Non-Profit Organizations", the Law on Science, and the Law "On Higher and Postgraduate Education" (as regards research institutes attached to higher educational establishments) and other legal acts of the RF. The differences are appearing because each department to which a particular scientific institution is subordinated, issues its own orders, decrees and normative acts by which the institutions are guided when developing their charters.

In the years 2000-2001, many scientific institutions underwent the procedure of reauthorization of their charters in connection with the changes that had occurred in the legislation during the several previous years. The peculiarity of the newly authorized charters is that many provisions have become more vague, and everywhere where it is possible there appeared more references to the existing legislation. Thus, the rights for intellectual property, with a very few exceptions, are not addressed at all, and instead it is stated that "the regulation of the rights for intellectual property occurs according to the existing legislation. This is logical in a situation of constantly changing legislation.

A selective analysis of the charters of scientific institutions subordinated to the Ministry of Education of the RF, the Ministry of Industry, Science and Technologies of the RF and some branch ministries has demonstrated that usually the charter of a state scientific institution contains the following sections:

1. General provisions.

2. Purpose and object of activity (as a variant, in addition – "Types of activity"; in some charters, international activity is specified under a separate heading).

3. Property, organizational and economic and legal bases of the activity (as a variant – "Property and finances").

4. Management of activity (Variants – "Organization of activity"; "Management and organizational structure". In some charters there is a separate section "Control over the activity of the institution").

5. Reorganization and liquidation.

6. Final provisions.

The general provisions, as a rule, contain the following information: full and abbreviated name of the institution, as well as the version of the name in the English language; the mane of the ministry that has founded the institution; its organizational

and legal form and status (“institution ”, “noncommercial organization”, “juridical person”).

All the charters analyzed contain a provision that an institution is answerable for the obligations that appeared within the framework of its chartered activity by the financial resources available. When there is a shortage of resources, a subsidiary responsibility for the institution’s obligations is borne by its founder.

In the section “General Provisions”, or in other sections of all the charters it is also stated that a certain scientific institution has the right for operative management of the property consolidated to itm for the purposes of its chartered activity financed from the state budget; has rouble settlement and current (including budgetary) accounts as well as foreign currency accounts at banking and other credit institutions; has the legal capacity of state scientific institutions of the Russian Federation in accordance with its chartered goals and objects of activity. In the charters it also stated that institutions have the right to pursue entrepreneurial activity in the instances specified by the legislation of the Russian Federation and not contradictory to their charters. To carry out the authorized entrepreneurial activity, an institution has the right to open settlement accounts at banking institutions.

In a charter's section “Purposes and object of activity”, there is a detailed description of particular areas and types of activity, as well as the rights of the institutions necessary for achieving their chartered goals.

Some examples of the objects of activity are as follows:

- research activity in the field of natural, applied and humanitarian sciences, as well as experimental design and technological developments;
- development and implementation of new technologies, creation and production of complex appliances, software products;
- organizing and holding exhibitions, seminars, symposia, fairs, auctions and other events in Russia and abroad;
- carrying out, as diversification, other activity which is not contradictory to the existing legislation and corresponds to the purposes of the institution, including entrepreneurial activity.

An interesting peculiarity of the content of this section is that in a great majority of charters the rights for intellectual property are not listed among the rights of a particular institution. In those cases when these rights are defined, they are distributed in the following way: the intellectual property created at the institution at the expense of budgetary resources is owned by the state while the right of authorship – by the actual developers. By an agreement with the consumer, the obtained scientific results can be realized on commercial terms, and the resulting revenues be spend on the development of the principal activity (strengthening of the material and technical base, bonuses to the developers, etc.). The issues of the ownership and use of the intellectual property created at the expense of extrabudgetary sources are regulated by the provisions of corresponding agreements and contracts.

It should be noted that the majority of works are carried out at the expense of mixed financing from several sources, and the distribution of the rights for the intellectual property has not been yet defined by legislation. In such a situation, it would have been more correct to make a general reference in the charters to the existing legislation which presently is still being actively developed (in particular, a

discussion is going on as to the amendments and alterations to the Patent law; the drafts of the federal laws “On professional inventions”; “On state support and state guarantees for innovative activities in the RF”; “On commercial secrecy”; and some other laws are being developed).

Another noteworthy aspect of this section in charters is the description of the rights associated with opening accounts at banks, receiving and granting loans, borrowings and credits. The charters of institutions specify that they have the right "to open accounts with banking institutions in order to keep in them their financial resources and to carry out settlement operations, credit operations and cash payments, to receive and grant advances, loans and credits with the consent of the founder". The latter provision is absent in many charters. At the same time, Article 118 of the RF Budgetary Code envisages that budgetary institutions do not have the right to receive credits from budgetary institutions and other physical and juridical persons with the exception of advances from the budgets and government extra-budgetary funds. This provision is not stipulated in the charters of research institutions.

The section on property and finances of an institution contains a provision on the right of operative management of property in Federal possession which is consolidated to the institution. It also envisages the order of disposition of the revenues received from business activities and the property acquired at the expense of such activities: it corresponds to Item 2 of Article 298 of the Civil Code. The order of leasing out property is specified in accordance with Item 5 of Article 5 of the Law on Science: "State academic organizations founded by the Government of the Russian Federation or the federal executive authorities have the right to lease out the temporarily unused property in federal possession including the real estate with the prohibition of the purchase of leased property and with the consent of the owner. The rent rate is determined by the contract and shall not be below an average rental rate usually set for the lease of federal property at the places where such property is located. The revenues received from the leasing of federal property shall be taken into account in their full volume in the revenues of the federal budget and shall be used by the said organizations as the source of supplementary budgetary financing of the maintenance and development of their material and technical base". This corresponds to Article 21 of the Federal Law "On the Federal Budget for the year 2001". However, some charters do not reflect the latter provision in full. Thus, it can be pointed out that the revenues received from the lease out of Federal property shall be used as a source of supplementary budgetary financing, but the types of activity are not specified. And this fact alone means an excessively wide interpretation of the existing legislation.

This section also specifies the procedure for determining the structure and the staff of an institution: the list of offices, the number of employees, the form and the rate of wages and other categories of income received by the employees without limitation of payments to each of the employees are independently determined by the institution. And again, there are certain discrepancies in the charters. Some charters determine the rates of wages and the forms of payments on the basis of who is financing a certain sphere of research - the founder or some other source. In the former instance all the issues are regulated in accordance with the "regulations set for research institutions" (as it is worded in the statutes), while in the latter they are independently regulated by the institution. It is typical that the said differences in the interpretations are not related with the affiliation of the institution to a certain department.

It is noteworthy that the charters do not contain any provisions pointing out the relation between the principal and non-principal activities of the research institution.

The section "Management of Activity" contains provisions on the competence of the founder, the director, the academic board and the staff. This section significantly differs in the charters of institutions with different departmental affiliations. It also has some pronounced specific features in the statutes of scientific-and-research higher educational establishments.

An institution is headed by the director appointed upon the order of the corresponding ministry. Some charters also specify that the appointment of the director shall take place on the basis of a work contract. In the instance when the institution is a higher educational establishment, the director is appointed and relieved from duty by the order from the rector of the higher educational establishment.

The competence of the founder consists in the right to alter the charter, to determine the principal lines of the institution's work and the principles of formation and disposition of its property, to found the executive bodies of the institution and to terminate their authority before time, to approve the annual report and the annual balance sheet, to approve the financial plan and to correct it, to create branches and open representations, to reorganize the institution and to close it.

The charters can specify the authority of the director in a closed-end or opened-end list. In the opened-end list it is pointed out that the director "also has the right to exercise other powers". In the majority of statutes, the functions and duties of the director include: the representation of the institution's academic and other interests to the academic community, government and other bodies, national and international organizations; the disposition of the institution's property, the conclusion of contracts and the granting of a power of attorney - all within the limits specified by the work contract; the opening of the institution's budget, settlement and other accounts; the approval of the institution's structure and manning schedule. The director of a research institution determines the number of its employees in coordination with the corresponding ministry; approves the functional duties of the institution's subdivisions in coordination with the Academic Board, organizes supervision over the content of research works and their quality; issues orders and gives instructions binding for all employees of the institution within the limits of his authority; independently determines the character and the volume of the information which shall be considered to be classified as well as the conditions of confidentiality, or delegates this task to a commission created by him, hires (appoints) the persons into office and relieves the institution’s employees from office and conclude work contracts with them; rises the salaries of the institution's employees in accordance with the existing laws; bears responsibility for the maintenance and the intended use of the institution's property and for the fulfillment of the instructions and orders of the corresponding ministry issued by the latter within the limits of his authority as envisaged by the charter and the work contract.

The role of a collegial managerial body is played in the institutions by the Academic (scientific, scientific-and-technological) Board. The structure and authority of the Academic Board substantially differ in the charters of various institutions. The following variants are possible (the list is unlikely to be exhaustive):

The Academic Board is a consultory body whose main objectives are as follows: to prepare proposals on the formation of plans and programs of research and to listen to the reports concerning their implementation; to develop proposals on the

improvement of the institution's structure, to place the scientific personnel including the heads of structural subdivisions; to prepare proposals on the organization of interaction with other research or other organizations; to organize and carry out the personal certification and re-certification of research associates; and to consider other issues regarding the research-and-organizational activity of the institution. The Academic Board is headed by the Chairman of the Board - who is elected by the Academic Board from its own midst. The decisions of the Board regarding the activity of the institution shall come into force upon their approval by the director. The statute does not specify whether the director can be the Chairman of the Board.

1. The Academic Board is one of the managerial bodies which acts on the basis of a provision adopted by the members of the Board. Its competence consists in the development of the strategy and the tactics of the scientific-and-technological, scientific-and-methodological, international and organizational activity of the institution; the listening to- and approval of the plans of the institution's work and the reports presented by the director of the Center. In accordance with this scheme, the Academic Board shall be headed by the director of the institution.

2. The Academic Board is a collegiate managerial body, the main function of which is to determine the principal lines of scientific-and-technological and social development of the institution, to map the plans of the research-and-production, educational-and-methodological and any other activity of the institution as well as to supervise their implementation, and to coordinate research. The activity of the Board shall be managed by the chairman who is appointed by the director.

In accordance with Item 4 of Article 7 of the Law on Science, "the Academic Boards of state research organizations map and approve the plans of research works and the plans of development of state research organizations on the basis of the state orders and the specific objective of the state research organizations and that of their scientific and economic interests."

The afore-noted excerpts from the charter indicate that this norm is observed not by every institution, to say the least. In some of the institutions, the Academic Boards - „are just preparing the proposals on the future plans of research development to be approved by the director. In the institutions, where the mapping out and the approval of plans are within the competence of the Academic Board, one could come across a situation when the Academic Board is headed by the director, which means that the principle of one-Ban management is materialized there in the most rigid form.

The section on the reorganization and liquidation of a research institution contains some more or less detailed descriptions of the procedures for these operations (in particular, the procedure for the actions of a liquidation commission). All the statutes include a provision that the institution "shall be reorganized and liquidated in accordance with the provision envisaged by the Civil Code of the Russian Federation" (variant: "in accordance with the existing laws of the RF"). The property of the institution being liquidated which remains after the completion of the settlement of accounts with the budget and the employees of the institution which has been effected in the established order of priorities shall be transferred to the owner of the institution.

The liquidation of the institution shall be considered to be completed and the institution to have terminated existence after the making of entries thereof in the unified State register of juridical persons.

Thus, the charters' provisions concerning the reorganization and liquidation of research institutions do no contradict Item 6 of Article 5 of the Law on Science, in accordance with which "a research organization shall be created, reorganized and liquidated in the order established by legislation of the Russian Federation. When a state research organization is being reorganized, the integrity of its technological and (or) scientific-and-technological activity shall be preserved. It is not permitted to withdraw the experimental, experimental-and-educational, experimental-and-pharmacological and medical bases from the structure of the said research organization". At the same time. the statutes mainly focus on the liquidation of an institution without paying much attention to the issues of re-organization. Thus, none of the statutes under consideration contains a provision on the unacceptability of any withdrawal of experimental, experimental-and-educational, experimental-and-pharmacological and medical production from the structure of an institution in the process of its reorganization.

An analysis of the existing statutes of research institutions makes it possible to conclude that they hare been composed with due regard to the norms of the Civil Code and the laws on science and higher and postgraduate education. At the same time, the statutes frequently ignore the norms of the RF Budgetary Code despite the fact that as far as budgetary institutions are concerned, the norms of the Budgetary Code are of primary importance as the norms of a social character.

1.6.12. The basic problems of the regulation of activity of research institutions

At the present time, the conditions for the activity of research institutions are regulated by a complex of normative acts, some provisions of which contain a number of contradictions Moreover, the order of financial-and-economic activities carried out by research institutions significantly depends on the identity of the owner of the institution. Research institutions of the state academies (RAS, RAMS, RAAS) are on a special footing due to the fact that the organizational-and-legal status of the state academies is unique and does not correspond to the norms of the Civil Code. The research institutes opened at higher educational establishments in the form of separate institutions are also facing juridical difficulties because their founders are higher educational establishments which are not considered by the existing laws to be research organizations. In accordance with the law, research activities do not represent the principal occupation of educational establishments, and the same can be said of the training of researchers.

And finally, some special mechanisms of state regulation are applied to State Research Centers which include certain research organizations in the form of institutions.

All this demonstrates that the existing laws are extremely complicated and contradictory in respect to budgetary research institutions. Therefore, it becomes difficult to find the way for any optimization of budgetary financing of budgetary research institutions, or to plot the lines of their reorganization into some other organizational-and-legal forms.

Nevertheless, it is still possible to single out certain conceptual approaches and criteria to be reasonably used in the transformation of research institutions.

The model of this transformation should be chosen on the basis of a set of parameters of which the most important are:

- the character of the ongoing research and projects, the share of research being handled in the interests of the regions;
- the categories of the ongoing works, including the share of fundamental research;
- the structure of the sources of assets allotted to institutions, including the share of extra-budgetary financing and its dynamics in the past three or five years;
- the possession by the institution of any unique facilities;
- the size of the organization;
- the degree of development of relations between the institution and the other research organizations, industrial enterprises and foreign organizations.

The academies-subordinated research institutions the activities of which should be put in some order in accordance with the norms of the existing laws, most likely would be subject to these transformation to a minimum extent. The majority of academic institutes especially in the sphere of natural sciences are the leaders in their respective fields of research, and they handle a substantial volume of fundamental research. Some of these institutions which possess certain unique facilities could obtain the status of State Research Centers.

The creation of scientific-and-educational (educational-and-scientific) complexes and centers represents a much-promising form of the said transformation. These structures are already being created in the framework of the program, known by the name "Integration" but they do not have the status of a juridical person and their organizational-and-legal form is still not defined.

The potential organizational forms of integration in science can include the creation of academic laboratories based on higher educational establishments and also the creation of educational subdivisions within the framework of research institutions.

For the first time in the history of legislation of the Russian Federation, the concept of an educational-and-scientific complex was consolidated in the Law on Science (Item 2 of Article 11) which has specified, among other things, the "basic objectives and principles of the state scientific-and-technological policy therewith envisaging "the integration of the scientific, scientific-and-technological and educational activities based on various forms participation of the staff, post-graduate students and students of educational establishments for higher vocational education in scientific research and experimental developments through the creation of educational-and-scientific complexes based en educational establishments for higher vocational education which have a state status, and also on research organizations of the ministries and other Federal bodies of executive authority".

The organizational legalization of integrated structures shall be based on the Civil Code and the Law "On Non-Profit Organizations". It is expedient to use the three following legal forms when forming educational-and-scientific centers: the contract of simple partnership, the non-profit partnership or the association of juridical persons (associations and unions).

The advantages of the use of a contract of simple partnership are determined by its specific features permitting to combine the property and efforts of the partners without the formation of a juridical person.

In the instance when the educational-and-scientific center is being created as a juridical person, it is possible to choose such organizational-and-legal forms as a non-profit partnership and an association of juridical persons (association, union). In accordance with the existing laws, these categories of juridical persons hare membership, and they may carry out educational activity on condition that they are licensed.

The purposes of the creation of a non-profit partnership shall correspond to the general purposes specified for non-profit organizations (Item 2 of Article 2 of the Federal Law "On Non-profit Organizations").

In the instance of the formation of an association of juridical persons (associations, unions), educational and scientific-and-research institutions combine their efforts in order to coordinate their educational and scientific activities without having the extraction of profit as their primary goal. When the association is being created, the founders shall take into account the provisions contained in Article 14 “Associations of Juridical Persons (Associations, Unions) "in the System of Higher and Post-Graduate Vocational Education" of the Federal Law "On Higher and Post-graduate Vocational Education", and also in Article 11 of the Federal Law "On Science and the State Science-and-Technological Policy".

1.6.13. The basic conclusions to be made from the analysis of the state institutions' legal status

Russia has a developed network of medical, educational, cultural and scientific institutions. Despite the development of the non-government sector, the basis of this network is still formed by state and municipal institutions. Their legal status is characterized by branch-associated peculiarities and by certain general features.

1. Medico-prophylactic institutions, educational institutions and some categories of cultural institutions can carry out their activities only on condition that they have the licenses authorizing the corresponding activities.

2. Educational and scientific institutions are subject to the application of the mechanism of state accreditation.

3. As far as many types of institutions working in the social sphere and the sphere of science are concerned, their management involves the existence of certain forms of self-administration such as the council of educational institutions, academic boards, boards of trustees, general assemblies, etc.

The legislation which specifies the legal status of institutions of the social sphere and the sphere of science is characterized by a rather low degree of elaboration and clarity, by the abundance of norms poorly coordinated with the principles and norms of the Civil Code and the Law "On Non-profit Organizations".

In practice, the legal status of state and municipal institutions is determined by their constitutive documents (charters, provisions) which shall be approved by the bodies of state authority and local self-government acting as the founders of these organizations. At the same time, such institutions as the Russian Academy of Sciences which are, in fact, the budgetary ones, constitute juridical persons of a special type - their form is specified by the constitutive documents but is not defined in civil legislation.

The insufficiently clear definition of the right of operative management as contained, in Federal legislation, gives the authorities of RF subjects and the bodies of local self-government a lot of opportunities to independently interpret the concept of operative management and to define the essence of the rights and responsibilities invested in state and municipal medical institutions when approving their charters (provisions). In reality, it results in the fact that some medico-prophylactic institutions while being juridical persons are not free even to approve their own manning schedules - which that cannot be considered to be justified in conditions of a market economy. And on the contrary, the heads and the staff of state and municipal medical institutions frequently use the premises and the equipment on their own accord in order to develop paid services and to extract revenues at the expense of the principal activity of these institutions which is financed by the state.

Branch legislation contains the norms envisaging the creation of more favorable conditions for the financing of institutions and for the conduct of their principal and business activities. As a rule, these norms contradict the norms of the Civil Code and the Law "On Non-Profit Organizations".

1.7. Conslusions

Russia has a ramiform network of health care centers, institutions of education, culture and science. Regardless of the fact that the private sector is taking shape in the above areas, the backbone of the aforesaid network is still made up of regional government owned and government funded institutions. Their legal status varies from industry to industry, but still there are some common features shared by all.

1. Hospitals and other health care institutions (spas, etc.), educational institutions, individual types of cultural institutions are required to obtain license from the state to be able to conduct the respective type of business activity.

2. Educational and scientific research institutions are subject to the mechanism of state accreditation.

3. The way many an institution in managed in the field of science and research, as well as in the social sphere comes in a variety of forms of self-governance, e.g. council of educational institutions, academic committee/council, boards of trustees, general meetings, teachers conferences, etc.

Legislation defining the legal status of science and research institutions, as well as those in the social sphere is imperfect in many respects and is characterized by a high degree of ambiguity; with numerous provisions lacking consistency with the principles and norms established in the Civil Code and the Law on non-for-profit Organizations.

In actual fact, the legal status of state and municipal institutions is determined in their articles of incorporation – by-laws, regulations – which are subject to approval by the government bodies and bodies of local self-governance that are founders thereof. Under the circumstances, such essentially government-funded institutions as, for example, the Russian Academy of sciences, are juridical persons of a special type whose legal form is determined in their respective articles of incorporation but not in the civil legislation.

Lack of a clear-cut definition in the federal legislation of the concept of the right to operational management and control enables governments of the constituent members of the Russian Federation and bodies of local self-governance to independently interpret, quite broadly and to their liking, the concept of operational management and determine the contents of rights and obligations of state and municipal medical institutions as the latter submit their by-laws or regulations for approval to the respective government body. In reality this leads to situations where medical institutions, while being juridical persons, are not independent enough even to draw up their organizational charts, determine the number of staff to employ, which fact can hardly be justified in a market economy. What is also possible is the opposite whereby quite often, at their own discretion, directors and staff of state and municipal medical institutions use the premises and equipment (facilities) of their institutions to render chargeable services and generate revenues to the detriment of the core activity which the institutions were set up for in the first place and financed by the government.

The industry specific legislation contains norms and provisions aimed at improving the environment necessary for the funding of such institutions, so that they can combine their core activity with business. However, such provisions generally run counter to the norms and provisions of the Civil Code of the RF and the Law on non-for-profit Organizations.

2. An analysis of budgetary financing of state institutions

2.1. An analysis of general mechanisms of financing of state institutions

2.1.1. Financing of budgetary institutions

In order to realize the charter-stipulated objectives of an institution, the owner finances its activity from the budget of a corresponding level. Annually, the Law on the Federal Budget envisages under the item of expenditure to be incurred by the major managers of budgetary means, the financing of jurisdictional budgetary institutions founded by them.

The principal document determining the general volume, the purpose and the quarter-by-quarter distribution of the assets allotted from the budgets for the upkeep of institutions is the estimates of revenues and expenditures. All the expenses of budgetary institutions are grouped in the items of budgetary classification which determines the purpose orientation under each estimate.

In accordance with Article 70 of the RF Budgetary Code, budgetary institutions shall spend budgetary means exclusively on:

- payment for labor in accordance with the existing labor contracts and legal acts regulating the amount of salaries and wages of the corresponding categories of workers;

- transfer of insurance premiums to the state extra-budgetary funds;

- the transfers to the population paid in accordance with the Federal laws, the laws of the subjects of the Russian Federation and the legal acts of the bodies of local self-government;

- travel allowances and other compensations paid to the workers in accordance with the laws of the Russian Federation;

- payment for the goods, works and services in accordance with the existing government or municipal contracts;

- payment for the goods, works and services in accordance with the approved estimates when no government or municipal contracts are concluded.

This list is exhaustive, and no spending of budgetary means for any other purposes is permitted.

2.1.2. Payment for the labor of workers of budgetary institutions

Payment for the labor of workers of budgetary institutions is carried out on the basis of a Joint Tariff Scale authorized by Decree of the RF Government №785 of l4.10.1992 "On the Differentiation in the Levels of Payment for the Labor of Workers of the Budgetary Sphere on the Basis of a Joint Tariff Scale". The use of the Joint Tariff Scale is obligatory for every institution, organization and enterprise financed from the Budget.

The Joint Tariff Scale has l8 categories: for workers from the 1st to the 8th, and for highly qualified workers and office workers from the 9th to the 18th. Each category has a special tariff coefficient. The amount of the pay rate for the first

category is determined by the RF Government. The pay rates for workers of the other categories of the Joint Tariff Scale are determined by multiplying the tariff pay rate of the first category on the corresponding tariff coefficient. The pay rate of each worker is determined in accordance with the results of attestation and tariffication on the basis of the labor functions, the duties, the degree of independence, the level of responsibility and the level of education of the said person. The pay rates for the deputies of the head of an institution shall be 10 to 20% lower than the pay rate of their superior.

2.1.3. The business activity of budgetary institutions and the order of its accounting

Item 2 of Article 298 of the RF Civil Code stipulates: "If in accordance with the constitutive documents an institution has been granted the right to effectuate activity which brings revenues, the revenues received from such activity and the property acquired at the expense of such revenues shall be at the autonomous disposition of the institution and shall be taken into account on a separate balance sheet".

However, analysis of the norms of the RF Civil Code and the RF Budgetary Code reveals certain distinctive features typical of the business activity of budgetary institutions as well as a number of contradictions between the Codes.

First, the revenues brought by such activity can be spent by an institution only in order to achieve the prescribed aims, and, moreover, both the means received from the owner and the revenues brought by the business activity shall be spent exclusively in accordance with the estimates authorized in the order specified by the principal manager of the budgetary means. This norm of budgetary legislation directly contradicts the afore-stated norm of civil legislation which stipulates an autonomous disposition of the revenues brought by business activities. Second, the business activity of a budgetary institution is secondary in respect to the principal activity, and it is carried out only on permission of the founding owner of the founder-and-owner of the budgetary institution. This situation results, first of all, from the very essence of a budgetary institution as a non-profit organization founded for specific purposes, and also from the legal status of the property operatively managed by the budgetary institution.

Thirdly, the business activity of budgetary institutions is carried out on condition of personal property accountability. Nevertheless, it has a limited nature, because, as far as the liabilities born by a budgetary institution are concerned, the latter is accountable only for the monetary means managed by it. Though Russian legislation acknowledges the principle of separate liability for the founder and the juridical person created by the former, there is an exception envisaged for the cases involving state property - it is the State that bears liability for the debts of any state institution founded by it. This means that if a budgetary institution does not have its own means to meet its obligations, subsidiary responsibility shall be born by the Russian Federation as the founder and the owner of such institution, as stipulated by Article 120 of the RF Civil Code.

The final feature which characterizes business activities conducted by budgetary institutions is the legal status of the monetary means brought by the business activities as well as of the property acquired at the expense of these means.

All the revenues of a budgetary institution received both from the budget and the government extra-budgetary funds as well as from the conduct of business and other activities bringing revenues (furnishing of paid services, revenues brought by the use of state property) shall be completely taken into account in the estimates of revenues and expenditures of a budgetary institution (Item 3 of Article l6l of the RF Budgetary Code).

The estimates of revenues and expenditures concerning extra-budgetary means is a document filed by an institution for a current fiscal year and authorized in accordance with the order specified by the principal manager of budgetary means, this document determines the volumes of incomings of extra-budgetary means while specifying the sources of formation and the orientation of the use of these means in the structure of indices of the departmental and economic classification of expenditures as incurred by the budgets of the Russian Federation (Order of the Ministry of Finance №46n of 21.06.2001).

An institution files the joint estimates of revenues and expenditures reflecting all the revenues of the budgetary institution - coming from the budget, from the government extra-budgetary funds and from the conduct of business activities. However, in accordance with Item 6 of Article 161 of the RF Budgetary Code, an institution has the right of autonomous disposition of the means received from extra-budgetary sources, while the RF Minister of Finance has the right to put a ban on any spendings on the part of a budgetary institutions excepting the spendings at the expense of extra-budgetary sources (Item 4 of Article l66 of the RF Budgetary Code).

As regards the introduction of a treasury-based system of implementation of the Federal budget, the RF Budgetary Code (Article 254) stipulates the following order of accounting and spending of the monetary means brought by profit-making activities and the use of state property. The said means received by a budgetary institution are entered into a joint account of the budget. The authorized government body conducting the budget's implementation, shall reflect the said means in the personal account of this budgetary institutions not later than on the day following the day when they were entered in the budget's joint account. A budgetary institution has the right to dispose of the means entered into its personal account only to the extent specified in the personal account of this budgetary institution. Moreover, as regards the budgetary institutions of Federal jurisdiction, Item 6 of Article 254 of the RF Budgetary Code specifies that when a budgetary institution is unable to fulfill the orders coming from a body of executive authority, it has the right to use the means brought by business activities and the use of state property. In accordance with Point 4 of Article 254 of the RF Budgetary Code, the amount by which the means actually received by a budgetary institution from its business activities and the use of state property exceed the means taken into account in the estimates of revenues and expenditures shall be left at the budgetary institution's disposal.

As far as the issue of the budgetary compensation for the expenses covered by extra-budgetary means has caused a number of questions addressed to the Ministry of Finance, the Main Administration of the Federal Treasury has issued an explanation (Letter of the Ministry of Finance of 26.07.2000 №3-01-12/12-335).

Thus, in accordance with Item 6 of Article 254 of the RF Budgetary Code, in the instance of a lack of budgetary means, a budgetary institution has the right to use - in order to fulfill the orders from the body of executive authority it is subject to - the means brought by its business activities and the use of state property.

At the same tine, the existing budgetary legislation of the RF does not envisage any compensation from the Federal budget for the expenses conducted at the expense of the revenues from business activities.

Proceeding from the afore-said facts, the bodies of the Federal Treasury do not have a legal basis for sanctioning a compensation at the expense of the means of the Federal budget for any temporarily acquired extra-budgetary means.

It should be noted that despite the existence of a special legal status, the monetary means brought by the business or any other profit-making activity as well as the means coming from the owner shall be spent under a joint estimate (Article l6l of the RF Budgetary Code), while all the calculating and accounting are carried out in a separate balance sheet.

In accordance with Item 6 of Part 1 of the Instruction for the Conduct of Accounting at Budgetary Institutions authorized by Order of the RF Ministry of Finance №107n of 30.12.1999 "On the Approval of the Instruction for the Conduct of Accounting at Budgetary Institutions", "The accounting of the implementation of the estimates of revenues and expenditures concerning the budgetary means and the means acquired from extra-budgetary sources shall be conducted through the card of accounts envisaged by the present Instruction and a separate balance sheet for the means received at the expense of extra-budgetary sources".

That means that this provision legitimizes a double accounting of the means brought by business and other profit-making activities because the said means are accounted in the joint balance sheet of an institution and then are accounted for a second time in the course of preparation of a separate balance sheet.

2.1.4. The system of accounting adopted for budgetary institutions

The system of accounting adopted for budgetary institutions is an aggregate rules, means and methods of accounting covering the economic activities of budgetary institutions.

The basic principles of accounting for both budgetary and commercial institutions are stipulated in Federal Law №129-FZ of 21.11.1996 "On Accounting" (with alterations and amendments as of 23.07.1998). The basic principles of accounting (the principle of double registering, the principle of assessment, etc.) are common for institutions of all forms of property. However, the system of accounting at budgetary institutions is characterized by the existence of a special normative and legal base represented by various decrees of the RF Government, instructions, orders and letters issued by the RF Ministry of Finance, the RF Ministry of Taxation and the RF Ministry of Labor as well as by the instructions of the RF Central Bank regarding the activities and the order of accounting and taxation of budgetary institutions. The principal normative acts regulating the introduction of accounting at budgetary organizations is the Instruction on the conduct of accounting at budgetary institutions authorized by Order of the RF Ministry of Finance №107n of 30.12.1999 which has been in force since January 2001.

In contrast to the accounting of commercial organizations where the principal goal of accounting is to assess their activities, the accounting of budgetary institutions is focused, first of all, on supervising the activities of an institution on the part of the bodies of state authority.

2.1.5. Centralization of accounting

The legal capacity of certain types of budgetary institutions is significantly influenced by the practice of centralization of accounting.

When an institution does not have a separate structural department for accounting, as it happens sometimes, the accounting of implementation of the estimates of revenues and expenditures of the institution shall be conducted in accordance with the volume of accounting either by the centralized booking office or by an accountant from a superior organization.

When accounting is centralized, the estimate planning and spending of monetary means are subject to special rules.

Thus, the Instruction for the conduct of accounting at budgetary institutions authorized by Order of the RF Ministry of Finance №107n of 30.12.1999 "On the Approval of the Instruction for the Conduct of Accounting at Budgetary Institutions" specifies that when accounting is centralized, the heads of institutions receiving this service preserve the rights of a receiver; then it is explained what particular rights are invested in the head of a given institution particularly within the limits of allotments envisaged by the authorized estimates of revenues and expenditures. These rights are as follows:

- to receive advance payments for economic and other purposes in accordance with the established order;

- to sanction advance payments and the payment of wages and salaries to the workers of the institution;

- to spend the materials, foodstuffs and other material valuables to satisfy the requirements of the institution in accordance with the established norms;

- to approve advance statements of the accountable persons, documents on inventory, the deeds of writing-off of decayed or inapplicable fixed assets and other material valuables in accordance with the existing laws;

- to solve other problems concerning the financial and economic activities of the institution.

At the same time, all the accounting forms dealing with the implementation of the estimates of revenues and expenditures as regards the budgetary means and the means received at the expense of extra-budgetary sources shall be signed by the head and the chief accountant of an institution at which a centralized accounting office is created, while the heads of institutions receiving the service are furnished by the centralized booking office only with the data on the implementation of the estimates of revenues and expenditures.

Thus, the legal capacity of budgetary institutions within the system of centralized accounting becomes further restricted in comparison with the volume envisaged not only by the Civil Code but even by the Budgetary one these institutions, in fact, have no possibility to dispose not only of the means received under the estimates, but also of the means received from extra-budgetary sources.

2.1.6. The order of recovery of monetary means from the debtor in the person of a budgetary institution

The order of recovery of monetary means from the debtor in the person of a budgetary institution through the use of a writ of execution is regulated by the RF Budgetary Code, the Federal Law "On the Federal Budget for the Year 2001" of December 27, 2000 and by the Regulations for the recovery based on the writs of execution issued by the judicial authorities as regards the liabilities of recipients of means from the Federal budget, authorized by Decree of the Government of the Russian Federation of February 22, 2001 №143.

Article 109 of Law №150-FZ and the Regulations regulate the process of recovery on the basis of writs of execution issued by the judicial authorities as regards the means covered by the liabilities of those who receive assets from the Federal budget through the use of personal accounts opened with the Federal Treasury's bodies for the purpose of accounting the budgetary means.

The rules envisage the existence of a list of necessary documents to be submitted by a claimant together with the corresponding writ of execution, and also specify the bases for a rejection without the implementation of such writ of execution by the Federal Treasury (violation of the time limits in which the writ of execution should have been submitted, the disagreements of the content of the writ of execution with the RF laws' requirements, etc.).

The regulations for the recovery based on the writs of execution issued by the judicial authorities in respect to the liabilities of the recipients of financing from the Federal budget (authorized by Decree of the Government of the Russian Federation of February 22, 2001 №143) do not regulate the process of the forceful execution of court rulings.

The regulations specify the process of recovery based on the writs of execution issued by the judicial authorities in respect to the liabilities of those who receive assets from the Federal budget (hereinafter to be referred to as “debtor”) through the use of personal accounts opened by the debtor with the Federal Treasury's bodies for the purpose of accounting the budgetary means and also the means brought by business or any other profit-making activities.

A writ of execution issued by the judicial authorities in respect to the debtor's liabilities shall be presented by the claimant to the body of the Federal Treasury at the place of opening of the debtor's personal account. Together with the writ of execution the claimant shall present a copy of the court decision and a statement containing the requisites of a bank account to which the means subject to recovery shall be transferred.

The Federal Treasury's body shall meet the demand for the recovery of the means from the debtor within the period of three days since the day of reception of the writ of execution and in the limits of the remaining volumes of financing received from a higher manager of the Federal budget's means in accordance with the departmental, functional and economic classification of the expenditures of the Russian Federation's budgets. This norm corresponds to the order regulating the withdrawal of the means in the personal account of a recipient of the Federal Budget's means which shall be carried out by the Federal Treasury's bodies in the process of implementation of the Federal budget as stipulated by Articles 249 and 251 of the RF Budgetary Code.

Thus, in accordance with Article 249 of the RF Budgetary Code, the volume of the rights of execution invested in the recipients of the Federal budget's means as regards the assumption of liabilities to be covered from the Federal budget shall be specified in the process of approval and adjustment of the limits of budgetary liabilities. In accordance with Article 250 of the RF Budgetary Code, recipients of budgetary means transferred to them within the adjusted limits of budgetary liabilities have the right to assume liabilities to be covered by the means from the Federal budget.

The assumption of liabilities is effected by the recipient of budgetary financing and the supplier of the products (works, services)who shall sign corresponding agreements (contracts) in accordance with the laws of the Russian Federation. The volume of the assumed liabilities to be covered at the expense of the Federal budget's means during a current fiscal year shall not exceed the limits of budget liabilities in the structure of indices of the budgetary classification of the Russian Federation.

In accordance with Article 251 of the RF Budgetary Code, the Federal Treasury conducts the spending of the Federal budget's means which takes place after checking the payment and other documents (required for the expenditure to be effected) for correspondence with the requirements of the Budgetary Code, the approved estimates of budgetary institutions' revenues and expenditures and the adjusted limits of liabilities.

In accordance with Article 253 of the RF Budgetary Code and on the basis of the duly completed payment documents submitted by the recipient, the Federal Treasury effects the payment on the day of endorsement by withdrawal the corresponding means from the Federal Budget's joint account and by reflecting the performed transaction in the personal account.

At the same time, a budgetary institution has the right to dispose of the means passed to its account only to an extent reflected in the private account of this-budgetary institution (Point 5, Article 254 of the RF Budgetary Code).

The provisions of Articles 286 and 287 of the RF Budgetary Code are not applied to the legal relations concerning the execution of demands for the recovery based on the writs of execution issued by the judicial authorities as regards the liabilities of recipients of the Federal budget's means, because the afore-said provisions regulate the legal relations concerning an incontestable withdrawal of budgetary means in the instances when this procedure of withdrawal is stipulated by the RF Budgetary Code.

In the cases of absence or insufficiency of the means required for meeting the presented demands, the payment is effected in order of subsidiary liability at the expense of the means allotted to the principal manager of the Federal budget's means in accordance with the departmental identification of a given debtor. To this end, the Federal Treasury's body returns all the submitted documents including the writ of execution to the claimant informing him or her about the impossibility of a timely execution and the possibility of passing the writ of execution to the Ministry of Finance of Russia in order to recover the assets from the principal manager of the Federal budget's means.

On the strength of the received writ of execution and the required documents listed in the Regulations, the Ministry of Finance of Russia informs the principal manager of the Federal budget's means about the necessity to settle the debt specified

in the writ of execution and to do so within the limits of the approved budgetary allocations and the limits of budget liabilities under the corresponding codes of the RF budgetary classification.

Thereupon, within the time limits and in order stipulated by the Regulations as regards the cases when the means are insufficient, the Ministry of Finance of Russia displaces the budgetary allocations and changes the limits of budgetary allocations by entering the corresponding changes into the joint revenue and expenditure of the Federal budget, and the Federal Treasury's body located at the place where the personal account of the debtor has been opened satisfies the demands contained in the writ of execution in accordance with the order envisaged by Point 5 of the Regulations.

In accordance with the laws of the Russian Federation, the RF Ministry of Finance and the corresponding body of the Federal Treasury have the right to suspend the effecting of any transactions involving the Federal budget's means on the part of the principal manager of the Federal budget's means if the said manager does not comply with the requirements specified by the present Regulations.

These Regulations do not cover the execution of court decisions regarding the arrears of monthly children's allowances to be recovered from the agencies of social protection of the population (Letter of the RF Ministry of Finance

2.2. The peculiarities of state financing of medical institutions

2.2.1. Budget and insurance financing of state and municipal medical institutions

According to Article 41 of the Constitution of the Russian Federation, medical care at state and municipal health care institutions is provided to citizens free of charge at the expense of the resources of a corresponding budget, insurance contributions and other revenues. The purpose of the budget financing of health care is to cover the costs of the institutions within the branch in question associated with providing the population with free-of-charge medical services according to the existing social standard.

The financial resources of the health care system in the Russian Federation have the following sources: those of the budgets on all levels; the resources of state and public organizations (associations), enterprises and other economic subjects; private resources of citizens; nonrefundable and charity deposits and contributions; securities yields; credits granted by banks and other creditors; other sources not prohibited by law.

These sources form the financial resources of the state and municipal health care systems and the financial resources of the state system of compulsory medical insurance. The financial resources of the state system of compulsory medical insurance are formed at the expense of the insurants’ contributions for compulsory medical insurance.

According to the official statistical data published by the Goskomstat of Russia, the expenditures of the consolidated budget of the Russian Federation and the expenditures of compulsory medical care insurance funds are classified as public

(state) spending on health care[13]. Budgetary spending on health care includes the expenditures of the consolidated budget of the RF under Section 1700 of the functional classification (health care and physical culture). Official data on the public expenditures on health care are presented in *Table 6*. During the period of 1995-1999 there was a tendency for reducing the financing of health care at the expense of the public sources of financing; from the year 2000 onward these expenditures began to grow. On the whole for the period of 1995-2000 the level of public financing of health care (in comparable values)[14] was reduced by 8.0%, and the level of per capita financing – by 7.3%.

Table 6

State expenditures on health care (years 1995-2000)

	1995	**1996**	**1997**	**1998**	**1999**	**2000**
Expenditure in the RF's consolidated budget under Section 1700 (trillion roubles., с 1998 г. – in billion roubles)	41	56.2	77.1	64.4	103.7	153.4
including:						
- federal budget	3.9	4.3	9.8	5.7	9.8	16.9
- consolidated budgets of the RF's subjects	37.1	51.9	67.3	58.7	93.9	136.5
including contributions to insure non-working population from consolidated budgets of the RF's subjects	4.1	5.6	6.5	7.0	10.9	17.9
Expenditures of CMI funds (billion rubles, since year 1998 - in million roubles)	10286	15914	21449	23595	33953	50984
including:						
- Federal CMI fund *	119	186	155	255	266	520
- territorial CMI funds **	10167	15728	21294	23340	33687	50464
State spending on health care (trillion roubles, sibnce year 1998 - in billion roubles	51.3	72.1	98.5	88.0	137.7	204.5
State spending on health care as percentages of GDP	3.3	3.4	4.0	3.3	3.0	2.9
State spending on health care in real terms*** as percentages of baseline year (1995 –100%)	100.0	97.6	115.0	91.7	88.0	92.0

* - The expenditures of the Federal CMI fund do not include the subventions paid to the territorial funds because the former are registered as the expenditures of the territorial CMI funds

** - To eliminate double counting, from the expenditures sums of the territorial funds the budgetary allocations on the insurance of the non-working population are subtracted because they are included in the expenditures of the RF's subjects' budgets.

*** calculated using the data of the Goskomstat of Russia, with applying the GDP deflator indices).

Source: Goskomstat of Russia, the authors' calculations

Since 1993, after the law on medical insurance was implemented, a new public source of financing health care has appeared - the employers' contributions to the compulsory medical insurance of their employees. In accordance with the law, from the financial point of view two systems are emerging - "the system of compulsory medical insurance (CMI)" and "state and municipal health care systems". The CMI

[13] "Social position and living standards of Russia's population", Moscow: Goskomstat of Russia, 1998, 1999, 2000

[14] To calculate the expenditures in comparable prices, a deflator index of the GDP was applied.

system is financed by the employers' contributions to insure the working population and the allocations in the local budgets on the insurance of the non-working population.

According to the legislation, the budgets of different levels still bear the responsibility for the direct financing needed to cover the expenditures on providing the following types of medical care: the treatment of socially significant diseases, emergency medical care, especially expensive kinds of medical care. The other types of medical care should be provided for the population within the framework of a basic CMI program. Thus about 70% of all the resources available for providing the population with medical care were to be pooled within the CMI system. As of today, the ratio of the two systems of financing represents something quite opposite to that envisaged by the law.

It was planned that the employers' resources were to be an additional source for financing health care[15], that these resources would supplement the budgetary allocations on health care. However in reality these resources were not "supplementing" budgetary spending. Budgetary spending on health care began to decline and during the years 1995-2000 was reduced in comparable prices by 13.6%. The regional budgets began to allocate less resources on financing health care. The total share of the resources of the territorial budgets allocated on financing the branch in question was reduced during the same period from 15.0% to 13.3% of the total expenditures of the territorial budgets (on the average in Russia).

At the same time there has appeared a tendency to increase the resources accumulated within the CMI system. During the years 1995-2000, the share of the expenditures of this system in total public spending on medical care grew from 28.0% to 33.7%. The growth of the resources available within the CMI system was provided mostly by the takings of the contributions paid by employers. The proportion of the budgetary contributions for the non-working population paid to the territorial CMI funds was only 25.6% of their total revenues in the year 2000.

The implementation of the CMI system has turned out to be only partial. The replacement of the budgetary financing of medical institutions by insurance financing has been started but not completed. The health care authorities and the local authorities still continue to finance the activity of medical institutions, along with the CMI funds. As a result, the medical care provided to the population according to the basic CMI program is funded both by the resources accumulated in the territorial CMI funds and by the budgetary allocations which are managed by the health care authorities.

According to the normative document of the Federal CMI fund (FCMIF) enacted in 199716, the resources of CMI are to be spend on the following four items:

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[15] The Decree of the Supreme Council (Soviet) of the Russian Federation "On the procedure of financing the compulsory medical insurance of citizens in the year 1993" (No 4543-1 of February 24, 1993).

16 The guidelines on ensuring targeted and rational utilization of the resources of the system of compulsory medical insurance approved by the order of the Federal CMI fund of August 7, 1997, No 71 // Obiazatelnoe meditsinskoe strakhovanie v Rossiiskoi Federatsii. Sbornik zakonodatelnykh aktov I normativnykh dokumentov, reglamentiruiushchikh obiazatelnoe meditsinskoe strakhovanie v Rossiiskoi federatsii (Compulsory medical insurance in the Russian Federation. A collection of legislative acts and

- wages and salaries;
- contributions to the social insurance funds charged to the wages funds;
- food products;
- medications and dressing materials.

This means that the resources of CMI are to cover the operating costs of medicoprophylactic institutions (MPI) associated directly with providing medical care. Budgetary allocations are to cover the business expenses of medicoprophylactic institutions, the purchases of minor furnishings, new equipment, capital repairs.

However many of the RF's subjects do not follow the guidelines of the FCMIF. Very often the CMI resources are used, in addition to the four specified items, also to cover the purchases of minor furnishings, to pay for the communal services, and to cover other business costs. Some of the examples are the Republic of Dagestan, Voronezh Oblast, Stavropol Krai. The resources of CMI are used to cover the costs equip[ment and capital repairs in the Republic of Karelia, in Kurgan, Rostov and Sakhalin oblasts. In some regions, as, for example, in Yaroslav Oblast, the basic wages costs of MPI are financed by direct budgetary allocations while the resources of CMI are used to buy medications, to pay for patient's food and only to cover the additional financing of labor costs. In Omsk Oblast the labor costs are covered exclusively from the budget. The resources of CMI are used to cover the costs of medications, minor furnishings, patients' food, public utilities.

The financing of medical institutions from two sources on different items of expenditure or even on overlapping lists of items of expenditure is done on the basis of two different principles.

Budgetary financing of state and municipal medicoprophylactic institutions (MPI) is based on a budget of expenses. The financial resources are planned and allocated to recipients by the items of the economic classification of budgetary expenditures. The list of these items includes labor costs, allocations charged to the wages fund, purchases of medications and dressing materials, minor furnishings, food, payments for fuel and lubricants, other expendables, the costs of business trips, transportation costs, communication costs, public utilities, the costs of operating repairs of buildings and equipment, the costs of purchasing equipment and durables, the costs of capital repairs, the costs of capital construction, etc. The amount of financial resources is calculated depending on the category and capacity of a MPI (the number of outpatient visits to physicians per shift). To substantiate the need for particular resources on each item, the standard rates of manning schedule and wages, the standard rates of patients' nutrition and medications, etc. are applied which are established on the basis of capacity indices and differentiated by the types and categories of institutions. The resources actually to be allocated to MPIs are calculated on the basis of the sums allocated to those MPI in a preceding period on particular items and of the substantiation of their expenditures calculated by applying the existing standard rates.

The institutions must spend the funds received strictly on the target items and are not allowed to redistribute these resources between different budget items. In cases of saving some of the resources allocated on a particular item as revealed by the year's

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normative documents regulating the compulsory medical insurance in the Russian Federation. Vol. 6. M.: Federal'nyi fond OMS, 1998, p.111.

results, the financial bodies tend to cut the planned expenditures of the institution in question for the coming year on the item in question by the amount of the sum saved.

The method of financing based on a budget of expenses is convenient for the financial bodies. It allows them to control the ways of spending and to be sure that the allocated funds are not used, for example, for paying wages or purchasing expensive equipment to the detriment of other necessary items of expenditure. However this type of financing has serious drawbacks from the point of view of efficient utilization of resources. Its main drawback is that resources are allocated without any regard for the results of their recipients' activity. Budget-of-expenses financing creates no stimuli for the institutions to utilize the available resources in a more rational way and reproduces the expense type of economic management.

Within the CMI system, other mechanisms of financing MPI are used. The methods of payment are applied that coordinate the scope of financing with the volumes of medical care provided.

For outpatient care:

- reimbursement of medical services according to agreed tariffs;
- payment for medical services expressed in marks according to a uniform system of tariffs;
- payment for completed treated cases according to agreed tariffs;
- financing by the per capita principle (per one registered patient of an outpatient clinic).

For inpatient care:

- financing of a hospital according to a budget of expenses to cover agreed volumes of care;
- payment by the numbers of actual patient-days differentiated by in-patient departments;
- payment for the number of patients treated by the average cost of caring for one patient in a particular department;
- payment for the number of completed hospitalizations according to tariffs differentiated by clinical/statistical groups or medico-economic standards.

The issue of the choice of the methods of payment is not regulated by the federal bodies and is delegated to the authority of the RF's subjects. The methods of payment for medical care such as payment for particular services, per one patient treated, for the number of patient-days and for completed hospitalizations have become widely applied. According to the data provided by the FCMIF, financing according to a budget of expenses occurred in the CMI system in the year 1998 only at 17.4% of outpatient care institutions and 5.4% of hospitals.

When parallel financing of certain services provided by a MPI occurs, there emerges the problem of compatibility of the particular methods of financing applied and the stimuli thus created for a MPI in question. Most of the budget/insurance models existing in the RF's subjects produce a situation where the system of financing a MPI from a budget and that of covering the costs of medical care by the CMI funds are poorly coordinated with one another. This combination of the elements of insurance and budgetary financing lowers the efficacy of the new methods of payment applied in the CMI system and create no stimuli for medical institutions to look for

new ways of reducing the costs associated with particular items and for some ways of more rational redistribution of the resources between the items of expenditure.

Thus the existing organization of state financing of medicoprophylactic institutions does not create any noticeable pressure that could urge them to increase the efficacy of their activity and promotes reproduction of the traditional expense-type economic management instead.

2.2.2. An analysis of the mechanism of financing medical institutions (as exemplified by the municipal health care facilities of the city of Yaroslavl)

2.2.2.1. Budgetary financing of the municipal health care facilities of the city of Yaroslavl

The city's municipal institutions are financed from the funds envisaged in the city's budget for financing the items in the "Health Care" section. The financing of MPIs is done according to a budget of expenses whose items correspond to the items of the budget classification represented in *Table 7*.

Table 7

The items of the budget of expenses on which municipal medical institutions are financed from the budget

Item code	**Item title**	**Note**
110100	Wages	Fully from budget + bonuses from CMI funds
110200	Allocations charged to the wages fund	Fully from budget + bonuses from CMI funds
110310	Medications and dressing materials	Free-of-charge medications + medications by departments financed only from budget
110320	Minor furnishings and uniforms	Shared with CMI funds
110330	Food products	Only special foods to staff + patients' nutrition in departments financed only from budget
110340	Costs of fuel and lubricants	Shared with CMI funds
110350	Other expendables and supplied articles	Shared with CMI funds
110400	Business trips and use of local transport	Fully from budget
110500	Transport services	Shared with CMI funds
110600	Payments for communication services	Shared with CMI funds
110710	Costs of the upkeep of premises	Laundry, shared with the CMI funds

110720	Heating costs	Fully from budget
110730	Electricity costs	Fully from budget
110740	Costs of water supply	Fully from budget
111020	Costs of current repairs of equipment and minor equipment	Shared with CMI funds
111030	Current repairs of buildings and facilities	Fully from budget
111040	Other operating costs	Education of staff, shared with CMI funds
240120	Purchases of equipment	Shared with CMI funds
240330	Capital repairs	Fully from budget

Until the year 2000, the city's medical institutions were financed through the Department of Health Care of Yaroslavl City Administration according to the following procedure. The city's MPIs are preparing draft budgets based on their needs. As a rule, these needs are considerably greater than the financial resources available within the "Health Care" branch. The Department of Health Care of Yaroslavl City Administration considers the submitted budgets and distributes, at its own discretion, the available budgetary resources among the MPIs. A budget of expenses for the MPIs is approved on all the codes of the budget classification.

The financing is done strictly according to the approved budget. A medical institution has no right to redistribute the resources from one item to another.

In November 1999, by the Mayor's Decree №1826 of October 22, 1999, all the city's MPIs were transferred to the fiscal (treasury) form of budget implementation. Besides, it was intended to change the procedure of financing the city's budgetary institutions. The health care institutions were to be financed directly from the City Administration's Department of Finance, without transferring the resources to the City Administration's Department of Health Care.

The Department of Health Care was given the assignment to develop the intrabranch standards of minimum budgetary endowment for the "Health Care" branch. These standards were calculated for one patient-day (irrespective of the specialty of particular beds) and one outpatient visit to a polyclinic. The standards were approved by the Mayor's decree № 1826 of October 22,1999.

Since these standards were not taking into account the differences in costs associated with the patient care at MPIs of different categories and in different specialty departments, the transfer to the financing procedure based on such standards was not fully achieved by the branch in the year 2000. Nevertheless, the budget of expenses was already considered and approved by the City Administration's Department of Finance.

During the year 2000, the Department of Health Care, together with the Department of Finance and the participation of economists from some of the city's MPIs, created a task force for developing the standards. The experience of the task force of the board on tariffs of the territorial CMI fund accumulated while developing the tariffs for compulsory medical insurance was studied. The city's municipal institutions were divided into categories according to the categories of hospitals and polyclinics granted to them by the Licensing Board. An exception was represented by several MPIs: hospice, emergency medical care station, medical exercises dispensary, medical prevention center, children's sanatorium.

After that, the standards were calculated depending on the category:

- for providing one specialty patient-day in a hospital;
- for one outpatient visit to a polyclinic;
- for one test for the laboratories servicing all the city's MPIs: nuclear medicine, microbiology, immunology, biochemistry laboratories;
- for one test for departments of morbid anatomy;
- for one liter of blood for blood transfusion departments;
- for servicing one call by an emergency care team;
- for one city's resident for the medical prevention center.

For the institutions with departments of pediatric prevention and rehabilitation, the inflator index of 1.3 is applied.

For those medical and sanitary units whose expenses are partly covered by the enterprise to whom the unit belongs, the deflator index of 0.75 is applied.

All the submitted calculations were approved by the Mayor's Decree №136 of January 29,2001 "On approving the intrabranch standards of minimum budgetary endowment for the "Health Care" branch.

From the year 2001 onward, the city's municipal institutions have been financed by the Department of Finance according to the standard of minimum budgetary endowment. The mechanism of financing is as follows:

From the city's budget for the "Health Care" branch the resources to cover the following items of expenditure are allocated: those of approved target programs, for purchasing expensive equipment, capital repairs of buildings, liquidation of disaster consequences, for redemption of credit indebtedness and preparations for winter. The calculations for distributing the resources on these items of expenditure among the city's MPIs are carried out by the City Administration's Department of Health Care.

The remaining sum goes for financing the city's MPIs according to the standards approved.

The total volume of financing for a hospital is defined by multiplying the standard value by the planned number of patient-days and outpatient visits to a particular medical institution.

Then the quarterly distribution of the total sum of financing available for the MPIs according to the approved quarterly distribution for the branch as a whole is established .

Only the total sum of financing, with quarterly distribution, goes to a medical institution.

MPIs on their own distribute the total sum of financing among the items of expenditure. According to the Mayor's Decree №137 of January 29, 2001 "On approving the quarterly distribution of the city's revenues and expenditures for the year 2001", the top managers of the city's municipal institutions bear personal responsibility for priority spending of the available resources on paying salaries and wages, the contributions charged to the wages funds and other socially significant items of expenditure (patients' nutrition, medications, transfers to the population, public utilities). Thus the remaining items are planned by the residual principle.

Within the limits of the resources allocated to a MPI, a balance of expenses is developed for a current year and submitted for approval to the Department of Finance.

Throughout the year the financing is executed according to the approved budget, but according to this same Mayor's Decree the managers are allowed to redistribute budgetary allocations among the material items of current expenditure without non-target use of the resources or any growth of credit indebtedness.

If the budget of the city's health care system is greater than the sum of financing to medical institutions in accordance to previously calculated standards of minimum budgetary endowment, the inflator coefficients are applied to the standards. Thus, for example, on the basis of the Mayor's Decree №218 of February 4, 2002 "On the procedure of developing the expenditures of the institutions within the "Health Care" branch for the year 2002", differentiated inflator coefficients to the standard expenditures for the upkeep of the city's health care institutions were introduced.

2.2.2.2. Financing from the resources of compulsory medical insurance

The financing from the resources of compulsory medical insurance of medicoprophylactic institutions is carried out in accordance with the Tariff Agreement for reimbursement of the medical services included in compulsory medical insurance of the residents of Yaroslavl Oblast. This Tariff Agreement was approved by the deputy governor of Yaroslavl Oblast, the Chairman of the Yaroslavl regional department of the all-Russian public organization "Russian Medical Association" and a representative of the association of medical insurance organizations, and is coordinated with the director of the department of health care and pharmacy of the Administration of Yaroslavl Oblast, the executive director of the TF of CMI.

A medical service, in terms of providing in-hospital care and that equivalent to in-hospital medical care, is understood as:

- one in-hospital patient-day;
- one patient-day in a day hospital attached to a regular hospital;
- one day of care at a day care department of a polyclinic.

If the tariff of one in-hospital patient-day is 100%, the tariff of one patient-day in a day hospital attached to a regular hospital equals 80%, and the tariff of one day of care at a day care department of a polyclinic - to 60% of the tariff of one in-hospital patient-day.

In cases when operative endoscopic procedures in trauma, surgery, purulent surgery, orthopedic surgery, urology, gynecology, or otorhinolaryngology departments are carried out, the tariff for the first six days of care is doubled.

A medical service, in terms of providing in-hospital care and that equivalent to in-ambulatory-polyclinic medical care, is understood as:

- one visit to a physician at a polyclinic;
- one house call by a physician;
- one diagnostic procedure.

The size of a tariff for each medical service is defined on the basis of the uniform "Methodology of calculating the tariffs for medical services in the system of compulsory medical insurance of the residents of Yaroslavl Oblast" approved by the deputy chairman of the Government of Yaroslavl Oblast of September 14, 1998.

The tariff-setting task force defines a list of the kinds of medical care and separate medical services that are subject to reimbursement from the resources of compulsory medical insurance.

All the hospitals and polyclinics of the medicoprophylactic institutions existing in the oblast are divided into 5 categories according to the results of licensing.

For each of the kinds of medical care or separate medical services, a cost factor expressed in arbitrary units is defined. The cost factor equal to one arbitrary unit is represented by the cost of one patient day at a medical department of a MPI belonging to category II.

The cost factors for the other kinds of medical care are obtained by dividing the cost of a particular service by the cost one patient day at a medical department.

The tariffs are calculated according to the following procedure:

Cost factor of a certain kind of medical care (i.e. one patient-day of a surgical specialty)	*	Actual volume of medical care (e.g. number of patient-days at surgical specialty)	=	Number of arbitrary units on this specialty (surgical)

Then the number of arbitrary units on each kind of medical care is totaled and results in the value of the total volume of medical services in arbitrary units.

Total of the item "Financing of medical insurance organizations" - Total resources on the CMI activity		Cost of one arb. unit (or cost of one
Total arbitrary units of the total volume of medical care within CMI	=	patient-day of a medical specialty at a category II MPI

Cost of one patient-day of a medical specialty at a category II MPI	*	Cost factor of a particular service	=	***TARIFF***

The tariff structure for reimbursing the expenditures of medical institutions from the resources of CMI includes the items of budget classification presented in *Table 8*.

Table 8.

The tariff structure in the CMI system by the types of reimbursable costs

Code	Item	Share in total financing, %

		Hospital	Polyclinic as part of MPI	Independent polyclinic
110100 110200	Wages (bonuses) Allocations charged to the wages fund	15%	15%	30%
110310 110330	Medications and dressing materials Patients' nutrition	70%	50%	30%
110320 110340 110350 110500 110600 110710 111020 111040 240120	Minor furnishings and uniforms Costs of fuel and lubricants Other expendables and supplied articles Transport services Communication services Costs of the upkeep of premises Costs of current repairs of equipment and minor equipment Other current costs (training of personnel) Purchases of equipment (medical)	Up to 15%	Up to 35%	Up to 40%

Table 9 shows the comparative characteristics of the advantages and deficiencies of the existing mechanisms of insurance and budgetary financing of medical institutions in Yaroslavl Oblast.

Table 9

The comparative evaluation of the mechanisms of budgetary and insurance financing of medical institutions applied in Yaroslavl Oblast.

	Advantages	**Deficiencies**
Financing in the system of compulsory medical insurance	Contractual relations	Tariff does not cover the full cost of a service included in CMI
	Reimbursement of the actually provided volume of medical services	Retrospective method of payment – promotes an increase in expensive in-hospital care
	Additional financing of equivalent-to-in-hospital technologies and endoscopic interventions	
BUDGETARY FINANCING	An attempt to deviate from financing on a budget of expenses	No contractual relations
	Greatest independence of an institutions as regards the issues of distributing financial resources	A need to further improve the methodology of calculating the standards. No standard for an intensive care bed etc.
		An MPI is financed according to planned indices of patient-days and visits, regardless of actual values
		Uneven financing throughout the year

2.2.2.3. Financing of a MPI by the revenues from providing paid-for medical services

The territorial program of the state guarantees of free-of-charge medical care for the residents of Yaroslavl Oblast contains a Specification of paid-for medical services and the regulations for rendering these services on the basis of which the City Administration's Department of Health Care approves for each of the city's medical institutions the registers of medical services to be paid for in cash by the residents. Each MPI must have a copy of the Regulations for the procedure of rendering paid-for medical services. The Yaroslavl City Administration's Department of Health Care allows the city's medical institutions to provide paid-for medical services during their working hours on the condition that they at the same time meet their approved capacity standards for their primary activity.

2.2.3. Basic conclusions from analysis of state financing of medical institutions

The main feature of state financing of medical institutions is the duality of the channels of such financing. State and municipal institutions of preventive medicine (LPU) are financed at the expense of budgetary appropriations which are at the disposal of health care management agencies and at the expense of resources from obligatory medical insurance (OMS) which come to them from medical insurance organizations or directly from territorial obligatory medical insurance (OMS) funds. According to the legislation on medical insurance, the resources from obligatory medical insurance (OMS) are supposed to cover the current expenditures of institutions of preventive medicine (LPU) [which expenses are] connected directly to the medical process. Operating and administrative expenditures at institutions of preventive medicine, acquisition of soft inventory and new equipment, and major repairs are supposed to be reimbursed at the expense of budgetary appropriations. In practice, however, this division of the subjects of budgetary and insurance financing is by no means observed everywhere. Budgetary appropriations are allocated according to the same expenditure lines as insurance resources, and it is not rare that medical equipment is acquired and operating expenses are reimbursed at the expense of insurance resources. At the same time, budgetary resources, as a rule, comprise the basic part of the state financing of medical institutions.

With parallel financing for the carrying out by institutions of preventive medicine (LPU) of one and the same functions, the problem arises as to whether the financing methods applied and the stimuli for institutions of preventive medicine (LPU) generated by them are compatible. Methods of payment are applied in the OMS system which link the size of financing to the volumes of medical aid rendered. But budgetary financing of individual expenditure lines at LPU are done according to general rule as financing the support of these institutions regardless of the real volumes and quality of medical aid rendered. This combination of the elements of insurance and budgetary financing lowers the effect of the new methods of payment which operate in the OMS system and does not create stimuli for medical organizations to search for ways of effecting economies of expenditures by individual entries or to search for variants of more efficient redistribution of resources among the expenditure lines.

Attempts to resolve this problem are being undertaken in individual regions. The duality of channels for financing medical institutions has been eliminated in Samara oblast. Budgetary appropriations are directed to the territorial OMS fund, and medical institutions receive resources for covering their current expenditures only from the OMS system. In Iaroslavl' oblast a mechanism is being approved of modified itemized estimate financing of medical institutions whereby LPUs independently effect allocation of the overall sum of financing from the budget according to expenditure lines.

2.3. Peculiarities of state financing of educational institutions

2.3.1. Budgetary and extra-budgetary sources of financing educational institutions

Common access to free preschool, primary general and secondary professional education in state or municipal educational institutions and at enterprises is guaranteed by Article 43 of the Constitution. The right of every citizen on a competitive basis to receive free higher education at a state of municipal educational institution and at an enterprise is established. The Russian Federation establishes federal state educational standards.

The "On Education" Law adopted in 1992 and elaborated in 1996 is noteworthy for the attempt to introduce guarantees of state financing of education on the whole. The amounts of financing, according to the law, must be established on the basis of norms determined by a per student calculation. The right to receive state financing extends to all state and municipal educational institutions and also to non-governmental general educational organizations which have received state accreditation.

The law secured the rights of educational institutions to afford chargeable supplemental educational services not envisaged by obligatory educational programs and state standards and to conclude contracts with physical and legal persons for fully chargeable instruction beyond tasks financed at the expense of the founders for the admittance of learners and retraining of specialists. The "On Education" law (paragraph 10 of Article 41) establishes the limits of admittance to higher educational institutions on the basis of full chargeability at twenty-five percent of the number of learners for the following specialties: law, economics, management, state and municipal government. The law "On Higher and Post-Graduate Education" says that state and municipal higher educational institutions have the right within limits established by license to accomplish, beyond state tasks financed at the expense of resources from the federal budget for admittance of students, training of specialists according to appropriate contracts with payment of the cost of instruction by physical and legal persons in an amount coordinated with organs of the executive authority; they fix the permissible volumes of chargeable instruction in institutions of higher education (paragraph 2 of Article 29). Institutions of higher education are endowed with the right to resolve independently questions on the concluding of contracts and determination of obligations and other conditions not in contradiction with Russian legislation.

Educational institutions in the Russian Federation remain state and municipal ones in their overwhelming majority. This means that financing of their activities must be accomplished at the expense of resources from the federal budget, budgets of subjects of the federation, and budgets of municipal formations in volumes sufficient for educational institutions to carry out constitutionally established guarantees for receiving educational services in the Russian Federation. The chart for the financing of a state or municipal educational institution is determined by standardized regulations on educational institutions of the corresponding types and kinds.

Primarily institutions of vocational education are financed from resources from federal and regional budgets, while general education institutions are financed from resources from municipal budgets. According to Article 89 of the Budget Code of the Russian Federation, organization, maintenance, and development of institutions of education, health care, culture, physical training and sports, mass information media, and other institutions belonging to municipalities or run by organs of local self-government must be financed exclusively from local budgets. The correlation of amounts of allocations for education among budgets of various levels according to data from recent years may be estimated at 15:20:65.

Additional sources of financing of educational institutions are resources allocated by ministries, enterprises, establishments and organizations, and also individual citizens, for training, enhancement of qualifications, and retraining of personnel on a contract basis; income gained by institutions of learning due to various kinds of activities (educational, scholarly-scientific, manufacturing, and others) and services; resources obtained due to voluntary remittances from state and non-governmental enterprises, organizations, societies, establishments, and also citizens of the Russian Federation and foreign countries.

In accordance with Article 40 «State guarantees of priority of education» of the «On Education» law, the state guarantees:

- annual allocation of financial resources for educational needs in the amount of not less than ten percent of the national income;
- protection of the corresponding spending clauses of budgets of all levels from inflation;
- allocation for financing higher education in the amount of not less then three percent of the expenditures part of the federal budget;
- the receiving of higher vocational education at the expense of resources from the federal budget annually by no fewer than one hundred seventy students for every ten thousand persons in the population of the Russian Federation;
- the freeing of educational institutions independent of organizational-legal form in their non-entrepreneurial activities from payment of all kinds of taxes;
- tax advantages for all organizations and physical persons investing their resources in development of the educational system;
- advantages for taxation of real estate to owners who rent their property to educational institutions.

It has to be noted that the legislatively established share of expenditures for education has not been provided a single time since this law was adopted. At the same time the well-groundedness of this amount cannot but cause doubts, insofar as detailed

substantiating calculations do not stand behind it. This requirement of the Law on education is a formal declaration of the priority of the educational sphere.

In practice the amounts of state financing of education over the 1990s decreased in real terms (see *Table 10*). The insufficiency of budgetary resources was compensated for by a growth of extra-budgetary income of educational institutions. The structure of the sources of financing the system of general education as of 1999 is presented in *Table 11*.

A most important factor in development of the sphere of education under conditions of the restrictedness of state and municipal budgetary resources is the extra-budgetary income of educational institutions. The basic normative act regulating the extra-budgetary financial activities of educational institutions is the Law of the Russian Federation "On Education." According to Article 45, state and municipal educational institutions have the right to render the population, enterprises, establishments, and organizations chargeable supplemental educational services (instruction according to supplemental educational programs, teaching of special courses and cycles of disciplines, tutoring, engaging with learners in deeper study of subjects, and other services) not envisaged by the corresponding educational programs and state educational standards.

Table 10

State expenditures for education

	1991	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
Share of budgetary expenditures for education in the GDP	3.6	3.6	4.1	4.5	3.7	3.9	4.4	3.6	3.2	3.1
Index of change of budgetary expenditures for education in real terms, in percentages	100	79	80	76	56	58	64	52	49	52

Source: calculated from data from the Goskomstat (State Committee of Statistics) of Russia using index deflators of the GDP published at the end of the corresponding year.

Table 11

Structure of financing the system of general education in 1999

Sources of financing	**%**
Regional and local budgets, including federal transfers	82.1
Extra-budgetary resources* including:	17.9
Family resources for paying children's preschool and extra-school institutions	5.7
Family resources for covering current expenditures	2.9
Family resources for paying tutors	1.9
Chargeable school services	0.2
Resources from enterprises	5.9
Resources from sponsors	1.2

Other receipts	0.1
TOTAL	100.0

* Family resources for paying tutors were calculated only for services in the system of general education and supplemental foreign language lessons; means for paying tutors when entering an institution of higher education are counted against expenditures for financing higher education.

Source: according to data from the Center for Educational Policy at the State University – Higher School of Economics

Table 12

Approximate structure of extra-budgetary financial flows in the system of vocational education in 1998

Sources of extra-budgetary resources	**%**
Institutions of higher education	
Chargeable instruction at the expense of resources from enterprises	17,1
Chargeable instruction at the expense of family resources	33,2
Chargeable educational services (supplemental)	7,9
Chargeable services beyond the boundaries of the educational process	2,0
Leasing and other commercial usage of fixed funds	34,0
Sponsor resources and aid from local budgets	5,8
All told	100,0
Secondary specialized educational institutions	
Chargeable instruction at the expense of resources from enterprises	31,8
Chargeable instruction at the expense of family resources	4,0
Chargeable educational services (supplemental)	1,0
Chargeable services beyond the boundaries of the educational process	1,2
Leasing and other commercial usage of fixed funds	48,0
Sponsor resources and aid from local budgets	14,0
Grand TOTAL	100,0
Vocational-technical schools	
Chargeable instruction at the expense of resources from enterprises	15,4
Chargeable services beyond the boundaries of the educational process	1,5
Income from sale of products and services of their own production	35,1
Leasing and other commercial usage of fixed funds	37,9
Sponsor resources and aid from local budgets	10,1
Grand TOTAL	100,0

Source: the Center for Educational Policy at the State University – Higher School of Economics

In the Instructions on bookkeeping accounting in government funded institutions approved by Order of the Ministry of Finances of Russia dated 30 December 1999 № 107n, an institution's income shall be subdivided into the following types:

- resources of budgetary financing shall be received from the budget for carrying out the basic functions of an institution;
- special-purpose resources shall be received for accomplishment of the basic activities of an institution, but not from the budget, but rather from extra-budgetary sources;
- resources from entrepreneurial activities shall be received within the framework of the non-basic (non-charter) activities initiated by an institution.

Because budgetary financing and special-purpose resources are not subject to added-value tax, corporate profits tax, and also several other taxes, while entrepreneurial activities are taxed in the usual way, the problem of correct classification of the kind of activities (kind of income) has great practical significance for the financial well-being of educational institutions.

2.3.2. Entrepreneurial activities of an educational institution

In accordance with the "On Education" Law of the Russian Federation, an educational institution has the right to conduct the entrepreneurial activities provided for by its charter.

The following shall be regarded as an educational institution's entrepreneurial activities:

- sale and rental of fixed funds and property of the educational institution;
- commerce in purchase goods and equipment
- the rending of services as an intermediary;
- individual shares [interest] in the activities of other institutions (including educational ones) and organizations;
- acquisition of stocks, bonds, or other securities and receipt of income (dividends, interest) from them;
- the conducting of other non-sale operations bringing income not directly connected with its own production of products, works, and services and with their sale as provided for by the charter.

The activities of an educational institution as to sale of products, works, and services produced by it and provided for by its charter shall be regarded as entrepreneurial only to the extent to which income received for these activities is not reinvested directly into the given educational institution and (or) for the immediate needs of securing, developing, and improving the educational process (including for wages) at the given educational institution.

2.3.3. Rendering chargeable services in the sphere of education

The Rules for rendering chargeable educational services in the sphere of preschool and general education were confirmed by Decree № 505 of the Government of the Russian Federation dated 5 July 2002. The Rules extend to state and municipal and also non-governmental educational organizations and to individual entrepreneurs rendering services in the sphere of preschool, primary general, elementary general, and secondary (full) general education.

State and municipal educational institutions have the right to render for pay only supplemental educational services, that is, ones not envisaged by the corresponding educational programs and state educational standards. Regarded as such services are: instruction according to supplemental programs, teaching of special courses and cycles of disciplines, tutoring, engaging in deeper study of disciplines, and other services.

These services may not be rendered in place of or within the framework of the basic activities of an institution financed at the expense of budgetary resources.

Rejection by the consumer of chargeable services offered shall not be cause for decreasing the volume of basic educational services afforded him.

A list of services is fixed normatively in the Rules for which state and municipal educational institutions do not have the right to collect payment:

- lowering established class-fill (groups), dividing them into subgroups during implementation of basic educational programs;

- implementation of basic programs and programs of enhanced level and direction by schools (classes) with deepened study of individual subjects, and also by gymnasiums, lyceums, and preschool institutions in accordance with their status;

- elective, individual, and group lessons, elective courses at the expense of hours allotted to basic general educational programs.

The list of chargeable educational services and the way they are afforded must be contained in the charter of the educational organization.

2.3.4. Mechanisms of budgetary financing of educational institutions

Budgetary financing of educational institutions shall be accomplished according to an estimate of expenditures and on the basis of state (including government departmental) and local norms of financing determined by a per learner or pupil calculation according to each type, kind, and category of educational institution.

The basic source of financing educational institutions is budgetary resources. The state allocates to educational organizations budgetary resources, differentiating them by kinds of outlays. Educational management agencies confirm income and expenditure estimates for the educational institutions under their jurisdiction. Financial resources are planned and allocated to their recipient according to the clauses of economic classification of budgetary expenditures. The size of financial resources are calculated depending on category and capacity of the educational institution. Planning of allocated resources by each clause is done on the basis of the actual outlays of the preceding period and of norms (norms of staff member list and pay for labor, of expenditures for school equipment and inventory, and so on) which are established on a basis of indicators of capacity and are differentiated by kinds and categories of institutions.

Institutions do not have the right to utilize budget resources for expenditures not envisaged by the itemized estimate or to exceed expenditures according to any clauses without the sanction of the higher-standing management agency. Budgetary resources are transferred to institutions taking into account the actual usage of previously received resources according to each clause. So economizing on any kind of outlays is disadvantageous to an institution; in that instance it will simply not receive the entire sum of the originally planned resources in the future. Financing by itemized estimate permits financial agencies to control usage of budgetary resources, but it does not create stimuli at the institutions to compare outlays with results achieved and to optimize their correlation. Their goal is to receive as much money for wages, resources, and equipment as possible.

Before the beginning of the 1990s budgetary financing of educational organizations in almost all countries was accomplished in the form of itemized estimate financing. In the meantime in recent decades the significance of a certain autonomy of educational institutions in making economic decisions has become

completely obvious. The information society taking shape presents educational organizations with demands for flexibility in organization of their activities, development of educational programs and forms of instruction, and expansion of sources of financing. In order to meet the demands of a developing economy and a society growing more complex, educational organizations need the ability to determine independently the basic features of the educational process, methods and technologies of instruction, personnel structure, sources of income, and directions for expenditure of resources. In turn the necessity of restraining the growth of state expenditures for social purposes compels the seeking of ways to stimulate recipients of budgetary resources to their more efficient usage. Estimate financing does not meet these requirements.

A system of normative financing personified in the sphere of education is a rational alternative to the system of itemized estimate budgetary financing. Whereas within the framework of the latter the volumes of budgetary expenditures by individual clauses of the itemized estimate are determined by individual clauses of the itemized estimate by higher-standing agencies and cannot be changed taking into account concrete circumstances by decision of the supervisor of the educational institution, normative financing, determining the overall volume of allowable budgetary expenditures, affords the educational institution itself the chance to determine the optimal structure of clause-by-clause expenditures taking into account the concrete circumstances of the functioning of the educational institution.

Transition to norms of budgetary financing by per learner (pupil) calculation was already declared by the «On Education» Law of 1992 and confirmed by its new edition in 1996. According to Article 41 of the «On Education» Law, «financing of educational institutions shall be accomplished on the basis of state (including departmental) and local norms of financing determined by per learner or pupil calculation by each type, kind, and category of educational institution.»

A similar position is also to be traced in the legislation on higher vocational education. According to Article 28 of the Law of the Russian Federation «On Higher and Post-Graduate Vocational Education,» financing of educational activities of state institutions of higher education at the expense of resources from the federal budget must be accomplished proceeding from established state, including departmental, norms of financing. The federal norm of budgetary financing according to legislation is supposed to be established every year in the Law «On the Federal Budget» or in some law linked to it.

This federal per capita norm of budgetary financing is supposed to assure the carrying out of the state standard of general education. Because the educational standard (or its existing analogue) determines the volume and content of the educational program, this affords the possibility proceeding from unified tariff scale wages of calculating the volume of necessary financing of teachers' wages and other expenditures for securing the educational process. At the present time the standard has not yet been adopted, a temporary standard is in operation, or more exactly the base educational plan, and school financing is not very much connected to it. Regional per capita norms of budgetary financing can only be higher than the federal one, and an increase in the norm must be covered from the budgets of the subjects of the Federation. Correspondingly, local (municipal) per capita norms cannot be lower than regional ones. In the event municipal norms of budgetary financing exceed regional ones, the difference is covered from the municipal budget.

The given rational diagram of the Law on education has not been put into effect, in significant measure because of imperfections in the system of fiscal federalism (interbudgetary relations) and discrepancies in understanding the substance matter of the norm. Because the majority of researchers and practitioners understood the norm mentioned as a rational norm providing full satisfaction of the needs of an educational institution calculated per learner (pupil), it could not be provided for by the exceedingly limited budgets at all levels. Correspondingly, any attempt to transition to normative financing was rejected by the financial agencies.

At the present time transfer of financing of educational institutions to the treasurer system of executing the budget is being completed. Extra-budgetary resources of budget organizations are also supposed thereby to be deposited in their current accounts in the treasury and be expended according to an itemized estimate compiled and approved ahead of time. The result of such transformations in the system of education may with great probability be the "diversion" of extra-budgetary resources to the "shadow," expansion of the practice of excessive collections in general education, and a lowering of stimuli for legal earning of supplemental resources and for their open enlistment from various extra-budgetary sources.

2.3.5. The experience of introduction of normative budgetary financing in Samara Oblast

The principle of normative per capita financing of educational institutions was implemented experimentally in Samara Oblast. Since 1998 educational institutions in Samara Oblast have been financed by per learner norm, without clause-by-clause breakdown by budgetary classificational codes. In Samara Oblast, where resources for conducting the educational process were centralized in the regional budget, the norm is calculated as a particular from a division of expenditures of the regional budget for education by the number of learners according to kinds and types of educational institutions. Although such a norm is insufficient to cover all necessary outlays, it provides equal financing on a per pupil basis on the territory of the region and fully "accords with" the available budgets (the regional one when the topic is financing of educational activities and the municipal ones when the topic is maintenance of buildings and structures).

Transition to per capita norms of budgetary financing, as the experience of Samara Oblast shows, entails rationalization of the school network and increasing the number of pupils per teacher. Correspondingly, budgetary expenditures per learner grow due to better organization of activities. In Samara Oblast from 1998 through 2000 they increased from 1,700 rubles to 3,000 rubles per year, that is, they grew by seventy-six percent, while overall for Russia this growth came to about twenty-two percent.

The positive effect obtained from introduction of norms of budgetary financing in Samara Oblast is connected first of all with the securing of transparency of financial flows for all participants in the educational process (supervisors of educational management agencies and educational institutions, teachers, parents, and the learners themselves). Because in the new system financing is accomplished by norm depending on the number of learners, and not by the traditional itemized estimate by clauses of budgetary classification, this system assures flexibility in utilization of allotted budgetary resources. At the level of a subject of the Federation aggregate

budgetary expenditures for secondary education are distributed among general education educational institutes of education proceeding from the declared number of learners for the recurring year. If a school due to a higher quality of instruction attracts more learners to itself, it also receives a greater volume of budgetary financing. Such an approach permits securing real competition by schools for learners and implementation of the principle "money follows the learner." With a mechanism of financing such as that in distinction to treasurer execution of the budget, institutions possess wide independence in utilization of budgetary resources received and possibilities of flexibly adapting the structure of their own with expenditures to the demands of the dynamically changing environment. Institutions also gain stable stimuli for the open attraction of extra-budgetary resources.

Generalizing the experience of experimental testing of the method of normative per capita financing of the activities of general education institutions in a number of regions of the Russian Federation under conditions of operation of the Tax and Budgetary Codes of the Russian Federation, it should be concluded that the positive features of the method characterized above may be implemented to a certain degree without entering the changes proposed above into the aforesaid codes by means of bringing budgetary resources to the budget receiver according to the norm of a unitary sum on a per pupil basis. For this it is needed to secure formation of the budgets at all levels for 2003 on a normative basis, accompanying this with preparation of the necessary normative legal base. It is also necessary to abolish the operative Standardized staff member list for an educational institution and to work out new norms for the formation of the numbers of staff members at educational institutions.

2.3.6. Basic conclusions from analysis of state financing of educational institutions

Educational institutions in the Russian Federation remain state and municipal in their overwhelming majority. Budgetary resources are the basic source of their financing. At the same time a most important factor in developing the educational sphere under conditions where state and municipal budgetary resources are limited is the extra-budgetary income of educational institutions, in particular institutions of vocational education.

Before the beginning of the 1990s, budgetary financing of educational organizations was effected in the form of itemized estimate financing; later a transition was partially effected to financing general education institutions on a basis of per capita normatives. After adoption of the Budgetary Code, beginning in the year 2000 there began a transition to treasury implementation of the state budget. Whereas previously educational institutions had the right to determine by themselves the vectors for expending their resources, now the itemized estimate form of budgetary financing of educational institutions has been restored, which [form] substantially limits the economic independence of educational institutions. Itemized estimate financing does not stimulate educational organizations to utilize budgetary resources efficiently and does not assure that educational activities supported by the state be in accordance with the current and future requirements of the labor market and the requirements for modernizing Russian society.

Attempts are being undertaken in individual regions to effect full-fledged introduction of the principle of normative per capita financing of educational

institutions. Its application has entailed rationalization of the school network and increasing the number of pupils per teacher.

2.4. Peculiarities of state financing of cultural institutions

2.4.1. Budgetary and extra-budgetary sources of financing cultural institutions

Budgetary appropriations allocated for financing state and municipal cultural institutions are allocated by a separate line (the cultural development fund) when budgets are formed at all levels. Resources are also directed into the funds which are received from enterprises, organizations, and citizens, as are income from the conducting of lotteries, auctions, exhibitions, and other social events, from the sale of securities, and also other receipts not contradicting legislation of the Russian Federation. Resources from cultural development funds are expended for purposes envisaged by provisions on these funds which are approved by state management agencies of the Russian Federation.

Expenditures of the consolidated budget for the section "Culture, art, and cinematography" in the year 2000 comprised twenty-eight and a half billion rubles or 1.45 percent of all budgetary expenditures. Whereas this year twenty-four point three billion rubles were expended from the consolidated budget on culture and art, including five point two billion rubles from the federal budget and nineteen point one billion rubles from the budgets of constituent members of the Russian Federation, which comprised one point two percent, point five percent, and one point nine percent of the total volume of the respective budgets (Table 16). Financing is done from these resources of:

current activities of cultural organizations;

the Federal special-purpose program "Russia's Culture": the subprogram "Development of culture and preservation of Russia's cultural legacy;

other institutions and events in the field of culture and art.

Table 13

Expenditures from budgets at different levels for the cultural sphere in the year 2000

	Consolidated budget of the Russian Federation	**The Federal budget**	**Budgets of constituent members of the Russian Federation**
Expenditures on culture, art, and cinematography, billions of rubles	28,5		
including on culture and art	24,3	5,2	19,1
The share of expenditures on culture and art in the expenditures of budgets, percentages	1,2	0,5	1,9

Sources: The Russian Statistical Annual: Collection of statistics/Goskomstat of Russia. Moscow, 2001; the Ministry of Finances of Russia.

Appropriations from budgets at various levels are not the only source of financing for cultural and art organizations (*Tables 14, 15*). They receive income from basic kinds of charter activities (sale of tickets at chargeable events, sale of chargeable services), entrepreneurial activities, renting of premises and other things, resources from patrons and sponsors.

Receipt of resources from extra-budgetary sources is not grounds to curtail budgetary remissions into funds for cultural development.

Table 14

Sources of financing for cultural and art organizations of the Ministry of Culture of the Russian Federation in the year 2000, in thousands of rubles

Kinds of cultural organizations	Total receipts	Appropriations from budgets at different levels	Extra-budgetary resources, total	of them:	
				Income from basic kinds of charter activities	Other income and receipts
1.Amusement parks	528735	195217	333518	265087	68431
2.Zoos	251575	143391	108184	101460	6724
3.Theaters	1007852	560820	447032	429021	18011
4.Concert organizations	1285830	856290	429540	387035	42505
5.Museums	4913313	3708269	1205044	955667	249377
6.Institutions of a cultural-leisure time type	8741154	7496193	1244961	881925	363036
7.Libraries	4488930	4244376	244554	106495	138059
Total	*21217389*	*17204556*	*4012833*	*3126690*	*886143*

Sources: the Ministry of Culture of the Russian Federation.

Table 15

Structure of sources of financing cultural and art organizations in the system of the Ministry of Culture of the Russian Federation in the year 2000 (in percentages)

Kinds of cultural organizations	Total receipts	Share of budgetary sources	Share of extra-budgetary sources	Of them:	
				Income from basic kinds of charter activities	Other income and receipts
1.Amusement parks	100,0	36,9	63,1	50,1	12,9
2.Zoos	100,0	57,0	43,0	40,3	2,7
3.Theaters	100,0	55,6	44,4	42,6	1,8
4.Concert organizations	100,0	66,6	33,4	30,1	3,3
5.Circuses	no data	no data	no data	no data	no data
5.Museums	100,0	75,5	24,5	19,5	5,1
6. Institutions of a cultural-leisure time type	100,0	85,8	14,2	10,1	4,2
7.Libraries	100,0	94,6	5,4	2,4	3,1
Total	*100,0*	*81,1*	*18,9*	*14,7*	*4,2*

Sources: the Ministry of Culture of the Russian Federation

In the year 2000 the share of budgetary appropriations for cultural and art organizations in the system of the Ministry of Culture of the Russian Federation comprised 81.1 percent in the overall volume of financial receipts and resources from other sources comprised 18.9 percent. This correlation fluctuates significantly for various kinds of cultural and art organizations. The share of extra-budgetary sources is higher at former self-financing enterprises (parks, zoos, performing arts organizations) and lower at cultural-educational institutions (museums, institutions of a cultural-leisure time type, libraries). This indicator is traditionally highest at amusement parks (63.1 percent) and lowest at libraries (5.4 percent). At theaters and zoos it comprises over forty percent, 24.5 percent at museums, and 14.2 percent at institutions of a cultural-leisure time type. At the present time the share of resources from extra-budgetary sources in the overall volume of receipts of financial resources at concert organizations is significantly lower than in the 1980s and at the beginning of the 1990s. Thus, in the year 2000 it comprised only 33.3 percent, while in 1990 the share of income from ticket sales alone reached sixty-three percent.

If one leaves aside income from basic kinds of charter activities of cultural and art organizations in the system of the Ministry of Culture of the Russian Federation, then the share of other income and receipts (income from entrepreneurial activities, rental of property, receipts from sponsors and patrons) in the year 2000 comprised 4.2 percent of the overall volume of financial receipts. Altogether this was only 886,000,000 rubles for 104,000 organizations.

2.4.2. Analysis of experience at transforming mechanisms of budgetary financing of cultural organizations

Analysis of the experience of transformations which were conducted in the last fifteen years has significance in principle for understanding the peculiarities of contemporary mechanisms of budgetary financing of cultural institutions and of the prospects for their change.

Two kinds of organizations functioned in culture during the era of the planned economy:

- enterprises (theaters, concert organizations, circuses, amusement parks);
- government funded institutions (museums, clubs, libraries).

Resources from the budget were allocated for accomplishment of the activities of both kinds of organizations. The proportions between these kinds of financial receipts were different. At theatrical-spectator enterprises[17] and [amusement] parks the share of collections from ticket sales was rather high. Thus in 1988 it comprises fifty or more percent in the overall sum of income (fifty percent on the average at theaters, sixty-three percent at concert organizations, and sixty-seven percent at parks, while the activities of the All-Union amalgamation “Soiuzgostsirk” (Union State Circus) were profitable). At cultural-educational institutions that same year the share of income from chargeable services to the population in the overall volume of

[17] For theaters, concert organizations, and circuses there existed at the time the official term «theatrical-spectator enterprises;» in the 1990s they began to be called performing arts organizations.

resources received comprised on the average less than one percent in libraries, eleven percent in clubs, and twenty-five percent in museums.[18]

Theaters, concert organizations, circuses, and [amusement] parks operated on principles of self-financing. They reimbursed expenses for creation, reproduction, and dissemination of their artistic products by means of income received from direct consumers and by means of state subsidies. State subsides were planned and allocated to theaters, concert organizations, circuses, and [amusement] parks "on the same line." Sizes of subsidies were established without connecting them to the results of the activities of the collectives [groups]; subsidies were utilized passively to compensate for the difference between expenditures and extra-budgetary income. >From so-called economy of subsidy, and for a very large number of profitable cultural organizations, funds for economic stimulation were formed from profit which exceeded the plan.

The itemized estimate procedure of financing was characteristic of government-funded institutions, such as cultural-educational institutions were. The necessary financial resources were allocated to museums, clubs, and libraries from the budget according to an itemized estimate of income and expenditures approved clause-by-clause and subsequently monitored by cultural management agencies and financial agencies. Government funded institutions were also unable to have independent disposal of so-called special resources (income from chargeable services to the population). Their usage was entered into expenditures clauses in just as much detail. The economic mechanism based on itemized estimate financing practically precluded material stimulation of the activities of the collectives; it did not allow the possibility for cultural institutions themselves to evaluate and exert economic influence on the results of the labors of their employees.

By means of the reforms at the end of the 1980s and of the theatrical experiment (1987-1988)[19] and the so-called new conditions of management (1989)[20] - there came to be in essence a turn to introduction of elements of market relations into the system

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[18] *Basic indicators of development of branches of culture for 1987-1988*. Statisticheskii sbornik (A statistical collection). Moscow, 1989 / Giproteatr MK SSSR. For concert organizations the data are for 1990. Source: Osnovye pokazateli razvitiia otraslei kul'tury za 1987-1988 gody (Basic indicators of development of branches of culture for 1989-1990). Statisticheskii sbornik (A statistical collection). Moscow, 1991 / Giproteatr MK SSSR.

[18] *On all-embracing experiment on improving management and increasing efficiency of activities of theaters.* Decree of the Council of Ministers of the USSR dated 8 July 1986, № 800. Methodological instructions on manner of planning, financing, and economic stimulation of theaters participating in the all-embracing experiment on improving management and increasing efficiency of activities of theaters. Worked out in correspondence with the decree of the Council of Ministers of the USSR dated 8 July 1986, № 800.

[19] Regulation on transfer of the country's theaters to new management conditions. Approved by the Commission on improvement of management, planning, and the economic mechanism dated 22 November 1988; Protocol № 136, Section III; Regulation on transfer of the country's concert organizations to new management conditions. Approved by the Commission on improvement of management, planning, and the economic mechanism dated 6 December 1988; Protocol № 138, Section II; Regulation on transfer of the Order of Lenin Creative Production amalgamation of state circuses «Soiuzgostsirk» to full self-support and self-financing. Approved by the Commission on improvement of management, planning, and the economic mechanism dated 3 January 1989; Protocol № 142. Basic regulations on transfer of cultural-educational institutions to new management conditions. Approved by the Commission on improvement of the economic mechanism at the Council of Ministers of the USSR dated 25 May 1989, Protocol №13.

of financing state cultural organizations. There proceeded a process of transfer of rights in the sphere of creative and operational-economic activities from state management agencies to the cultural organizations themselves. This concerned issues of repertoire and operational policy, cultural-educational, leisure-time and scholarly-scientific activities, and of organizing working conditions and procedures. The collectives also received far more rights in the area of price formation, management of their income, formation of the vocational make-up of employees, payment and stimulation of their labor, and development of the creative production and social sphere.

The new management conditions for the first time afforded government funded institutions (museums, libraries, clubs) practically the same rights in the area of planning, economic stimulation, and payment for labor as self-financing art organizations. As far as budgetary financing of these institutions is concerned, its itemized estimate procedure was in fact kept. Resources from the state budget continued in the same way to be allocated clause-by-clause, but their number gradually decreased. At first the "break-down" inside clauses (by letter) was eliminated, then the clauses themselves began being joined together and made larger.

At the same time there also took place more substantial changes in the system of financing cultural and art organizations of all organizational-legal forms. One of the results of the theatrical experiment was the introduction of a new principle of allocation of economy of subsidy according to which its entire sum remained at the theater. In 1989 this regulation was extended to concert organizations and circuses. Under the conditions of the theatrical experiment, income remaining after reimbursement of material outlays and formation of the wages fund were directed in full to the incentives fund and the fund for creative-production and social development. From then on they were planned in the expenditures part of the itemized estimate. This signified, in spite of retention of the concept «economizing the planned subsidy,» in essence a transition from encouraging over-fulfillment of the plan to stimulating real results. Under the «New management conditions» appropriations from the budget came to be looked upon as a particular kind of income of self-financing organizations and budget cultural institutions, which gave the already familiar concepts of income and expenditures new content and eliminated the concept of «planned unprofitability.»

The decision on granting cultural organizations of all organizational-legal forms the right to enlist diverse extra-budgetary sources of financing was of significance in principle to them. Beginning in 1989 all subjects interested in development of cultural activities and in improving the cultural servicing of the population – enterprises of all forms of property ownership, social and other organizations, private persons – were allowed to participating in its financing. At the same time receipt of resources from other sources was not, as noted in the normative documents, grounds for decreasing the size of appropriations from the budget. With the introduction of the new system of management there began the formation of a multi-channel system of financing cultural activities.

In the course of the reforms at the end of the 1980s performing arts organizations and cultural institutions moved from the principle of rigid price regulation to usage of the basic instrument of the market mechanism – free price formation. Free prices for tickets were introduced beginning in 1989 in theaters, and later in other performing arts organizations, too. This transition took place later for

budget cultural institutions. At the end of the 1980s when rendering chargeable services to the population they were still compelled to use approved price lists. However, the "New management conditions" already allowed application of so-called agreed prices to new kinds of services. And, besides that, clubs, museums, and libraries now had the right to independently expend financial resources received from sponsors and patrons, and also from the population for rendering supplemental chargeable services, for providing for and development of their basic activities. Work with potential patrons and sponsors, mastery of the basics of price policy, and an increase in volume and diversification of chargeable forms of activities permitted many cultural organizations to attract supplemental income.

A consequence of the political and economic reforms of the beginning of the 1990s was decentralization of cultural financing. And although the level of decentralization of budgetary expenditures on culture had been high even earlier, the very practice of financing changed radically. Whereas before 1992 all appropriations for culture in local budgets was coordinated with the Ministry of Culture of the Russian Federation, and later with the Ministry of Finances of the Russian Federation, in 1992 local authorities became factually independent in the making of decisions on allocation of the resources in their budgets.

The Law on culture (1992) contained an attempt to define unambiguously the state's obligations for financing the cultural sphere. The principle of the normative approach to forming appropriations for culture in the budgets of all levels was proclaimed. No less than two percent of the resources of the federal budget and no less than six percent of the resources of regional and local budgets was to go for these purposes. But, as in the case of the financing of education, these norms were not fulfilled.

As to the actual mechanisms of budgetary financing of cultural institutions, no radical changes took place here right up until the middle of the 1990s. The new system of management which was secured in the Law on culture and in a number of other documents began to be gradually dismantled beginning in the middle of the 1990s by means of various kinds of methodological directions, elucidations, and instructions. While as a result of putting into effect the Budgetary Code and the treasurer system of executing the budget, the economic independence of cultural organizations turned out to be less than they had had under the conditions of the planned economy.

2.4.3. The mechanism of budgetary financing of state cultural organizations

For accomplishment of the charter goals of a cultural organization a proprietor finances its activities from the budget of the appropriate level. The greater part of budgetary resources are allocated for the current activities of cultural organizations according to clauses:

- 1501/410/273 and 1501/411/273 - maintenance of especially valuable sites of the cultural legacy of the peoples of the Russian Federation;

- 1501/410/283 - maintenance of museums and permanent exhibitions;

- 1501/410/284 - maintenance of libraries;

- 1501/41/281 - state support of theaters, concert organizations, and other performing arts organizations;

- 1501/410/288 - state support of circus organizations.

Financing of the current activities of theaters, concert organizations, museums, libraries, clubs, zoos, and amusement parks, which by their organizational-legal form are institutions, is accomplished on the basis of the itemized estimate principle. For each of them there is approved an itemized estimate of expenditures in which are reflected all kinds of outlays divided by clauses of economic classification of budgetary expenditures. Financial resources allocated from the budget for the current activities of an institution are entered into a current account opened at treasury agencies. The latter accomplish monitoring of expenditure of these resources in accordance with the designated purpose. The above-named cultural organizations do not have the right to independently reallocate them among the various expenditure clauses. The budgetary list may be changed by the Ministry of Finance (or other appropriate financial agency) in the course of a year at the request of the Ministry of Culture (or other appropriate agency of the executive authority) prepared according to a declaration made by the cultural organization.

The «Rosgostsirk» (Russian State Circus) company is a unitary enterprise. It is allocated subsidies from the federal budget «on the same line» according to clause 1501/410/288 which are received into its settlement account. Then these resources are allotted to individual circus organizations and entered into their settlement accounts. Some of them are unitary enterprises and some of them are government-funded institutions. The company allocates the former financial resources for current activities «on the same line» and the latter on the basis of an itemized estimate of income and expenditures, but not such a detailed one as theaters, concert organizations, clubs, [amusement] parks, and other institutions in the cultural sphere. Circus organizations having the status of an institution have not gone over to the treasurer system. Monitoring of expenditure of financial resources allocated to them is accomplished by the company's leadership.

Aside from budgetary financing of the current activities of cultural organizations there exists special purpose budgetary financing:

- according to clause 1501/410/287 - other institutions and events in the field of culture and art (from the Ministry of Culture's centralized fund);

- according to clause 1501/631/711 – the federal special purpose program «Russia's Culture» (subprogram «Development of culture and preservation of Russia's cultural legacy»).

Special purpose budgetary financing of cultural organizations is accomplished on the basis of agreement (up to 200,000 rubles) or state contract (over 200,000 rubles). Allocated resources are also received into the organization's current account at the treasury agencies and are expended according to the itemized estimate approved by the Ministry of Culture (or other appropriate agency of the executive authority).

The cost of implementing the Federal special purpose program «Russia's Culture» (subprogram «Development of culture and preservation of Russia's cultural legacy») for the years 2001-2005 comprises 27,783,000,000 rubles (2,476,100,000 rubles for 2001), of that 19,968,300,000 rubles (1,426,600,000 rubles for 2001) at the expense of resources from the federal budget, 4,130,500,000 rubles at the expense of the budgets of constituent members of the Russian Federation (572,500,000 rubles for

2001), and 3,684,200,000 rubles at the expense of extra-budgetary sources (477,000,000 rubles for 2001).

Financial resources of institutions in the cultural sphere from extra-budgetary sources, like resources received from a proprietor, are reflected in current accounts at treasury agencies and are expended exclusively according to the itemized estimate. Volumes and sources of financial receipts are reflected in the itemized estimate of income and expenditures for extra-budgetary resources, as are the directions in which they are utilized in accordance with the clauses of economic classification of budget expenditures. The itemized estimate for extra-budgetary resources, as is the case also for budgetary special purpose resources, is approved by the Ministry of Culture or other appropriate agency of the executive authority and can be changed in coordination with them. Monitoring of special purpose expenditure of resources is accomplished by treasury agencies.

Estimates reflecting the income of a cultural organization from the budget and from entrepreneurial or other income-producing activities are joined into a unified itemized estimate of income and expenditures. Accounting and accountability for each kind of financial receipts thereby are done according to an independent balance sheet.

Thus it can be said that at the present time the principles and the mechanism of financing the absolute majority of cultural organizations does not differ from that of any state institution.

2.4.4. Entrepreneurial activities of state and municipal cultural institutions

State and municipal cultural institutions are permitted to conduct entrepreneurial activities envisaged by their charter.

A list of the kinds of entrepreneurial activities is established in the Fundamentals to which are referred activities:

- on sale and rental of basic assets and property of a cultural organization for purposes not connected to cultural activities;

- on commerce in purchase goods and equipment;

- on rendering the services of an intermediary;

- on individual shares in the activities of commercial enterprises, institutions, and organizations (including cultural ones);

- acquisition of stocks, bonds, or other securities and receipt of income (dividends, interest) from them;

- on accomplishment of income-producing operations, works, and services not envisaged by the charter.

The activities of a cultural institution as to sale of products, works, and services produced by it and provided for by its charter are regarded as entrepreneurial only to the extent to which income received for these activities is not reinvested directly into the given organization for the needs of securing, developing, and improving basic charter activities.

Chargeable forms of the cultural activities of cultural-educational institutions, theaters, philharmonic societies, and folk collectives and performers are not

considered to be entrepreneurial ones if the income from them goes completely for their development and improvement.

2.4.5. Pricing policy in the area of culture

Prices (rates) for chargeable services and products, including prices for tickets, are established independently by cultural institutions.

When organizing chargeable events, cultural institutions are obligated to establish privileges for preschool children, learners, the disabled, and enlisted military personnel. The manner of establishing privileges for these categories of the population is established by the appropriate agencies of the executive authority.

The financing of expenditures connected with the free-of-charge visits to museums once a month by persons under the age of eighteen is accomplished within the boundaries of the financial resources envisaged for financing museums and permanent exhibitions in the agency structure of expenditures from the federal budget.

For purposes of the social welfare of citizens, state regulation of prices, except for the folk art industry, is allowed for the products of enterprises producing goods of cultural and informational purpose when these enterprises have a monopoly on these goods in the market.

2.4.6. Basic conclusions from analysis of state financing of cultural institutions

The component parts of the system of state and municipal cultural institutions are extraordinarily heterogeneous from the point of view of the structure of the sources for financing their activities. The work of archives, libraries, and organizations engaging in protecting monuments is provided for almost completely at the expense of financing from the state or from philanthropic organizations. In museum and club activities a more noticeable role is played by revenue from entry tickets and sale of various services and souvenir products. But budgetary financing remains primary. The activities of theaters and philharmonic and folklore collectives are provided for by a combination of budgetary financing, private donations, income from ticket sales, and other things.

At the same time, the principles and mechanism of financing the absolute majority of cultural organizations do not differ from any state institution. The basic form applied for budgetary financing of state and municipal cultural institutions at the present time is itemized estimate financing. It provides state organizations with the financial resources for effecting their activities. But a direct connection between the size of appropriations allocated and the results of these activities achieved is not assured thereby. The connection turns out to be mediated – through the size of aggregate expenditures minus extra-budgetary revenues. Itemized estimate financing greatly limits the possibilities for organizations to make independent economic decisions on expending resources received.

Over the course of the last fifteen years cultural institutions have been urged to conduct active entrepreneurial activities and to replace budgetary appropriations with extra-budgetary income. Extra-budgetary revenues from basic activities and from the sale of kinds of goods and services not in their line of specialization really have

grown, but the share of extra-budgetary resources in the overall income of cultural institutions remains low.

A cutting of state expenditures on the cultural sphere combines with the low efficiency of their utilization. The practice is widespread of allocating budgetary resources in support of cultural organizations without precise obligations on their part and without monitoring the results of usage of budgetary appropriations. Competitive allocation of budgetary resources is applied episodically, and its procedures are non-transparent and elicit justified reproaches. Methods of shared financing of cultural projects and programmes from the budgets of various levels which have given good account of themselves abroad are almost not applied. Any proposals on creating intersecting systems of financing individual kinds of cultural activities are rejected, while such systems are applied in many countries, both with developed market economies and with transitional economies.

2.5. Peculiarities of state financing of institutions in the sphere of science

2.5.1. Budgetary and extra-budgetary sources of financing scientific institutions

According to paragraph 1 of Article 15 of the Law on science "Financial provisioning of scientific and (or) scientific technical activities is based on its [financial provisioning's] special purpose orientation and a multiplicity of sources of financing. Financing of these activities shall be accomplished at the expense of resources from the federal budget, the budgets of constituent members of the Russian Federation, extra-budgetary sources (their own or resources enlisted from economically active subjects and their amalgamations, and also resources from clients who order works done), and other sources in accordance with the legislation of the Russian Federation."

The structure of the sources for financing research and development (R&D) which has actually taken shape is presented in *Table 16*.

As an example of the structure of sources for financing government-funded institutions of science one may consider the financing of the Russian Academy of Sciences. The enlarged structure of sources for financing the Russian Academy of Sciences looks as follows:[21]

60% - resources from the federal budget;

5% - resources from state scientific assets (the Russian Foundation for Fundamental Research and the Russian Humanitarian Scientific Foundation [RFFI and RGNF]);

4% - resources from the Ministry of Industry, Science, and Technologies of the Russian Federation;

20% - agreements on economic activities;

5% - income from rental of real estate;

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[21] Vestnik RAN (Bulletin of the Russian Academy of Sciences), №8, Volume 71, August 2001, p. 691.

6% - other sources.

Table 16

Structure of sources for financing scientific research and development (in percentages)

	1996	1997	1998	1999	2000
Total	*100*	*100*	*100*	*100*	*100*
Resources from the budget	60,7	59,6	52,2	49,9	53,7
Resources from organizations in the entrepreneurial sector	15,3	15,5	17,3	15,7	18,7
Resources from private nonprofit organizations	0,5	0,8	0,9	0,04	0,04
Resources from the scientific organizations themselves	11,5	10,5	13,7	10,4	9,0
Resources from extra-budgetary funds	6,2	6,0	5,5	6,9	6,5
Resources from institutions of higher education	0,1	0,1	0,1	0,2	0,08
Resources from foreign sources	5,6	7,4	10,3	16,9	12,0

Goskomstat of the Russian Federation.

There remain now no scientific institutions, the only source of financing of which is the state budget. Thus, for example, at institutions of higher education the financing of science from extra-budgetary sources exceeds budgetary financing by two or three times on the average.

The share of budgetary financing is science is decreasing (see *Table 16*); however about half the expenditures on R&D is financed from the resources of the state budget, which is substantially higher than in the majority of developed countries. Extra-budgetary sources there provide up to seventy-eight percent of the total volume of domestic outlays on R&D, the leading role thereby belonging to the entrepreneurial sector. The share of the participation of the entrepreneurial sector in the financing of R&D remains stably low in Russian science.

The system of extra-budgetary funds, as can be seen from the table's data, for the time being does not yet play a large role in supporting R&D, although it could have been larger. The system of extra-budgetary funds may be considered in the capacity of a form of state redistribution of resources, since the receipts from the funds are formed at the expense of decreasing the tax base of enterprises and organizations. However, this redistribution is effected not by means of direct state intervention (the taking of a part of the profits of enterprises in the form of taxes for the purpose of subsequent redistribution), but by means of stimulating enterprises to finance R&D through granting them tax advantages.

In June 2001 Chapter 25 of the Tax Code was adopted canceling all privileges having to do with the corporate profits tax. This in all likelihood will lead to reduction and even curtailment of the activities of extra-budgetary R&D funds, if privileges for expenditures on R&D are cancelled.[22]

The basic part of budgetary expenditures on civilian science is comprised of Section 06 “Fundamental research and the facilitating of scientific technical progress.”

[22] The second part of the Tax Code (in the part concerning the tax on profits) was adapted by the State Duma of the Russian Federation on 22 June 2001 in the third reading. In the version adopted by the Duma, tax privileges for expenditures on R&D were kept, that is, these expenditures are subject to deduction from the taxable base.

It consists of two subsections: 0601 “Fundamental research and the facilitating of scientific technical progress” and 0602 “Development of promising technologies and high priority trends in scientific technical progress.” The subsections are intended to reflect outlays on fundamental and applied research, respectively.

Resources for financing scientific research and experimental development for civilian purposes are allocated from the federal budget in an amount of not less than four percent of the expenditures part of the federal budget. At the present time the operation of this norm in the part not secured by financing from the federal budget has been suspended from the first of January through the thirty-first of December 2002 by Federal Law dated № 194-FZ dated 30 December 2001.

Reflection of state expenditures on science in the budgetary classification of the Russian Federation has a characteristic feature: the operating budgetary classification is at variance with the system of concepts and terms used in the Law on science. A part of the expenditures on that which, according to this law is defined as “scientific research, “scientific technical,” or “experimental activities” is placed not in section 06, but in other sections of budgetary classification (for example, the kind of expenditures 408 “Geological study of the mineral wealth of the Russian Federation, the continental shelf, and the oceans of the world for federal needs” is entered into subsection 3107 “the Federal foundation for reproduction of the mineral raw materials base;” 0904 “Hydrometeorology” and 0905 “Cartography and geodesy” etc., are allotted separate subjections).

Allocation of financing by main managers of budgetary resources of section 06 is shown in *Table 17*. The greater share of financing falls to the academies of science which have state status.

Table 17

Expenditures of the federal budget by section 06 “Fundamental research and the facilitating of scientific technical progress” in the context of the main managers of budgetary resources

Designation	**The year 2001**	
	Millions of rubles	**%**
Total for the section	22093.9	100
Academies of science having state status, Moscow State University	9010.0	40.0
State budgetary funds	1776.2	8.0
The Ministry of Industry, Science, and Technologies of the Russian Federation	5450.7	24.7
Other ministries and agencies	5857.0	26.5

Source: the Ministry of Finance of the Russian Federation.

There is to be observed in the dynamics a tendency toward growth of the proportion of state academies in the overall volume of budgetary financing and a decrease in the share of budgetary financing of science in institutions of higher education.

Fundamental scientific research is financed primarily at the expense of resources from the federal budget. Funds for support of scientific and (or) scientific technical activities are being created for purposes of facilitating original projects in fundamental

scientific research selected on a competitive basis in a manner established by the Government of the Russian Federation.

Federal scientific technical programs, high priority applied scientific research, and experimental development are financed at the expense of the federal budget, of funds for the support of scientific and (or) scientific technical activities, and by way of individual shares at the expense of resources from organizations, amalgamations, banks, and other subjects carrying on activities of economic significance. Scientific technical programs formed and implemented on the basis of international and inter-industry scientific technical agreements and scientific technical programs for creation of new equipment and technology of dual application can also be financed by way of individual shares.

Works of regional significance can be financed at the expense of resources from the budgets of constituent members of the Russian Federation, local budgets, regional funds for support of scientific and (or) scientific technical activities and by way of individual shares at the expense of resources from organizations, amalgamations, banks, and other subjects carrying on activities of economic significance.

The most important regional scientific and scientific technical programs and projects, the results of the accomplishment of which can also be used in other regions, can be financed at the expense of resources from the federal budget, including by way of individual shares.

Joint utilization of resources allocated from the federal budget, the budgets of constituent members of the Russian Federation, and local budgets for financing scientific research of federal significance is effected on a share basis by coordination among the appropriate agencies of the Russian Federation, constituent members of the Russian Federation, and agencies of local self-government.

Scientific and (or) scientific technical activities may be accomplished at the expense of grants. The recipients of grants manage them in accordance with the legislation of the Russian Federation or in the event of their utilization on the territory of a foreign state in accordance with the legislation of that state, and also under the conditions under which these grants are allocated.

According to Clause 6 of Article 15 of the Law on science, “financing of scientific and (or) scientific technical activities is effected by the state on the basis of a combination of financial support from scientific organizations and special purpose financing of concrete scientific and scientific technical programs and projects.” The share of base financing of scientific organizations (when resources are allocated to a scientific organization on the whole on the basis of an overall itemized estimate of its number and the previous year's level of outlays) in overall budgetary appropriations for civilian science over the course of the last ten years fluctuated from a minimum of 76.6 percent to a maximum of 83.5 percent.

2.5.2. Trends of expenditure of budgetary and extra-budgetary resources of budget science institutions

Substantial problems in the sphere of state financing of R&D are connected to the indefiniteness of the legal and property status of government funded institutions and are common to the entire budget sphere.

On the one hand, there exists budgetary financing of scientific and other research institutions which, however, does not cover all the requirements for their maintenance. On the other hand, these institutions cover a significant part of the financial requirements at the expense of usage of the property transferred to them for their economic jurisdiction (first of all by renting premises) and also at the expense of carrying out chargeable works on order from other organizations.

Trustworthy information about the value and make-up of property which can be an extra-budgetary source of financing government funded institutions and about the magnitude of supplemental income, including income entered into the accounts at the Treasury, is absent. The rights of government-funded institutions to utilize this property are determined, as a rule, by agency normative acts or by the arbitrary decisions of the leaders of ministries and agencies. The rights of government-funded institutions to receive and expend extra-budgetary income are also indefinite.

The structure of expenditures in the volume of budgetary financing using the example of the scientific institutions of the Russian Academy of Sciences have looked as follows in the last two years (*Table 18*):

Table 18

Structure of the articles of expenditures in the volume of budgetary financing for scientific institutions of the Russian Academy of Sciences

Subject article	**2001**	**2002 (draft)**
Total	*100*	*100*
Base financing of scientific institutions	74.2	74.4
Including:		
Wages fund with additional sums	59.4	59.8
Public utilities	8.3	9.8
Scholarships	0.6	0.6
Programs of special purpose expenditures of the Presidium of the Russian Academy of Sciences (support of young scientists, acquisition of scientific literature, support of conferences, congresses, symposiums, and other things)	13.8	13.4
Programs of fundamental research of the Presidium of the Russian Academy of Sciences	7.0	7.8
Program for modernization of the material technical base at scientific institutions	5.0	4.4

Source: the Financial-economic board of the Russian Academy of Sciences

Base financing of scientific organizations – the least effective means of financing scientific institutions – dominates. This leaves a practically insignificant volume of resources for modernization of scientific instruments and equipment – of the article of expenditures which in significant measure should be supported at the expense of budgetary sources in the instance of support of science institutions conducting fundamental research primarily[23]. However, the resources received according to the itemized estimate suffice basically only for repair of equipment and purchase of expended materials and reagents. Therefore it is basically extra-budgetary

[23] The share of fundamental research in the overall volume of research and development conducted by the Russian Academy of Sciences came to seventy-four percent in the year 2000, according to data from Goskomstat of the Russian Federation.

resources which are expended for modernization of the material and instruments base today.

All new instruments, as a rule, are purchased at the expense of extra-budgetary resources – foreign (more rarely – domestic) grants or contracts or at the expense of economic contract resources. Scientific equipment acquired at the expense of extra-budgetary resources has to be put on the institution's balance sheet. The spending of extra-budgetary resources on the purchase of equipment is regarded as expenditures not taken into account for purposes of taxation (according to Article 270 of the Tax Code), and therefore a twenty-four percent tax has to be paid on these resources. In this way the possibilities today for renovation of the instrument base of science are sharply limited.

For some institutions the utilization of extra-budgetary resources has become significantly more complicated. This has to do with institutions of higher education first of all. Beginning 1 December 2001 in many regions of Russia they went over to the treasury system of servicing the extra-budgetary resources of institutions of higher education, and at the end of the year all unutilized resources, in accordance with the Budget Code, were transferred to the state budget. Deposited wages in particular wound up there, too.

2.5.3. Problems of misuse of resources

There is no well-adjusted and worked-out system of monitoring the efficiency of utilization of budgetary resources for research and development in Russia today. The systematic checks done on ministries, agencies, and funds by the Auditing Chamber of the Russian Federation are an exception. They reveal individual instances of misuse and even illegal utilization of the budget. As far as efficiency of utilization of the budget is concerned, one should take a cautious approach to the conclusions of the auditors, because the problem of such an evaluation in principle has been weakly worked through even at the methodological level.

The practice which has taken shape understands as misutilization any utilization of resources not according to the codes envisaged in the itemized estimate. Theoretically the itemized estimate can be reapproved, but in practice this is a very complicated and time-consuming procedure. Therefore the system of allocation of resources through the Treasury system which has been introduced, although it does carry out a monitoring function, can simultaneously lead to paralysis of the scientific process. Besides that, the itemized estimate of expenditures is approved at the beginning of the year, while receipt of resources according to individual clauses in practice takes place extremely unevenly. Thus the entire annual budget for official travel may be received by a science institute at the end of December, when it is already practically impossible to utilize it. Only wages with additional sums are financed most evenly and according to plan, while the greatest difficulties are connected to purchasing equipment and reagents.

According to Clause 6 Part 1 of the Instructions on bookkeeping accounting at government funded institutions approved by order of the Ministry of Finances of the Russian Republic № 107n dated 30 December 1999 «On approval of instructions on bookkeeping accounting at government funded institutions» the conducting of separate accounting of operations by budgetary resources and resources received at the expense of extra-budgetary sources is envisaged. Only direct expenditures which were

effected during the course of fulfillment of a concrete agreement, such as wages, additional sums for wages, sums transferred to co-executors, material outlays, and expenditures for official travel are regarded as outlays for works carried out at the expense of extra-budgetary sources. Thus an institution cannot direct resources to development of the material technical base and also to covering current operating expenditures (heating, lighting). Thus there has been created a sort of budgetary trap, when the financing of expenditures important to a science institution encounters too many difficulties.

It also makes sense to mention separately one aspect of misutilization of resources which is not revealed by bookkeeping accounting. What is meant is expenditure of budgetary resources allocated within the framework of the state scientific technical programs existing today. Ministries, as a rule, conduct allocation of program financing without competition, without independent expertise, without concluding agreements and contracts for the carrying out of works, and, finally, without any kind of evaluation of the efficiency of their carrying out.[24] Resources for carrying out programs are received into the accounts of institutes and are often paid out in the form of increases in wages for all employees of the institute regardless of whether they participate in implementation of program projects or not. Therefore program resources in the majority of instances are looked upon by scientific organizations as a form of base financing not encouraging active researchers to work and affording the possibility of maintaining the entire personnel complement of the institute.

2.5.4. Peculiarities of financing university complexes

Financing of educational and scientific activities at federal university complexes is effected at the expense of resources from the federal budget in accordance with state missions for preparation of specialists and retraining and enhancing the qualifications of employees.

Thus introduction of the concept of university complexes can solve the problem only in part, leaving aside issues of organizing budgetary financing of science at institutions of higher education.

Science employees at institutions of higher education and scientific research conducted by state institutions of higher education are financed by the federal agency for managing higher vocational education independent of the financing of educational activities (Paragraph 3 Article 28 of the Federal Law «On higher and post-graduate vocational education,» that is, according to a separate budgetary clause. Science employees have a different labor and vocational-legal status than teacher-professor personnel. Representatives of the latter are not obligated to conduct scientific work, but at the same time legislation does not forbid them to do that, not having defined thereby the legal status of such combining of teaching and scientific research.

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[23] Report on results of checking at the Ministry of Science and Technologies of the Russian Federation on the completeness of receipt, purposeful and efficient utilization of resources of the budget and extra-budgetary sources for financing high priority trends in the development of science and equipment, critical technologies at the federal level, carrying out of measures for strengthening state support of science in the Russian Federation in accordance with the budgetary legislation of the Russian Federation and the Federal Law «On science and state scientific technical policy» for 1998 and the first half of 1999, and also carrying out of the representation of the Auditing Chamber of the Russian Federation on the results of preceding checks by the Ministry of Science of Russia // Bulletin of the Auditing Chamber of the Russian Federation. 2000, № 2 (26), p. 125.

The institutions of higher education of the Russian Federation do not receive budgetary financing for conducting fundamental scientific research, while financing of preparation of graduate students and doctoral candidates is done through expenditure clauses of the budget for educational activities.

Institutes of higher education receive budgetary resources for conducting scientific research within the framework of a unified order-warrant. This is a branch-of-industry term introduced by the Ministry of Education for internal use. At the present time there is being effected a transition to a new term – «thematic plan for R&D.» These resources are allocated to institutions of higher education in the capacity of base financing, without competition, according to itemized estimate, on the basis of plans for scientific works which institutes of higher education present to the Ministry of Education, and this is qualified as resources for developing not «science,» but «science at institutes of higher education,» because science at institutions of higher education is regarded as a base for the educational process. In turn, the Ministry of Education receives these resources according to the budgetary classification clause «Other R&D» (0602 287 216).

Institutions of higher education usually passed on a part of the resources of the unified order-warrant to their own scientific research institutes. After introduction of budgetary classification, institutions of higher education can pass on resources to scientific research institutes in the form of an order for a concrete job [operation] (111010 – an order to an institution of higher education for a scientific research job); however, financing within the framework of a unified order-warrant does not allow for the possibility of financing according to that line), which in addition to that could conclude economic agreements with industry, the regions, and other R&D clients. Preservation of the status of juridical person [legal entity] for a scientific research institute at an institution of higher education in the event of creation of associations (university complexes) will lead to final separation of financing of scientific activities, whereby institutions of higher education will receive budgetary resources for development of science only within the framework of the educational process, while scientific research institutes at institutions of higher education in fact cease being government funded institutions, because they are compelled to seek resources for conducting scientific research outside the budget of the Ministry of Education of the Russian Federation.

A possible solution consists of looking upon scientific research institutes belonging to institutions of higher education as isolated structural subdivisions – the scientific branches of an institution of higher education. A branch is an autonomous organization and has its own account at the bank. Scientific branches can thereby be licensed in the same way as educational branches are licensed. At the same time they could be accredited as independent subjects performing scientific activities.

For resolution of existing contradictions it is necessary to:

- Recognize scientific activities at institutions of higher education as basic activities alongside educational activities. This will permit receiving the privileges envisaged for scientific organizations and laying claim to greater budgetary financing. At the present time in base budgetary financing there is a very great disproportion in favor of the Russian Academy of Sciences, which is constantly growing, and it works out that as before instruction takes place in isolation from science; in particular the scientific subdivisions of institutions of higher education should possess such rights;

- Envisage in the Law on the budget the financing of fundamental scientific research conducted at state institutions of higher education;
- Define in the Law about science both about higher and about post-graduate education;
- Invest leaders of scientific organizations with the right to use federal or other scientific equipment intended for scientific work for the educational process;
- Grant leaders of scientific organizations the right to conduct seminars, lectures, practice studies, and also other elements of the educational process or to instruct students in scientific laboratories.

2.5.5. Basic conclusions from analysis of state financing of scientific institutions

The specifics of budgetary financing of scientific institutions consists of the fact that budgetary financing effected by itemized estimate and on the basis of state contracts does not cover all the requirements for maintaining scientific institutions. On the average, the financing shortfall comes to thirty-five to forty percent, and that renders difficult the effecting of financial operating activities strictly in accordance with the norms of currently effective legislation. Scientific institutions cover a significant part of the financial requirements at the expense of utilizing property transferred to them for doing business (first of all, through renting out premises), and also through performing chargeable / paid-for works on order for other organizations. The rights of budgetary institutions to utilization of property are determined, as a rule, by secondary legislation (regulations issued by executive bodies – *trans.'s note*) or arbitrary decisions by ministry and agency managers. The rights of budgetary institutions to receive and expend extra-budgetary income have also not been defined to the end, and one of the substantial problems consists of the extremely limited possibilities for renovation of science's instrument inventory, which, under the conditions of eighty percent physical wear and obsolescence of the inventory of scientific equipment in the country, is becoming a critical problem today.

There also exist a number of problems connected to imperfections in the currently effective budgetary classification. The basic part of budgetary expenditures on civilian science consists of Section 06 "Fundamental research and facilitating scientific technical progress," the structure of which is at variance with the system of concepts and terms used in the Law on science. A part of the expenditures on what is defined according to this law as "scientific research," "scientific technical," or "experimental activities" is listed not in Section 06, but in other sections of budgetary classification. Base financing of scientific organizations is dominant, where resources are allocated to a scientific organization on the whole on the basis of an overall estimate of its number of staff and last year's level of outlays, which is one of the least efficient methods of allocating budgetary resources for scientific research.

2.6. Conclusion

The basic source for financing state and municipal institutions of health care, education, culture, and science are budgetary resources. The state allocates institutions budgetary appropriations, demarcating them by kinds of outlays. Agencies of state management approve a detailed itemized estimate of income and expenditures for the institutions subordinate to them agency-wise. Financial resources are planned and

allocated to their recipient according to entries of economic classification of budgetary expenditures. The size of financial resources is calculated depending on the category and indicators of the resource potential (capacity, number of beds, seats, etc.) of an institution. Planning of resources allocated by each entry is done on the basis of the actual outlays of the last period and of norms (norms of the staff member list and payment for labor, of expenditures for equipment and inventory, etc.) which are established counting on indicators of capacity and which are differentiated by kinds and categories of institutions.

For financial agencies, itemized estimate financing eases the task of monitoring usage of budgetary resources, but it does not create stimuli for institutions to compare outlays with results achieved and to optimize their correlation. Their purpose is the getting of a large a volume of resources as possible.

The mechanism of itemized estimate financing of state institutions requires, for the greater part of them, replacement by a mechanism of budgetary financing on the basis of normatives of financial outlays counting on indicators characterizing the results of their activities. In individual regions, in particular in Samara and Iaroslavl' oblasts, attempts are being undertaken experimentally to introduce such mechanisms for financing.

Fourth Scenario.

Transformation of a certain part of the institutions might be connected to privatization. Privatization of state and municipal institutions understood maximally narrowly as transfer of their property to commercial organizations is forbidden by legislation, and at the present time there are no grounds for casting doubt on the correctness of such a prohibition. But privatization on the whole does not amount to transfer of property to private commercial organizations. Privatization is transfer of a part of the functions of the state sector to non-state sectors: to the private enterprise sector and to the non-state noncommercial one.[25] В частности, возможна некоммерческая приватизация, понимаемая как передача правомочий собственности на государственное имущество негосударственным некоммерческим организациям. In particular, noncommercial privatization understood as transfer of legal property rights to state property to non-state noncommercial organizations is possible. Four types of such noncommercial privatization may be singled out:[26]

1. *Partial noncommercial privatization* – liquidation of a state or municipal institution and transfer of its property by rental or to gratuitous use by a non-state noncommercial organization, the basic purposes of which are in accord with the purposes of the institution being liquidated.

2. *Formal noncommercial privatization* – transfer of the property of a state (municipal) institution (which thereby is liquidated or reorganized) to the property ownership of a noncommercial organization having the form of an autonomous

[25] Jansen R., Made van der J. (1990), Privatization in health care: concepts, motives and policies. // Health policy, 1990, Vol. 4, pp. 91-102.; B. Rudnik, S. Shishkin, L. Iakobson (1996), Privatizatsiia v sotsial'no-kul'turnoi sfere: problemy i vozmozhnye formy (Privatization in the socio-cultural sphere: problems ad possible forms). // Voprosy ekonomiki (Economic issues), 1996, № 4, pp. 18-32.

[26] S.V. Shishkin, Reforma finansirovaniia rossiiskogo zdravookhraneniia (Reform of the financing of Russian health care). Moscow: Teis, Institute of the Economy of the Transitional Period, 2000, pp. 412-414.

noncommercial organization or foundation with the appropriate charter purposes, the founders of which are state agencies.

With this option, there takes place formally a change of the owner of the institution's property, which ceases to be an object of state or municipal property ownership. But because the given autonomous noncommercial organization or foundation has no other founders, other than agencies of state authority or local self-government, in reality this Scenario is not accompanied by the coming of new non-state structures into the corresponding sphere, which is what is meant by formality of privatization.

The given form of privatization factually signifies the transformation of state (municipal) institutions into quasi-state organizations. The sense of such transformation consists of the creation of more flexible organizations, the structure and principles of the activities of which answer in greater measure the interests of their founders than traditional institutions working on the basis of standardized branch regulations.

3. *Mixed noncommercial privatization* – transfer of the property of a state (municipal) institution (which thereby is liquidated or reorganized) to the property ownership of a noncommercial organization created in the form of an autonomous noncommercial organization or in the form of a foundation, the cofounders of which are agencies of state authority or (and) agencies of local self-government, and also citizens and (or) juridical persons [legal entities].

The given Scenario permits, on the one hand, attraction of supplemental sources to the financing of the activities performed by the institution, and, on the other hand, it affords government agencies the possibility of retaining control of usage of state property transferred to a noncommercial organization.

4. *Complete noncommercial privatization* - transfer of the property of a state (municipal) institution (which thereby is liquidated or reorganized) to the property ownership of a noncommercial organization created in the form of an autonomous noncommercial organization or foundation, the founders of which are only citizens and (or) juridical persons [legal entities].

Most realistic for practical application is noncommercial privatization according to the second or third way. With that the fullest institutional guarantees are secured for preserving the specific features of the activities of the organizations and the usage of the property assigned to them for its direct intended purpose and also maintenance of the interests of the employees of the institutions being privatized. Noncommercial privatization according to the third way would permit attracting supplemental resources to the social sphere, which is extremely urgent today. It could also act as a transitional stage on the way to complete noncommercial privatization.

The second way is more preferable for those organizations for which attraction of supplemental resources at the expense of expanding the circle of persons monitoring them is not very acceptable, but a change of status would permit conducting transformations in the organization of the management of the institutions which answer the interests of the founders.

3. Some recommendations on alteration of the status of public institutions

3.1. Principal Problems of Functioning of the Public Network and Principal Objectives of the Reform

Up till now, it is predominantly public-sector enterprises that have been privatized, while institutions rendering social services (such as health-care institutions, educational establishments, cultural institutions and scientific institutions) have been virtually untouched by that process. The public network has remained virtually unchanged since the Soviet era, even though the economic conditions have changed dramatically and there has been a significant drop in the public-sector institutions' share in the GDP.[27] One of the natural results of sluggishness of the reform in that sphere has been chronic under-financing of such institutions. In such a situation, it seemed at one time that the only way to ensure those institutions' survival was to grant them the right to independently generate an income out of which their activities could be financed and also the right to use such non-budgetary income at their discretion. A provision to that effect was included in Article 298 of the 1994 Civil Code. Under that that provision, "if under the founding documents the institution has the right to pursue income-generating activities, the income generated by such activities and also property acquired out of such income shall be disposed of by the institution itself at its own discretion and shown in a separate balance."

However, the granting to public institutions of the right to pursue business activities was deeply at variance with those institutions' very nature. Under Article 2(1) of the Civil Code, seen as business activities 'shall be such activities as are pursued by an entity at its own risk and is aimed at continuous generation of profit from use of property, sale of goods, performance of jobs or rendering of services.' Meanwhile the costs of pursuance by public institutions of entrepreneurial activities and the risks inherent therein are borne by the state; apart from being the proprietor of those institutions' property, the state also supplies those institutions with working assets. Under the principles of business activities, the right to gain profit is inseparable from the bearing of costs and risk of loss. In respect of public institutions, those two inseparable components of the legal status are divided between two entities: the costs and risks are borne by the state, while the profit is gained by the public institution.

The existing mechanism of public institutions' economic activities stimulates dramatic differentiation of public institutions' financial situations. Taking into account the fact that public institutions' mission consists in performance of social functions, differentiation of their financial situations should, by justice, only be based on their efficiency in the rendering of social services. However, in actual fact conditions have been created for such financial differentiation of the public network as has nothing to do with either those institutions' efficiency in the main line of their activities or with efficiency of their business activities. The amounts of public

[27] Analysis of the dynamic of the share of public expenditure (including that by non-budgetary funds) in the GDP has shown that in the 1991-1997 period that share was nearly halved. Over that period, there was an even more significant drop in the state's real-terms expenditure, that is, expenditure calculated in permanent prices, by 64.3 percent. The spending for social purposes dropped by 41.2 percent, the same drop was observed in per capita spending.

institutions' extra-budgetary incomes depend not so much on the efforts by the institution's management as on their location and size and market value of the premises, amount of investments made in those premises in the Soviet era, and the repute gained during previous periods. So, some of the institutions have to make-do on budgetary financing alone and are permanently short of funds, some even unable to perform their functions, while others draw an income comparable or even superior to their estimate-based budgetary financing. However different the financial situations of those two categories of public institutions, the approaches to their budgetary financing are the same. The need to finance quasi-public institutions which are perfectly adapted to market economy conditions and can do well on their own renders the state unable to increase (even to a level where the very basic costs would be met) the amounts of financing of such institutions which by virtue of the nature of their activities or limits thereof cannot survive outside the public sector.

Another problem consists in the fact that the state is liable for the liabilities assumed by the institutions established by it in the course of their business activities, that is, activities involving risks. Under provisions of Article 120 of the Civil Code, an institution shall be liable for its liabilities with the funds at its disposal, while in case of insufficiency of such funds, subsidiary liability shall be borne by the proprietor. As can be seen, in that Article no distinction is drawn between liabilities assumed by the institution in the course of performance of its functions (as stated in its Statute) and liabilities assumed by such institution in the course of its business activities, though the latter, unlike the former, are assumed without any authorization by the state. The resulting situation is truly paradoxical: the greater the scope of an institution's business activities (and hence the less the grounds on which it can claim financing from the budget), the higher the risk of direct loss being incurred by the state.

Expansion of the scope of business activities by public institutions means infringement not only on the interests of the state but also those of users of free-of-charge social services, since in such a situation quality and volume of such services are bound to decline. That is the inevitable result of a clash between performance by the institution of its functions (as stated in its Statute) and that institution's business activities. Under the present principles of drawing of the financing estimate, the amount of financing does not depend on the outputs of the institution's activities (in its principal line of activities), since it is not the institution's services that are financed, but the functioning of the institution (in particular, the payroll costs, payment for use of public utilities, purchase of implements, and the like). In such conditions, performance of the principal functions just 'detracts' resources from activities yielding non-budgetary income. So, the institution management's tactic will normally be to expand the scope of paid services and reduce the range and quality of free-of-charge services. So, estimate-based budgetary financing of budget institutions with a high share of non-budget income is inefficient since the state does not get for its money the services it is in a position to expect.

Using budget financing to cover part of their costs, public institutions are in a more favorable economic situation than their potential competitors (if any such potential competitors exist). It is also to be noted that in a situation where part of the costs related to such activities as yield non-budget income is actually reimbursed by the state, public institutions' management is not motivated to reduce the costs of such activities.

In addition to direct budgetary financing, public institutions, unlike their counterparts in the private sector, enjoy free use of premises and tax benefits, both direct and indirect. Free tax benefits include exemption from taxation of the entire property of such institutions, including such property as has been purchased out of the proceeds from their business activities [28], and exemption from the unified social tax of the amounts of benefits granted by public institutions to their staff members if such an amount does not exceed 4.000 rubles per person a year[29]. Indirect tax benefits include an income tax benefit (for individuals) consisting in deduction from the tax base of 'such amounts of the income as have been donated by the taxpayer to such scientific, cultural, educational, health care and social security institutions as are fully or partially financed from the responsible budgets.'[30] This basically means that taxpayers donating to similar institutions in the private sector are not entitled to that benefit. So, however inefficient, public institutions by virtue of their being in the public sector are protected from competition on the part of the private sector.

The above shortcomings of the public network necessitate reformation of that network, which reformation, in our view, should be carried out along the following two lines.

First and foremost, the legal status of the existing public institutions needs to be changed. Within that task, the following problems related to statutory regulation of those institutions need to be handled (which problems currently make state supervision of such institutions' activities difficult and adversely affect such institutions' efficiency): the issue of public institutions' legal powers, the issue of the legal status of the income derived by them from rendering of paid services and the issue of the state's liability for their debts. It is to be noted that the above problems cannot be handled in isolation from each other, since they are rather closely intertwined. For instance, the situation where the state is liable for public institutions' debts unsanctioned by it is caused by the fact that public institutions have the right to pursue business activities and independently dispose of the proceeds from such activities and also by such an important factor as under-financing of public institutions (compared to the minimum level required to enable them to function without getting into debt). Statutory measures to be taken at the initial stage of the reform will be discussed in detail in Section 2 of the present Report.

Successful implementation of the initial stage of the reform, that is, assignment of the proposed legal status to all the existing budget institution, will, at the same time, lay the foundation for the next phase of the reform, which will consist in legal sealing of the differences in the nature of economic activities. That idea is based on the supposition that the above approach to recording and use of income received from paid services considerably limits the extent of public institutions' autonomy and will mostly be acceptable to such of these as are unable to function in a market environment and, consequently, cannot have any significant proceeds from non-budgetary sources. The principal grounds for preservation of entities' former status of institutions and also the principal grounds for transformation of the existing public and municipal institutions into other entities are discussed in detail in another

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[28] See Article 4 (a) of the Law of the Russian Federation on Taxation of Enterprises' Property of December 13, 1991, No.2030-1.

[29] See Article 238(2) of the Tax Code of the Russian Federation.

[30] See Article 219 (1.1) of the Tax Code of the Russian Federation.

section of the present Report. Here, we would only wish to note that preservation of the status of an institution is advisable with entities engaging in certain specific activities (in particular, with museums, libraries and research institutions specializing in fundamental research) and in cases where there is no solvent demand in such entities services and/or no choice is available to consumers of their services (which is the case, in particular, with educational and health-care institutions in rural areas). It is also to be noted that it is important to retain direct control by state authorities over certain institutions, such as military hospitals, sanitary and epidemiological facilities and the like (irregardless of their ability/inability to operate in market-economy conditions). Al the above types of institutions must have guaranteed estimate-based budgetary financing.

However, institutions which are in a position to expect that their income may grow as their customer base is expanded through a more adequate approach to potential customers' needs will become interested in alteration of their status and their relationship with the state. While, as has been noted above, at present, they are opposed to any reform and for objective reasons (since the reform would mean for them loss of guaranteed financing which commits them to nothing), with withdrawal of public institutions' right to independently dispose of non-budgetary income such institutions will rather forego the guarantees and, hence, rigidity of estimate-based financing than give up their independence in earning and use of income. It is also to be noted that in such a case loss of the status of an institution will only mean loss of estimate-based financing, not loss of such financing as can be received under a contract on rendering of social services. In that context, the change we propose can be seen as a precondition of a momentous reorganization of profit-making public institutions (the purpose of that reform will consist, firstly, in relieving of the state from the duty to finance them in accordance with the estimate-based procedure and, secondly, in relieving of the state of liability for their debts. Naturally, with the above conditions assured, there will be no need to impose any serious limitations on those institutions' business activities. Alternative ways of reorganization of public institutions capable of operating in a market environment will be discussed in Section 3 of the present Part of the report.

3.2. Change of the Legal Status of Existing Public Institutions as a Basis for Reformation of the Public Sector

The adverse effect of use of the method which was chosen in the early years of market reforms for solution of the problem of under-financing and which consisted in expansion of public institutions' economic independence did not take long in becoming evident. However, no fundamentally different solutions were even considered. The measures which were taken were aimed at cushioning off of that adverse effect rather than at a radical change of approach.

The natural outcome of enactment of the provisions of Article 120 of the Civil Code was growth in public institutions' accounts payable debts and ever more frequent instances of their debts related to business activities being recovered from the state. So, even as early as in 1998, at the adoption of the Budgetary Code, an attempt was made to preclude instances of the state being held liable for such debts; provisions of the effective Civil Code were not revised, though.

As a result of such tactics, contradictions emerged between provisions of the Civil Code and the Budgetary Code in respect of the extent of powers vested in public institutions. Though the Civil Code proceeds from the concept of 'special' (that is, limited) legal ability of non-commercial entities, including public and municipal institutions, the limitations provided for by it mostly concern the nature and purpose of deals that can be transacted by such entities, rather than the amount of liabilities that can be assumed by public entities under such deals. So, under the provisions of the Civil Code, transaction by public entities of such deals as correspond to objectives of such entities' activities (as stated in their founding documents), but exceed the budgetary liability quotas approved for such entities is deemed legitimate. Unlike the Civil Code, the Tax Code contains provisions prohibiting assumption by public entities of any liabilities in excess of such entities' approved budgetary liability quotas (Article 225[1]). However, in actual fact, the above prohibition does not work, and not only because provisions of civil law in respect of legal entities' powers have precedence. The thing is that that prohibition is incompatible with public institutions' right to independently use the proceeds received from non-budgetary sources (which right is provided for not only by the Civil Code, but also by the Budgetary Code (see Article 161[6] of the Budgetary Code). Since budgetary liability quotas only apply to budget allocations, a public institution which has assumed liabilities in excess of the quota can assert that financing of such liabilities was to be done out of extra-budgetary sources (including proceeds from paid services, the prohibition on assumption of financial liabilities in access of the quota is totally unenforceable and meaningless. So, at present, there are no legal grounds for deeming invalid such deals as are transacted by public institutions in access of the budgetary liabilities quotas set for those institutions. The Budgetary Code can only set the limits for plan-based allocations for financing of public entities, but cannot prevent enforcement under court writs of public entities' debts out of funds allocated to the public entity on the estimate basis or out of budget funds by way of enforcement of the state's subsidiary liability for public institutions' obligations.

So, the problem of the state being held liable for such liabilities of institutions established by it as have not been authorized cannot be solved if the present extent of public institutions' powers is preserved. As was noted in Section 1, limitation of public institutions' powers would be important not only for prevention of imposition on the budget of unsanctioned accounts payable liabilities, but also for solution of a number of other problems, in particular, for removal of the contradiction between the statutory and business activities by public institutions, which contradiction has had an adverse effect on the range and quality of services rendered by those institutions free of charge.

The above shows that business activities by public institutions are inadmissible. This is does not mean that public institutions cannot render any paid services. However, unlike entities rendering paid services by way of business activity, public institutions should not have the right to use profit generated by such services, since they do not bear the related costs. For implementation of the proposed concept, the following amendments of legislation are required.

First and foremost, such provisions of the Civil Code as concern powers of state-run and municipal entities need to be brought in accordance with such provisions of the Budgetary Code. That means that state-run and municipal entities will be in a position to assume civil obligations within the amount of budget financing allocated it

on the basis of estimate and the budgetary liability quotas assigned it. In practical terms, the meaning of the proposed amendment consists in the fact that the Civil Law permits invalidation such deals by a legal entity as that legal entity did not have the authority to transact. At the same time, it is advisable that the wording of Article 173 of the Civil Code be revised with inclusion in that article of a provision to the effect that any such deals as are concluded by state-run (municipal) entities in excess of the assigned amount of budget financing and budgetary liability quotas are deals which such a legal entity does not have the authority to transact. In conditions where any deal which a public institution did not have the authority to transact, but actually transacted, can be invalidated, the danger of the state being held liable for unsanctioned debts by public entities will largely be removed. However, it is inadmissible to merely shift the loss resulting from non-performance by public institutions of their obligations from the budget to the creditors. The state needs to take every measure in its power to prevent such loss. For that purpose, a statutory provision needs to be introduced to the effect that all contracts concluded by public institutions shall be registered with the federal treasury authorities. In this way, the public institution's creditor will know in advance, whether or not the state is liable for the liability in question. A creditor who has started meeting its obligations under a contract not registered with federal treasury authorities will thus assume the risk of non-meeting by the public institution of its obligations.

Withdrawal of public institutions' authority to assume any civil obligations in access of the allocated amount of budget financing will automatically mean withdrawal of public institutions' authority to independently dispose of the proceeds from paid services rendered by them. That means that the public institution's estimate approved by a superior authority in charge of allocation of budget funds should include all its income in costs, including those related to paid services.

It is to be noted that in the Budgetary Code currently in effect the handling of the issue of record-keeping in respect of public institutions' incomes is extremely confusing. On the one hand, under provisions of Article 42 (2) of the Budgetary Code, 'such income as has been obtained by a public institution from business or other profit-making activities is fully posted in the estimate of that institution's income and costs and shown on the income side of the responsible budget as income from use of public/municipal property or as income from paid services.' On the other hand, under Article 161 (6) of the Budgetary Code, provided the estimate of income and costs is complied with, a public institution is free to use at its own discretion any funds received by it from non-budgetary sources. In our belief, those two provisions contradict each other, taking into account the provision on a single system of meeting of costs. Under that principle, 'the budget's revenues and funds from sources related to financing of budget deficit cannot be matched with specific types of the budget's spending, with the exception of revenues of goal-oriented budget funds and cases of centralization of funds from lower-level budgets within the budgetary system of the Russian Federation.' So, if public institutions' proceeds from paid services are deemed a source of budget revenues, they should be posted as budgetary revenues and thus de-personified. So, they cannot either be shown on the public institution's estimate or independently spent by the public institution.

In reality, till recently, precedence was given to provisions of Article 161 of the Budgetary Code, since, far from being able to dispose of public institutions' non-budgetary income, the state did not have any information on these: the so-called 'own

funds' accounts of public institutions were kept with private banks. Article 114 of the Federal Act on Federal Budget for the Year 2001 contained a provision to the effect that transfer of 'own funds' accounts of public institutions to federal treasury authorities shall be completed, with public institutions retaining the right to use those accounts at their discretion. That measure permitted gaining of information on amounts of proceeds from paid services and use thereof, and also the way they compared with budget allocations, which information can subsequently be used in reformation of the public network. Article 132 of the Federal Act on Federal Budget for the Year 2002 took that process a step further. It contained a provision to the effect that spending by public institutions of proceeds from business and other profit-making activities 'shall be done in accordance with the estimates of income and costs adopted in accordance with the procedure approved by head authorities in charge of allocation of federal budgetary funds, within the balances of their bank accounts'. Public institutions' proceeds from business and other profit-making activities were equated with goal-oriented budget funds, which have fixed sources of revenues and lines of spending and which cannot be re-distributed in the course of drawing and approval of the budget. At the same time, unlike with other budgetary funds, the parliament is not in a position not only to appropriate public institutions' assigned income for use in other spheres, but even to influence the spending of such funds; that authority has been unequivocally delegated to executive authorities, which, in respect of public institutions are 'superior authorities in charge of allocation of budget funds'.

In assessing that provision's efficiency of that provision, the following two circumstances should be taken into account. Firstly, it is the working,'adopted in accordance with the procedure approved by head authorities in charge of allocation of federal budgetary funds', instead of 'approved by head authorities in charge of allocation of federal budgetary funds', which presupposes the possibility of delegation of the authority of the head authorities in charge of allocation of budgetary funds to any other party, including public institutions themselves. But even the estimates in question are actually approved by head authorities in charge of allocation of federal budgetary funds, the adopted procedure for their approval does not ensure due efficiency of institutions' spending, since the amount of financing allocated to an institution does not depend in any way on the scope and quality of services rendered by that institution. If there is to be a dependence between these, norms of financial inputs in budgetary services of various types and setting of assignments for rendering of such services. In that case, the institution's estimate would be calculated automatically and will no longer depend on individual accords between the institution and the head authority in charge of allocation of budget funds. In the present situation, opportunities are still open for pursuit of essentially business activities with the use of state property. If an institution has considerable non-budgetary incomes, the head authority in charge of allocation of budget funds can reduce the amount of budget financing, however, if a public institution's non-budgetary income considerably exceeds the cost of its free-of-charge services or services partially paid by customers, the profit cannot be expropriated and transferred to the budget.

So, in our view, the next logical step should consist in repeal of the provision contained in Article 161 (6) of the Budgetary Code and treatment of all public institutions' proceeds from paid services and other profit-making activities as budget revenues. In this way, budget financing will be the only source of public institutions' income, and there should also be a single estimate of public institutions' costs.

Organization of planning of budget revenues from paid services does not look like a difficult task to us. Rough forecasting of such revenues can be done on the basis of data on the actual amount of such proceeds in the previous reporting period. Naturally, the actual proceeds can be different from forecasts. Taking into account the fact that under the proposed scheme all the budget institutions' costs are to be met from budgetary sources, a negative deviation of forecast non-budgetary income will not mean any need for cutting of its spending, while its positive deviation will not mean profit. Additional budget revenues related to paid services would be used in accordance with the adopted procedure for use of additional budget revenues, while non-arrival of these, to the general sequester rules.

A more serious task in that context consists in prevention of a sharp drop in revenues from paid services rendered by public institutions in a situation where the latter stop to have vested interest in such services. Naturally, that only concerns such public institutions as will remain within the public network (highly profitable institutions willing to preserve their economic independence are likely to choose reorganization). That problem can be handled with the use of a combination of stimulation and control measures. Stimulation could consist in establishment of a bonus fund for the institutions' staff, to which fund a certain percentage (say, five to ten percent) of the revenues from the institution's paid services could be assigned. Whatever the size of the bonus fund, though, it will certainly much smaller than the amount the institution's management will have at its disposal if it conceals non-budgetary income. The principal measure to prevent such practices consists in the fact that once public institutions' non-budgetary income has the status of budget revenues, concealment of such income will be seen not as an administrative offence, but as a criminal one. That is not to mean that there is no need for strict financial control, which should be carried out, in particular, in case of a sharp drop in an institution's income from paid services. A milder preventive measure, one not involving criminal proceedings, could consist in setting to institutions of assignments in respect of generation of paid services income, which assignments could be set on the basis of comparative assessment of incomes generated by other similar institutions. Non-fulfillment by the institution of such assignment could serve as grounds for sanctions, including dismissal of the management and appointment of a new one.

Though withdrawal of public institutions' right to assume any civil obligations not provided for by the estimate largely solves the problem of prevention of instances of the state being held liable for public institutions' liabilities not sanctioned by it, in some cases the state may stay be held liable for such liabilities. In particular, that may happen where the public institution's accounts payable debt was caused by non-fulfillment or undue fulfillment by the latter of its obligations under a sanctioned deal, that is, one provided for by the estimate) and is related to obligation to reimbursement of the counteragent's loss where that obligation is of a non-contractual nature and is determined by the fact of infliction of damage on third parties. In addition to that, a considerable proportion of the total volume of public institutions' accounts payable debts is made up by debts formed as a result of sequestration of expenditure in the course of execution of the budget. Such debts are of a complex legal nature. On the one hand, at sequestration of expenditure, the quotas of budget liabilities are reduces and, consequently, the public institution's spending (in particular, such spending as is related to fulfillment by the institution of agreements concluded with third parties) needs to be adjusted. A provision to the effect that in case of reduction of budget

financing the terms of agreements should be adjusted is contained in Article 767 of the Civil Code, which article deals with the terms of contracts concluded for the needs of the state. Under that provision, at reduction of budget financing allocated for contractual work, the parties shall reach an agreement on change of the time-limits for performance of the jobs and, if necessary, also other terms of their performance. However, the above provision only applies to such obligations by the parties as have not yet been met. One an obligation has been met, no adjustment can be carried out, and the unpaid fulfilled obligation will turn into the public institution's debt which can be enforced by a court writ. This means that sequestration cannot be applied to such obligations as have already been met, and if it has been applied, the debt thus incurred by the public institution should not be seen as unauthorized and there are no grounds for the state not to be held liable for its payment. In all the above cases, the issue of the procedure for enforcement of the state's subsidiary liability for public institutions' debts has an important role to play. However, the effective provisions on the score are less than optimum.

Under the Civil Code, the state's subsidiary liability can only enforced after collection of the debt from the principal debtor has proved impossible. Under provisions of the Civil Code, the amount of an institution's liability is limited to 'the amount of funds at the institution's disposal'. However, in our view, a public institution's right to dispose of budget financing assigned it is somewhat notional, as that financing is strictly goal-oriented and specified in the estimate. In that context, even where claims by the public institution's creditors are met out of funds allocated to that institution under the estimate, these are actually met out of the budget. In line with that logic inherent in the Civil Code, provisions of Article 288 of the Budgetary Code do not impose any limitations on debiting of funds from entities' bank accounts under court writs. (With the exception of cases where debiting of funds from a public institution's 'by way of enforcement of the public institution's debt incurred by it in the course of performance of orders of the responsible superior executive authority', though even in that case, that is, where the institution is not responsible for incurring the debt, the debited amount should be within the limits of the account balance). Only if the balance of the public institution's bank account is insufficient for recovery of the entire amount of debt, the lacking amount is recovered from accounts of the territorial Federal Treasury authority in charge of keeping of the bank account in question.

In our view, public institutions' unlimited liability for their debts with recovery against budget financing funds is inadmissible, considering that it is neither the institution itself, nor the state as its founder, but society at large that is the beneficiary of a public institution's activities. Let us analyze a hypothetical situation where through abuse of power a public institution's management has accumulated an accounts payable debt comparable in amount to the total amount of budget financing allocated it. In such a case, meeting of the creditors' claims would make performance by the institution of its statutory functions impossible and it is not so much the institution's management that would be disadvantaged by that as users of public services. For that reason, the adopted practice is that the superior state authority in charge of allocation of budget financing does take part in settlement of the debts by redistribution of quotas between recipients of budget financing in its charge. That function of the authority in charge of allocation of budget financing is not provided for

by the law, and so theoretically complete exhaustion of a public institution's bank account at payment of its debts is quite possible.

Considering the above, it seems advisable that strict limits of court recoveries from a public institution's account be introduced (for example, at 10 percent of the total annual amount of budget financing). Preservation of a limited (within ten percent of the annual volume of budget financing) liability of public institutions for its obligations seems acceptable for the following reasons. Firstly, the Budgetary Code g participants in the process of execution of the budget (both authorities in charge of allocation of budget funds and recipients of budget financing) certain operative independence, that is, the right to deviate from the amount of total approved budget financing within ten percent of that total amount without authorization by legislators or superior executive authorities. Since all the possible changes cannot be taken into account in budget planning, in the absence of such powers, execution of the budget would be unfeasible. This, Article 229 of the Budgetary Code contains a provision granting the Government the right at its own discretion to introduce sequestration at reduction of income or receipts from the sources of financing of budget deficit no more than by ten percent of the annual amount allocated, while Article 166 of the Budgetary Code grants the Minister of Finance the right at his own discretion to shift allocated amounts between the head authority in charge of allocation of budget funds. Sections, sub-sections and articles of the functional and economic classification within 10 percent of the approved spending, the head authorities in charge of allocation of budget funds and other authorities in charge of allocation of budget funds have similar powers. For their part, at a considerable reduction of actual budget receipts as against the planned figure, recipients of budget financing have the right to 'select at their discretion the lines of cash spending from their accounts with Federal Treasury authorities within… the quotas of budget liabilities the amounts of financing', which means that they can deviate from the estimate (Article 237 of the Budgetary Code). So, the Budgetary code permits unauthorized deviation within ten percent of the actual results of execution of the budget from the planned ones. In that context, there are no obstacles to a reduction of estimate-based expenditure by a public institution in the course of execution of the budget on such grounds as enforcement of such institution's liabilities. However, in such a case, reduction of the volume of financing should have an 'educational effect'. It should be accompanied by narrowing of the institution's powers in re-allocation of expenditure within the estimate, rather than expansion of such powers (which is observed with other cases of reduction of estimate-based budget financing). Obviously, the payroll costs (the bonus fund) of the public institution's management should be reduced, first and foremost. Such an approach would ensure a dependence between the outputs of the management's activities and the amount of their remuneration. Speaking about such portion of accounts payable debt as is not repaid at recovery against the public institution's own bank account, there are two options for repayment of these. Recovery can be made either directly against the territorial Federal Treasury authority which operates the account of the public institution in question, or in to stages: originally against the accounts of the head authority in charge of allocation of budget financing which responsible for supervision of the activities of the institution in question, then against the accounts of the Federal Treasury. The latter option has the advantage of permitting to enhance the extent of responsibility of the head authorities in charge of allocation of budget financing for the outputs of activities by public institutions in their charge. At the same time, if the above option is selected, for the

sake of prevention of considerable disproportion of various departments' budgets, a limit could also be imposed in respect of recovery from the accounts of head authorities in charge of allocation of budget financing of amounts of liabilities of public institutions in such authorities' charge.

Taking into account the fact that the proposed procedure for enforcement of the state's liability for public institutions' debts is stricter than the one currently used, provisions should be made to the effect that checks should be carried out by the Ministry of Finance or the responsible financial authorities at every instance of enforcement of the state's subsidiary liability for the debts of a public institution so as to find out whether or not the institution's management is to blame for the institution having incurred the accounts payable debts. For guilty members of the management, disciplinary or administrative penalties should be developed, including recovery from the officials in question of the damages to the budget.

With the exception of the institutions described above, unprofitable public institutions should retain their present status. This means preservation of the state's subsidiary liability for public institutions' obligations, preservation of state ownership of all such property (both real and movable) as is assigned to such institutions for operational management, and also state ownership of all such property as is purchased by such institutions out of budget funds.

3.3. Institutional conditions for selecting the forms of organizations financed by the state

3.3.1. Grounds for selecting the forms of organizations for affording services financed by the state

Analysis of the legal standing and mechanisms for budgetary financing of state and municipal organizations affording social services to the population has shown that the status of an organization and financing by budget of income and expenses do not create sufficient institutional conditions for effective activities on the part of these organizations in the interests of consumers and of the state, which finances the affording of the corresponding services. Analysis of the very grounds for selecting the forms of organizations for affording services financed by the state is needed for discussion of possible means of resolving this problem.

The taking upon itself by the state of responsibility for rendering certain kinds of services to the population is conditional upon the necessity of overcoming the flaws in market regulation of affording the corresponding services and of implementation of the demands of social justice and of political interests. The state organizes the affording to the population of certain kinds of services (medical, educational, educational, and others), creating specialized state organizations for that and financing their activities, or acting in the role of purchaser of services concluding contracts with organizations of various forms of ownership. What economic forms of organizations should the state choose and in which instances should it make a choice?

By *the economic form of an organization* we mean the system of rights and limitations which the organization possesses when reaching economic decisions. Two different types of economic forms are the commercial organization and the noncommercial organization. Commercial organizations are ones pursuing the extraction of profit as the basic purpose of their activities. They independently determine the directions their activities take, change the structure of goods and

services produced, and distribute the profit received among their founders (participants). Noncommercial organizations do not have the extraction of profit as a purpose of their activities and do not have the right to distribute profit received among their founders (participants).

Upon what is the advisability of utilizing commercial or noncommercial organizations for affording services financed by the state dependent? And what is the significance here of the differences between various forms of commercial and noncommercial organizations?

We will examine the general outline of the relations between the state, the producers (providers), and the consumers of services. The state, having taken upon itself responsibility for securing certain services for consumers, formulates certain requirements for the characteristics of the necessary services (quality, volumes of services, manner of their affording, efficiency of resource utilization). The requirements and expectations of the state with regard to services afforded should, on the one hand, reflect consumer needs and expectations. On the other hand, they should not come down exclusively to the needs and expectations of the consumers themselves, insofar as they may be based on more complete information, and they may take into account the external effects of rendering the corresponding kinds of services, notions of social justice, ideological and political factors, and also resource limitations.

The state entrusts the providers with the affording of services meeting these requirements and expectations. Which motivating forces can assure that a provider's activities are in accord with these requirements and expectations? Five main types of these motivating forces may be singled out, differentiating them by the types of entities from which they proceed:

1. pressure from the state;
2. pressure from competitors carrying out or capable of carrying out analogous functions;
3. pressure from consumers;
4. pressure from civil society;
5. inner motivation of the provider.

Pressure from the state is actions by state agencies to stimulate and compel the provider to carry out the state's requirements and expectations with regard to affording the corresponding services.

The force of pressure by the state depends on:

- the level of specification (that is, of precision and detail) of requirements for the provider's services;
- the degree of monitorability of the provider's actions—of the degree of the possibilities state agencies have to evaluate the degree of accordance between the requirements it places on the agent and the real actions of the agent;
- intensity of application by state agencies of procedures for monitoring the agent;
- the nature of the stimuli which the state offers the provider for carrying out its requirements;

- the availability and nature of sanctions against the agent for the unsatisfactory carrying out of the state's requirements;
- the strictness with which state agencies observe the state's obligations in relation to the provider and the strictness with which the sanctions envisaged are applied.

Pressure from competitors is the actions of entities affording or capable of affording social services meeting the state's requirements and which actions are directed at keeping or redistributing to their benefit financial resources allotted by the state for the rendering of such services to the population. From the economic point of view, competitive pressure on a provider occurs when other providers carry out or propose to the state that they will carry out the sought for functions at less expense or with greater result. This makes each provider care about carrying out the state's requirements and increasing the efficiency of its activities.

Pressure from consumers are actions with the aid of means available to consumers to compel a provider to afford them services meeting the needs and expectations of consumers.

The force of consumer pressure on a provider depends on the possibilities they have to:

- appeal to state agencies with complaints against a provider and on the practices applied to examining such complaints;
- choose the provider who organizes the affording of the required services to consumers;
- directly influence a provider's income; for example, if a consumer (client) himself makes partial payment for the provider's services, he can exert economic compulsion on the provider to be care about the accordance of the quality and volume of services rendered with the consumer's needs.

Pressure from civil society is actions by local associations, charitable and human rights organizations, the mass media, etc., which are directed at attracting attention to the problems created by the unsatisfactory activities of social services providers and at inducing the state to implement measures to resolve these problems. The remark needs to be made that such pressure on providers is very strong in countries with mature democracy; it is beginning to form in the countries of Central and Eastern Europe, but for the time being it is not very perceptible in the post-Soviet states.

A provider's internal motivation is determined by the interests of the organization's leaders and the organization's internal culture. An organization's leaders may be oriented toward subordination of their actions to increasing income (economic motivation), to career growth (administrative motivation), to achieving professional satisfaction and creative self-expression, to value notions relating to duty, to the public good, to social justice, etc.

Let us now turn to the characteristics of the requirements placed on a provider by the state. The initial question for selection of the economic form of an organization with which it is most advisable to do business is the question of the possibility of precise expression of these requirements, or, in other words, of the level of their specificity (see figure 1).

We will assume that the state's requirements are characterized by a high level of definiteness (specificity). This means that they may be expressed exhaustively by quantitative indices or in the form of clear and unambiguous descriptions of the qualitative characteristics of services and of the manner of their rendering to various categories of consumers. Forms of unambiguously defined requirements are quality standards, instructions on conditions and procedures for rendering services, etc. Examples of such situations in the social sphere are maintenance of state housing and organization of blood transfusions.

If the level of specificity of the requirements the state places on a provider's activities is high, then the requirements may be reflected adequately in the contract concluded with the provider by the authorized state agency. Under such conditions, the usual contract relations between the manager of the financial resources allotted by the state for financing the sought-for social services and the provider and the usual monitoring of the observation of the contract's conditions are sufficient to assure the carrying out of the requirements placed on the corresponding services. With that, a *commercial organization* may act as the basic type of provider. Its predominant motivation will be the economic motivation—the orientation toward extraction of profit. But as a consequence of precision of contract conditions, the expense of monitoring its execution will not be too high; it will not be difficult to reveal deviation from contract conditions. Therefore the striving of the producer to extract profit will more likely materialize not as possible deviations from the state's requirements and expectations, but as an increase in the efficiency of the activities being carried out. In turn, pressure from competitors and pressure from consumers are capable of becoming additional forces inducing the provider to carry out contract conditions rigorously, to afford services meeting the needs and expectations of consumers, and inducing growth in the efficiency of the functioning of the entire services system.


Требования государства к услугам определены четко и исчерпывающе
yes
no
Сильное давление потребителей на поставщиков
yes
no
Нечетко определенные требования государства сводимы к запросам и
yes
no
Коммерческая организация
Некоммерческое предприятие
Общественно контролируемая некоммерческая
Административно контролируемая

FIGURE 1. **Conditions for preferability of economic forms of providers of services financed by the state**

We will now consider the situation whereby the level of specificity of the state's requirements is not high, that is, the requirements and expectations of the state with the regard to the agent's activities either cannot be expressed in the form of unambiguous requirements placed on the characteristics of the services afforded or the obtaining of such a description is too expensive. Many of the kinds of services afforded in the social sphere are complex in content, heterogeneous, and not easily susceptible of or not susceptible at all of standardization. The needs for such services are also heterogeneous and frequently individualized. Therefore the characteristics of the required services cannot be stipulated completely and formulated unambiguously in a contract with a provider.

Under such conditions the provider has the chance to use in his interests and to the detriment of the interests of the state and consumers the advantages accruing from the fact that the requirements placed on his activities are insufficiently precisely defined in the contract. If the provider is a commercial organization and interacts with the state on a contract basis, then he can extract economic advantage by deviating in his activities from the expectations both of the state, and of consumers—by changing the structure and worsening the quality of the activities financed by the state. Possibilities for counteracting such deviations through pressure from competitors and consumers do exist, but may prove limited if the relations between providers and consumers are characterized by informational asymmetry, which is what is typical for branches in the social sphere. Then, even while competing with each other, producers may extract advantage to the detriment of consumer interests.

In order to avoid that, what is needed is to limit the possibilities and weaken the striving itself of the provider to alter his activities for the sake of extracting greater profit. The attempt may be made to do that by exerting pressure on the provider through informal social ties, by exhorting and attempting to induce him to act in the interests of the state and consumers. But if such pressure is brought exclusively to bear on the provider's values, then most often it will not yield much result. Formal institutions need to be applied for the stable weakening and limiting of the economic motivation for extraction of profit by any means.

The status of *noncommercial organization* is such an institution. It envisages limiting the distribution of an organization's profit. Profit cannot be distributed among the organization's owners or its personnel, but must be directed at developing the organization's activities. The status of noncommercial organization also envisages limitations on the kinds of activities which are accomplished. While a commercial organization has the right to engage in any kinds of activities which bring it profit and do not require the obtaining of a special license, in the founding documents of a noncommercial organization there must be indicated the concrete purposes of its basic activities distinct from the extraction of profit. Limitations on other, non-basic kinds of activities usually exist also. They are established in order to prevent possible deviation of the activities of a noncommercial organization in favor of more profitable pursuits to the detriment of basic activities answering the purposes of its creation.

Thus if the state's requirements cannot be defined precisely in the contract, it is advisable to utilize a noncommercial organization in the capacity of provider of the sought-for services. The status of noncommercial organization weakens the provider's economic motivation to extract profit and to deviate from the state's expectations and limits the possibilities for such deviation. Are such limitations alone sufficient? The answer to this question depends first of all on the force of the pressure on the provider from consumers and civil society and on the force of competitive pressure.

We will consider the situation whereby consumer pressure on a noncommercial organization provider is or potentially can become strong. This is achieved when the consumers themselves make partial payment for services afforded them at their own expense,

or all the more so when they make full payment for these services through vouchers which they are issued. Consumer pressure will be strong if they have the possibility to choose the provider and if there is pressure on the provider on the part of his competitors. If the possibilities for consumer choice are limited and competitive pressure is weak or absent, strong pressure from consumers and civil society can still occur if there exists a mechanism created by the state and which acts effectively to examine consumer complaints and act on them. We will also assume that the requirements which the state places on the provider and which are not susceptible of precise definition are reducible to consumer needs and expectations.

Concert activities and care for the aged and disabled may serve as examples of the affording of services characterized by the features indicated above.

In such a situation, for implementation of its requirements and expectations it is sufficient for the state to utilize contract relations with a noncommercial organization which acts in relation to the state and consumers as an independent economic agent having limitations on distribution of profit and on the kinds of activities it can accomplish. The economic form of an organization possessing such characteristics may be termed a *noncommercial enterprise*.

We will now turn to a situation whereby there is or may be secured strong pressure from consumers, but the requirements the state places on the provider in the part not susceptible of precise definition are not reducible to consumer needs and expectations. The requirements the state places on the provider will not be identical to the requirements of the aggregate of the consumers of services if there occur external effects of the rendering of such services or informational asymmetry between the provider and consumers. Such situations are widespread in healthcare, education, and the cultural sphere.

In this situation the institutions limiting the economic interest of the provider and lessening the chance for the deviation of his activities from the state's expectations should be strengthened. This is achieved by institutionalization of representation of the state's interests inside the organization itself. The organization's executive offices should be limited in their rights to make independent economic decisions. Within the organization there should be a collegial office (governing body, board of guardians, etc.) in the makeup of which there are persons representing the state and possibly the consumers, but not working in the organization itself and not receiving compensation for their participation in the work of this collegial office. This office should accomplish the function of monitoring the accordance of the organization's activities with the expectations laid on it by its founders and the consumers of its services. For this it should be endowed with rights to make certain economic decisions. For example, consideration of annual plans for the organization's financial activities and approval of the reports on their execution; discussion of the financial results of the organization's activities over shorter intervals of time (six months, the quarter); the making of decisions on the accordance of various kinds of non-basic income-producing activities with the organization's charter purposes, etc.

In this way a noncommercial organization with distributed right of making economic decisions—among its executive office, the collegial governing office, and possibly the founder, if the state acts as the founder—should be the provider. This economic form of organization may be termed a *socially monitored (public) noncommercial organization*. State financing of the activities of such an organization may be constructed either on a contract basis or on the basis of norms of expenditures established calculated on a per person receiving services basis (per capita norms) or by the resultative indices of its work.

Finally we will consider the situation whereby the state's requirements cannot be formulated unambiguously in a contract and the possibilities for organizing strong pressure on the part of consumers are either lacking or such pressure is inadvisable from the state's point of view. Examples of such situations are sanitary and epidemiological oversight, the rendering of medical aid to military personnel, the teaching of children in rural schools, and archival activities.

In this instance the provider is not very dependent on consumers. Consequently, in order that his activities not deviate from the state's requirements and expectations, he should be strongly dependent on the state in the making of economic decisions. Full monitoring by the state of distribution of the funds made available is needed here. This means application of administrative monitoring of what kinds of activities are accomplished and what the sources of the organization's income are and where expenditures are directed. An *administratively monitored noncommercial organization (a state institution)* is such an economic form. It works according to administrative assignments (commands) from the state. The method of itemized financing is the most adequate one for financing such an organization.

We will now ask yourselves this question: what would happen if the state were to utilize for the affording of certain services an organization, the monitoring of the activities of which were stronger than necessary? For example, an administratively monitored noncommercial organization instead of a socially monitored one. The form of a socially monitored noncommercial organization is adequate to the situation whereby strong pressure from consumers is or can be assured If, however, an administratively monitored organization is used in such a situation, then excess limitations on the organization's activities and its dependence on administrative commands will end up weakening its motivation to take adequate account of the needs and expectations of its immediate consumers and limiting its possibilities to react flexibly to changes in these needs and expectations. The organization's insufficient sensitivity to consumer pressure will hinder growth in the efficiency of its activities.

3.3.2. Economic and legal forms of organizations

When selecting the forms of organizations for affording services financed by the state, the differences between the four economic forms of organizations considered above are key differences:

1. the commercial organization;
2. the noncommercial enterprise;
3. the socially monitored (public) noncommercial organization;
4. administratively monitored noncommercial organization (state institution).

This typology of forms of organizations is constructed according to how broad the rights to make economic decisions are. Therefore we term them economic forms of organizations. The forms of the organizations established by laws are termed *legal forms of organizations* or *organizational-legal forms*.

Russian civil legislation divides all legal entities into two large groups: commercial organizations and noncommercial organizations. The legislation provides for various forms of commercial and noncommercial organizations. The differences between these forms are determined by other grounds than differences in the volume of rights of making economic decisions.

The main features defining the differences between forms of commercial organizations are:

- the property rights of the organization's founders (participants);
- the composition and number of the organization's founders.

The differences between the forms of noncommercial organizations are defined by the following set of features:

- t he nature of the purposes of the organization's activities;
- the property rights of the organization's founders (participants);
- the composition of the organization's founders;
- the presence or absence of membership in the organization.

An entirely fixed correspondence may be established between the four economic forms of organizations singled out above and the concrete forms of organizations provided for by Russian legislation (see *Table 19*).

Table 19

Correspondence of economic and legal forms of organizations

Economic forms of organizations	**Legal forms of organizations**
Commercial organizations	Partnerships and companies Production cooperatives Unitary enterprises
Noncommercial enterprises	Social and religious organizations Noncommercial partnerships Institutions, foundations, and autonomous noncommercial organizations, among the founders of which there are no local self-government agencies or agencies of governmental authority
Socially monitored (public) noncommercial organizations	Foundations and autonomous noncommercial organizations, among the founders of which are agencies of governmental authority or of local self-government, while authority to make economic decisions is divided between the executive office and the board of guardians or the supreme collegial office of management State corporation
Administratively monitored noncommercial organizations (state institutions)	Institutions

At the present time there are two legal forms in which state noncommercial organizations may be created: they are the institution (uchrezhdenie) and the state corporation. The state institution belongs to the type of administratively monitored noncommercial organizations. The peculiarities of this legal form have been analyzed in detail in the preceding parts of this study.

A state corporation is a noncommercial organization not having membership and created on the basis of federal law by an agency of federal authority for accomplishment of social, governmental, or other socially useful functions. Property transferred to a state

corporation at its creation becomes its property. The state is not responsible for the obligations of a state corporation. It needs to be noted that this is a kind of an "exclusive form" of a legal entity. For the time being it has been introduced specially for creation of only one organization—the Agency for Restructuring Credit Organizations.

The state corporation belongs to the type of socially monitored (public) noncommercial organizations, but it may be utilized only for the creation of a few isolated federal organizations.

At the present time there is no legal form of state noncommercial organization which belongs to the type of socially monitored noncommercial organization and which could be widely utilized. The necessity for the availability of such a legal form is determined by the fact that the institution form is not adequate in many instances to the conditions under which the state affords services in the social sphere. Many state organizations operate under conditions where consumers can or could choose the providers of services, where there is competition or competition is possible between the providers of social services, and, consequently, there are alternative variants for expending state funds for securing social guarantees. In such situations it is advisable for the state to create conditions for intensifying pressure from consumers and for development of competitive pressure on providers. For that it is advisable, as a rule, to move from itemized estimate financing (smetnoe finansirovanie) of the content of institutions to purchase of concrete services for the population at the expense of the budget. Implementation of the principle "money follows the consumer" expands, on the one hand, the possibilities the consumer has to influence the quality of social services, while on the other hand it induces providers to care about the rational utilization of available resources.

However, for organizations which are in such situations their present-day organizational-legal form of institution does not allow applying methods of financing which would implement that principle. The limitedness of the rights of an institution in making economic decisions becomes a factor here which narrows the possibilities for reacting flexibly to changes in the conditions for rendering consumer services and meeting consumer needs. Administrative monitoring by the state of the activities of institutions does not assure sufficient pressure on institutions to increase the efficiency of their activities under conditions where this efficiency depends on how adequately the heterogeneous and changing needs of the immediate recipients of services are taken into account.

This makes necessary the creation of a new organizational-legal form which would have the characteristics of a socially monitored (public) noncommercial organization. The sought-for form of organization should meet the following requirements:

- the basic purpose of the activities is not tied to extracting profit; the object and purposes of the activities are defined in the charter;
- creation is allowable of an organization both by one and by several founders, for example, jointly by a regional and a municipal agency, or by a municipal agency and a legal entity (which is allowable neither for an institution nor for a unitary enterprise);
- the founders endow the organization with property which remains their property; direct tasks for the owners of the property transferred are not envisaged;
- a key role in governing the organization is played by a collective office (observer council) formed by the founders with the involvement of the public; it monitors the directions the organization's activities take and their scale and it examines its financial plan;

- financing the organization's activities on the part of the founders and other buyers in the system of public financing of social services is accomplished on the basis of agreements (dogovory);
- profit is directed at developing the basic activities of the organization and cannot be distributed to the benefit of the founders.

This form of an organization assures its greater autonomy in relation to the founder than in the instance of an organization created in the form of an institution (uchrezhdenie). But with that a monitoring mechanism is utilized which is implemented by an observer council appointed by the founder.

Possible variants of the legal form of such a public noncommercial organization and their comparative advantages and defects are discussed in detail in a different section of this work.

3.3.3. Conditions for transforming state institutions into other forms of organizations

Introduction of the new organizational-legal form of a public noncommercial organization will permit the securing of the efficient functioning of the basic part of state and municipal organizations in the social sphere.

Relying on the analysis conducted above of the institutional conditions for choosing forms of organizations for affording services financed by the state, we will formulate the basic conditions for transforming existing state and municipal institutions into organizations belonging to other types of economic forms of organizations.

3.3.3.1. Transforming institutions into public noncommercial organizations.

The conditions determining the advisability of transforming a concrete state or municipal institution into a public noncommercial organization are:

- the influence (pressure) on the activities of the given institution on the part of the consumers of its services is or potentially can become strong; this can occur when one of the following conditions is fulfilled:
  - consumers have the possibility of choosing among organizations affording these kinds of services;
  - there is an efficiently operating mechanism for examining claims and complaints consumers have on questions relating to the corresponding services afforded them.
- the state's requirements and expectations in relation to the institution's activities are not identical to the requirements placed on its services and expectations on the part of the consumers;
- the state's requirements and expectations in relation to the institution's activities cannot be exhaustively expressed in licensing requirements, quality standards, instructions on the conditions and procedures for rendering services, or in contracts—that is, in quantitative indices and/or in the form of clear and unambiguous descriptions of the qualitative characteristics of the services and of the manner of their rendering to various categories of consumers;
- transformation of the institution will not entail changing the state's obligations to the population with regard to financing the affording of the kinds of services which this

institution renders and of and by itself will not create barriers for concluding contracts between the state and the new organization for affording these kinds of services.

It seems to us that the conditions enumerated are fair and just for the majority of state and municipal healthcare, education, culture, and social welfare (literally: social protection) institutions working in major and mid-sized cities.

When discussing the advisability of transforming a part of the existing state (municipal) institutions there naturally arises the question of utilizing the index of the share of the institution's income from extra-budgetary sources as grounds for a conclusion as to such advisability. In this connection it needs to be mentioned that this index can be considered only as an indicator of the possible advisability of transformation.

A high share of the income of a state (municipal) institution coming from extra-budgetary sources can be the consequence of three basic causes:

- the state finances the institution's activities not directly from the budget, but from extra-budgetary funds; thus a substantial source for financing the activities of medical institutions is resources from the system of compulsory medical insurance,[31] sanitarium-health resort institutions are financed in significant measure at the expense of resources from the system of compulsory social insurance;
- the services financed by the state are afforded the population on conditions of payment of part of their cost, that is, the state subsidizes the affording of certain services, but the greater part of the expense of their affording is covered by the consumers;
- within the structure of the institutions activities the services financed by the state comprise the lesser share.

In the first instance the possible high share of extra-budgetary income in an institution's income is a purely formal result; in actual fact what is meant just the same is state resources, and, moreover, according to the Budget Code, resources from state extra-budgetary funds (in particular, the Federal and territorial funds from compulsory medical insurance and the Fund for Social Insurance of the Russian Federation) are equated to budgetary resources. In the given instance an index of a low share of direct budgetary financing says nothing about the advisability of transforming institutions into other forms of organizations.

In the second instance a high share of an institution's income from payment for services by their consumers may bear witness to the state whereby the influence (pressure) on the activities of the given institution on the part of the consumers of its services is or potentially may become strong. The latter is a key condition for the advisability of transforming an institution. But the index of the share of consumer participation in compensating expenses for the rendering of the corresponding kinds of services alone is insufficient to draw a conclusion as to the possible force of consumer pressure on an institution's activities and correspondingly to draw a conclusion as to the advisability of its transfer under the conditions of functioning in a market environment. An institution may have a high share of receipts from services to the population in its income, but still be a local monopoly thereby, the granting of greater economic independence to which may end up not as a gain for the efficiency of its activities, but as a loss for its consumers. Therefore the advisability of transforming the institution in the given instance will require more detailed analysis of the other conditions of its activities.

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[31] See the analysis of the financial economic activities of medical institutions conducted within the framework of this study.

In the third instance a high share in the structure of an institution's activities of services implemented under conditions of full compensation of expenses by their consumers does not permit saying anything about the conditions of rendering that lesser part of the services which is financed by the state. For drawing a conclusion as to the advisability of changing the status of the given institution, significance attaches first of all to the characteristics of that part of its activities which is financed by the state. It is specifically in relation to that part that the fulfillment of the conditions indicated above of the advisability of transforming an institution should be analyzed.

The presence of a high share of services which pay their own way in the structure of an institution's activities of and by itself only serves as a condition for the relevance of more detailed analysis of the conditions of the activities of institutions (sic!) and of the advisability of its transformation as a whole or of the organizational separating out from it of a subdivision which would engage in the affording of services which pay their own way.

Transforming institutions into non-state noncommercial organizations (noncommercial enterprises).

Transformation of a state (municipal) institution into a noncommercial organization, among the founders of which there are no agencies of state authority or local self-government, is noncommercial privatization. The conditions determining the advisability of such transformation are:

- the influence (pressure) on the activities of the given institution on the part of the consumers of its services is or potentially can become strong;
- the state's requirements and expectations in relation to the institution's activities which (requirements and expectations) go beyond the framework of licensing conditions, quality standards, and instructions are identical to the requirements placed on its services and expectations on the part of consumers;
- transforming an institution will not entail changing the state's obligations to the population with regard to financing the affording of those kinds of services which this institution renders, and of and by itself will not create barriers to concluding contracts between the state and the new organization for affording these kinds of services;
- noncommercial privatization will permit expansion of the sources assuring resources for the organization's basic activities;
- the state and civil society are capable of standing in the way of utilizing privatized property to the detriment of the state's obligations to the population with regard to affording those kinds of services which the given institution rendered previously.

3.3.3.2. Transforming institutions into commercial organizations.

Transforming a state (municipal) institution into a commercial organization will signify its commercial privatization. Such privatization is justified under the following key conditions:

- the state's requirements and expectations with regard to an institution's activities can be expressed exhaustively in licensing requirements, quality standards, instructions as to the conditions and procedures for rendering services, and in contracts;

- any subsequent usage of privatized state property will not inflict damage on the state's obligations to the population with regard to the affording of those kinds of services which the given institution rendered previously.

3.3.4. Retaining organizations in the form of an institution

Transforming state (municipal) institutions into other organizational-legal forms is inadvisable if even one of the following circumstances obtains:

- the influence (pressure) on the activities of the given institution on the part of the consumers of its services is not strong and potentially cannot or should not be strong;
- transforming an institution may entail relieving the corresponding agency of authority or of local self-government which is its founder of responsibility to the population for financing the affording of those kinds of services which this institution renders;
- in the instance of transforming an institution into another form of organization, agencies of state authority and agencies of local self-government and civil society organizations will not be able to stand in the way of usage of privatized property to the detriment of the state's obligations to the population with regard to affording those kinds of services which the given institution rendered previously.

The first of these circumstances is fair and just for the majority of organizations in the system of sanitary-epidemiological oversight and also of institutions in healthcare, education, culture, and social welfare working in small cities and in rural areas. As a rule they enjoy a monopoly in this or that locality. Due to the impossibility of consumer choice, a key role in the implementation of social guarantees in the given instance belongs to administrative mechanisms. Transforming institutions into organizations possessing greater economic freedom is inadvisable here.

The fairness and justice of the second and third circumstances depend on concrete historical conditions and territorial peculiarities.

3.4. Proposed Lines in Reorganization of Public Institutions Capable of Operating in a Market Environment

Many public institutions can be reorganized with the traditional estimate-based budget financing replaced with payment for their social services out of the budget under contracts concluded in accordance with the civil law. Decisions on advisability of reorganization should be passed for each public institution individually, taking into account a number of factors. No such institutions should be reorganized as are objectively unable to function in conditions where they would depend on consumers and actions by their competitors (that is, in a market environment).

The meaning of reorganization consists in change of the legal and organizational status of profit-making public institutions. The following differences from the legal status of state-run/municipal institutions should be ensured:

1) no budget financing done on the basis of a receipts&expenditures estimate;
2) no limitations or less rigid limitations[32] in respect of business activities; the right to independent use of proceeds from such activities;

[32] "Less rigid limitations' stands here for general limitations imposed by the Civil Code of the Russian Federation on business activities by nonprofit organizations. (Under provisions of Article 50 (3) of the Civil

3) no subsidiary liability by the state for such an organization's obligations.

The principal of the above distinctions of entities established as a result of reorganization from public institutions is absence of budget financing done on the basis of a receipts&expenditures estimate. There are two possible alternative options of state financing of social services rendered by such institutions: state social order and normative estimate-based financing (also known as output-based estimate financing). Let us discuss each of these in greater detail.

3.4.1. Procedure for Financing of Public Institutions After Reorganization

3.4.1.1. Normative-Targeted Financing

A more conservative method of reformation of public institutions consists in a switchover from estimate-based financing to a so-called normative-targeted financing, that is, reimbursement to public institutions of the cost of rendering of specific services to specific users on the basis of single norms which concern outputs and are calculated in accordance with an administrative procedure. The principal distinction between normative-targeted financing and the traditional estimate-based budget financing consists in the fact that in the former case the amount of budget allocations to an institution is calculated not on the basis of the institution's payroll, the actual costs it sustains in using state property, procurement by it of materials, and the like, but on the volume of social services actually rendered by the institution.

In health care, such varieties of normative-targeted financing can be used as payment for completed treatment, 'total budget' payment (that is, payment within the approved volumes of health services), payment on the basis of the number of registered patients with the use of per capita norms and other. A topical task consists in overcoming of the existing dual nature of financing of health-care institutions. Payment for health-care services rendered by producers of health-care services should be done by a single buyer responsible for reimbursement of costs of the agreed volume of health-care services and control over the quality of services rendered to insured persons, rather than two financing bodies (the responsible health-care authority and the insurer).

In general schooling, the existing estimate-based financing procedure can be replaced with a mechanism of budget financing on the basis of stable per capita norms. Such norms can be established either on the federal, or on the regional level. They will assure financing of schooling in compliance with the national general schooling standards. Such standards should be established by on an annual basis by a federal act adopted simultaneously with the federal act on the budget for the next year. At the regional level, norms of territorial financing of general schools will be set.

The per capita norm should mostly cover current expenses, such as payroll costs, schooling and administrative costs, costs of retraining, purchase of equipment and routine maintenance. To a certain extent, cost of public utilities should also to be taken into account in formation of the norm, though in respect of some of the public utilities that may be difficult due to a considerable regional differentiation. With most urban general schools, the 'student comes first, the money follows' principle should apply. That will give students more opportunities to choose between schools, and also created a supervised competition between schools. Primary vocation training establishments should be financed in accordance with the

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Code of the Russian Federation, 'nonprofit organizations can pursue business activities only insofar as it serves those organizations' objectives, and only such business activities as promote their objectives').

same pattern as general schools, since the state guarantees that such training is free of charge and accessible to all.

The principal shortcoming of the current system of financing of secondary and higher vocational training consists in the fact that the currently used mechanism of issuing of state assignments to vocational training institutions in respect of enrolment of students for free training mirrors not so much the requirements of the national economy as the interests of such institutions themselves. In reality, institutions of higher learning and institutions of secondary vocational training considerably influence formation of those assignments adjusting their qualitative parameters to the traditional lines of training, numbers and specialization of the faculty. As a result, up to 40 percent of college-trained engineers and up to 30 percent of doctors and teachers fail to get employment in their specialization after graduation. The mechanism of placement of state assignment for training of specialists in various types of specialization. However, it is highly doubtful that such an approach will be at all efficient. It would be extremely difficult to change the existing mechanism of placement of state assignments, make them more transparent, ensure competition among institutions of higher learning and also ensure that decision-making on allocation of funds is done depending on the actual quality of training.

In that context, more promising is such transformation of the mechanism of financing as would be done in accordance with the principle 'the student comes first, the money follows'. It would motivate institutions of vocational training to increase their enrollments and adjust the structure of specialization to the requirements of the labor market.

The purpose of establishment of a dependence between the actual offer and demand on the labor market and financing is expected to be served by an experiment involving switchover to financing of individual institutions of higher learning with the use of state-issued registered financial bonds (referred to hereinafter as SIRFB) launched following the Resolution of the Government of the Russian Federation on Carrying out in 2002-2003 of an Experiment Involving Switchover to Financing of Individual Institutions of Higher Learning with the Use of State-Issued Registered Financial Bonds (Resolution No. 6 of January 14, 2002). In their economic nature, SIRFB are similar to an educational voucher. They are to be issued to general school graduates on the basis of the results of the single state examinations (which are to replace both graduation examinations at school and entrance examinations at institutions of higher learning and secondary institutions of vocational training and to guarantee payment by the state for schooling at any educational establishment [within a certain amount]). However, at present the choice of an educational establishment is but limited because only a limited number of institutions of higher learning takes part in the experiment since under the above Resolution the only entities entitled to participation are 'entities under the Ministry's jurisdiction (that is, state-run institutions of higher learning, note by the author) situated in such constituent regions of the Russian Federation as take part in the experiment related to introduction of a single state examination'. The categories of financial liabilities are set in accordance with the methods of planning and financing of costs higher education on the basis of state-issued registered financial bonds and the procedure for calculation of such financial guarantee as will be attached to the state-issued registered financial bonds depending on the results of the single state examination. In other words, the better the results at the single statue examination, the higher the financial guarantee attached to the SIRFB. Under the above Resolution by the Government of the Russian Federation, each institution taking part in the experiment is expected at least three months prior of start of enrolment to make a statement of the expected cost of training for each specialty and for each line and form of training. An institution of higher learning is expected to do enrolment (first

year) exclusively on the basis of financial bonds. Students whose tuition fees are paid exclusively by financial bonds, without any additional payment by the students should account for at least 50 percent of the total enrolment and at least 25percent of enrolment in each specialty. If a citizen has failed to qualify for free schooling and the tuition fee exceeds the financial guarantee attached to his/her bond, he/she shall conclude an schooling contract with the institution of higher learning and pay the difference between the financial guarantee and the tuition fee in accordance with the procedure provided for by the contract.

That the proposed normative estimate-based financing system is more progressive than the current financing procedure is obvious, since that system is much more oriented towards the output and the interests of the consumer. It permits cutting of costs related to excessive personnel and floorspace and ousting from the market inefficient operators whose services are not in demand. That system is much more transparent and for that reason permits to preclude instances where budget funds are spent on financing of public institutions which, while gaining income from business activities, render little or no free services.

At the same time, considering compulsive nature of placement of assignments for rendering of social services, that system does not permit solution of the principal problem of estimate-based budget financing: it does not motivate providers of social services to enhance their efficiency in rendering of such services.

3.4.1.2. State Social Order

An alternative to estimate-based financing consists in the state social order. By ‘state social order’ we mean the totality of tender-placed contracts between a state orderer and a contractor under which the state undertakes to pay for social, educational, cultural, health and other socially significant services rendered by the contractor to citizens free of charge or with charging of only part of the fee from the customer.

The state/municipal social order should become an integral part of the state/municipal order, which is defined in Article 72 of the Budgetary Code as ‘the totality of contracts concluded at the state or municipal level for deliveries of goods, performance of jobs and rendering of services with payment out of the responsible budgets’. At the same time, contracts concluded within the framework of the state/municipal social order have certain specifics which distinguish them from other contracts for deliveries of goods, performance of jobs and rendering of services required by the state. While with other state order contracts the orderer and the user are one and the same party, with a state social order contract they are different parties. The state orderer (an executive authority in charge of the sector in question which is also the head authority in charge of allocation of budget funds or a lower-level authority in charge of allocation of budget funds) is not the user of social services. This makes the contract concluded within the framework of the state/municipal social order an agreement concluded in favor of a third party. Under Article 430 of the Civil Code, seen as an agreement in favor of third party is an agreement under the terms of which the debtor shall deliver not to the creditor but to a third party which is in a position to require from the debtor performance of the obligation in its favor.

At present, social order as a system of placement of state orders for social services is not in use in Russia. Such attempts as have been taken up till now to introduce the principle of dependence between assessment for a supplier of services and the user’s attitude to its activities have failed exactly because the state tried to ‘economize’ on the state order costs.

The principal distinction between the state social order and estimate-based financing and normative-targeted financing consists in the fact that the former presupposes placement of assignments for delivery of social services on a contractual rather than a compulsory basis. Importantly, such contracts are expected to be concluded depending on the result of tenders, that is, in conditions of competition between public and private entities rendering similar services for access to budget resources.

Taking into account the fact that the consumers of services rendered under state social order contracts are citizens, it would be logical to place such orders by letting the consumer to choose between providers of services (just like under the SIRFB system). However, application of that method is but limited.

Firstly, it is practically impossible to grant the consumer an unlimited right to choose providers within the social order system where the state has the duty to guarantee free services, since the consumer may choose a provider whose services are too costly for the state. Another case against granting to the consumer of an unlimited right to choose the provider of services within the social order framework is the consumer's inability to select wisely in areas where the provider's qualifications are of importance. That is particularly true of the educational and health-care systems, that is such types of social services as cannot be accurately appraised without specialized knowledge (which the consumer lacks). The above shows that in many cases preliminary selection of providers should be done by the state. In particular, the state can organize tenders for provision of social services under the state social order system, thus selecting a number of providers with the optimum quality-price ratio. Such tenders can be held in accordance with the effective procedure for holding of tenders for placement of orders for deliveries of goods, performance of jobs and rendering of services required by the state, which procedure was set by Federal Law No. 97-ФЗ of May 6, 1999. In such a case, the consumer will be able to select a provider from among the entities with which the state has concluded social order preliminary contracts on certain terms.

Direct choice by the consumer is mostly possible in such spheres where the state does not have the obligation to guarantee rendering of free-of-charge services and insufficient awareness by consumers does not pose a particular problem. In particular, in culture and sports instead of estimate-based financing subsidizing of certain types of consumers of socially important services could be used (in particular, services by children's and teenagers' clubs, music schools and sports facilities). In such a case, subsidies could be differentiated depending on the social status, income and requirements of various consumers of cultural and sports services. In particular, subsidies to pay for services of children's sports institutions could be granted either to children from families whose income does not exceed the subsistence minimum, or to talented children, irrespective of their families income. So as to ensure that such subsidies are used for the purpose they are meant for, they can also be in a non-monetary form (in particular, in the form of a voucher with which a certain type of social services to a certain amount can be paid for.

Summing up the above analysis of the normative-targeted and the contract-based systems of financing, it is to be noted that these have a much higher extent of dependence on the outputs of the institution's activities than is observed under the present system. While under the present system, operation of the institution is financed, with both the alternative systems the payment is for the services actually rendered. Both with normative-targeted and social order financing, an institution whose services are not in demand cannot expect to get any budget funds.

However, the extent of difference between normative-targeted financing and contract financing should not be over-estimated. Firstly, in the former case, placement of the order for

rendering of social services is done on an non-annual basis. The state in its capacity as a founder merely sets institutions assignments for rendering of state/municipal services. With state order being compulsory, one can hardly expect from the provider conscientious attitude to its fulfillment. If the norms of financing calculated by administrative means do not cover the necessary costs of the services in question (which is highly probable, considering the unilateral nature of calculation of such norms of financing), the founder's assignment just will not be fulfilled (which is the case at present).

It is also to be noted that the non-contractual method of placement of assignments for rendering of social services thwarts competition between providers of such services. Firstly, it precludes access by private entities to budget financing. Secondly, with normative-targeted financing the value of social services is established by administrative means rather than with reference to the market. When costs of social services are calculated by a state orderer and paid in accordance with single norms which are the same with all providers, there can be no competition among providers of such services. With no competition, there is no motivation for reducing the costs and raising the standard of services. For that reason, the non-contractual method of placement which is meant to minimize for the state the cost of services may the opposite effect. Under such an approach, public-sector providers protected from competition for state financing both on the part of their own kind and on the part of the private sector become allies in seeking to justify the need to raise the quotas of costs of social services.

As can be seen, normative-targeted financing has the same shortcomings as the existing system. On the one hand, it does not ensure meeting of institutions' costs in rendering of social services, on the other hand, it does not create any motivation for reduction of those costs. In that context, it is advisable that the use of normative-targeted financing is restricted to cases where placement of the social order on the basis of a tender is impossible (for instance, because none of the participants in the tender has offered a prize acceptable for the state or the number of participants which have offered acceptable prices is insufficient for the meeting of demand in the services in question).

3.4.2. Alternative Methods of Reorganization of Public Institutions

3.4.2.1. Methods of Reorganization of Public Institutions at Transfer to a State Social Order System

As stated in the previous section, the state social order differs from the normative-targeted financing in that contractual and tender procedures are used in its placement. The gradual introduction of the social order system implies that, on the one hand, entities which have been established as a result of reorganization of public institutions do not have any specific advantages in their relationship with the state as compared to similar private institutions, and, on the other hand, the state, as the contractor of their services, gives no preference to such institutions as compared to their other customers. Consequently, public institutions (except public unitary institutions) should be reorganized into entities with one of the existing organizational and legal forms provided for by the legislation for entities of the private law. Such an exception for public unitary institutions (that is, their exclusion from those available organizational and legal forms into which public institutions can be reorganized) can be explained by the fact that reorganization fails to achieve one of its

principal goals in respect of such institutions, that is discarding by the state of its property responsibility for performance of a newly established legal entity.[33]

Taking into account the fact, that the existing legislation does not provide for existence of legal entities which do not own any property (except institutions and public unitary entities[34]) reorganization of public institutions inevitably involves privatization because under the existing legislation[35] privatization is interpreted as 'alienation for compensation to individuals and (or) legal entities of property owned by the Russian Federation, constituent entities of the Russian Federation and municipals'. From the point of view of the law, privatization also takes place in cases where the state is the sole founder of a newly established legal entity.

Depending on the commercial or nonprofit nature of a newly established legal entity's activities and composition of its founders four major options of reorganization can be singled out:

1) Full commercial privatization .

This option is the most radical one, since it implies that not only the state will have no control over the property and activities of the newly established entity, but the nature of business of such an entity will be change (including its specialization). For that reason, this option should be considered as an exceptional one which can be used in such exceptional situations where a public institution undergoing reorganization (or any divisions thereof) has operated for many years as a commercial entity and proceeds of such an entity are not used for fulfillment of its principal charter functions. This option can be applied to such 'profit centers' as operate within the structure of public institutions, such as fee-charging departments at institutions of higher learning and doctor's consulting rooms rendering such medical services as are not covered by the programs of guaranteed public health services.

In such a case privatization should be carried out on a tender basis for cash only (that is, the personnel of such institutions (or of any divisions thereof) will have no advantages as compared to other bidders for such public property). It is to be noted that privatization may be carried out either with the real property or without it (that is, the real property earlier assigned to the public institution will be transferred to the state, subsequently to be leased off at a market rate to the entity formed as result of such reorganization).

2) Formal commercial privatization is a form of reorganization where a public institution is reorganized into an economic entity with the state holding controlling interest in its charter capital. This privatization option is regarded as a formal one in the meaning that though the state will have no formal proprietary rights to the property of the entity (the property will be transferred to a newly established entity) which was established as a result of reorganization of a public institution the state as a founder of such an entity will retain control over its activities and the right to the profits generated by it.

This option should also be regarded as an exceptional one, since it implies that far from being in need of budget financing the reorganized public institution could generate profit

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[33] Public unitary institutions (except state-run institutions) are liable for their obligations with all such property they use in the course of their business activity, while the owner of such property is the state (Article 113 (5) of the Civil Code). As regards liabilities of a state-run entity, the state bears unlimited and subsidiary responsibility (Article 113 (5) of the Civil Code).

[34] Property is assigned to public institutions and public unitary entities for operational management or carrying out economic activities, while all the proprietary rights are retained by the state.

[35] Federal Law on Privatization of state and Municipal Property of December 21, 2001, №178-FZ.

to the state. Unlike the previous option, this one can be applied in cases where the activities of the institution undergoing reorganization are of importance to the state. Unlike nonprofit privatization this option permits attraction of investments in reconstruction and modernization of the newly established entity. Taking into account the commercial nature of such privatization it can only be done for cash.

3) Full noncommercial privatization

This option implies reorganization of a public institution into a nonprofit

entity with no or small participation by the state. As the state will have no control of the newly established entity this option does not differ much for the state from commercial privatization and it needs to be carried out in accordance with the same rules, that is, any public property both immovable real property and tangible assets can be transferred to the newly established entity only for cash. A newly established nonprofit entity may also be offered to lease real property at a market rate instead of paying for it.

This reorganization option can be applied in the health-care system in order to make legal patients' payments for health services. Under the Constitution of the Russian Federation, members of the public are entitled to free of charge health services at state-run and municipal health-care institutions. Since the above-mentioned provision does not apply to nonprofit organizations of other forms, they are in a position to introduce partial payment by patients for their services. At the same time, if privatized health-care institutions participate in fulfillment of compulsory medical insurance programs they can also retain access to budget financing.

4) Formal noncommercial privatization

Formal noncommercial privatization takes place in cases where the state is the sole and principal founder of the nonprofit entity, legal successor of the public institution. That privatization can be deemed formal because the state as the sole founder retains control of activities of such an entity. In reality, that privatization means that public (municipal) institutions will be reorganized in quasi public entities. The goal of such reorganization consists in establishment of more flexible entities whose structure and principles of operation suit better the interests of their founders than institutions working on the basis of the standard branch principles.

Under the Law on Nonprofit Entities, the supreme management body of the nonprofit entity (that body is normally formed from among founders) is entrusted with powers, in particular, to amend the charter, form executive bodies of the nonprofit entity, set functional priorities and approve financial plans, annual reports and balance-sheets (Article 29 (3)). It is to be noted that the charter of the nonprofit entity approved by the founder may provide for additional exclusive rights for management bodies of such an entity which are formed from among its founders. So, under the charter of the nonprofit entity which was established as a result of reorganization of a public institution the powers of decision-making on any matters related to activities of such an entity (including establishment of control over the prices for its services) can be assigned to its management bodies in which the state has a majority vote. In this context, the formal noncommercial privatization permits the state to retain rather strict control of activities of reorganized public institutions. In our view, that reorganization option should be basic at transfer of public institutions rendering such free of charge services as are guaranteed by the Constitution.

At the same time, the control by the founder of the autonomous nonprofit entity should not become a dictate. Under Article 10 of the Law on Nonprofit Entities, founders of the autonomous nonprofit entity can only use services of such an entity on an equal basis with other consumers. That provision of the law protects an autonomous legal entity from making

in favor of the founder of any such loss-making deals as may be imposed on it by the founder. Though no similar measures are expressly provided for by the law in respect of entities with other organizational and legal forms, the above norm provided for in Article 10 cannot be seen as specific to the legal status of the nonprofit entity. Any legal entity bearing full responsibility for its obligations is protected by the legislation from the dictate by its founders. So, despite the general provision under which founders (stakeholders) are not liable for the legal entity's liabilities Article 56 (3) of the Civil Code provides for holding founders (stakeholders) liable on the subsidiary basis for the legal entity's liabilities in case the bankruptcy of such a legal entity was the result of fulfillment by it of obligatory instructions of its founders (stakeholders). So, despite the organizational and legal status of reorganized public institutions, the state is not in a position to give them unilaterally obligatory instructions in respect of provision of social services without running the risk of becoming liable on the subsidiary basis for their liabilities in case the bankruptcy of such an entity was the result of fulfillment of those instructions.

As was stated above, under formal noncommercial privatization founders can also include individuals (provided that the state retains dominant position in the management body of such an entity). The case for it is that that option would permit attraction of private investments in the social sphere. At the same time, taking into account the fact that under the law the profit of nonprofit entities cannot be distributed among its founders attraction of investments would be limited.

Additional case for formal noncommercial privatization in education is that privatization of public and municipal educational institutions is forbidden by the Federal Law on Preservation of the Status of Public and Municipal Educational Institutions and Moratorium on their Privatization of May 16, 1995, №74-FZ. To carry out formal noncommercial privatization, that law needs to be amended to such an extent as it would not be applied to reorganization of educational institutions into other nonprofit entities with the state as the founder. However, it would be easier to achieve that goal by political means, rather than through abrogation of that law. The case for such an option is that more complete institutional guarantees of preservation of the specific line of activities of that institution would be ensured, the property assigned to that institution would be used properly, while the interests of the personnel of privatized institutions would be secured.

Of the existing forms of nonprofit entities the most advisable one for formal noncommercial privatization is the so-called autonomous nonprofit entity, that is " such a nonprofit entity without a membership as is founded by individuals and (or) legal entities on the basis of voluntary property contributions for the purpose of rendering services in the sphere of education, health-care, culture, science, law, physical culture and sport and other' (Article 10 of the Law on Nonprofit Entities of January 12, 1996, №7-FZ). The property transferred to the autonomous nonprofit entity by its founders will be the property of that entity. Founders will not be liable for the autonomous nonprofit entity's liabilities, while the latter, for liabilities of its founders.

However, realization of that option of reorganization is complicated because the Law on Nonprofit Entities does not expressly provide for a possibility of foundation of autonomous nonprofit entities by the state and municipals. Though state authorities have the right of the legal entity (they can be founders of autonomous nonprofit entities), they have a so-called special legal capability which means that they cannot perform any actions beyond their authority. So, for the purpose of making legal participation by the state in establishment of autonomous nonprofit entities it is expedient to introduce an amendment in the Law on

Nonprofit Entities which provides for foundation of autonomous nonprofit entities by the state and municipal entities.

At reorganization of a public institution into an autonomous nonprofit entity with state participation (hereinafter ANESP) retention by it of operative management of public property is impossible because under the Civil Code operative management of public property is exercised only by state-run institutions or public entities. Though the state can still control the activities of ANESPs, a free of charge transfer of real property and particularly valuable property to such entities is not advisable, since there is a risk of recovery of debts of ANESPs against the above property. In addition to that, at liquidation a nonprofit entity its property is not returned the founder, but " is used …for the purposes that entity was established for and (or) on charity". So, in our view, only tangible assets (except particularly valuable property) can be transferred free of charge to ANESPs. Real property and particularly valuable property earlier under operational management of a public institution should remain the property of the state and be leased off to ANESPs at reduced rates or be granted for free use, while any transfer of such property to ANESPs should be done for cash. The latter scenario is highly unlikely because the profit of a nonprofit entity cannot be distributed among founders and, consequently, even if other parties (for instance, members of the personnel of that institution) participate in foundation of an ANESP along with the state they will not be interested in making serious investments. Thus, the basic option is to lease off or grant in free use the property which was earlier under operational management of the public institution which is currently undergoing reorganization.

However, the option has a disadvantage which consists in the need of transfer of the above-mentioned property from the balance of the entity established in the course of reorganization of the public institution to the balance of the Ministry of Public Property. At present, lessees of state real property depend to a great extent on the Ministry of Public Property which can unilaterally change the rent rates and other material terms of the lease. So, if that option of reorganization is selected special statutory acts need to be enacted in order to reduce dependence on the Ministry of Public Property of lessees from among reorganized public institutions.

The Government of the Russian Federation need to approve a standard lease (free use) agreement for public autonomous nonprofit entities which includes the following material terms:

- indefinite term of the agreement;
- complete list of grounds on which the agreement can be terminated on the initiative of the lessor (particularly, liquidation of the autonomous nonprofit entity, guilty infliction of damage to the property which is the subject of the agreement and failure to pay the rent for a long period of time if the property is leased for cash);
- parties' obligations in respect of general and routine maintenance [as a rule, it is provided in lease agreements that the general maintenance is the lessor's responsibility and it is to be done at the lessor's account, while the routine maintenance is the lessee's responsibility (Article 616 of the Civil Code); it is provided for agreements on free use of property that all the expenses related to the general maintenance and routine maintenance shall be borne by the borrower unless otherwise is provided for in the agreement (Article 695 of the Civil Code)]. If the responsibility for the maintenance lies with the lessee all types of repairing jobs which the lessee is obligated to perform at its own account and maximum requirements to the quality (technology) of such jobs need to be specified in the

agreement. It is obvious that if the expenses related to the routine maintenance are borne by the lessee such expenses should be included in the cost of services payable under the state social order system;

- ban on imposition upon the lessee of services of a public house maintenance institution acting on behalf of the owner of the real property. If the entire building is leased off the ban should be imposed on appointment by the owner of the real property of the house maintenance institution. In other cases, the agreement should contain a provision to that effect that the lessee can participate in selection of the house maintenance institution;
- Maximum rental rates (if such rates are provided for) and transparent procedure for their indexation due to inflation (for instance, on the basis of the consumer price index).

One of the most controversial terms of the lease agreement is undoubtedly the right of the lessee to sublease the property. It is to be noted that income received from sublease of public property is still the principal source of revenues for public institutions though such income started to be shown in public institutions' general estimate before incomes received from paid services. At the same time we do not see any reasons why such proceeds should be preserved at disposal of public institutions or autonomous nonprofit entities because public property is granted them for a free use (or at reduced rates) for fulfillment of social services. Consequently, if such property or any part thereof is leased to third parties for commercial use there are no reasons why such privileges in respect of the rent should be preserved; all the proceeds received from the sublessee should be paid to the budget. Taking into account the above, it is expedient to impose a ban on sublease of public property by an autonomous nonprofit entity and consider violation of such a ban as grounds for termination of the agreement. At the same time, to motivate autonomous nonprofit entities to rationally use the state owned premises commissions can be introduced for attraction of commercial lessees.

Taking into account the fact that such privileges in respect of the lease of the state owned property are granted to an autonomous nonprofit entity because it is obligated to carry out social functions, in our view, additional grounds for termination of the lease agreement will be constituted by non-conclusion by the autonomous nonprofit entity of the state social order agreement unless such an agreement means any loss for that entity. At the same time, in a similar situation the lessee can be given preference in conclusion of a lease agreement in respect of the specified real property at a commercial rate.

A more difficult situation will be observed in case of failure by the public autonomous nonprofit entity to win a tender for the right to conclude the social order agreement (for instance, such a situation is highly likely, if the consumer is given the right to choose the provider). In that situation, the public autonomous nonprofit entity did not refuse to fulfill social functions it was entrusted with, but objectively it was not entitled to privileges in respect of the lease of public property. In such a case it will be expedient charge rental commissions from that entity at a market rate. Another complicated issue is whether it is expedient to differentiate rental rates for public institutions performing different volumes of the social order.

Theoretically, granting of privileges in respect of rental rates in exchange for obligations to carry out the social order is not rational because such a measure artificially limits competition at placement of the social order and, consequently, makes its cost higher. If with introduction of market rental rates the state can buy social services from any provider on the competitive basis, in a situation where privileges in respect of rental rates are granted to some public institutions the state has to buy such services primarily from those institutions,

which with other things being equal makes the state's expenses higher. In addition to that, such privileges mean increment of per unit cost of services by public institutions which means discrimination of private providers of similar services. It is to be noted that such an offset pattern lacks transparency, upsets equivalence of exchange and may encourage operation in bad faith by that party whose fulfillment of obligations is difficult to control. Taking into account the above, in a long-term prospect it would be expedient to charge market rental rates from public nonprofit organizations with simultaneous inclusion of rental costs in the cost of services such institutions render under social order agreements. For the purpose of minimization of forward financial flows, a transparent mechanism which offsets rental payments and payment of the social order can be introduced. If a public institution did not participate for any reason in fulfillment of the social order or the sum of privileges granted it in respect of rental payments exceeded the value of social services it rendered that institution will have to reimburse the state budget for the amount of such rental privileges minus the cost of its social services. That will create equal conditions for public and private providers of social services. However, it is clear that at the initial stage of reorganization such an approach is unacceptable because the state is unlikely to pay for social services at rates which include market rental rates (particularly in large cities). For that reason, we consider transfer to entities established in the course of reorganization of state owned property or leasing there at reduced rates as a basic option.

3.4.2.2. Methods of Reorganization of Public Institutions at Transfer to a Normative-Targeted Financing System

While the state social order concept permits numerous options of reorganization of existing public institutions with the use of the existing forms of entities, switchover to the system of normative-targeted financing requires development of a new organizational and legal status for use in reorganization of public institutions.

In September 2001, the Ministry of the Economic Development of the Russian Federation sent a letter to the Government in which it suggested that the matter of development of a new status of public (municipal) nonprofit institution (alternative to the organizational and legal form of entities) be discussed at the meeting of the Government. The message of the report was the following. The institution is expected to fulfill an assignment set by the owner (founder), operate on the basis of the estimate of receipts and expenditures and that is why it is under constant control of the founder and cannot operate independently. To be able to fulfill their functions, public sphere entities need to be flexible in their response to fluctuations of the demand and be motivated to enhance efficiency of their services. The report contained a proposition of a new status of a nonprofit entity rendering services in education, health-care and culture whose property would belong to the state (a municipality), while the owner of such property would not bear any subsidiary liability for obligations of that entity or finance it under the estimate of receipts and expenditures. In addition to that such an entity should meet specific needs of consumers of social and cultural services, be to a great extent independent, be liable for its obligations, fulfill instructions of the owner in respect of rendering social and cultural services of specified quality and receive guaranteed payments from the budget for fulfillment of instructions. Such entities should be permitted to render paid services to citizens, attract financing from other non-budgetary sources and use funds at their own discretion. The activities of those entities should be transparent (it should be subject to public reporting), while representatives of the public and consumers of their services should be directly involved in management of such institutions as members of the board of trustees. An entity with such a new organizational and legal status was proposed to be called a specialized public (municipal) nonprofit institution.

Under draft Law on Specialized Public Nonprofit Organizations, such an institution is assigned state owned property for economic use, however without recovery of that institution's debts against that property. The right to economic use is a substitute for proprietary title. It is unknown in legal systems of countries with market economies; it was invented in the Soviet era in an attempt to reconcile public ownership of fixed production assets and certain economic independence of entities. Prior to adoption of the existing Civil Code of the Russian Federation there used to be the so-called right to 'full economic use' under which system public entities had powers to use at their own discretion the state owned property (real property and movable property) assigned to them. Under such a system, the state could lose the above property in case of malfeasance by the management of those entities. To prevent such negative trends, certain limitations in respect of that right were provided for in the Civil Code of 1996. Under that Civil Code, any deals with the state owned property can be transacted with prior consent of the owner (Article 295 (2) of the Civil Code). However, it did not help resolve the problem as the loss of real property assigned to the public institution can take place not only through deals with that property, but also through recovery of that institution's debts against that property. According to the definition of the legal entity provided for in Article 48 (1) of the Civil Code, "seen as a legal entity shall be such an entity as owns, *has economic use of* (italics by the author) or has in operative management independent property and *is liable for its obligations with that property*". So, though liability of legal entities for their own obligations was formally provided for in the Civil Code the Article in question implies the state's liability with its real property assigned to an institution for the public institution's debts. From the economic point of view, the proposition of the Ministry of the Economic Development on abolition of the state's liability with such real property as has been assigned to a specialized nonprofit institution for economic use for those institutions' debts is well justified.

However, from the legal point of view that proposition of the Ministry of the Economic Development is not perfect. Firstly, it legitimizes the institute of economic use which, in our opinion, needs to be abolished, since a system where two independent entities have proprietary title to the same property is economically vulnerable.

Secondly, as was stated above such basic definition as 'the legal entity' provided for in Article 48 (1) of the Civil Code would need to be changed. However, it is not specified in that norm that the legal entity is liable for its debts with all its property which it has proprietary title to; that suggests that a legal entity can be liable with part of its property or certain types thereof for its depts. However, such an interpretation contradicts the provisions of Article 56 (1) of the Civil Code under which "legal entities, except those entities which are financed by the owner are liable with all their property for their debts". It is to be noted that the exception provided for in that Article in respect of the entities financed by the owner which are liable with 'cash funds at their disposal' for their debts does not contradict the principle of full proprietary liability for their debts; on the contrary it reaffirms it because under Article 120 (2) of the Civil Code 'the owner is subsidiary liable for that entity's debts' in case that entity does not have sufficient funds at its disposal. An analysis of the totality of provisions of the Civil Code shows that legislators proceed from the principle of legal entities' liability for all their debts with all their property, while limitation of such a liability is admissible only in cases of transfer of such liabilities to the founder of that legal entity. At the same time, as was stated above the architects of the draft Law on Specialized Public (Municipal) Nonprofit Institutions suggest that not only such a liability be limited to the value of such institutions' property, but also the founder's subsidiary liability for those institutions' debts be abolished.

If real property is assigned to specialized public nonprofit organizations for economic use with the right to economic use preserved in such a form as it is provided for in the Civil Code we shall see a relapse to the present state of things. There is a danger that such institutions may deliberately accumulate their debts to counteragents (in conspiracy with the latter) in order to receive state owned property as a collateral. To prevent such instances, certain limitations would need to be introduced in respect of such liabilities as specialized public nonprofit organizations can assume; that means we shall have again the same problems reorganization of public institutions is meant to resolve.

If the problem of economic vulnerability of economic use as an institution is to be resolved, it is advisable that instead of introduction of any additional limitations in it (which would be at variance with other basic provisions of the Civil Code) it should be understood that that institution cannot be used as a key attribute of the form of entity into which public institutions are to be transformed.

Another key characteristic of the proposed form of specialized public/municipal nonprofit organizations consists in the need for replacement of standard budget financing under the estimate of receipts and expenditures in relations with specialized public nonprofit organizations with "complete or partial reimbursement of expenses of those institutions related to specific services they render to specific categories of consumers (the principles of compulsory medical insurance, state-issued registered financial bonds in education and other)". Under Article 17 of the draft law, " the founder has the right to make an assignment to such an institution in respect of provision of public (municipal) services, provided that such services are financed from the responsible budget in conformity with such norms as ensure reimbursement of costs related to provision of public (municipal) services in accordance with the assignment". It is to be noted that along with normative-targeted budget financing the architects of that draft law provide for financing of public specialized institutions "in the form of payment for goods, jobs and services made or performed by such institutions under public (municipal) orders or within the framework of specific types of compulsory social insurance".

However, the actual experience gives reasons for doubts that tender-based and non-tender-based procedures for placement of the social order can be used simultaneously. Should the proposed approach be realized, the system of the social order based on the tender-based selection of providers may never be introduced because out of the three parties involved in placement of the order for provision of social services only such a less influential party as the consumer of social services is interested in tender-based placement of the social order. It is also to be noted that only the most efficient providers are interested in tender-based placement of the social order (but they are few), while the majority either seeks to secure through administrative means higher norms of budget financing, or fails to fulfill the assignment of the founder explaining such a failure by insufficiency of funds. And still another party, such as public orderers is the least interested in introduction of the tender-based selection of providers of social services because under that system they will lose their powers in respect of determination of the cost of social services. So, we arrive at the conclusion that introduction of the tender-based placement of the social order can be done only if non-tender selection of providers is prohibited. The tender-based system should be recognized by the law as a compulsory one; that does not mean that public orderers will be prohibited from placing an order among public institutions on terms agreed upon with those institutions in case of a failure to place an assignment by means of a tender. Such a situation may arise if tender participants' bids exceed the amount allocated by the state or the winner of the tender is not able to ensure provision of the required volume of social services. At the same time, to prevent instances of abuse by public orderers, it is important to introduce statutory acts in

respect of the procedure and grounds for use of other systems of placement of the social order other than tender-based (as it is provided for in the Law on Tenders for Placement of Orders on Supply of Goods, Fulfillment of Jobs and Rendering of Services to Meet Public Needs in respect to other forms of the state order).

It follows from some norms of the draft Law on Specialized Public (Municipal) Nonprofit Organizations that budget financing needs to be guaranteed to specialized public nonprofit organizations. That idea is unequivocally expressed in Article 17 (5) of the draft Law under which "reorganization into specialized institutions of institutions financed out of the responsible budgets and state non-budgetary funds does not constitute grounds for exclusion of the newly established institutions from the list of recipients of budget financing". The reason behind inclusion in the draft law of such a provision is obvious: it is the desire to preserve guarantees of public financing of the existing public and municipal institutions active in such spheres as health care, education, culture and the like. However, it is to be remembered that that norm of the draft law is at variance with the principle of tender-based placement of the state social order.

As can be seen from the above, the idea of development of a special organizational and legal status, that of a specialized public/municipal nonprofit organization, for reorganization of public institutions has certain shortcomings from the point of view of civil law and economic principles of ensuring of efficient use of resources.

At the same time, that concept has some advantages of a tactical nature. It is clear that unlike the tender-based placement of the social order the idea of the normative estimate-based financing will meet with less opposition in interested circles. That idea is more acceptable for public institutions because it permits those institutions to retain most of such privileges as they are entitled to because of their status; even with expansion of their commercial autonomy such institutions keep enjoying those privileges. Firstly, with reorganization of a public institution into a specialized nonprofit institution any limitations imposed on the right of such an entity to use non-budgetary funds at its own discretion (since their estimates of receipts and expenditures need not be approved) will be abolished and a danger of greater limitations being imposed on that right in future will be prevented. In addition to that, those institutions will still be able to receive a large portion of such income through free use of public property. In particular, if the above concept of functioning of public autonomous nonprofit organizations (ANESP) implies a ban on subleasing former public institutions retain the right to free use of state owned real property with unlimited leasing-off rights and the right to appropriate proceeds (which are in fact budgetary revenues). If the concept of the state social order implies that public and private institutions rendering similar services should compete with each other in order to receive budgetary financing such public financing irregardless of competitiveness of the services those institutions render is provided for in the draft Law on Public Specialized Nonprofit Organizations. It would seem that that the founder's being in a position unilaterally to set an assignment on provision of social services annuls the specified privileges inherited by public specialized nonprofit institutions. However, in reality, public specialized nonprofit organizations will be in a better position than public institutions. If under the effective law the head authority in charge of allocation of budget funds is in a position to instruct public institutions to spend part of their proceeds received from paid services on fulfillment of charter functions (that is, assignments of the owner) public specialized nonprofit organizations will be obligated to fulfill assignment only to such an extent as they are covered by direct budget financing. It is clear that in conditions of insufficient financing it is impossible to call an institution to account for a failure to fulfill the

founder's assignments, the more so, since there is no market of respective services any costs can be justified, so one cannot be certain that the state budgetary financing is sufficient.

The head authority in charge of allocation of budget funds by respective sections of the budget which will set 'obligatory' assignments for public institutions they are in charge of has no reasons to be displeased as the proposed system would not encroach upon their powers in distribution. With introduction for all public institutions of uniform norms of financial expenditures for provision of public services, the procedure for allocation of current budgetary funds will be more transparent. However, the authorities in charge of allocation of budget funds will retain powers to assign to public institutions they are in charge of public property for free use; that means such authorities will have ample opportunities for manipulation. Thus, the idea of reorganization of public institutions into public specialized nonprofit organizations will be enthusiastically welcomed by both the interested parties on whose opinion the future realization of that concept depends.

So, the propositions on establishment of an institution of a specialized public/municipal nonprofit organization stand a better chance of being adopted than those on transformation of public institutions into autonomous nonprofit organizations with replacement of estimate-based financing with tender-based placement of the social order.

"Less rigid limitations' stands here for general limitations imposed by the Civil Code of the Russian Federation on business activities by nonprofit organizations. (Under provisions of Article 50 (3) of the Civil Code of the Russian Federation, 'nonprofit organizations can pursue business activities only insofar as it serves those organizations' objectives, and only such business activities as promote their objectives').

The comparative analysis offered in this section of the alternative methods of reorganization of highly profitable public institutions either into one of the organizational and legal forms provided for by the effective law or through development of a new organizational and legal form for reorganization of such institutions suggests that the first option of reorganization has more advantages in a long-term perspective. The principal case for the second option is that it is more "acceptable" from the political point of view. At the same time, it is to be remembered that that would mean preservation of a number of such currently adopted principles of functioning of the existing public institutions in the social sphere as impede all enhancement of efficiency of those institutions' activities. Those principles include, in particular, such a vestige of the Soviet legislation as the right to economic use, granting to public institutions by way of a privilege the right to use real property free of charge and at their own discretion, lack of competition on the part of private providers, non-tender selection of providers of social services and, consequently, lack of motivation in those institutions to fulfill assignments on provision of social services, enhance quality of those services and reduce the costs related to provision of such services.

3.5. Procedure for Reorganization of Public Institutions

In addition to conceptual matters, certain tactical issues related to the budget network reform needs to be handled. The first question is: which party should initiate reorganization: the state as the founder of public institutions or those institutions themselves; in other words, should reorganization of public institutions be voluntary or compulsory. The second question is: which party should have the right to make a decision in respect of reorganization in case, for instance, such a reorganization initiative belongs to the public institution, or, in other words, can the state deny an application for reorganization. In principle, the latter question boils down to the following: should reorganization be spontaneous or plan-based. It is

important to consider such possible limitations as can be imposed in the course of the plan-based reorganization.

3.5.1. Choice Between Voluntary and Compulsory Reorganization

In our opinion, the most appropriate method of reorganization should be the voluntary reorganization, that is reorganization initiated by public institutions. The prerequisite of such reorganization is that with strengthening of financial control over spendings of funds received for paid services such public institutions as receive considerable proceeds from non-budgetary sources become interested in changing their organizational and legal status and the form of their relationship with the state. As was stated above, those institutions are not completely free to use non-budgetary funds at their disposal and greater limitations are expected to be imposed in future. In such a situation, those public institutions which have managed to adapt themselves to market conditions would be prepared to give up estimate-based financing in exchange for economic freedom; those institutions will not see it as too high a price for such freedom because estimate-based financing only accounts for an insignificant portion of their income.

In certain cases, additional statutory acts will need to be passed to motivate public institutions to reorganize on the voluntary basis. For instance, in the sphere of the higher education a serious problem to reorganization is posed by the existing procedure for license-issuing and accreditation for newly established institutions. Under the Law on Education, a newly established institution is entitled to apply for such state accreditation as grants it entitlement to issue diplomas meeting the national standard only after the first graduates graduate, that is about 5 years after that institution was established. It means that at reorganization the state institution of higher learning will not be able to issue diplomas meeting the national standard. That problem can be handled through amendment of the Law on Education under which educational institutions established as a result of reorganization of former state educational institutions would automatically receive state accreditation.

An obvious advantage of voluntary reorganization consists in that the state cannot be accused of artificial reduction of the public network and economizing on social expenditures; that is, those institutions which are prepared to comply with the strict budget discipline will be financed by the state on the same basis as before.

At the same time, the choice of the voluntary reorganization as a strategy in reorganization of the public network does not preclude the state as the founder from initiating compulsory reorganization and even liquidation of individual institutions if those institutions' activities are of no use, their operations are inefficient and, consequently, allocation to those institutions of budgetary funds is not justified.

3.5.2. Choice Between Spontaneous and plan-Based Reorganization

The spontaneous reorganization implies that at application by a public institution for reorganization the state would not be in a position to turn down such an application on the grounds that it is not expedient to carry out reorganization of that institution. It is to be noted that privatization of the housing fund which was carried out in the early 90s was based on the same principle. So, under the Law on Privatization of the Housing Fund in the Russian Federation of July 4, 1991, № 1541-1, application for privatization can be turned down only in case the dwelling belongs to the category of dwellings which cannot be privatized (these include dwellings in unsafe buildings, dwellings which do not meet sanitary and fire safety norms, dwellings situated in hostels and apartments shared by several families, apartments in buildings registered as historic and cultural monuments, dwellings in closed military

townships and some other). It is to be noted that privatization was carried out free of charge, that is, there were no indirect (price) limitations on the privatization.

There is a serious case against the spontaneous reorganization of public institutions. The main shortcoming of that method of reorganization is that such reorganization cannot be properly controlled, that is, it is impossible to regulate its pace and scale and keep the register of the number of public institutions left in the public sector. That problem is particularly acute as regards free, non-tender-based provision by public and municipal institutions of such public services as are guaranteed by the Constitution. So, under Article 41 of the Constitution, "medical aid in public and municipal health-care institutions is rendered to citizens free of charge; such services are financed out of the responsible budget, contribution payments and other funds". Article 43 (2) of the Constitution provides for "availability for all of free pre-school education and general and specialized secondary education in state and municipal educational institutions and at enterprises". Free higher education at state or municipal educational institutions is guaranteed only "on the competitive basis" (Article 43 (3)). The meaning of the above-mentioned articles of the Constitution is not that the state cannot ensure either free provision of medical services to consumers, or education in non-public institutions. However, it is to be remembered that after the transfer of the respective public institutions into the private sector those institutions would not be able to ensure provision of the required volume of the respective services through the state social order system. The reason for such misgiving is that the existing volumes of estimate-based financing of those institutions (or the volumes of financing channeled through the compulsory medical insurance system to health-care institutions) rarely cover costs related to provision of the respective public services. But when buying such services under the social order system the cost of those services should include not only expenses, but also the profit. Consequently, such volume of funds as is currently allocated for financing of health-care and education (except higher education) through the budget system and the system of compulsory medical insurance for payment of the respective services rendered by private institutions on the competitive basis is insufficient, so private institutions would not be interested in rendering services at the same price.

Theoretically, to solve that problem, state regulation of prices on health-care and educational services (secondary education) can be introduced. However, for the reasons stated below such solution of that problem (that is, availability to all of health-care and educational services by private sector institutions is not acceptable).

Despite the fact that Article 124 (1) of the Civil Code provided for regulation of prices by authorized state authorities in cases provided for by the law arbitrary use by legislators of such powers would contradict the fundamental principle of market relations: the freedom of the contract. The state regulation of prices is currently done only in cases where it is directly provided for by the law[36] provided that there are sufficient economic grounds.

As regards natural monopolies' products state regulation is justified by the specific of the market where "due to the technological specifics of production the demand is met more efficiently where there is no competition (because of reduction of per unit cost of production

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[36] See, for instance, norms of the following federal laws: Article 6 of the Federal Law on Natural Monopolies of August 17, 1995, № 147-FZ; Article 10 of the Federal Law on Precious Metals and Precious Stones of March 26, 1998, № 41-FZ; Article 44 of the Federal Law on Use of Atomic Energy of November 21, 1995,№ 170-FZ; Article 9 of the Federal Law on Funerals of January 12, 1996, № 8-FZ; Article 15 of the Federal Law on the Principles of the Federal Housing Policy of December 24, 1992, № 4218-1; Article 5 of the Federal Law on Medicines of June 1, 1998, № 86-FZ and Article 5 of the Federal Law on State Regulation of Production and Sales of Ethyl Alcohol and Alcohol and Spirits Products of November 22, 1995, № 171-FZ.

at increase of the volumes of output), while products of entities of natural monopolies cannot be replaced by any other products; it is because of those specifics the demand on such products on that particular commodity market does not depend on price fluctuations as much as the demand on other products" (Article 3 of the Federal Law on Natural Monopolies). In case of absence of the natural monopoly the price regulation is justified in other segments of the market with limited competition; for instance, in case of absence of elements of the natural monopoly (the market of precious metals and precious stones, ethyl alcohol and alcohol and spirits products); in highly monopolized branches of the economy (gas production and housing and public utilities); or in case of production of products with limited circulation (defense and nuclear and fuel products).

Even if one is to see as admissible state regulation of prices in the absence of any defects in the competitive environment on the sole ground of the social significance of the products (services) state regulated prices cannot be set below the cost of production of such products (services). Such a conclusion can be drawn, in particular, from provisions of Article 20 of the Law on Natural Monopolies under which "should an authority in charge of regulation of a natural monopoly take a decision […] on determination 9seting) of prices (tariffs) without sufficient economic grounds, and as a result of that a natural monopoly entity or other economic entity has incurred any loss, those entities are entitled to claim indemnification against such a loss in accordance with the procedure provided for in the Civil Law".

One can find a similar norm in provisions of Article 527 of the Civil Code regulating the terms of the state order on supply of products for public needs. Paragraph 2 of the above Article reads: " Conclusion of a state contract is obligatory for the provider (the contractor) only in cases provided for by the law and on condition that the public orderer will reimburse any such loss as may be incurred by the provider (the contractor) in the course of fulfillment of the state contract".

In reality, the state actually extends subsidies to entities in housing and public utilities and the transport sector for reimbursement of such losses as they incurred as a result of state regulation of prices on services of those entities and (or) granting of privileges to individual categories of consumers in respect of payment of those services.

So, even if state regulation of prices on medical and educational services rendered by private institutions is legalized setting of prices below the cost of such services (it is to be noted that current financing of the respective public institutions does not fully cover those costs) would require budget spending to indemnify private sector producers against such losses.[37] It is to be noted that under Article 15 of the Civil Code, seen as loss are not only "such expenditure as the person whose rights were infringed upon has or will have to make for restoration of the infringed title, a loss or damage of his property (real damage), but also "such a lost income as that person would have received under normal economic conditions if his rights have not been infringed upon (a lost income)". So, at regulation of prices on products of private suppliers of social services, those prices should include not only the costs of such services, but also a certain norm of profit.

The above shows that in such spheres of public institutions' activities as health-care and education where the state is obligated to ensure free provision of services for all the consumers the spontaneous reorganization is unacceptable. At the same time, it would be

[37] In practice, sometimes (for instance, in the railway sector) instead of direct compensation of losses incurred as a result of state regulation cross subsidizing is used; it consists in inclusion of the loss incurred in sale of products to privileged customers into the price charged from all the other customers.

wrong to conclude that a ban on reorganization in those spheres needs to be imposed. With insufficient budget financing of public institutions (that is, such financing as does not cover the cost of services rendered) the state is not legally obligated to reimburse such a loss as the very notion of a loss as a negative difference between income and expenditure cannot be applied in those situations. At the same time, while not imposing any responsibility on the state under-financing of public institutions does not make services rendered by them accessible to all. As a result of such under-financing the number of such services decreases, while their quality deteriorates (which is equivalent to legal reduction by the founder of an assignment on provision of such services). It is impossible to make that entity liable for a failure to fulfill the assignment of the owner in a situation where it does not have sufficient funds. So, while preserving health-care institutions and educational institutions in the public sector it is important to increase the norms of their financing to such a level as would be sufficient for covering costs of the respective services (possible solutions of that problem will be discussed in Section 5 of the present report). As compared to the prospect of reorganization of such institutions the only difference consists in the fact that the pace will be different and the amount of financing will be increased. For instance, if hypothetically a switchover to financing under the system of state social order were to take place immediately an increase in respective budget expenditures would be required at once, while with preservation of health-care institutions and educational institutions in the present form one could put up with the existing lack of funds for some more time.

Taking into account the above, the most advisable strategy in reorganization of the education system and the health-care system is a plan-based reorganization whose pace should be based on the state's ability to ensure such financing of the state social order as would be acceptable for private institutions rendering the respective services.

As regards other spheres of activities of public institutions it would also be advisable to carry out a plan-based reorganization, though limitations need not be overly strict. Some of the limitations used in a plan-based reorganization will be discussed below.

3.5.3. Limitations to be Applied in Plan-Based Reorganization

One of the most simple limitations which is used in a plan-based reorganization is limitation of the number of such public institutions as can be reorganized. In such a situation, reorganization is initiated by public institutions themselves, however the state retains the right to turn down their application for reorganization in case the number of such institutions exceeds the set quota. That method of reorganization is appropriate, in particular, in such spheres as the secondary education and health-care where the state is obligated under the Constitution to ensure provision of free for all services on the non-competitive basis.

If that method of reorganization is chosen, a problem may arise with selection of such applicants as would be granted the right to use the set quota. So, different approaches to that problem can be used. Firstly, one can use such performance indices of public institutions as characterize their activities in the past, for example, the share of the income received from paid services in that institution's total volume of income. Consequently, the preference will be given to such institutions as have a higher share of such profits. However, the shortcomings of that criterion consist in that the actual volume of the income received from paid services depends not only on the extent of activities of public institutions, but also on the conditions of functioning of those institutions set by the founder (which conditions are sometimes set individually for the specific institutions). For instance, unlike institutions of higher education, state schools are not allowed to enroll students on a paid basis and for that reason they receive non-budgetary funds mainly from such additional services as are not included in educational programs and also from specific donations made by students' parents and similar insignificant

contributions. Consequently, with abolition of such limitations on the entrepreneurial activities as have been imposed by those institutions' charter, the share of their income received from paid services in the total volume of income will increase considerably. Many public institutions receive a greater portion of their income from leasing off some of their premises (however, the volume of that income cannot objectively reflect those institutions' ability to function independently in market conditions). It is to be noted that such dependence of the title to reorganization public institutions seek to obtain on the volume of income they are able to generate from rendering paid services can encourage those institutions to generate such an income and, consequently, increase its volumes. And last, but not least, such orientation to the share of income received from non-budgetary sources in the total volume of income of a public institution implies that after reorganization such an institution will entirely depend on that income, and does not take into account that budget financing those public institutions could receive under the system of the state social order. However, it is clear that only few such public institutions as have actually operated entirely on a commercial basis are able to manage without budget financing, while an overwhelming majority of public institutions can function in market conditions only in case they receive budget financing under the system of the state social order, however the latter institutions can also be reorganized.

Taking into account the above, it is not advisable to use in the course of reorganization such criteria as characterize the performance of a public institution in the past.

It seems more appropriate and advantageous for the state would be use in selection of institutions for reorganization of such a criterion as the terms of reorganization proposed by institutions themselves. So, in reorganization of a majority of state-run companies the important criterion to be used in selection of applicants was the purchase price. In many cases, agreements on privatization included such additional non-property obligations of the buyer as, for instance, an obligation to preserve for a certain period of time the specific line of business of that company, a certain number of jobs and other. It is obvious, that the conditions of reorganization of non-profit institutions cannot be similar to those of commercial entities. The purchase price (that is, the price the institution undergoing reorganization is prepared to pay for public property assigned to it for operational management) can play a decisive role in reorganization in those spheres of activities of public institutions where the state is not bound with any obligation to ensure provision of free-of-charge services (for example, it may concern theaters, movie-theaters, clubs and sport complexes). It is to be noted that even in those spheres the purchase price does not have an important role to play because public institutions can be reorganized without privatization of the real estate assigned to them (that real estate accounts for the larger portion of their assets); the respective property can be leased off to them at a market rate on a long term basis. In the latter case, the decisive condition of the tender for the right to rent the property should be the rental rate the prospective lessee is prepared to pay.

In carrying out of reorganization in those areas where the state is obligated to ensure availability of services for all, the principal condition of reorganization and, simultaneously, a criterion in selection of applicants should be the obligation to fulfill the state social order. The preference in reorganization should be given to such institutions as assume an obligation to render social services under the social order at a lower price or render services to as many customers as possible at a price which is calculated by the orderer in accordance with the specific methodology. It would seem that such a scheme is similar to that scheme under which the founder of a newly established entity sets for it an obligatory assignment on provision of services; however there are three principal differences. Firstly, the conditions on which services are rendered to customers are agreed upon by the parties (though in such a case a

public institution can sacrifice its immediate advantage in order to be granted the title to reorganization), while the concept of a public specialized nonprofit institution implies that the state unilaterally charges it with unclearly defined obligations. Secondly, as it was stated above the founder's right to placement of a social order with a related provider should be of a notional nature, that is, it should be applied only in cases where a tender-based placement of the respective order cannot be done. Thirdly, in our opinion, any obligations of a public institution taken by it in the course of reorganization should be assumed only for a specified term, otherwise, the deal would mean bondage (such a practice is incompatible with the principles of the market economy). Upon expiry of a certain transition period (which is required for formation of a competitive environment on the market of the respective social services) the institution established as a result of reorganization should be relieved from such obligations even if the state is its sole founder. However great the temptation to impose unilaterally conditions of the state social order, it should be remembered that one cannot buy for a ruble services whose cost amounts to ten rubles. A deal can be concluded, but obligations under it will never be fulfilled.

Determination of a quantitative ratio of institutions whose existing status needs to be preserved and institutions which can be reorganized in those spheres where the state is obligated to ensure availability of services for all poses a certain problem. For that purpose, prior to the beginning of the budget period it is important to collect the data in respect of what level of financing of services rendered under the system of the social order is required and what number of private institutions are prepared to conclude an agreement on provision of such services at the offered prices. However, the situation is complicated by the fact that institutions' readiness to conclude an agreement in the current year does not necessarily mean their consent to prolong such an agreement in subsequent years. To prevent that, agreements need to be concluded for a longer term. For example, in the sphere of education an agreement should be concluded for the entire term of education; a transparent mechanism of indexation of the cost of education due to inflation needs to be established. In addition to that, as was stated above, during the transition period the very conditions of reorganization (that is, taking by a public institution undergoing reorganization of a minimum obligation in respect of fulfillment of the social order) should prevent the situation where placement of the social order would pose a problem to the state.

However, in conditions of insufficient budget funds and a lack of competition on the market of social services in those spheres where the state is bound with an obligation to ensure free provision of specific social services hastening of reorganization is inappropriate. At the first stages of reorganization the number of institutions which can be reorganized should be minimum so that the remaining network of public institutions would be able to provide the required volume of social services in case of a problem with placement of the social order.

Pilot experiment in reorganization permits one to assess viability of the system of the state order system and hone the mechanisms of its functioning before it is introduced nationwide. The principal issue which needs to be handled at the first stages of the reform is determination of a price level at which the social order can be placed. In that connection, two circumstances need to be taken into account. On the one hand, there is a danger of overpricing the services rendered under the system of the social order. It happens because in certain sectors of the national economy (primarily in education and health-care where the state cannot give up its obligation to pay for the services rendered to citizens) public institutions do not meet with any competition on the part of the private sector. The existing private schools and hospitals primarily target at high-income social groups; they do not compete with their

counterparts in the public sector. On the other hand, at the first stages of the reform the state will be able have ample opportunities to influence the activities of institutions undergoing reorganization (including those which have been fully privatized). As was stated above, it is possible to make the right to reorganization contingent on taking by institutions undergoing reorganization of specific obligations in respect of the price of services rendered under the system of the social order and the number of consumers whose service is guaranteed at the price agreed upon by the parties. However, taking into account the fact that at full transfer of public institutions to the private sector (that is, through their informal privatization) the state will not be able to exercise control over the activities of legal successors in those segments of the market where the state is obligated to ensure availability of services for all formal methods of reorganization would be appropriate.

3.6. Probable Consequences for the Budget of Reformation of the Public Network

The principal factor to be taken into account when assessing feasibility of reformation of the public network is the possible consequences of such a reform for the budget. It is obvious that the reform cannot be started before the amount of the costs it may involve has been established and the sources of funds for compensation of those costs found.

As was noted above, a switchover to the social order system with preservation of the present volume of the state's social obligations (in real terms) will require a nominal increase in the spending on rendering of state-guaranteed social services. At the same time, those will not be new liabilities, but merely full financial coverage of the obligations already assumed, that is, financing of the state-guaranteed set of social services at least in the amount of the cost of rendering of such services. For that reason, a transition to the social order system will not create a deficit in the responsible sectors but will merely make the existing deficit obvious. So, even if the public network is preserved in its present state the issue of coverage of the deficit of budget financing still remains topical. A realistic approach to that issue does not include consideration of an absolute increase of budget financing of the social sphere. So, some hidden resources of the national economy should be tapped.

In our view, if the public network remains unchanged, such resources are going to be limited. As was shown above, the existing organization of the social sphere does not offer any motivation for reduction of costs of rendering of social services, which means that the deficit can only be done away with if the volume of the state's social obligations is reduced. In other words, the legislation in that sphere needs to be brought in accordance with the actual state of things. For instance, if the state cannot guarantee free availability of every type of health services covered by the compulsory medical insurance program, that program should be reduced to such a range of services as can actually be financed. If there are insufficient funds for full-blown financing of general schooling, general schools'curriculum, standards of general education and the like should be reduced.

That, extreme source of economy can be also used at transition to the social order system. At the same time, reorganization of the public network permits enhancement of efficiency of budget spending in the social sphere thus preventing a dramatic reduction in the state's social obligations. Now let us discuss what additional sources of financing of the public sphere can be generated by the proposed reform of the public network.

Firstly, economy can be assured through a reduction of loss of budget funds at enforcement of the state's subsidiary liability for such debts by public institutions as have not been authorized by the state. As was noted in Section 1 of the present Report, a reduction in

such loss is expected to occur following introduction of limitations on public institutions' powers and introduction in civil law of a provision on invalidation of such deals as are concluded by public institutions as were transacted in excess of the institutions' quotas of budget liabilities. Unfortunately, no quantitative assessment of the possible economy can be made due to lack of accurate data on the amount of accounts payable debt and the reasons behind the occurrence of such debt (it is obvious that only part of the accumulated accounts payable debt of public institutions is caused by transaction by those institutions of deals in excess of the budget liability quotas, while some of the debt is incurred as a result of sequestration carried out in the course of execution of the budget, non-inclusion of contract liabilities of the previous years in the current annual budget, and the like).

Secondly, the reform presupposes posting as budget revenues of proceeds from paid services rendered by public institutions. At present, there is a large amount of such funds received from non-budget sources as public institutions are free to use. In its report *Record-Keeping in Respect of Non-Budget Income of Public Institutions* the Fiscal Policy Center[38](*table 20*).

Table 20

Relation Between Non-Budget Income and Federal Budget Allocations for Some Ministries, Departments and Other Recipients of Federal Budget Allocations in 2000

Agencies in charge of allocation and recipients of budget funds	%	Non-Budget income, thousand rubles.
Russian Patent and Trademark Agency	6795.8	513 886 654
State Committee of the Russian Federation on Standardization and Metrology	1303.9	1 604 380 349
State Bread Inspection under the Government of the Russian Federation	317.4	143 702 662
Russian Academy of Architecture and Building	256.6	42 132 784
Ministry of Proprietary Relations of the Russian Federation	218.4	716 988 284
Ministry of Railways of the Russian Federation	207.7	6 857 948 215
Medical center of the Household Administration of the President of the Russian Federation	186.9	1 214 868 252
Center of Economic Conjuncture of the Russian Federation	155.5	23 883 125
Ministry of Foreign Affairs of the Russian Federation	141.6	897 826 198
Russian Academy of Agricultural Science	140.6	959 919 483
Russian Academy of Medical Science	124.9	565 853 127
Ministry of Communication and IT of the Russian Federation	116.6	493 157 483
Bolshoi Theatre	109.6	244 466 049
Federal Meteorological Service of Russia	93.5	818 657 304
Siberian Branch of the Russian Academy of Sciences	89.2	1 170 487 895
State Hermitage Museum	85.8	170 328 530
Moscow University	81.4	808 076 907
Federal Mining and Industrial Inspection of Russia	77.5	263 713 938
ITAR-TASS Information Agency	71.6	116 912 224
Ministry of Transportation of the Russian Federation	71.1	2 107 561 670
Ministry of Education of the Russian Federation	64.4	18 123 703 605
Russian Academy of Sciences	63.6	2 276 764 706
Federal Land Cadastre Service of Russia	56.4	340 841 661
Ministry of Natural Resources of the Russian Federation	52.1	7 600 349 428
State Committee of the Russian Federation for Building,	51.7	412 816 476

[38] Record-Keeping in Respect of Non-Budget Income of Public Institutions. A Report prepared under contract with the Agency for International Development, US, No. OUT-PER-1-00-99-00003-00 Fiscal Policy Center, Moscow, 2001.

Housing and Public Utilities		
Ministry of Health Care of the Russian Federation	48.9	7 543 602 138
Federal Archives Service of Russia	40.3	55 550 963
Russian Academy of Fine Arts	36.5	27 348 781
Small Business Promotion Fund	35.7	57 865 845
Urals Branch of the Russian Academy of Sciences	35.3	133 585 304
Ministry of Culture of the Russian Federation	32.4	1 794 573 945
Household Administration of the President of the Russian Federation	30.2	1 730 493 919
Ministry of Anti-Monopoly Policy of the Russian Federation	29.6	53 438 568
Far-Eastern Branch of the Russian Academy of Sciences	28.7	137 942 363
Russian academy of education	27.0	29 620 987
State Committee of the Russian Federation for Fisheries	25.9	1 098 169 966
State Statistics Committee of the Russian Federation	25.8	418 970 073
Ministry of Labor and Social Development of the Russian Federation	22.4	1 044 090 900
Federal Rehabilitation and Bankruptcy Service of Russia	21.0	17 545 312
Ministry of Agriculture of the Russian Federation	20.7	3 758 819 975
Ministry of Taxation of the Russian Federation	9.2	1 438 856 548
State Committee of the Russian Federation for Physical Culture, Sports and Tourism	9.1	145 594 535
Ministry of Nationalities of the Russian Federation	5.8	57 420 699
Federal Geodesy and Cartography Service of the Russian Federation	5.3	31 093 424
Ministry of the Press of the Russian Federation	5.0	313 335 966
Russian Academy of Painting, Sculpture and Architecture	3.9	722 422
Ministry of the Power Industry of the Russian Federation	3.7	34 283 052
Supreme Court of Arbitration of the Russian Federation	3.7	405 653 308
State Committee of the Russian Federation for Environmental Protection	1.5	7 498 183
Judiciary Department Under the Supreme Court of the Russian Federation	1.3	12 905 312
Russian Fund of Fundamental Studies	1.3	95 750 984
Russian Fund of Humanities Studies	1.1	1 770 265
Council of the Federation of the Federal Assembly of the Russian Federation	0.7	3 591 609
Supreme Court of the Russian Federation	0.4	2 142 254
State Committee of the Russian Federation for Agrarian Policy	0.3	3 003 159
Federal Forestry Service of Russia	0.2	4 991 196
Aggregate for the listed departments/entities		**68 949 458 963**

As can be seen, with some recipients of federal financing non-budgetary income exceeds the amount of budgetary financing thousands of times over. If those revenues were to be centralized in the budget, they could be redistributed and so the financial situations of various beneficiaries could be leveled. It is obvious that upon adoption of regulations on centralization of revenues from non-budgetary sources, beneficiaries' interest in generating such income will be diminished and so will be the actual amount of such income. With institutions remaining in the public sector and continuing to receive estimate-based financing tendencies towards concealment of non-budgetary income can and should be checked with the use of a combination of motivation and control measures, though efficiency of such control is not without its limitations.

It is also to be noted that a switchover from estimate-based to contract-based financing in itself stimulates a reduction in the costs of social services and an increment in the volume

of such services. While with the estimate-based financing system involving free use by public institutions of their non-budgetary income, public institutions are motivated to expand paid services at the expense of unpaid ones (since the amount of estimate-based financing does not depend on the latter, with the contractual financing system, there is no distinction between ‘paid’ and ‘free of charge’ services. Services of both kinds are paid after having actually been rendered, and the lower their cost, the more funds the institution will have at its disposal. So, hopefully, after switchover to the social order system the state will be getting a larger volume of services for the same price.

Another factor of reduction of social services’ cost may consist in participation in competition for an access to budget financing of existing and newly established private entities active in the lines of activity in question. Unlike estimate-based financing which is only available to public institutions on the register of recipients of budget financing, under a contract any entity of whatever organizational and legal status can receive payment out of the budget. We are far from suggesting that elite private schools, for example, will vie to get budget financing. However, graduates of teacher-training colleges (who currently prefer to make a living as street-market vendors rather than try to live on a teacher’s salary at a state-run school) may choose to establish small primary schools of their own if there is a stable demand in educational services on the part of the state.

As can be seen, switchover to the social order system will not mean any growth in the permanent spending out of budget on social services. Speaking about the so-called ‘transaction costs’ of the reform, that is, the costs related to carrying out of the reform itself, such costs will be relatively small. Just like in the case of any reform, a legal and methodological backing will be needed, however, that can be created by the existing staff of the state apparatus without any significant increase in administrative costs. Re-registration of public institutions will involve certain costs (related to re-registration of the existing public institutions, re-issue of licenses, and the like), however, most of those costs will be related to payment of state duties, from which institutions undergoing reorganization can be exempted. If the reform is carried out prudently, there will be no risk of drop in budget revenues (in particular, revenues from use of public property), either. As was noted above, full privatization of public institutions should only be done for cash, while in cases of formal privatization (that is, where the state is among the founders of the new legal entity) the right to determine the terms of use of public property will be retained by the state.

It seems that the only serious problem in reorganization of public institutions will be posed by accounts payable debts accumulated by those institutions. Under provisions of Article 60 of the Civil Code, creditors of such entities as undergo reorganization are in a position to require termination or fulfillment prior to maturity of that entity’s liabilities and also payment of damages. That provision has been introduced to ensure protection of creditors, since at reorganization the liability is transferred to another legal entity, which under the effective law can only be done with the creditor's consent. Taking into account the fact that reorganization of public institutions the level of the debtor’s liability for the debt is lowered (because the state is thus freed from its subsidiary liability for the debt) there is no doubt that creditors will exercise the right provided for in Article 60 of the Civil Code. That should be taken into account during reorganization. If that problem is to be avoided, it is necessary firstly, to carry out at the preparatory stage of reorganization a survey of public institutions’ accounts payable debt and establish which part of such debts was incurred because deals were transacted in excess of the budget liability quotas, and which part because of reduced budget financing. At reorganization, the former portion of the debt will be paid by the public institution itself (and actual reorganization will not be permitted till the debt is paid

in full), while the latter will be settled by the state (if the state authorizes reorganization of the debtor entity).

The above shows that the proposed reformation of the public network will not involve any significant additional spending out of the budget and will create prerequisites for redistribution of funds and more efficient use of funds allocated by the state for financing of the social sphere.

3.7. Draft federal act on amendment of the budgetary code of the Russian Federation, the Civil Code of the Russian Federation and the federal law on nonprofit organizations

Article 1. The following amendments of the Budgetary Code of the Russian Federation of July 31 1998, No. 145-ФЗ (Statute-Book of the Russian Federation, 2000, No. 31, p. 3823) shall be made:

1. In Article 41 (4), the comma and the words following it (‘after payment of taxes and duties provided for by the laws on taxes and duties’) shall be excluded.

2. In Article 42(2), the wording shall be as follows:

‘2. Income derived by a public institution and another profit-making activities shall be fully recorded in the public institution’s receipts and expenditures estimate, either as income from use of state or municipal property or as income from rendering of paid services.’

3. In Article 72:

in Clause 2, the words ‘laws and statutory acts of constituent entities of the Russian Federation and normative legal acts issued by local self-government authorities’ shall be excluded;

Clauses 4 and 5 shall have the following wording:

‘4. The state or municipal order shall be a totality of concluded state or municipal contracts for delivery of goods, performance of jobs and rendering of services payable out of the responsible budget. Part of the state or municipal order will be constituted by the state or municipal social order, that is, the totality of state or social contracts for rendering of educational, cultural, health care and other socially important types of services with payment out of the responsible budget (services rendered to users free or charge or partly paid by the users).’

‘5. The relations emerging under state and municipal contracts are subject to provisions by federal laws and such laws and statutory acts passed by constituent entities of the Russian Federation and such normative legal acts passed by local self-government legislatures as are in accordance with federal laws. Specific procedures for formation and placement of the state and municipal order with regard to specific types of socially important services shall be determined by federal laws.’

4. In Article 158, Clause 10 shall have the following wording:

‘The head authority in charge of allocation of federal budget funds shall represent the treasury of the Russian Federation in court at mounting by third parties of suits against institutions under its jurisdiction and state-run enterprises.’

5. In Article 161:

Clause 3 shall have the following wording:

‘Both income (including income from paid services and other profit-making activities) and costs of a public institution shall be fully recorded in the public institution’s receipts and expenditures estimate and shown on the credit and debit sides of the responsible budget and in the report on execution of the budget in question.’

A new clause, Clause 4, shall be added with the following wording:

‘4. Conclusion and payment by public institutions of contracts shall be done within the limits of budget liability quotas assigned such institutions in accordance with the departmental, functional and economic structures of spending of the budget out of which they are financed. Bodies in charge of treasury execution of budgets shall ensure record-keeping in respect of liabilities of public institutions financed under the budgets in question on the basis of receipts and expenditures estimates. Such liabilities of public institutions as have not been recorded by bodies in charge of treasury execution of budgets shall not be met out of the budget in question. Such a contract concluded by a public institution (or such section of such a contract as provides for enhanced liability by the public institution) as is at variance with provisions of the present Article, shall be adjudged null and void at a suit by the superior authority in charge of allocation of budget funds or a body in charge of treasury execution of the respective budget.’

Clauses 4-7 shall be deemed, respectively, clauses 5-8.

To Clause 5, another sentence shall be added reading as follows: ’In such a situation, the amount of funds allocated from the budget especially for financing of contracts concluded by public institutions cannot be reduced after due fulfillment by public institutions’ counteragents of their obligations under those contracts.’

In clause 7, the first sentence of the first paragraph and also the second paragraph shall be excluded.

6. In Article 166 (4), in Paragraph 5, the words ‘except such spending as is done by the institution’s manager out of receipts from non-budgetary sources’ shall be excluded.

7. In Article 176, the following words shall be added after the words ‘unitary enterprise’: ‘also determined shall be the demand in allocations required by each head authority in charge of allocation of budget funds for conclusion of state or municipal contracts constituting the state or municipal order.’

8. The wording of Article 177(3) shall be as follows:

‘Norms of financial inputs in rendering of public or municipal services shall be taken into account in calculation of the amount of financing of a state or municipal order for rendering of public or municipal services, including the state or municipal social order.’

9. In Article 232(1) the wording of Paragraph 2 shall be as follows:

‘At budget execution, the income actually received by public institutions from paid services and other profit-making activities over and above those authorized by the law (resolution on a budget) and in excess of the receipts and expenditures estimate shall be used to finance those public institutions’ spending under an additional estimate approved by a superior authority in charge of allocation of budget funds. If at execution of the budget the income actually received by public institutions from paid services and other profit-making activities exceeds the quota set by the law (resolution on a budget) by over ten percent, the amount received in excess of the quota shall be credited to the responsible budget.’

10. In Article 242, Clause 4 shall be excluded. Clause 5 shall, respectively, be deemed Clause 4.

11. In Article 254, clauses 4, 5 and 6 shall be excluded.

12. In Article 255, another paragraph shall be introduced, which shall be the closing paragraph of that Article. The additional paragraph shall read as follows:

'For the meaning of this Article, seen as an instance of insufficiency of the balance of the account of a recipient of budget allocations shall be a situation where the quota (set by Article 288 of the present Code) for debiting by court decisions of funds from a public institution's bank account has been used up.'

13. In Article 288:

The wording of Clause 2 shall be as follows:

'The amount of funds debited from a public institution's individual account by way of enforcement of court decisions cannot exceed 10 percent of the annual approved volume of budget allocations to the public institution in question. In case of insufficiency on the public institution's account of funds for execution of such a recovery in full, payments under court writs shall be done out of such funds as have been allocated to the head authority in charge of allocation of budget funds (under whose jurisdiction the public institution in question is) within the limits of ten percent of the approved budget allocations for the head authority in charge allocation in per annum terms. Should the account balance of the head authority in charge of allocation of budget funds be insufficient for execution of such a recovery in full, payments under court writs shall be done from the budget from which the public institution in question is financed in accordance with the procedure set by Article 286 of the present Code.'

A new clause, Clause 3 shall be added to the Article. Clause 3 shall have the following wording:

'Head authorities in charge of allocation of budget funds shall carry out checks at each instance of enforcement of the state's subsidiary liability for a public institution's debts and establish whether or not any officials need to be brought to account. In respect of head institutions in charge of allocation of budget funds and also in cases where recovery under court writs was done from the accounts of the budget from which the public institution is financed, the checks shall be carried out, respectively by the Ministry of Finance of the Russian Federation, financial authorities of constituent entities of the Russian Federation and financial authorities of municipalities.'

Article 2. Section 1 of the Civil Code of the Russian Federation of November 30, 1994, No. 51-ФЗ (Statute-Book of the Russian Federation, 1994, No. 33, p. 3301) shall be amended as follows:

1. In Article 49:

In Clause 1, Paragraph 1 shall have the following wording:

'Since the present Article does not contain any provisions to the contrary, a legal entity can have such civil rights as correspond to its objectives (as stated in its founding documents) and perform such obligations as are related to its activities.'

A new Paragraph 3 shall be inserted. It shall have the following wording:

'Nonprofit organizations established as public or municipal institutions cannot assume any civil obligations in excess of the quotas of budget liabilities assigned them.'

Paragraph 3 shall henceforth be Paragraph 4.

2. In Article 120:

In Clause 2, Paragraph2, after the words 'proprietor of the property in question' a comma and the following words shall be inserted: 'except in cases specified in Clause 3 of the present Article.'

Inserted in Clause 3 shall be a new sentence (Sentence 1). Its wording shall be as follows:

‘3. The proprietor of the property assigned to a public or municipal institution shall bear subsidiary liability for that institution’s contractual obligations assumed within the limits of such quotas of budget liabilities as have been assigned to that public or municipal institutions. In Sentence 2, the word ‘specifics’ should be replaced with the words ‘other specifics’. Added to the Article shall be Clause 4 reading as follows:

‘4. An institution can be transformed into a fund, an autonomous non-profit organization or an economic entity.

‘A public or municipal institution can be transformed, respectively, into a public or municipal autonomous nonprofit organization.

‘Transformation of public or municipal institutions into nonprofit organizations with other statuses and into economic entities can only be done in cases and in accordance with the procedure specified by the law.’

3. Article 173 shall have the following wording:

‘Article 173. Invalidity of a Deal Transacted by a Legal Entity With Abuse of the Legal Entity’s Powers.

1. A deal transacted by a legal entity at variance with the purpose of its activities (as clearly defined in its founding documents) or a deal transacted by a legal entity which does not have a license to pursue the activities in question can be invalidated by a court of law once an action has been instituted by that legal entity, its founder/stakeholder or a state authority in charge of supervision of that legal entity’s activities if it has been proved that the other party to the deal knew or should have known that the deal was illegal.

2. A deal transacted by a legal entity which is a public or municipal institution in excess of the budget liability quota assigned to that entity can be invalidated by a court of law once a suit by that entity’s founder has been instituted.’

4. In Article 298:

in Clause 2, the following words shall be added at the end: ‘with the exception of cases specified in Clause 3 of the present Article.’

Also, Clause 3 shall be added which shall read as follows:

‘3. ‘Both income (including income from paid services and other profit-making activities) and costs of a public or municipal institution shall be fully recorded in the public or municipal institution’s receipts and expenditures estimate and shown on the credit and debit sides of the responsible budget, either as income from use of state or municipal property or as income from rendering of paid services.’

5. In Article 421:

A new Paragraph 2 shall be added in Clause I. The wording of Paragraph 2 is as follows:

‘In such a case, contracts concluded by public and municipal institutions shall be within the limits of budget liability quotas assigned to those institutions.’

Paragraph 2 shall, consequently, become Paragraph 3.

New paragraphs 2 and 3 shall be added in Clause 2. Those new paragraphs shall read as follows:

‘In such cases, such liabilities assumed by public and municipal institutions in relation to contracts for deliveries of goods, performance of jobs and rendering of services as are in

excess of the budget liability quotas assigned those institutions shall not be payable out of the funds of the responsible budgets.

Any such contract (or such part of the contract as presupposes expanded liability by the budget) as is concluded by a public or municipal institution in breach of provisions of the present Article shall be invalidated by court decision once an action has been instituted by a superior body or a Federal Treasury authority.'

Article 3. The Federal Law on Nonprofit Organizations of January 12, 1996 No. 7-ФЗ (Statute-Book of the Russian Federation, 1996, No. 3, p. 145, 1998, No. 48, p. 5849) shall be amended as follows:

1. In Article 9:

In sentence 2 in Clause 2, the following words shall be inserted:', except cases specified in Clause 3 of the present Article.';

Clause 3 shall have the following wording:

'3. The owner of the property currently in the public or municipal institution's use shall bear subsidiary liability for that institution's contractual obligations assumed within the limits of the budget liability quota assigned to those institutions.'

Clause 3 shall, consequently, become Clause 4.

2. In Article 10:

In Clause 1, Paragraph 1, the following words shall be inserted after the words 'legal entities': 'and/or the Russian Federation, a constituent entity of the Russian Federation or a municipality.'

A new clause, Clause 5 shall be added which shall read as follows:

'5. An autonomous nonprofit organization in whose supreme collective governing body representatives of the Russian Federation, a constituent entity of the Russian Federation have over 50 percent of votes shall be deemed, respectively, a public or municipal autonomous nonprofit organization. Specific legal statuses of specific types of public and municipal autonomous nonprofit organizations shall be determined by applicable laws and other statutory acts.'.

3. In Article 17:

Clause 2 shall have the following wording:

'2. An institution can be transformed into a fund, an autonomous non-profit organization or an economic entity.

'A public or municipal institution can be transformed, respectively, into a public or municipal autonomous nonprofit organization. The decision on transformation of a public or municipal institution into a public or municipal nonprofit organization can only passed by the institution's founder. The procedure for transformation of a public or municipal institution into a public or municipal autonomous nonprofit organization shall be set by the applicable federal law.

'Transformation of public or municipal institutions into nonprofit organizations with other statuses and into economic entities can only be done in cases and in accordance with the procedure specified by the law.'

Article 4. The Government of the Russian Federation shall before _____:

Prepare and submit for consideration of the State Duma of the Federal Assembly of the Russian Federation a draft federal law setting the procedure for transformation of a public or municipal institution into a public or municipal autonomous nonprofit organization;

Prepare and approve a standard statute of a public or municipal autonomous nonprofit organization;

Develop and approve a program for reorganization of public institutions financed out of the federal budget for the period ending on January 1, 2006.

Article 5. The Government of the Russian Federation shall before _____: prepare and submit for consideration of the State Duma of the Federal Assembly of the Russian Federation a draft federal law on specifics of formation and placement of the state and the municipal social order.

Article 6. Governing **a**uthorities of constituent entities of the Russian Federation and local self-government authorities shall be instructed to develop and implement a program for reorganization of public institutions financed out of their budgets.

Article 7. The present Federal Act shall become valid from the day of its official publication.

President

of the Russian Federation

AMENDED ARTICLES OF STATUTORY ACTS WITH AMENDMENTS INDICATED (Newly added text is underscored, while excluded text, crossed out).

3.7.1.The Budgetary Code of the Russian Federation

Article 41. Types of budget revenues

1. Budget revenues shall include tax and non-tax revenues and also non-repayable contributions.

2. Tax revenues shall include such federal, regional and local taxes and duties as are provided for by tax laws of the Russian Federation, and also various penalties.

3. The amounts of the granted tax loans, deferrals in payment of taxes and making of other compulsory payments to the budgets and permits to pay such amounts in installments shall be fully shown on the income side of the respective budget'' balance.

4. Non-tax revenues shall include:

income from use of public or municipal property, after payment of the taxes and duties provided for by tax laws;

income from paid services rendered by public institutions under the jurisdiction, respectively, of federal executive authorities, executive authorities of constituent entities of the Russian Federation and local self-government authorities, ~~after payment of the taxes and duties provided for by tax laws~~;

funds obtain as a result of enforcement of civil, administrative and criminal liabilities, including penalties and confiscation, and also funds obtained by way of compensation for damage done to the Russian Federation, constituent entities of the Russian Federation and municipalities, as well as other amounts obtained through impoundment;

transfers received by way of financial aid from budgets of other levels, except budget loans and budget credits;

other non-tax income.

Article 42. Income from use of public or municipal property

1. Shown on the income side of budgets' balances shall be:

Funds received as a rent for such public or municipal property as has been leased off, whether the terms of lease presuppose temporary transfer of title to such property or mere temporary use of it;

Interest accrued on the balances on accounts kept with credit institutions;

Funds received from mortgaging or placing in trust of public or municipal property;

Interest accrued of budgetary funds lent to other budgets, foreign states or legal entities on terms of repayability and charging of interest;

Income in the form profit yielded by interest in the authorized capital of economic entities or dividends on shares belonging to the Russian Federation, constituent entities of the Russian Federation or municipalities;

Such portion of profit of public and municipal unitary enterprises as remains after payment of taxes and other compulsory payments;

Other such types of income from use of public and municipal property as are provided for by the laws of the Russian Federation.

The income from use of public or municipal property (income of the types listed in the present Clause) shall be included in budgets' revenues after payment of taxes and duties provided for by the laws on taxes and duties.

2. Income received by a public institution from ~~business activities~~ paid services and other profit-making activities ~~after payment of taxes and duties provided for by laws on taxes and duties~~ shall be fully recorded in the receipts and expenditures estimate of the public institution and shown on the income side of the balance of the responsible budget either as income from use of public or municipal property or as income derived from rendering of paid services.

Article 72. State or municipal contract or state or municipal order.

1. State or municipal contract is a contract concluded by a state or municipal authority, a public institution or an authorized agency or organization on behalf of the Russian Federation, a constituent entity of the Russian Federation or a municipality with individuals or legal entities for the purpose of meeting of state of municipal requirements whose payment is authorized in the respective budget.

2. State and municipal contracts shall be placed on a tender basis, unless a different procedure is provided for in federal laws, ~~laws and statutory acts of constituent entities of the Russian Federation or normative legal acts passed by local self-government legislatures.~~

3. State and municipal contracts shall contain a provision on payment of damages in case of failure by the contractor to comply with the terms of the contract.

4. The state or municipal order shall be a totality of concluded state or municipal contracts for delivery of goods, performance of jobs and rendering of services payable out of the responsible budget. Part of the state or municipal order will be constituted by the state or municipal social order, that is, the totality of state or social contracts for rendering of educational, cultural, health care and other socially important types of services with payment out of the responsible budget (services rendered to users free or charge or partly paid by the users).'

'5. The relations emerging under state and municipal contracts are subject to provisions by federal laws and such laws and statutory acts passed by constituent entities of the Russian Federation and such normative legal acts passed by local self-government legislatures as are in accordance with federal laws. Specific procedures for formation and placement of the state

and municipal order with regard to specific types of socially important services shall be determined by federal laws.'

Article 158. Head Authority in Charge of Allocation of Budget Funds

1. The head authority in charge of allocation of funds of the federal budget shall be a state authority authorized to dispense federal budget funds to lower-level authorities in charge of allocation of budget funds and to recipients of budget funds, as specified in the departmental classification of federal budget spending.

The head authority in charge of allocation of funds of the budget of a constituent territorial entity of the Russian Federation or a local budget shall be a state authority of a territorial entity of the Russian Federation, a local self-government authority or a public institution authorized to dispense funds from the budget of the constituent territorial entity of the Russian Federation or a local budget to lower-level authorities in charge of allocation of budget funds and to recipients of budget funds, as specified in the departmental classification of federal budget spending.

2. The head authority in charge of allocation of budget funds can be authorized by the Government of the Russian Federation to represent the state at conclusion of contracts on lending of budgetary funds on terms of repayment, on granting of government or municipal guarantees or investment of budget funds.

3. The head authority in charge of allocation of budget funds shall in accordance with the spending quotas determine lower-level budget funds allocation authorities' and budget funds recipients' assignments on rendering of public or municipal services.

4. The head authority in charge of allocation of budget funds shall approve receipts and expenditures estimates of public institutions in its charge.

5. The head authority in charge of allocation of budget funds shall itemize the budget and set budget liability quotas to lower-level authorities in charge of allocation of budget funds and recipients of budget and execute the respective portion of the budget.

6. The head authority in charge of allocation of budget funds shall have the right on the basis of a substantiated application by a public institution to amend the adopted receipts and expenditures estimate of that public institution in respect of redistribution of funds between the items notifying the body in charge of execution of the budget in accordance with provisions of the present Code.

7. The head authority in charge of allocation of budget funds shall check activities by recipients of budget funds for the purpose of establishing whether or not budget funds are used for appropriate purposes and are returned in a timely manner, whether the reporting is adequate and whether the assignments for rendering of public or municipal services are duly fulfilled.

8. The head authority in charge of allocation of budget funds shall exercise control over use of funds by authorities in charge of allocation of public funds and also by public institutions and other recipients of budget funds, and by state-run and municipal unitary enterprises to which property, respectively, of the Russian Federation, constituent entities of the Russian Federation or municipalities has been assigned for economic use or operational management. Actual control of use of budget funds by unitary enterprises shall be done on instructions from the head authority in charge of allocation of budget funds by state financial control authorities.

9. The head authority in charge of allocation of budget funds shall prepare and submit to the body in charge of supervision of execution of the budget in question a consolidated report on execution of the budget in respect of the funds allocated, a consolidated receipts and

expenditures estimate, and also a report on fulfillment of the assignment on rendering of public or municipal services.

10. ~~The head authority in charge of allocation of federal budget funds shall represent the treasury of the Russian Federation in court at trials~~

~~involving suits for damages caused by illegal decisions and actions/inaction by the responsible officials and authorities, depending on the departmental jurisdiction;~~

~~involving subsidiary liability suits by jurisdictional enterprises and institutions.~~

~~The payment of funds under court writs shall be done at the expense of the treasury of the Russian Federation allocated by a federal executive authority in its capacity of the head authority in charge of allocation of federal budget funds.~~

The head authority in charge of allocation of federal budget funds shall represent the treasury of the Russian Federation in court at mounting by third parties of suits against institutions under its jurisdiction and state-run enterprises.

Article 161. Public Institution

1. A public institution is an entity established by state authorities of the Russian Federation, state authorities of constituent entities of the Russian Federation and local self-government authorities for performance of administrative, social, cultural, scientific, technological or other nonprofit functions which is financed out of the respective budget or out of the budget of a state non-budget fund on the basis of a receipts and expenditures estimate.

2. Organizations to which public or municipal property has been assigned for operational management and which do not have the status of a state-run enterprise under federal jurisdiction shall for the purpose of the present Code be deemed public institutions.

3. ~~Shown in the receipts and expenditures estimate shall be all receipts of a public institution, including budgetary allocations, allocations from public non-budgetary funds and income derived from business activities, including income from rendering of paid services and other types of income derived from use of public or municipal property assigned to the public institution for operational management and income derived from other activities.~~

Both income (including income from paid services and other profit-making activities) and costs of a public institution shall be fully recorded in the public institution's receipts and expenditures estimate and shown on the credit and debit sides of the responsible budget and in the report on execution of the budget in question.

'4. Conclusion and payment by public institutions of contracts shall be done within the limits of budget liability quotas assigned such institutions in accordance with the departmental, functional and economic structures of spending of the budget out of which they are financed. Bodies in charge of treasury execution of budgets shall ensure record-keeping in respect of liabilities of public institutions financed under the budgets in question on the basis of receipts and expenditures estimates. Such liabilities of public institutions as have not been recorded by bodies in charge of treasury execution of budgets shall not be met out of the budget in question. Such a contract concluded by a public institution (or such section of such a contract as provides for enhanced liability by the public institution) as is at variance with provisions of the present Article, shall be adjudged null and void at a suit by the superior authority in charge of allocation of budget funds or a body in charge of treasury execution of the respective budget.

54. In case of reduction by the authorized state authorities in accordance with the adopted procedure of the amount specifically allocated from the respective budget for

financing of contracts concluded by a public institution, the public institution and the other party to such a contract shall negotiate new time-limits for implementation of the contract and, in case of need, alteration of other terms of the contract. In such a situation, the amount of funds allocated from the budget especially for financing of contracts concluded by public institutions cannot be reduced after due fulfillment by public institutions' counteragents of their obligations under those contracts. The other party to the contract shall only be in a position to claim compensation for the actual loss inflicted upon it as a result of alteration of the terms of the contract.

65. On the basis of forecast volumes of public or municipal services to be rendered and the set norms of such services' costs, and also taking into account execution of the receipts and expenditures estimate for the period under review, a public institution shall prepare a budget application for the next financial year, which application shall be lodged for approval with the head authority in charge of allocation of budget funds or authority in charge of allocation of public funds.

76. ~~A public institution shall use budget funds in accordance with the approved receipts and expenditures estimate.~~ The extent of the public institution's rights in redistribution of funds between items and between types of expenditure in execution of the estimate shall be determined by the Federal Treasury of the Russian Federation or another body in charge of budget execution shall in collaboration with the head authorities in charge of allocation of budget funds.

~~In execution of the receipts and expenditures estimate, the public institution shall be in a position to use at its own discretion such funds as has been received from non-budget sources.~~

87. A public institution which is under the jurisdiction of federal executive authorities shall only use funds through bank account of public institutions which are operated by the Federal Treasury of the Russian Federation.

Article 166. Exclusive powers of the head of the Ministry of Finance of the Russian Federation

1. The head of the Ministry of Finance of the Russian Federation (referred to hereinafter as the Minister of Finance) shall have the exclusive authority to authorize (in writing) the following:

approval of the itemized version of the federal budget;

approval of budget liability quotas set for head authorities in charge of allocation of federal budget funds;

granting of budget loans out of the federal budget;

reduction of federal budget spending in conditions of lack of revenues (no more than five percent of the approved amount of federal budget revenues);

redistribution of allocations between the head authorities in charge of allocation of federal budget funds, sections, subsections and items of the functional and the economic classifications of budget expenditure in the Russian Federation within 10 percent of the approved expenditure;

blocking of spending and lifting of such blocking in cases provided for in Article 231 of the present Code.

Performance of any of the above actions without authorization by the Minister of Finance shall constitute a breach of budget laws of the Russian Federation and be penalized in accordance with provisions of the present Code.

2. The Minister of Finance shall be in a position to prohibit alteration by head authorities in charge of allocation of budget funds of distribution of funds within the estimate if the Minister of Finance has received from the Auditing Committee of the Russian Federation or Federal Treasury authorities an official representation on breaches by the head authority in charge of allocation of budget funds of budget laws of the Russian Federation.

3. In cases where instances of misuse of budget funds have been discovered, the Minister of Finance shall be in a position to assign federal budget commissioners to federal executive authorities and public institutions.

In such a case, all the powers of head authority or authority in charge of allocation of budget funds or recipient of budget funds shall be assigned to the federal budget commissioner.

4. The Minister of Finance shall be in a position to prohibit certain types of spending by a head authority or authority in charge of allocation of budget funds or a public institution, ~~except such spending as is done by the public institution's management out of funds received from non-budget sources~~.

Seen as grounds for such a prohibition shall be a representation by the Auditing Committee of the Russian Federation and reports on audits carried out by authorities of the Ministry of Finance of the Russian Federation and the Federal Treasury evidencing instances of breaches of budget laws of the Russian Federation.

Article 176. Rendering of public or municipal services

At shaping of the budget, assigns shall be set to each head authority in charge of allocation of budget funds, each authority in charge of allocation of budget funds and each public institution in respect of rendering of public or municipal services, depending on the specific functions of the head authority in charge of allocation of budget funds, authority in charge of allocation of budget funds, public institution or state-run or municipal unitary enterprise; also determined shall be the demand in allocations required by each head authority in charge of allocation of budget funds for conclusion of state or municipal contracts constituting the state or municipal order.'

Article 177. Norms of financial inputs in rendering of public or municipal services

1. The Federal executive authority shall develop and approve norms of financial inputs per unit of public or municipal services.

2. In shaping of the draft budget, allocation of funds to each head authority in charge of allocation of budget funds, each authority in charge of allocation of budget funds and each public institution shall be determined taking into account the norms of financial inputs per unit of public or municipal services and also assignments for rendering of such services.

3. Norms of financial inputs in rendering of public or municipal services shall be ~~used~~ <u>taken into account</u> in calculation of the amount of financing of a state or municipal order for rendering of public or municipal services, <u>including the state or municipal social order.</u>'

Article 232. Use of income actually received at budget execution over and above the quota set by the law/resolution on the budget

1. Income actually received at budget execution over and above the quota set by the law/resolution on the budget shall be used by the body in charge of budget execution for reduction of the budget deficit and making of payments to reduce the budget's liabilities with no amendments made to the law/resolution on the budget.

At budget execution, the income actually received by public institutions from paid services and other ~~business~~ profit-making activities over and above those authorized by the law (resolution on a budget) and in excess of the receipts and expenditures estimate shall be used to finance those public institutions' spending under an additional estimate approved by a superior authority in charge of allocation of budget funds. If at execution of the budget the income actually received by public institutions from paid services and other profit-making activities exceeds the quota set by the law (resolution on a budget) by over ten percent, the amount received in excess of the quota shall be credited to the responsible budget.

2. In cases where there is need to use of additional income for purposes other than those indicated in Clause 1 of the present Article and in cases where the actual expected income exceeds the approved per annum allocations by over 10 percent, financing of such budgetary spending as is over and above the amount of allocations specified in the law/resolution on the budget shall be done upon amendment of the law/resolution on the budget. Amendment of the law/resolution on the budget shall be done on the basis of results of budget execution in the quarter /six-month period in which the excess was observed.

3. A draft law on amendment of the law/resolution on the budget on occasion of receipt of additional income shall be considered by a legislative/representative authority at an extraordinary meeting within 15 days after it has been submitted to such an authority. If the law is not passed within the set time-limits, an executive authority shall be in a position to carry out an even indexation of the budget spending in every sphere after reduction of the budget deficit and meeting of the liabilities.

Article 242. End of the budget year

1. The budget year shall end on December 31.

2. The term of budget liability quotas shall expire on December 31.

3. No financial obligations shall be assumed after December 25. Confirmation of financial liabilities shall be completed by the body in charge of budget execution not later than on December 28.

The body in charge of budget execution shall make payments on such liabilities as have been accepted and confirmed not later than December 31.

Accounts used in execution of the budget of the ending year shall be closed 12 p.m. on December 31.

~~4. Such income derived by public institutions from business activities as has not been used as of December 31 shall be credited in the same amount to the institutions' new bank accounts.~~

4~~5~~. Upon completion of operations with the assumed financial liabilities of the ended year, the balance of the budget's consolidated account shall be recorded as the balance as of the beginning of the new financial year.

Article 254. Individual budget accounts

1. Execution of the federal budget in respect of spending shall be done with the use of individual budget accounts (referred to hereinafter as 'individual accounts') opened with the single accounting register of the Federal Treasury for each head authority in charge of allocation of budget funds, authority in charge of allocation of budget funds and recipient of federal budget funds.

2. Shown on the individual account shall be the amount of federal budget funds of which the authority in charge of allocation of such funds or recipient of such funds has the use at authorization and financing of federal budget spending.

3. The individual account of an authority in charge of allocation of federal budget funds or recipient of federal budget funds shall be opened with the responsible territorial branch of the Federal Treasury.

~~4. Income derived by a public institution from business activities and use of public property shall be credited to the single federal budget account with the responsible territorial branch of the Federal Treasury. The territorial branch of the Federal Treasury shall credit the above amount to the public institution's individual account not later than the day following the day of its crediting to the single federal budget account. From that time, the public institution shall be in a position to use those funds.~~

~~5. A public institution shall only be in a position to use funds credited to its individual account within the amount actually indicated in the account.~~

~~6. Should the available budget funds be insufficient for fulfillment of assignments set by the executive authority, a public institution under that executive authority's jurisdiction shall be in a position to use for that purpose proceeds from business activities and use of public property. A public institution shall be in a position to use at its own discretion such an amount of income actually received by a public institution from business activities and use of public property as is in access of the amount specified in the receipts and expenditures estimate.~~

Article 255. Order of priority of debiting of funds from the budget's account and individual accounts of recipients of budget funds.

1. In case of availability on the budget's account (individual account of a recipient of budget funds) of a balance sufficient for meeting of all claims to that account, debiting of such funds shall be done in order of presentation of confirmed bonds and other documents constituting grounds for recovery, including court writs (calendar reporting).

2. In case of unavailability on the budget's account (individual account of a recipient of budget funds) of a balance sufficient for meeting of all claims to that account, debiting of such funds shall be done in the following order:

first in priority shall be recoveries under court writs providing for debiting or payment in cash out of the account of funds under allowed claims for compensation for damage inflicted upon individuals' life and health by illegal actions/inaction by state authorities, local self-government authorities or officials in such authorities' employ;

second in priority shall be recoveries under court writs providing for debiting or payment in cash out of the account of funds for compensation for actual damages in the amount of under-financing, and also compensation for loss inflicted on an individual or legal entity by illegal actions/inaction by state authorities, local self-government authorities or officials in such authorities' employ, including issue by such state authorities or local self-government authorities of acts which are at variance with the law or with any other statutory acts;

third in priority shall be debiting of funds for return of overpaid amounts or those erroneously credited to the budget in excess of the due amounts;

fourth in priority shall be debiting of funds under payment documents related to financing of expenditure on servicing or repayment of a government or municipal debt;

fifth in priority shall be debiting of funds under payment documents related to financing of other budget expenditures.

Debiting of funds under documents with the same priority shall be done in calendar order of presentation of such documents.

For the meaning of this Article, seen as an instance of insufficiency of the balance of the account of a recipient of budget allocations shall be a situation where the quota (set by Article 288 of the present Code) for debiting by court decisions of funds from a public institution's bank account has been used up.

Article 288. Unconditional debiting of funds from public institutions' individual accounts

1. Unconditional debiting of funds from public institutions' individual accounts shall be done in cases specified in the present Code and other federal laws. The procedure for such debiting shall be set by the Bank of Russia with approval by the Federal Treasury.

2. The amount of funds debited from a public institution's individual account by way of enforcement of ~~such liabilities of a public institution as have occurred as a result of fulfillment by it of an assignment set by a superior executive authority~~ court decisions cannot exceed ten percent of the annual approved volume of budget allocations to the public institution in question ~~the balance of the account~~. In case of insufficiency on the public institution's account of funds for execution of such a recovery in full, payments under court writs shall be done out of such funds as have been allocated to the head authority in charge of allocation of budget funds (under whose jurisdiction the public institution in question is) within the limits of ten percent of the approved budget allocations for the head authority in charge allocation in per annum terms. Should the account balance of the head authority in charge of allocation of budget funds be insufficient for execution of such a recovery in full, payments under court writs shall be done from the budget from which the public institution in question is financed, ~~while the lacking funds shall be debited from the accounts of the territorial branch of the Federal Treasury maintaining the account in question~~ in accordance with the procedure set by Article 286 of the present Code.

3. Head authorities in charge of allocation of budget funds shall carry out checks at each instance of enforcement of the state's subsidiary liability for a public institution's debts and establish whether or not any officials need to be brought to account. In respect of head institutions in charge of allocation of budget funds and also in cases where recovery under court writs was done from the accounts of the budget from which the public institution is financed, the checks shall be carried out, respectively by the Ministry of Finance of the Russian Federation, financial authorities of constituent entities of the Russian Federation and financial authorities of municipalities.'

3.7.2. The Civil Code of the Russian Federation

Article 49. Capacity of the Legal Entity

1. Since the present Article does not contain any provisions to the contrary, a legal entity can have such civil rights as correspond to its objectives (as stated in its founding documents) and perform such obligations as are related to its activities.

Commercial entities, except unitary entities and other types of institutions specified by the law can have such civil rights and perform such civil obligations as are related to any such activities as are not prohibited by the law.

Nonprofit organizations established as public or municipal institutions cannot assume any civil obligations in excess of the quotas of budget liabilities assigned them.

A legal entity can engage in certain types of activities specified by the law only in case it has been granted a special permit (license).

2. Limitations can be imposed on a legal entity's rights only in cases and in accordance with the procedure provided for by the law. A legal entity can appeal in court against a decision on imposition of such limitations.

3. A legal entity shall become legally capable from the day of its foundation (Article 51 (2)) and become incapacitated as soon as its liquidation is completed (Article 63 (8)).

A legal entity shall have the right to pursue activities subject to licensing from the day of drawing of a license or within the period specified in it and lose that right at expiry of the license unless otherwise is provided for by the law or other statutory acts.

Article 120. Institutions

1. Seen as an institution shall be an entity established by a founder for the purpose of fulfillment of management, social, cultural and other nonprofit functions and financed fully or partially by it.

The title of an institution to the property assigned to it shall be established in accordance with provisions of Article 296 of the present Code.

2. An institution shall be liable for its obligations with cash funds at its disposal. Should there be a lack of cash funds, the proprietor of the respective property shall be liable for obligations of that institution on a subsidiary basis, except in cases specified in Clause 3 of the present Article.

3. The proprietor of the property assigned to a public or municipal institution shall bear subsidiary liability for that institution's contractual obligations assumed within the limits of such quotas of budget liabilities as have been assigned to that public or municipal institutions. Other specific legal statuses of individual types of public and municipal institutions shall be determined by applicable laws and other statutory acts.

4. An institution can be transformed into a fund, an autonomous nonprofit organization or an economic entity.

A public or municipal institution can be transformed, respectively, into a public or municipal autonomous nonprofit organization.

Transformation of public or municipal institutions into nonprofit organizations with other statuses and into economic entities can only be done in cases and in accordance with the procedure specified by the law.

Article 173. Invalidity of a Deal Transacted by a Legal Entity With Abuse of the Legal Entity's Powers

1. A deal transacted by a legal entity at variance with the purpose of its activities (as clearly defined in its founding documents) or a deal transacted by a legal entity which does not have a license to pursue the activities in question can be invalidated by a court of law once an action has been instituted by that legal entity, its founder/stakeholder or a state authority in charge of supervision of that legal entity's activities if it has been proved that the other party to the deal knew or should have known that the deal was illegal.

2. A deal transacted by a legal entity which is a public or municipal institution in excess of the budget liability quota assigned to that entity can be invalidated by a court of law once a suit by that entity's founder has been instituted.

Article 298. Use of the Property of an Institution

1. An institution shall not be entitled to appropriate or otherwise use the property assigned to it or purchased for funds allocated to it under an estimate.

2. If under founding documents an institution is granted the right to carry out profit-making activities the income received from such activities and the property bought for those

funds shall be used by that institution at its own discretion and shown in a separate balance with the exception of the cases specified in Clause 3 of the present Article.

3. Both income and costs of a public and municipal institution related to profit-making activities shall be fully recorded in the public and municipal institution's receipts and expenditures estimate and shown on the credit and debit sides of the responsible budget, either as income from use of state or municipal property or as income from rendering of paid services.

Article 421. Freedom of a Contract

1. Individuals and legal entities shall have the right to conclude a contract.

Contracts concluded by public and municipal institutions shall be within the limits of budget liability quotas assigned to those institutions.

An individual or a legal entity cannot be forced to conclude a contract, except in cases where an obligation to conclude a contract is provided for by the present Code, a law or an obligation assumed voluntarily by an individual or a legal entity.

2. The parties can conclude such contracts of such types as are either provided or not provided by the law and other statutory acts.

In such cases, such liabilities assumed by public and municipal institutions in relation to contracts for deliveries of goods, performance of jobs and rendering of services as are in excess of the budget liability quotas assigned those institutions shall not be payable out of the funds of the responsible budgets.

Any such contract (or such part of the contract as presupposes expanded liability by the budget) as is concluded by a public or municipal institution in breach of provisions of the present Article shall be invalidated by court decision once an action has been instituted by a superior body or a Federal Treasury authority.

3. The parties can conclude a contract which includes such elements of other contracts as are provided for by a law or other statutory acts (a combined contract). The relationship between the parties to the combined contract shall be subject to applicable rules on contracts elements of which rules shall be incorporated in the combined contract unless otherwise agreed between the parties or a different procedure is determined by the subject of the contract.

4. The terms of the contract shall be determined by the parties at their own discretion, except in cases where inclusion of the respective terms are provided for by the law or other statutory acts (Article 422).

In cases where terms of the contract are provided in such a norm as is applied unless otherwise agreed between the parties (a dispositive norm) the parties by agreement shall be in a position either to exclude application of such a norm, or set the terms different to those provided in that norm.

5. Unless the terms of the contract are determined by the parties or the dispositive norm, the respective terms shall be determined by such business practices as are applicable to the relations between the parties.

3.7.3. The Federal law on nonprofit organizations

Article 9. Institutions

1. Seen as a nonprofit organization shall be an entity established by the owner for the purpose of fulfillment of management, social, cultural and other nonprofit functions and financed fully or partially by it.

Property of such an organization is assigned to it for operational use in accordance with the Civil Code of the Russian Federation

The title of an institution to the property assigned to it shall be established in accordance with the Civil Code of the Russian Federation.

2. An institution shall be liable for its obligations with cash funds at its disposal. Should there be a lack of cash funds, the proprietor of the respective property shall be liable for obligations of that institution on a subsidiary basis, except in cases specified in Clause 3 of the present Article.

3. The owner of the property currently in the public or municipal institution's use shall bear subsidiary liability for that institution's contractual obligations assumed within the limits of the budget liability quota assigned to those institutions.

43. Specific legal statuses of specific types of public and other institutions shall be determined by applicable laws and other statutory acts.

Article 10. An Autonomous Nonprofit Organization

1. Seen as an autonomous nonprofit organization shall be such a nonprofit entity without a membership as is established by individuals and (or)legal entities and (or) the Russian Federation, constituent entities of the Russian Federation or municipal entities on the basis of voluntary property contributions for the purpose of provision of services in the sphere of education, health-care, culture, science, law, physical culture, sports and other services.

Property transferred to an autonomous nonprofit organization by its founder (stakeholder) shall be the property of the autonomous nonprofit organization. Founders of an autonomous nonprofit organization shall not retain title to the property transferred by them to that organization. Founders shall not be liable for that autonomous nonprofit organization's obligations, while the latter shall not be liable for obligations of its founders.

2. An autonomous nonprofit organization shall have the right to carry out such business activities as correspond to the objectives it is established to pursue.

3. Supervision of the activities of an autonomous nonprofit organization shall done by its founders in accordance with the procedure provided in its founding documents.

4. Founders of an autonomous nonprofit organization shall use its services on an equal basis with other customers.

5. An autonomous nonprofit organization in whose supreme collective governing body representatives of the Russian Federation, a constituent entity of the Russian Federation have over 50 percent of votes shall be deemed, respectively, a public or municipal autonomous nonprofit organization. Specific legal statuses of specific types of public and municipal autonomous nonprofit organizations shall be determined by applicable laws and other statutory acts.

Article 17. Transformation of Nonprofit Organizations

1. A nonprofit partnership shall have the right to transform itself into a public institution, fund or autonomous nonprofit organization.

2. An organization can be transformed into a fund, autonomous nonprofit organization or economic entity.

A public or municipal institution can be transformed, respectively, into a public or municipal autonomous nonprofit organization. The decision on transformation of a public or municipal institution into a public or municipal nonprofit organization can only passed by the institution's founder. The procedure for transformation of a public or municipal institution into a public or municipal autonomous nonprofit organization shall be set by the applicable federal law.

Transformation of public or municipal institutions into nonprofit organizations with other statuses and into economic entities can only be done in cases and in accordance with the procedure specified by the law.

3. An autonomous nonprofit organization shall have the right to be transformed into a public institution or fund. Transformation of public or municipal institutions into nonprofit organizations with other statuses and into economic entities can only be done in cases and in accordance with the procedure specified by the law.

4. An association or a union shall have the right to be transformed into a fund, autonomous nonprofit organization, economic entity or partnership.

Decision on transformation of a nonprofit partnership shall be taken unanimously by its founders, while that on transformation of an association (union), by all such members as have concluded the agreement on its foundation.

Decision on transformation of an organization shall be taken by its owner.

Decision on transformation of an autonomous nonprofit organization shall be taken by the supreme management body in accordance with the present Federal Law and in conformity with the procedure established by the charter of that autonomous nonprofit organization.

At transformation of a nonprofit organization into a newly established entity the rights and obligations of the reorganized organization shall be transferred to its legal successor in accordance with a deed of assignment.

Annex 1. Analysis of Financial and Economic Operations of Medical Institutions

1.1. An analysis of the financing of a municipal health care institution on the model of Hospital № 9 of the city of Yaroslavl

1.1.1. A general overview of the activity of Hospital № 9 of the city of Yaroslavl

Hospital № 9 is one of the city's largest multi-specialty medicoprophylactic institutions. It incorporates:

- In-hospital department of 385 beds (the specialties can be seen in *Table 21*);
- Polyclinic # 1 servicing 70,000 of adult population, with a multi-specialty day-care department of 15 beds (opened on July 7, 2002);
- Polyclinic # 2, servicing 50,000 of adult population; in March 2002 a new multi-specialty day-care department of 10 beds will be opened;
- Antenatal clinic.

The indices showing the hospitals activity for the past three years can be seen in *Table 22*, its structure of financing – in *Table 23*.

Table 21

The specialties of the in-hospital division of Hospital № 9 of the city of Yaroslavl

Specialty	Number of beds	Including day care at in-hospital division	District serviced	Type of care
Gastroenterology	55	10	Whole city	Planned
Endocrinology	25		Dzerzhinskii	Planned
General medicine	20		Dzerzhinskii	Planned
Cardiology	75		Dzerzhinskii	Planned
General Surgery	100	5	3 districts	Emergency
Purulent Surgery	30		3 districts	Emergency
Obstetrics	40		Dzerzhinskii	Emergency
Obstetrical Pathology	40	15	Dzerzhinskii	Emergency
TOTAL:				
In addition:	385	30		
Intensive care	9			

Table 22

The indices of the activity of Hospital №9.

Index	1999	2000	2001
Polyclinic			
Number of visits to polyclinic and house calls – total	492100	487568	452360
Including CMI	442824	460593	427364
Share of CMI in the total volume, %	90.0	94.4	94.5
Number of day care beds at the polyclinic	-	-	15 from July7, 2001
Number of days of care – for 7 months of operation	-	-	4597
Number of patients treated in 7 months of operation	-	-	378
Mean duration of care	-	-	12.16
In-hospital			
Mean duration of care	14.2	13.6	12.74
Days of bed occupation in one year	293.7	308.2	328.3
Yearly average number of beds of round-the-clock care	359	361	355
Number of patient-days in the division of round-the-clock care- total:	111620	109119	114266
Including CMI	95578	106854	109319
Number of patients treated – total:	7880	7787	8515
Including CMI	6054	7573	8071
Yearly average number of day-care beds at the in-hospital division	19	29	30
Number of day-care beds – total:	3896	11215	12131
Including CMI	1838	9482	11428
Number of patients treated- total:	383	1060	1407
Including CMI	103	825	1209

Table 23

The structure of financing of the municipal health care institution – Hospital № 9

Source	1999	2000	2001
Municipal budgetary resources	17284314	19633720	28411898
Share in total financing, %	56.0	47.4	55.0
CMI funds	12110492	19643196	20075566.5
Share in total financing, %	39.2	47.4	38.8
Revenues from paid-for medical services, contracts and VMI	1475108	2133865	3202155
Share in total financing, %	37472.0	37292.0	7293.0
ИТОГО:	30869914	41410781	51689620
Share in total financing, %	100.0	100.0	100.0

From *Table 23* it clearly follows that the main sources of the hospital's financing are the Yaroslavl City's municipal budget and the resources of the compulsory medical insurance system. The share of the financing from the revenues resulting from paid-for services is small – 5-6%. From 1995 (the year when the hospital was included in the CMI system) to 1999 the main bulk of the total volume of financing was provided by the budget (70%), and only 30% was provided by the CMI sources. During the past two years the structure of the sources of financing has changed dramatically. In the year 2000 the budgetary funds equaled 50%, and the other 50% was provided by the CMI funds. In the year 2001, 59% was covered by the budgetary resources, and 41% by the CMI funds.

1.1.2. The hospital's budgetary financing

The resources of the municipal budget represent one of the two primary sources of the hospital's financing. The mechanism of the hospital's budgetary financing is like that described in item 1.2.1. The volume of the declared needs in the budgetary resources, the approved and the actual volumes of allocations during the past three years are presented in *Table 24*.

TABLE 24

Budgetary financing of Hospital №9 in the years 1999-2001

Source	1999	2000	2001
Calculated budget of the MPI - total	25019000	40800200	41666354
including according to the budget	15217700	19152000	23889837
Approved budget allocations	17893678	21082242	28502143
Financed in the current year	17284314	19633720	28411898
% of financing of approved allocations	96.6	93.1	99.7
% of financing of the calculated budget	113.6	102.5	118.9
Cash expenses	17302370	19645068	28397010
Actual expenses	19151948	19168362	26770734

The drawback of budgetary financing is its uneven spread throughout the financial year. As a rule, the main bulk of the allocated resources is received in the second half of the year, especially quarter IV. For example, as of beginning of the year 2001, the approved yearly budgetary allocations for Hospital №9 were covering only the costs of wages with the contributions charged to wages and the costs of public utilities (without the cost of the upkeep of premises). For the other costs, there was only 100,000 roubles for the whole year. This sum was distributed as follows: 90,000 on the upkeep of premises and 10,000 on repairs of medical equipment. The allocations on all the other items of expenditure were zero. The main bulk of financing came toward the end of the year. This situation with the budgetary financing results in non-targeted utilization of the CMI resources – for covering the items of expenditure which were not covered in due time by the budgetary resources.

The structure of the hospital's spending of the received budgetary resources is shown in *Table 25*. The main spheres of applying the budgetary resources are as follows:

- wages (1999 - 43%; 2000 - 53.4%; 2001 - 53.8%);
- public utilities (1999 -10.2%; 2000 -10.9%; 2001 –11.4%);
- purchases of medications (1999 - 17.6%; 2000 - 20.5%; 2001 -11.6%).

Table 25

The structure of spending the budgetary resources allocated to Hospital № 9 in the years 1999-2001

Item	1999	%	2000	%	2001	%
Wages	5962579	31,1	7409826	38.7	10665597	39,8
Contributions charged to wages	2282502	11,9	2818162	14,7	3740993	14,0
Office supplies, materials and minor equipment for current activity	2765	0,0	64117	0,3		
Medications and dressing materials	3365054	17,6	3922030	20,5	3095339	11,6
Minor furnishings and uniforms	45002	0,2	693000	3,6	104989	0,4
Food	222700	1,2	110950	0,6	206511	0,8
Cost of fuel and lubricants		0,0		0,0	62558	0,2
Furniture		0,0	1400	0,0		
Other supplies and expendables		0,0		0,0	210891	0,8
Business trips		0,0		0,0	6040	0,0
Transportation services	30863	0,2	2508	0,0	77700	0,3
Costs of communication services	26517	0,1	25000	0,1	59223	0,2
Costs of upkeep of premises	741464	3,9	323860	1,7	602279	2,2
Cost of heating	817119	4,3	1251586	6,5	1824296	6,8
Electricity costs	270724	1,4	430541	2,2	325567	1,2
Water supply	122430	0,6	94950	0,5	321273	1,2
Current repairs of equipment and minpr equipment	83769	0,4	241536	1,3	375574	1,4
Current repairs of buildings and facilities	0	0,0	0	0,0	938534	3,5
Other current expenses	0	0,0	202083	1,1	535687	2,0
Purchases of non-production equipment	3411200	17,8	176000	0,9	2130846	8,0
Capital repairs	1767260	9,2	1400813	7,3	1186837	4,4
Other capital repairs (from the city's budget)	0	0,0		0,0	300000	1,1
TOTAL:	**19151948**	**100,0**	**19168362**	**61,3**	**26770734**	**100,0**

1.1.3. Financing from the CMI funds

Hospital № 9, like all the oblast's medical institutions included in the compulsory medical insurance system are financed according to the tariffs approved in the tariff agreement. In accordance with its license, Hospital № 9, like all the oblast's medical institutions included in the compulsory medical insurance system, is financed according to the tariffs approved by the tariff agreement. In accordance with its license, the hospital belongs to Category 1 of the oblast's medical institutions ом соглашении.

The hospital has signed contracts for the reimbursement of madical care in the CMI system with all the oblast's medical insurance organizations (MIO) licensed for providing compulsory medical insurance:

- IMS "Zdorovie";
- CMO "Arsenal";
- CMO "Ekofond";

- CMO “Volmed”
- CMO “Rosno”

Besides, a contract was signed with the Territorial CMI Fund for reimbursing the costs of care provided to residents from outside the oblast.

The volume of CMI financing directly depends on the actually provided volume of medical care. The structure of financing for a hospital from the CMI funds is shown in Table 26.

Table 26

The structure of financing for Hospital # 9 from the CMI funds

Item	1999	2000	2001
Financing on CMI tariff			
Financing from insurance companies	6321023	10429076	17539091
Financing from insurance companies - bills and setoffs	4440291	4803940	0
Financing from CMI TF for residents outside the oblast	15496	38047	17317
TOTAL on tariff	10776810	15271063	17556408
Financing over CMI tariff			
Financing from insurance companies - bills and setoffs	522042	3233056	0
Financing from the preventive measures fund of insurance companies	0	260497	137426
Financing on target CMI programs	811640	878580	2381732
Total over tariff	1333682	4372133	2519158
TOTAL:	12110492	19643196	20075566

The share of the reimbursement for in-hospital and ambulatory-policlinic care depends on the structure of the tariffs set for the fiscal period and the structure of the medical care provided by a MPI. In Hospital № 9 in the year 2001, the reimbursement for in-hospital care was 65%, and for outpatient care – 35% of the total of the total of the drawn-up bills.

In the year 2001 the total bills made out to medical insurance organizations and the TF of CMI amounted to 17 7,863,000 roubles, the monthly average being 1 4,822,000 roubles.

The structure of spending for the CMI funds is shown in *Table 27*.

Table 27

The Structure of spending for the CMI resources transferred to Hospital № 9

Item of expenditure	Percentage of resources spent as approved by tariff agreement	Actual percentage of spent resources		
		1999	2000	2001
Wages and contributions charged to wages	15	8.0	7,8	13,6
Medications and patients' nutrition	62	51,6	52,3	43,3
Other expenses	23	40,4	39,9	43,1
TOTAL	100	92,0	100,0	100

From this table it follows that a considerable portion of the CMI resources is spent on items other that the target ones (other expenditures). The reason for this in insufficient and uneven budgetary coverage of the costs of running a medical institution.

1.1.4. Revenues from rendering paid-for medical services

The hospital started to provide paid-for medical services in 1991. These were mainly paid-for diagnostic procedures and contracts for preventive screenings. With the appearance of voluntary medical insurance, contracts were made for providing medical care for the personnel of the city's enterprises within the framework of VMI programs. The revenues from paid-for services and the number of employees participating in rendering paid-for medical care have been growing every year (*Table 28*). The revenues grow every year by approximately 1.5 times, both due to the growing volume of medical care and to the growth in prices.

Table 28

The revenues and the numbers of employees involved in providing paid-for services at Hospital # 9

Year	Revenues	Number of employees
1998	988077	160
1999	1477167	264
2000	2118542	284
2001	3202155	309

The structure of the revenues from paid-for services in the year 2001:

- Direct cash payments made by the population to the hospital's cashier - 76%;
- Payments for services made by legal entities (on contracts) - 11%;
- Payments for services within the framework of the programs of voluntary medical insurance - 13%.

1.2. Analysis of Financial and Economic Operations of Outpatient Clinical Institution. Case Study of a Clinic in the City of Yaroslavl

1.2.1. A general description of the polyclinic

The clinic is located in the city of Yaroslavl in the vicinity of a large multipurpose hospital. It was set up in 1970 and occupies a ground floor of a residential building. The capacity is 200 visitors per shift. In addition, the clinic has a branch, an antenatal care service with the capacity of 50 visitors per shift. It also occupies a floor in a residential building in the Dzerzhinsky district. The clinic is a municipal institution.

Medically attended population is 22407, including 11690 women (52% of the total). Of them employable are 14486 people (73% of the total).

Table 29

Basic Performance Indicators of the Clinic

Indicator	**2000**	**2001**
Visitors and calls – total:	147476	130299
Including mandatory medical insurance	126592	114168
Mandatory medical insurance share of the total, %	85.8	87.6
Bed capacity of the day inpatient facility of the clinic	7	7
Treatment days	2840	3671
Treated patients	180	186
Average duration of treatment	15,8	19,7

There are 11 therapeutic and 2 departments for medical treatment of specific occupations at the clinic. The specific occupational treatment departments provide medical attendance to 2566 people on the basis of agreements with construction companies. Since 1993, a seven-bed day inpatient facility has been open. Basic performance of the clinic is shown in *Table 29*.

It should be noted that in 2001 the number of visitors to the clinic decreased considerably by 12%. The same is true for all medical facilities in the city due to a decrease in work capacity for doctors.

Financing structure of the clinic is presented in *Table 30*. Basic sources of financing are the Yaroslavl municipal budget (57% of clinic's revenues in 2001) and mandatory medical insurance (30% of the revenues). Extrabudgetary sources of financing accounted for only 13% of the total revenues.

Table 30

Sources of Financing of the Clinic

Sources of financing	**2000**	**2001**
Municipal budget, Rb .	1994632	3074050
Share of the total financing volume, %	57.6	56.9
Mandatory medical insurance, Rb .	1077713	1641072
Share of the total financing volume, %	31.1	30.4
Revenues from pay medical services, economic agreements and voluntary medical insurance, Rb .	390700	685805
Share of the total financing volume, %	11.3	12.7
TOTAL:	3463045	5400927
Share of the total financing volume, %	100.0	100.0

1.2.2. Budgetary Financing of the Clinic

Budgetary financing of the clinic has been increased over the last few years. The clinic, as well as other medical facilities of the city, received funds to satisfy accounts payable accrued in the prior period. Budgetary financing indicators are shown in *Table 31*. Budget expenditures are shown in *Table 32*.

Table 31

Budgetary Financing of the Clinic in 1999-2001, Rb

Indicator	1999	2000	2001
Calculated according to clinic's budget – total:	3033194	3610192	5837551
Including budget	2664500	2321200	3038551
Budgetary provisions approved	954280	2160580	3081739
Financed in the current year	788322	1994632	3074050
% of growth to the previous year		153%	54%
% of financing of the provisions approved	82.6	92.3	99.8
% of financing of the budget estimated	30.0	85.9	101.2
Cash expenditures	881737	1989244	3079438
Actual expenditures	1531505	2003849	2890151

Table 32

Budget Expenditures of the Clinic in 1999-2001, Rb

Indicator	1999	%	2000	%	2001	%
Wages	692601	45.2	867447	43.3	1255932	43.5
Extra payments to wages	261026	17.0	328825	16.4	430142	14.9
Stationery, materials and items for current purposes	40	0.0	20	0.0	0	0
Medicines and dressing materials	340379	22.2	532204	26.6	519941	18.0
Soft items and uniform	0	0	0	0	9744	0.3
Food products (special fats for staff members)	3200	0.2	5000	0.3	0	0
Fuel and lubricants	0	0	400	0.0	0	0
Furniture	0	0	0	0	0	0
Other materials and supply items	0	0	0	0	154	0.0
Travel	1000	0.1	0	0	0	0
Transport services	0	0	0	0	0	0
Communication services	0	0	0	0	17358	0.6
Room maintenance	4021	0.3	0	0	6304	0.2
Heating	109771	7.2	117030	5.8	120369	4.2
Power supply to rooms	21484	1.4	22497	1.1	38474	1.3
Water supply in buildings	1837	0.1	2177	0.1	1771	0.0
Current maintenance of equipment and stocks	400	0.0	0	0	34759	1.2
Current maintenance of buildings	0	0	0	0	0	0
Other current expenditures	1485	0.1	0	0	219894	7.6

Transfers to citizens	0	0	128249	6.4	117939	4.1
Purchase of nonproduction facilities	0	0	0	0	54080	1.9
Overhaul	94261	6.2	0	0	63290	2.2
TOTAL:	1531505	100.0	2003849	100.0	2890151	100.0

Basically, budget expenditures are related to wages plus extra payments: in 1999, 62.2% of the budget expenditures; in 2000, 59,7%; in 2001, 58.4%. A large share is represented by expenditures for free medicines: in 1999, 22.2%; in 2000, 26.6%; in 2001, 18.0%.

1.2.3. Financing with Mandatory Medical Insurance

Since 1995 the clinic has been involved in the system of mandatory medical insurance. According to licensing in the system of mandatory medical insurance the clinic has acquired category I among medical institutions at the region. It has agreements with all licensed medical insurance organizations at the region.

The volume of financing of the clinic, as well as other medical institutions at the region, with medical insurance funds depends upon an actual volume of medical services provided.

Table 33

Structure of Financing of the Clinic with Mandatory Medical Insurance in 2001

Sources of financing	**2001, Rb**
Insurance companies	1636025
Mandatory medical insurance for medical assistance for non-residents	2947
Preventive measures fund of insurance companies	2100
TOTAL:	1641072

Treatment of some patients is not expected to be covered by the mandatory medical insurance in the cases with unavailable mandatory medical insurance policy, unsatisfied bills for medical treatment of patients, unavailable data in data bank on insured individuals, etc.

Growth in revenues is resulted from the day inpatient facility. The daily rate of treatment at the day inpatient facility accounts for 60% of the daily rate per bed-day at the all-day inpatient facility.

The structure of clinic's expenditures financed with the mandatory medical insurance is presented in *Table 34*. In comparing the structure of expenditures of the clinic covered by the mandatory medical insurance with that of the multipurpose hospital, it is seen that the hospital spends less on targeted purposes. Basically, hospitals show a bigger percentage of other expenditures, which is resulted from spending less on medicines, food for patients and wages. In 2000, the clinic exceeded significantly its expenditures on medicines, while in 2001 this item remained virtually standard. Even without exceeding standard expenditures on medicines the clinic can treat patients at the day inpatient facility by spending on medicines more than at the all-day inpatient facility.

Table 34

Structure of Clinic's Expenditures by Mandatory Medical Insurance in 1999-2001 , %

Expenditures	**Approved by rate agreement for 2000 and 2001**	**2000, actual**	**2001, actual**

Wages plus extra payments	30	14.2	30.2
Medicines	30	55.0	33.0
Other expenditures	40	30.8	36.8
TOTAL:	100	100.0	100.0

Let's compare by various items the expenditures of the clinic's day inpatient facility with the previous analysis of expenditures of the clinic in Yaroslavl (*Table 35*).

Table 35

Expenditures Financed with Mandatory Medical Insurance at City Hospital and Day Inpatient Facility of the Clinic in 2001, Rb

Expenditures	**Inpatient facility of the hospital**	**Day inpatient facility of the hospital**	**Day inpatient facility of the clinic**
Medicines per 1 bed-day / 1 treatment day at the day inpatient facility on the average: At the inpatient facility on average By therapeutic departments of the inpatient facility/ day therapeutic inpatient facility	40.76 19.89	5.41	92.50
Food for patients per 1 bed-day on the average	17.37	0.00	0.00
Wages per average of 1 bed-day of the therapeutic inpatient facility / 1 day of treatment at the day inpatient facility	10.80	4.26	8.20
TOTAL: One bed-day at the therapeutic inpatient facility / 1 day of treatment at the day inpatient facility of the clinic	48.06	9.67	100.70

Comparison of these indicators reveals the difference in expenditures on medicines at the hospital and the clinic. In 2001, the cost of 1 bed-day at the therapeutic departments of the hospital was only 19,89 Rb. This was caused by insufficient financing of the hospital from the budget and mandatory medical insurance. The basic share of the funds provided for purchase of medicines was spent on emergency medical care at hospital's departments. At the therapeutic departments, patients had to buy some medicines for their own account. In 2002, the problem of medicines supply at the hospital was resolved due to a higher rate of mandatory medical insurance. On the average, over 9 months the cost of medicines per 1 bed-day at the hospital was 73 Rb, over 4 quarter - 86 Rb, in September, 111 Rb. In 2003, the average cost is expected to be 93 Rb. As early as in 2001, the rate structure at the self-dependent outpatient clinic No.5 allowed purchase of medicines at such amount – 92.50 Rb - for targeted purposes.

Expenditures on medicines per one day of treatment at the day inpatient facility of the clinic exceed multiply the similar item per day at the day departments of the hospital. At the hospital, about only a half the expenditures needed for treatment at the day inpatient facilities are covered by mandatory medical insurance. Purchased are syringes, units and a few number of medicines required for particular patients. Drop bottle solutions are prepared at the pharmacy of the hospital, which costs less than those purchased from pharmacies at the city. All other medicines required for treatment have to be purchased by patients. Unlike the hospital, the clinic has funds for purchasing expensive but most effective medicines. However, it is difficult to reveal a better effectiveness of the medicines since the average duration of treatment of one patient is 19,7 days at the clinic, and 12,74 days at the hospital.

The difference between wage costs at the hospital and day inpatient facility at the clinic per one bed-day is specified by different work schedules of the staff.

1.2.4. Extrabudgetary Revenues

In 2001, extrabudgetary revenues of the clinic were 685.8 thousand Rb (*Table 36*) or 12.7 % of the total revenues. Of 89 staff members (individuals, full-time jobs – 141) 25 persons are paid on a regular basis for providing pay medical services. The structure of extrabudgetary revenues and their utilization in 2001 is presented in *Tables 37-39*.

Table 36

Extrabudgetary Revenues of the Clinic in 1999-2001

Year	Income, Rb thousand
1999	436,3
2000	390,7
2001	685,8

Table 37

Extrabudgetary Revenues Structure of the Clinic in 2001

Extrabudgetary sources	Share of total volume, %
Pay medical services	78.5
Economic agreements	21.5
Voluntary medical insurance	0.0

Table 38

Structure of Clinic's Revenues from Pay medical Services in 2001

Service	Revenues, Rb	%
Driver fees	10082	1.5
Dentistry	274510	40.0
Prosthetic dentistry	174443	25.4
Health examinations for specific occupations	147217	21.5
Other medical services	79543	11.6
Total:	685805	100.0

Table 39

Structure of Clinic's Extrabudgetary Expenditures in 2001

Expenditures	Share of total volume, %
Wages	44.6
Extra payments to wages	17.6
Medicines	13.1
Food products	0.0
Clinic maintenance expenditures	24.7
TOTAL:	100.0

1.3. Analysis of Financial and Economic Operations of Emergency Ambulance Station in the City of Rybinsk

1.3.1. General Operation Profile of the Emergency Ambulance Station

The emergency ambulance station provides service for 265 127 people, including 240299 citizens of the city of Rybinsk and 24828 people at rural communities, including 40 161 children. The station includes 76 multipurpose mobile emergency teams (*Table 40*). Manning level and structure of the staff are presented in *Table 41*. Operation profile of the station in 2001 is presented in *Table 42*.

Table 40

Structure of Emergency Teams at the Emergency Ambulance Station in 2001

Emergency teams	**Number of emergency teams**	**Number of individuals received medical assistance**
Multipurpose medical teams	38	37702
Including those for children	8	6779
Paramedic	22	22246
Intensive therapy	12	9157
Psychiatrical	4	3939

Table 41

Manning Level at the Emergency Ambulance Station in 2001

	Total	**Doctors**	**Paramedics**	**Junior medical personnel**	**Other personnel**
Full-time jobs	332,0	78,5	201,0	27,5	25,0
Individuals	250,0	54,0	166,0	12,0	18,0
Manning level	75,3	68,8	82,3	43,6	72,0

Table 42

Performance Indicators of the Emergency Ambulance Station in 2001

	Total calls	**Including calls regarding accidents**	**Including calls regarding sudden diseases and diseased state**	**Including calls regarding childbirth and abnor-mal pregnancy**	**Including transporta tion of lying women and puerpera**	**Including transporta tion of hospitali zed**
Responded calls	76810	7033	58332	391	10961	23462
Including children	9532	802	6322	5	2403	3956
Including individuals received medical assistance	73044	7025	54983	386	10643	23072
Of them at rural						

communities	2811	371	1715	22	661	1345

1.3.2. Financing

The emergency ambulance station (EAS) of Rybinsk is financed from the budget only. Emergency medical care is not included in the territorial mandatory medical insurance program, and therefore the mandatory medical insurance funds do not cover the station's operations.

It should be noted that there is no personal accounting department at the station. Book-keeping of the station is conducted by the centralized accounting office of the Healthcare Department of Rybinsk. Thus, economic independence of the station is minimum.

The volume of budgetary financing of the station in 1999-2001 is presented in *Table 43*. It is seen in the Table that financing of provisions approved is getting closer to 100%. However, the average demand of the station exceeds by 25% the credits approved.

Table 43

Budgetary Financing of Emergency Ambulance Station in 1999-2001

	1999	**2000**	**2001**
Calculated by estimate of expenditures in budgetary call	5457000	7592000	9661000
Budget provisions approved	4748511	5556500	7415580
Financed in the current year	4282693	5439991	7404197
% of financing of the approved provisions	90.2	97.9	99.8
% of financing of the calculated budget	78.4	71.7	76.6
Cash expenditures	4282693	5439991	7404197
Actual expenditures	4096325	5495379	7453103

The structure of utilization of budgetary funds is presented in *Table 44*. Basic expenditures – wages plus extra payments – is 78,4% over 3 years on the average. This is higher than at other types of medical facilities. However, the average wages at the station is smaller than at medical facilities having extrabudgetary sources of financing (see *Table 45*). This is related to the fact that medical facilities financed with mandatory medical insurance can pay bonuses to their staff in the amount of 20 to 35% of the funds received from mandatory medical insurance. In addition, the staff have an opportunity to receive extra wages by providing pay medical services.

Expenditures on medicines and dressing materials account for 11.5% on the average; utilities, 4.0%; other expenditures, except for wages, medicines and utilities, account for 6.1%.

Table 44

Utilization of Budgetary Funds by the Emergency Ambulance Station in 1999-2001, Rb

	1999	**%**	**2000**	**%**	**2001**	**%**
Wages	2658071	62.1	3145441	57.8	4151807	56.1
Wages plus extra payments	767073	17.9	1113443	20.5	1584101	21.4
Stationery, materials and items for current purposes	82087	1.9	30129	0.6	0	0
Medicines and dressing materials	450019	10.5	654667	12.0	867900	11.7

Soft stock and uniform	23877	0.6	11900	0.2	20456	0.3
Food products (special fats for personnel)	0	0	0	0	0	0
Fuel and lubricants	4539	0.1	0	0	0	0
Furniture	0	0	15704	0.3	0	0
Other service materials and items of supply	0	0	0	0	77014	1.0
Travel	27943	0.7	12093	0.2	34715	0.5
Transport services	52	0.0	0	0	0	
Communication services	43880	1.0	50444	0.9	55661	0.6
Maintenance of buildings	34615	0.8	38937	0.7	52334	0.7
Heating	1846	0.0	139288	2.6	186819	2.5
Power supply in rooms	54536	0.1	43677	0.8	124268	1.7
Water supply in rooms	2356	0.1	3432	0.1	1989	0.0
Current repairs of equipment	15035	0.4	27784	0.5	56040	0.8
Current repairs of buildings	6314	0.1	3584	0.1	-4010	-0.1
Other current expenditures	30544	0.7	108711	2.0	59463	0.8
Transfers to citizens	0		0		0	
Purchase of equipment	21020	0.5	0	0	45171	1.2
Overhaul	62575	1.5	40757	0.7	91109	1.2
TOTAL:	4282693	100.0	5439991	100.0	7404197	100.0

Table 45

Manning and Average Monthly Wages at Multipurpose Hospital and Emergency Ambulance Station in 2001

	Hospital in Yaroslavl	**Emergency Ambulance Station in Rybinsk**
Manning %		
Doctors	85.0	68.8
Paramedics	69.0	82.3
Junior medical personnel	33.0	43.6
Other personnel	48.0	72.0
By medical facilities on average:	62.2	75.3
Average monthly wages, Rb	1869	1384
Including:		
From the budget	1413	1384
From mandatory medical insurance	214	0
From revenues from pay medical services	242	0

Annex 2. Analysis of Financial and Economic Operations of Educational Institutions

2.1. Analysis of Financial and Economic Operations of Secondary School in a Large City. Case Study of School No. 1060 in Moscow

2.1.1. Budget financing

Educational institutions prepare and submit a budget call for a regular fiscal year to the chief administrator or budget administrator for approval, as provided for by Article 161 of the Budgetary Code of the Russian Federation.

The budget and respective attachments of an educational institution are drafted according to the forms approved by the Ministry of Finance of the Russian Federation. The specified budget indicators are filled in for the period of one year by quarters and by items and sub-items of economic classification introduced by the Ministry of Finance of the Russian Federation (decree No.48н of July 23, 1999). The 2002 budget of the day secondary school No. 1060 of the Central District in Moscow is shown in *Table 45*.

Table 45

Budget of the School No. 1060 of Moscow approved for 2002

1. REVENUES AND PROCEEDS				Form 0501010		
Indicator	Code of line	Budgetary funds				
		Total	including by quarters			
			I	II	III	IV
1	2	3	4	5	6	7
Revenues and proceeds to be allotted by economic standards	010	2815200	565400	971100	419400	859300
from budget (funds of industry) by standards						
Other proceeds - total	020					
including:	030					
from realization of manufactured products (works, services)						
social extra payments and compensations to citizens (pensions to orphans)	040					
payments for services under agreements with individuals and legal entities (cost recovery)	050					
from Prefecture	060					
from City Council	070					
pay educational services	080					
percentage from realization of passenger passes	090					
wages of students	100					
1,5% of commercial credit	110					
other proceeds (payment from parents)	120					
Interests of bank for utilizing temporally available	130					

funds of the institution						
Profit	140					
Total revenues and proceeds to be allotted	150	2815200	565400	971100	419400	859300
Targeted revenues and proceeds	160					
Extra allocations for centralized and unscheduled events						
from financial reserve (centralized fund) of overhead administration	170					
Voluntary contributions from enterprises, cooperatives, non-profit organizations, citizens (financial support)	180					
Other targeted proceeds (funds for support for orphans)	190					
Total targeted revenues and proceeds	200					
Total revenues, proceeds	210	2815200	565400	971100	419400	859300
(Unified Financial Fund (UFF))	220	2815200	565400	971100	419400	859300

2. EXPENDITURES — Form 0501010

Economic classification of expenditures	Budgetary funds						
Item	Code of item		Total of line	including by quarters			
				I	II	III	IV
1	2	3	4	5	6	7	8
WAGES OF PUBLIC EMPLOYEES - total	**110100**	230	1070900	178000	409000	163700	320200
including: basic wages of civil employees	110110	240	1067400	178000	409000	160200	320200
other payments to civil employees	110140	250	3500			3500	
EXTRA PAYMENTS TO WAGES (premiums for public and social insurance of citizens)	**110200**	260	383400	63800	146400	58600	114600

PURCHASE OF SUPPLY ITEMS AND SERVICE MATERIALS - total	**110300**	270	10100	3400	2200	1100	3400
including: medicines, dressing materials and other treatment costs	110310	280	10100	3400	2200	1100	3400
soft stock and equipment	110320	290					
food products	110330	300					
fuel and lubricants	110340	310					
other service materials and supply items	110350	320					
TRAVEL	**110400**	330	3900	1000	1000	1000	900
TRANSPORT SERVICES	**110500**	340	28000	8000	7200	3600	9200
COMMUNICATION SERVICES	**110600**	350	9600	2400	2400	2400	2400
UTILITIES - total	**110700**	360	175100	33600	29700	76900	34900
including: room maintenance	110710	370	11200	2800	2800	2800	2800
room heating , including:	110720	380					
heating	110721	390					
gas consumption	110722	400					
boiler and furnace fuel consumption	110723	410					
power supply to premises	110730	420	81600	24000	19200	14400	24000
water supply to premises	110740	430	30100	6800	7700	7500	8100
Rental charge for accommodations	110750	440					
other utilities	110770	450	52200			52200	

Item	Code of item		Total of line	including by quarters			
				I	II	III	IV
1	2	3	4	5	6	7	8

OTHER CURRENT EXPENDITURES ON GOODS AND PAYMENT FOR SERVICES	**111000**	460	77200	10000	52000	6700	8500
including: current repairs of equipment and stock	111020	470	15700	4000	4000	3700	4000
running repairs of buildings	111030	480	3000		3000		
other current expenditures	111040	490	58500	6000	45000	3000	4500
TRANSFERS TO CITIZENS - total	**130300**	500	40000	7200	7200	18400	7200
including: scholarships	130320	510					
other transfers to citizens	130330	520	40000	7200	7200	18400	7200
including: allowance for methodological literature	130330.1	530	28800	7200	7200	7200	7200
allowance for families with many children	130330.2	540	11200			11200	
allowance for orphans	130330.3	550					
PURCHASE OF EQUIPMENT AND DURABLE ITEMS	**240100**	620	242000		142000		100000
Purchase of nonproduction equipment and durable items for public agencies	240120	630					
Supply of PCs and educational equipment for educational institutions	240120 (0940)	640	242000		142000		100000
OVERHAUL	**240300**	650					
TOTAL BY ITEM 14	**800000**	660	2040200	307400	799100	332400	601300
OTHER TRANSFERS TO CITIZENS	**130330**	670	775000	258000	172000	87000	258000
including: allowance for school canteens	130330.11	680	775000	258000	172000	87000	258000
TOTAL BY ITEM 18	**810000**	700	775000	258000	172000	87000	258000
TOTAL EXPENDITURES ITEM 14+18	**820000**	710	2815200	565400	971100	419400	859300

Let’s consider in detail the contents of the budget.

1. Item «Unified Payroll Fund» - code110100 consists of subitems:

- 110110 – «Wages of public employees»;
- 110140 – «Wages of free lancers».

Expenditures of the educational institution by subitem 110110 are made up according to the “Unified Wage Rate Distribution for Public Employees” (UWRD) established by a Federal Law and the Government of the Russian Federation, and on the basis of wage rating of educational personnel, administrative and economic personnel, and auxiliary personnel, extra payments as of September 1 of the current year.

Free-lance payroll fund – code110140 – is made up on the basis of budgetary calls from institutions. The free-lance payroll fund covers wages of free lancers. Free-lancers are employed only to perform the job which is not provided for by agreements with respective organizations. In some cases the fund may pay for the jobs performed by staff members provided that these jobs are not within the basic scope of work of the staff members and performed out of hours.

Payroll fund of educational institutions is scheduled to contain:

- payroll fund on wage rating for hours according to the curriculum;
- fund for establishment of rated extra payments, including:
    - extra payments for administration of classes;
    - extra payments for checking students’ papers;
    - extra payments for extra work with classes;
    - extra payments for jobs on a pilot basis;
    - extra payments for junior specialists;
- fund for establishment of non-rated extra payments, including

  extra payments to managers of institutions (established by the order of the overhead administration or by the founder);
- payroll fund according to manning table;
- child care benefits for the children at the age of 1.5 to 3 (according to the Decree of the Government of the Russian Federation of November 3, 1994, No. 1206).

Calculation of the payroll fund by vacant rates is made on the basis of the actual average rate of the respective position at every educational institution.

Example of wage estimate at the educational institution is shown in *Table 46*.

Table 46

Translation of "Revenues and Expenditures of the educational Institution by code of sub-item 110100 - wages of public employees"

	TOTAL	I quarter	II quarter	III quarter	IV quarter
Manning table	650380	108397	249312	97557	195114
Rating	415845	69308	159407	62377	124753
Child care benefits Up to 3 years	1200	300	300	300	300
TOTAL: 110110	1067425	178005	409019	160234	320167
Free-lance payroll fund 110140	3500	-	-	3500	-
Wages of public employees 110100	1070925	178005	409019	163734	320167
Extra payments to wages (ECH – 35,8%)	383391	63726	146429	58617	114620
Compensation for methodological literature 130300	28800	7200	7200	7200	7200

Notes:

A). Wages estimate by quarters is performed by use of coefficients as follows:

- 1 quarter – coefficient 2;
- 2 quarter – coefficient 4,6 (consideration is made of wages in March, April, May and leaves);
- 3 quarter – 1,8;
- 4 quarter – 3,6.

B). Compensation for methodological literature is scheduled for 24 teachers.

2. «Extra payments to wages (premiums for public insurance of citizens)» – code 110200 includes expenditures on contributions to the Social Insurance Fund of the Russian Federation, Pension Fund of the Russian Federation and mandatory medical insurance funds (ECH item 234 TC) estimated from the payroll fund in the amounts established by law, under code 110100. At present, extra payments to wages account for 35.8% of the payroll fund, except for the amounts subject to taxation (item 238 TC).

3. Expenditures on «Purchase of supply items and service materials» – code 110300 include:

3.1. "Medicines, dressing materials and other treatment costs" – code110310. Standards of medicines expenditures per one student are established by District Administrations of the Ministry of Education in accordance with the budgetary provisions received for the calendar year.

In the given item of «Revenues and Expenditures» (Attachment 1) the expenditures by subitem 110310 are 10128 Rb (the standard is 16,88 Rb per one student and number of students is 600).

3.2. «Soft stock and equipment» – code110320. Expenditures in this item are determined on the basis of the established supply standards with consideration of actual availability of these stock for preschool institutions, residential schools, orphan homes;

3.3. «Food products»– code110330. This item reflects food expenditures at preschool educational institutions, sanatorium schools, residential schools, orphan

homes, vocational training schools in accordance with the standards approved by municipal authorities;

3.4. «Fuel and lubricants»– code110340. This item reflects fuel and lubricants expenditures at educational institutions employing their own vehicles;

3.5. «Other service materials and supply items» – code 110350. This item includes expenditures on stationary and writing utensils, materials for economic purposes, expenditures on production of seals; expenditures on binding of documents; expenditures on materials used for economic purposes with the cost of one item at the date of purchase not exceeding fifty minimal wages per unit as established by law, and expenditures on materials with life time being less than one year; expenditures on delivery and storage of these materials.

Expenditures on spare parts for vehicles, office appliances, etc.

Calculation of this type of expenditures includes cost standards on materials for economic operations, cost standards on purchase of stationary and forms.

4. «Travel» – code of item 110400.

Travel expenditures are included in this type of expenditures according to the current legislation (passenger fare, rental charge, relocation and travel allowance).

5. «Transport services» – code of item 110500.

This item includes expenditures on:

- maintenance of motor transport and other means of transport, including current repairs of vehicles and other means of transport;
- leasing of transport for cash delivery;
- leasing of transport for delivery of water, fire wood, disposition of garbage, snow and for other economic purposes; for delivery of food products, medicines, dressing materials, etc.; for treatment and medical prevention purposes and other social and cultural institutions.

Expenditures of this item are estimated on the basis of agreements with transport organizations.

In «Revenues and Expenditures» (Attachment 1) item, the educational institution estimates payment for delivery of food products to the school canteen on the basis of agreement with a transport organization, which specifies the average cost of 1 machine-day, 400 Rb. The educational institution determines the number of operation days for (2 times per week, for instance) the vehicle and by quarters and makes calculation for the period of one year. Translation of the item by code 110500 is shown in *Table 47*.

Table 47

Translation of "Revenues and Expenditures of the Educational Institution by code of item 110500 - transport services"

Indicators	TOTAL	I quarter	II quarter	III quarter	IV quarter
Average cost per 1 machine-day		400	400	400	400
Number of service days of machine	70	20	18	9	23
Total transport expenditures	28000	8000	7200	3600	9200

6. «Communication services» – code of item 110600.

Payment for all communication services:

- subscriber's charge for telephone, TV set, radio and distant calls;
- any kind of posting (including parcels, telegrams and radiograms, cash transfers, etc.);
- telegraph fees in transferring of budget funds through telegraph;
- reference, official and periodical literature (newspapers, magazines, bulletins, reference books, etc.), except for purchase of periodical literature for educational institutions;
- installation of communication means.

Translation of item110600, «Revenues and Expenditures» (Attachment 1), is shown in *Table 48*.

Table 48

Translation of "Revenues and Expenditures of the educational Institution by code of item 110600 - communication services"

Indicators	TOTAL	I quarter	II quarter	III quarter	IV quarter
Monthly subscriber's charge for one number		360	360	360	360
Subscriber's numbers	16	4	4	4	4
Charge for coin-operated telephone	3840	960	960	960	960
Amount by communication expenditures	9600	2400	2400	2400	2400

7. «Utilities» – code of item 110700.

Expenditures on utilities by type are specified in the amounts in accordance with the agreements concluded by subitems – codes 110710 – 110770.

7.1. «Room maintenance» – code 110710.

This subitem includes the following expenditures on:

- cleaning of accommodations;
- maintenance of elevators;
- fire protection measures;
- utilities under agreements with organizations on occupancy of office buildings, housing space;
- disinfection;
- laundry;
- conditioning of buildings, facilities;
- floor waxing and polishing.

7.2. «Thermal energy consumption» - code 110720.

This subitem includes:

- «Expenditures on heating and technological purposes» – code 110721 (defined according to agreements);
- «Gas consumption» – code 110722;
- «Boiler and furnace fuel (coal)» – code 110723. Consumption limit remains at the level of actual expenditures over the past period.

Payment for heating is scheduled by the educational institution on the basis of the agreement specifying the limit of expenditures and rate. An example of calculation of heating expenditures is found in *Table 49*.

Table 49

Translation of "Revenues and Expenditures of the educational Institution by code of item 110720 – heating of premises"

Indicators	TOTAL	I quarter	II quarter	III quarter	IV quarter
Limit (Gcal)	1400	650	140	60	550
Rate (Rb)		350	350	350	350
Expenditures on heating	490000	227500	49000	21000	192500

7.3. «Power supply» – code 110730.

Power supply expenditures are calculated depending upon the limits specified in agreements. An example of calculation of power supply expenditures is shown in *Table 50*.

Table 50

Translation of "Revenues and Expenditures of the educational Institution by code of item 110730 – power supply".

Indicators	TOTAL	I quarter	II quarter	III quarter	IV quarter
Limit (kWh)	85000	25000	20000	15000	25000
Rate (Rb)		0,96	0,96	0,96	0,96
Expenditures on heating	81600	24000	19200	14400	24000

7.4. «Water supply» – code110740.

Is defined according to the agreements, in which the limit of water discharge is specified, and in accordance with current rates. An example of calculation of water supply expenditures is found in *Table 51*.

Table 51

Translation of "Revenues and Expenditures of the educational Institution by code of item 110740 – water supply"

Indicators	TOTAL	I quarter	II quarter	III quarter	IV quarter
Limit (cubic meters.)	5281	1193	1351	1316	1421
Rate (Rb)		5,70	5,70	5,70	5,70
Expenditures on heating	30101,70	6800,10	7700,70	7501,20	8099,70

7.5. «Rental charge for accommodation and land» – code110750.

These are expenditures on leasing of sporting facilities (under agreements).

7.6. «Other expenditures on utilities» – code110770.

This subitem includes expenditures on measuring wiring resistance, maintenance and operation of central heating station, water test of heating system.

In «Revenues and Expenditures» (Attachment 1), expenditures by this subitem are defined by multiplying bulk of building into expense rate, where:

- bulk of building is 20880 cubic meters;
- rate is 2.50 Rb

8. «Other current expenditures on goods and services » – code of item 111000.

Expenditures on goods and services according to subitems 111010 – 111040.

8.1. «Services of research organizations» – code 111010.

Expenditures on payment of agreements on research work, research and development and technological work.

8.2. «Current repairs of equipment and stock» – code111020.

Expenditures by this subitem are provided for current repairs of equipment and stock, including repairs of soft stock, and expenditures on maintenance of medical, copying and technical facilities.

Expenditures by this subitem are determined as 2% of the book value of the equipment.

In «Revenues and Expenditures» (Attachment 1) the educational institution has estimated the payment for repairs of the equipment and stock in the amount of 15700 Rb (net fixed assets 785000 Rb X 0.02).

8.3. «Current repairs of buildings and facilities» - code111030.

Expenditures on current repairs of administrative buildings and other offices, buildings and facilities, including hostels of educational institutions (including expenditures on service materials), repairs of pavements, fences of areas adjoining office buildings and facilities.

8.4.”Other current expenditures”– code111040.

Expenditures by this subitem are provided for:

- agreements on security and fire alarm;
- organization and arrangement of cultural and educational events for students;
- electronic data processing services;
- services by information agents ;

- purchase of educational media, writing and drawing utensils and stock for educational and practicum of students;
- bank services, loan charges;
- taxes to budget;
- advanced training, training and retraining of specialists at advanced training organizations (including: travel fare, hostels, hotels, daily allowances, scholarships).

The budget of the institution allows for subscription to periodicals related to organization and methodology of the educational process.

Educational and other expenditures for schools, residential schools, orphan homes is calculated per one class according to the standards established by overhead organization within the allocations for this item of expenditures.

Translation of other current expenditures is shown in *Table 52*

Table 52

Translation of "Revenues and Expenditures of the educational Institution by code of item 111040 - other current expenditures"

Indicators	TOTAL	I quarter	II quarter	III quarter	IV quarter
Expenditures for educational purposes	12000	3000	3000	3000	3000
Security	-	-	-	-	-
Expenditures on field studies	-	-	-	-	-
Fire alarm	-	-	-	-	-
Subscription	3000	-	1500	-	1500
Data processing services	-	-	-	-	-
Upgrading of programs	3000	3000	-	-	-
TOTAL:	18000	6000	4500	3000	4500

9. Purchase of equipment and durable items – code 240100.

Volume of expenditures on stock and equipment is established by overhead organization in accordance with the budget of the educational institution within the budgetary allocation for this purpose. In this case allowance is made for availability of stock and equipment. It should be noted that expenditures on delivery of this items are allowed for by this item as well.

10. Overhaul – code 240300.

Allocations for overhaul of buildings of educational institutions from overhead organizations on the basis of the front list.

2.1.2. Provision of Pay Extra Educational Services

The school is authorized to provide PEES, provided that it has license to conduct educational operations.

Pay extra educational services (PEES), which may be provided by a general education institution licensed to conduct educational operations, include services as follows:

- education on additional educational programs;
- special courses and disciplines;
- coaching;
- in-depth study of specific subjects, etc.

PEES are not supposed to be provided in exchange for or within the framework of core educational operations (within the framework of core educational programs, educational plans and state educational standards) financed with the respective budget.

PEES only can be provided by wish of parents (other legal representative) of underage students as well as to citizens, enterprises and organizations (herein after -- consumers). Pay extra educational services are provided on agreement basis.

The agreement specifies a list (types) of additional educational services, period of provision of such services, terms of delivery of such services, amounts of payment and settlement procedure, terms and conditions of early cancellation, rights, obligations and contractual liability of the parties. Agreement between an educational institution and consumer must comply with the standards of the Civil Code of the Russian Federation on agreement on onerous provision of services.

The price of services is established on a contractual basis. Executive authorities and local governments establish no limits to the price of PEES. Such regulation takes place at some regions. This actually equates the price of a service with its cost. Such regulation is not provided for by the federal legislation. Since subject matters of contractual relationships between the school and consumer of educational services are related to the civil law, they are not supposed to be regulated by any kind of regional «Pay Additional Educational Services Regulations»[39], because under the Constitution of the Russian Federation (p. 71) the civil legislation comes within the terms of reference of the Russian Federation and, consequently, the civil legal regulation of this type of services by constituent territories is considered unconstitutional.

Payment for pay additional educational services is made through banks or check-out machines at educational institutions in accordance with the legislation of the Russian Federation on the use of check-out machines.

Revenues generated by the educational institution from PEES are utilized by the school at its own discretion. The revenues may be utilized for the development of school's stock, increase in wages for the entire school staff rather than only for those providing PEES. Revenues and expenditures related to pay extra educational services are generated and utilized in accordance with the budget, which is approved by the director and council of the school.

Arbitrarily, all expenditures items of such budget fall into two categories:

- General items inherent in any educational institution (payroll fund (PF), extra payments to PF, utilities, economic and stationary expenditures, expenditures on educational and methodological materials)
- Specific expenditures items.

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[39] Regretfully, such Regulations have been adopted in some regions (Vladimir Oblast, Republic of Tatarstan, cities of Perm, Tver, Novosibirsk, Chelyabinsk, etc.). – See Data of the Ministry of Antimonopoly Policy of the Russian Federation; materials of the Board of the MUP RF, 24.11.1999.

Let's consider wage estimate. Normal practice shows that above all the School Council estimates basic figures. Revenues are analysed, and share (or absolute value) of the revenues in PF and the fund of the respective assessments are determined.

PF of the teachers participated in PEES and PF of other staff members of the school involved in provision of pay services are made up regardless of the fact whether additional educational services are provided in package or separately.

PF of the teachers is made up as follows. Normally, teachers' work is strictly regulated by time (class time frame), and from this point it is easy to assess involvement of a particular teacher in PEES by number of classes. In addition, skill level of separate teachers should be considered. In actual practice, however, the situation is more differentiated, and the actual value of every teacher is different with equal class time frame.

The given school No. 1060 has adopted a system of wages for the teachers involved in provision of additional educational services:

1. "Base salary" is determined: a teacher is ranked (raking is not needed if the teacher is already employed at the school), which is followed by wage rating on the basis of working hours. Thus, the "base salary" is similar to the amount which the teacher would be paid at any other state (municipal) educational institution for a particular number of working hours.
2. "Extra payment per hour" is assessed: the School Council establishes a certain amount of extra payment for every class performed within the PEES system regardless of the rank, subject, experience, etc.

   Practice has shown that the developed PEES system depending on the quality of education received as part of the state educational plan, requires for a substantial redistribution of the revenues generated within the PEES system for teachers involved in implementation of the state general education program. This is also challenged by the principle of social justice (otherwise the teachers, who hold classes according to basic curriculum within the PEES system, would receive a largely different salary), and the efforts of administration and parents in maintaining teachers at the educational institution (otherwise the teachers would simply switch for the PEES system, where actual earnings are higher than that provided by the state education system. This is more than a topical problem for the Russian school). This has resulted in the fact that over several years the Council of School No. 1060 has been approving the same level of extra payments per hour for the teachers involved in the core educational process and those involved in the PEES system.
3. Individual extra payment: as indicated above, other things being equal (teaching hours, skill level, subject, etc.), contributions of various teachers involved in implementation of PEES differ. Specific economic factors are to be added to this: successful operation in the field of pay services requires not only high educational skills but also certain managing skills. In addition, in some cases we can speak of the fact that it is the managing skills of the teachers and staff involved that are vital for a successful operation of the PEES system. To make a differentiated assessment of the contribution of every teacher, the system of individual extra payments is employed at the school.

Extrabudgetary revenues and expenditures approved by the school No. 1060 for 2002 are found in *Table 53*.

Table 53

Extrabudgetary Revenues and Expenditures of School No. 1060 of Moscow, approved for 2002

1. REVENUES AND PROCEEDS				Form 0501010		
Indicator	Code of line	Extrabudgetary funds				
		Total	including by quarters			
			I	II	III	IV
1	2	3	4	5	6	7
Revenues and proceeds to be allotted by economic standards	010					
from budget (funds of industry) by standards						
Other proceeds – total	020	166200	55400	36900	18500	55400
including:	030					
from realization of manufactured products (works, services)						
social extra payments and compensations to citizens (pension to orphans)	040					
payments for services under agreements with individuals and legal entities (cost recovery)	050					
from Prefecture	060					
from City Council	070					
pay educational services	080	166200	55400	36900	18500	55400
percentage from realization of passenger passes	090					
wages of students	100					
1,5% of commercial credit	110					
other proceeds (from parents)	120					
Interests of bank for utilizing temporally available	130					

funds of the institution						
Profit	140					
Total revenues and proceeds to be allotted	150	166200	55400	36900	18500	55400
Targeted revenues and proceeds	160					
Extra allocations for centralized and unscheduled events						
from financial reserve (centralized fund) of overhead administration	170					
Voluntary contributions from enterprises, cooperatives, non-profit organizations, citizens (financial support)	180					
Other targeted proceeds (funds for support for orphans)	190					
Total targeted revenues and proceeds	200					
Total revenues, proceeds	210	166200	55400	36900	18500	55400
(Unified Financial Fund (UFF))	220	166200	55400	36900	18500	55400
2. EXPENDITURES				Form 0501010		

Economic classification of expenditures	Extrabudgetary funds						
Item	Code of item		Total of line	including by quarters			
				I	II	III	IV
1	2	3	4	5	6	7	8
WAGES OF PUBLIC EMPLOYEES - total	**110100**	230	108000	36000	24000	12000	36000
including: basic wages of civil employees	110110	240	108000	36000	24000	12000	36000
other payments to civil employees	110140	250					
EXTRA PAYMENTS TO WAGES (premiums for public and social insurance of citizens)	**110200**	260	34200	11400	7600	3800	11400

OTHER CURRENT EXPENDITURES ON GOODS AND PAYMENT FOR SERVICES - total	**110300**	270	4500	1500	1000	500	1500
including: medicines, dressing materials and other treatment costs	110310	280					
soft stock and equipment	110320	290					
food products	110330	300					
fuel and lubricants	110340	310					
other service materials and supply items	110350	320	4500	1500	1000	500	1500
TRAVEL EXPENDITURES	**110400**	330					
TRANSPORT SERVICES	**110500**	340					
COMMUNICATION SERVICES	**110600**	350	2200	700	500	300	700
UTILITIES - total	**110700**	360	11900	4000	2600	1300	4000
including: room maintenance	110710	370	900	300	200	100	300
heating of accommodations, including:	110720	380	6300	2100	1400	700	2100
heating	110721	390	6300	2100	1400	700	2100
gas consumption	110722	400					
Boiler and furnace fuel consumption	110723	410					
power supply to premises	110730	420	3200	1100	700	300	1100
water supply to premises	110740	430	1500	500	300	200	500
rental charge for premises	110750	440					
other utilities	110770	450					
Item	Code of item	of line	Total	including by quarters			
				I	II	III	IV

1	2	3	4	5	6	7	8
OTHER CURRENT EXPENDITURES ON GOODS AND PAYMENT FOR SERVICES	**111000**	460	5400	1800	1200	600	1800
including: current repairs of equipment and stock	111020	470	1800	600	400	200	600
current repairs of buildings and facilities	111030	480					
other current expenditures	111040	490	3600	1200	800	400	1200
TRANSFERS TO CITIZENS - total	**130300**	500					
including: scholarships	130320	510					
other transfers to citizens	130330	520					
PURCHASE OF EQUIPMENT AND DURABLE ITEMS	**240100**	620					
Purchase of nonproduction equipment and durable items for public agencies	240120	630					
Supply of PCs and educational equipment for educational institutions	240120 (0940)	640					
OVERHAUL	**240300**	650					
TOTAL BY ITEM 14	**800000**	660	166200	55400	36900	18500	55400
OTHER TRANSFERS TO CITIZENS	**130330**	670					
TOTAL BY ITEM 18	**810000**	700					
TOTAL EXPENDITURES ITEM 14+18	**820000**	710	166200	55400	36900	18500	55400

2.2. General Profile of Financing of Secondary Schools in Moscow Oblast

2.2.1.General Description of General Education System in Moscow Oblast

The Moscow Oblast is one of the largest regions of the Russian Federation populated by 6.6m people, which accounts for 4.5% of the Russian population. Density of the population of the Moscow Oblast is 16 times higher than in the country at large. The region is divided into 73 municipal units representing highly urbanized territories: the Moscow Oblast is leading by number of cities in Russia. The Moscow Oblast is a steady donor of the Federal Budget.

The region is characterized by a stable positive population growth over the last 5 years: while in 1990 to 1995 the trend was extremely negative (birth-rate decreased from 68 thousand people per year to 46.25 thousand people), the situation was stabilized between 1996 and 2001 and saw a small growth in birth-rate thereafter.

A multilevel educational system has been formed in the Moscow Oblast, including a network of 4030 institutions with 1m and 61 thousand students. These are federal, regional, municipal and private regional institutions, in which general and vacational education programs are implemented at all levels. Administration is represented by the Ministry of Education of the Moscow Oblast and 70 municipal educational administrations.

The system of general education of the Moscow Oblast includes 1618 general education institutions of different types with over 800 thousand students. It includes 1179 secondary schools, 221 schools specialized in in-depth study of several subjects, 103 gymnasiums and 62 lycees. Rural general education institutions account for 43% of total number of secondary schools, many of which are ungraded (less that 100 students in 36% of rural schools). Private general education institutions account for 1.3 % of the total of general education institutions.

In 2001-2002 academic years, 35.499 teachers were employed at day secondary schools of the Moscow Oblast, including 6488 (18.3 %) people of retirement age. In 2001-2002 academic years, 12474 teachers were employed at day secondary schools of the Moscow Oblast, including 2169 (18.7%) people of retirement age. Wage data on educational personnel in the Moscow Oblast are shown in *Table 54*.

Let's consider in details financial and economic operations of general education institutions by way of the case studies of one urban and two rural schools.

Table 54

Average Wages of Educational Personnel in Moscow Oblast

Categories of employees	**Actual average wages, Rb**		
	April 2000	**April 2001**	**April 2002**
In the educational system in general:			
Moscow oblast	990,2	1990,4	3107,0
Moscow	1880,8	2830,5	4653,0
Russian Federation	1061,6	1640,5	2858,0
By categories of employees:			
Administration personnel	1050,0	2100,0	4850,0
Educational personnel:			
Teachers	900,0	1860,0	3685,0
Tutors	610,0	1030,0	2502,0
Young specialists	415,0	815,0	1500,0
Service personnel	305,0	580,0	1285,0

Source: Ministry of Education of Moscow Oblast

2.3. Analysis of Financial and Economic Operations of Secondary School No. 5 at the City of Dolgoprudny, Moscow Oblast

2.3.1. General Description of the School

The municipal secondary school No.5 specializing in in-depth study of physical and mathematical subjects was founded in 1937 and used to be the only ten-year-education school in the city over many decades. Inhabitants of the nearest communities and villages within the rage of 5-7 km went to the school. The school is located downtown of the district, which was founded 70 years ago during construction of an aircraft plant and the Moscow Physical and Technical Institute (MPSI). Analysis of the demand for educational services among the district inhabitants and its close vicinity to a railway station, bus station and MPSI allowed the school jointly with MPSI to open classes for in-depth study of physics, mathematics and computer science at the school in 1988.

At present, 774 students study at the school in 30 classes, including 19 special subjects classes, 5 special-course classes, 3 general education classes, 3 classes for children with social maladjustment. The school operates 6 days per week in two shifts: 12 classes in 5-day workweek, 20 classes in 6-day workweek. The second shift includes 3 classes. There is a downtrend to the number of classes due to a decrease in the number of preschool-age children in the district.

The school provides extracurricular classes and day-care service. It also provides the students with hot meals, of which 30% receive it for free. There is a doctor and paramedic at the school, which provide monitoring and medical prevention measures for the students. Basic performance indicators of the school are shown in *Table 55*.

Table 55

Basic Performance Indicators of School No. 5 in the City of Dolgoprudny, Moscow Oblast

	1998	**1999**	**2000**	**2001**
1. Number of pupils	754	761	759	774
2. Number of class-units	31	31	31	30
3. Number of employed -total, including personnel :	90	92	98	86
Teachers	74	76	80	70
Administration	6	6	6	6
Other	10	10	12	10
4. Number of personnel employed for less than one wage rate (from p. 3)	46	48	35	40
5. Average educational load on a teacher employed at full pay (hours per week)		23,1	27,4	26,1

Though a special emphasis is paid to gifted children, the school has classes of various special courses, traditional curriculum classes and classes for children with social maladjustment. The school operates in the interest of all the population in the district and provides classes of different levels. At the same time the school is a centre for gifted children from all other districts of the city and nearest towns and communities of the Moscow Oblast. Consequently, the school has to take a differential approach in development of educational programs. Flexible educational programs allow an individual approach to education on the basis of students' intelligence level.

High quality education at the school is provided by a skilled personnel, including 59 top-grade and fist-grade teachers, of which 12 are masters of science, 2 postgraduates and 12 college students. Over the period between 1994 and 2000, 13 teachers received grants from the Soros Fund.

The school tends to be innovative as testified by individual curricula and participation of the students in various contests and festivals. The teachers of the school study and test frequently the content of education and various educational technologies.

2.3.2. Organizational and Economic Tools of Operation

Legal status of the school is specified in its Charter, including the following key features:

- non-profit organization financed from the budget of the city of Dolgoprudny and other sources authorized by current legislation;
- the founder of the educational institution is the local government – Administration of Dolgoprudny;
- ownership rights on the school belong to the Mayor of Dolgoprudny on behalf of the municipal unit.

The school, being an institution by form of law, has a limited capacity. In addition to the core operations the Charter permits the following:

а) additional education: chess school, education with the use of computers, driving school, physical workshop, creative mathematics and physics;

б) additional pay educational services: groups of children's adjustment to additional department; dancing school; chess school, groups of pre-collage training; driving school.

The founder of the school has an exclusive power to:

- amend the Charter of the school;
- reorganize and liquidate the school;
- permit opening or closing of bank accounts;
- withdraw unused or inappropriately used assets;
- permit any deals or agreements;
- approve manning table and establish wages pattern.

The educational institution utilizes available funds at its own discretion as provided for by the procedure established by the founder, sets wage rates for the staff on the basis of ETC and rate and job specifications (according to a decision of the classification board), determines types and amounts of extra payments and other incentive payments within the limit of the funds allocated for wages. The educational institution determines the structure of management, manning table and allocates duties.

The educational institution is governed by the director. The director is appointed by the founder according to a presentation made by the Educational Administration of Dolgoprudny. Methodological governance of the educational institution is conducted by the Educational Administration.

The director is responsible for his/her performance according to the functional duties provided for by the job specifications, labour contract and the Charter.

The director is authorized to make decisions regarding all operations of the school other than those subject to the exclusive power of the founder or the Educational Administration.

The sources of property and funds of the school are:

* budgetary funds;
* property, assigned to the institution by the owner or agency authorized by the owner;

* funds received from parents for pay additional services, donations from individuals and legal entities;

* other sources provided for by the current legislation.

Core operations of the school are financed by the founder in accordance with the budget. In budgeting, payroll fund is first to be estimated with consideration of manning table and rating of the teachers on the basis of their workload and skill level. This is followed by estimating of expenditures on utilities, economy, communication services and other expenditures depending upon the capacity of the city budget.

Data on budgetary revenues and expenditures of the school over the last four years are shown in *Table 56*.

Table 56

Revenues and Expenditures of School No 5 over 1998-2001, Rb thousand

	1998		**1999**		**2000**	**2001**	
	planned	**actual**	**planned**	**actual**	**actual**	**planned**	**actual**
1.Sources of financing	*1722,0*	*1536,6*	*1809,7*	*1907,0*	*2628,2*	*3414,9*	*3414,9*
From regional budget	1722,0	1536,6	1809,7	1907,0	2628,2	3414,9	3414,9
2. Expenditures							
Wages, including Payment to educational personnel	405,6	490,8	745,0 525,7	745,0 525,7	1076,8 707,4	841,3 592,0	1789,2
Extra payments to wages	156,2	189,0	286,8	286,8	356,9	325,6	687,0
Food	147,5	163,7	160,2	160,2	143,8	157,4	190,0
Maintenance and stationery expenditures	210,5	190,7	3,6	3,6	45,1	7,0	70,0
Travel	0,4	1,8	0,6	0,6	1,9	2,5	2,4
Educational materials			92,0	92,0	83,5	91,5	55,7
Utilities	450,4	219,0	221,1	222,1	71,7	701,0	258,7
Soft stock			4,0	4,0	4,0	4,0	3,5
Transport and communication services	1,0	1,2	1,9	1,9	2,2	67,1	2,6
Current repairs	-	-	-	-	-	-	-
Capital expenditures, including - purchase of equipment	158,9 158,9	100,0 100,0	167,2 167,2	190,6 190,6	7,5 7,5	199,5 199,5	178,5 178,5
Other educational expenditures	177,7	93,5	52,2	126,1	47,7	157,8	92,2
Transfers to citizens	73,8	86,9	74,1	74,1	65,4	73,5	71,9
Total expenditures	*1722,0*	*1536,6*	*1809,7*	*1907,0*	*1906,5*	*2628,2*	*3414,9*

Analysis of the data on the financial situation of the school presented in the Table can lead to the conclusions as follows. Total expenditures have almost doubled over the last three years. Wages have been increased in 4.14 times. The school employs in full the possibility of wage increase by creating the so-called extra rate fund. The fund is calculated by equation as follows:

Extra Rate Fund = Base Rate Fund * 25:75

Thus, the Base Rate Fund accounts for 75%, and the Extra Rate Fund, 25% of the total payroll fund. The Extra Rate Fund is utilized in accordance with the document “On distribution of incentive extra payments for the staff of the secondary school No. 5” approved at a meeting of the School Board. Due to the fact that the school is specialized in in-depth study of physics and mathematics, the teachers receive extra payments ranging between 15 and 50% of the wages assessed according to the rates established. Nevertheless, some teachers with heavy work load

and small salaries have to supplement their income by outside work, which adversely affects the quality of their work at the school.

Due to an increase in the cost of utilities, the share of expenditures on utilities in the total expenditures of the school has become significantly larger: from 14.3% in 1998 to 11.6% in 1999, to 26.7% in 2000.

Expenditures on equipment have increased almost by 1.8 times. These include mostly purchase of units for classrooms, chairs for school hall, equipment for the computer classroom. However, the share of these expenditures in total expenditures did not increase 7% in 1999, 8% in 2000, 5.2% in 2001. Over the last few years, the share of logistics expenditures has increased sharply from 46.8% in 2000 to 19.8% in 2001. School's funds for current repairs and overhaul are insufficient or often unavailable.

The number of applicants for physical and mathematical classes remains strong enough, however the level of their basic training is often low. Therefore, parents have to hire tutors for their children or send them to special training courses. Consequently, the school provides additional educational services, especially courses for applicants for physical and mathematical classes, courses for training and adjusting 5-6-year-old children to the school. According to the estimates the school can open 4-5 groups by 10-15 students in each (preschool children and students of 6,7,8,9 grades from other schools).

2.4. Financial and Economic Operations of Rural Secondary School No. 2 at Schelkovsky Region, Moscow Oblast

The school is located in close vicinity to the regional centre. Basic performance indicators over the period between 1998 and 2000 are shown in *Table 57*. It should be noted that senior students have decreased in number. In spite of this fact, budgetary provisions to the school have been ahead of the inflation rate (*Table 58*).

Table 57

Basic Performance Indicators of School No. 2 of the Schelkovsky Region, Moscow Oblast

Indicators	**1998**	**1999**	**2000**
1. Number of pupils	586	560	500
2. Number of class-units	27	27	23
3. Number of employed - total,	42	42	40
Including personnel :			
Teachers	4	4	3
Administration	26	26	25
Others	12	12	12
5. Average work load on a teacher employed on full pay (hours per week)	29	27	23

Table 58

Budgetary Expenditures of School No.2 over 1998-2000, Rb thousand

Indicators	**1998**		**1999**		**2000**	
	Plan-ned	**actual**	**Plan-ned**	**actual**	**Plan-ned**	**actual**
Wages	325,8	407,2	470,4	507,0	580,9	619,3
Extra payments to wages	149,3	164,4	181,1	183,0	224,8	235,4
Expenditures on foods	86,8	104,0	132,6	183,7	185,0	185,0
Administrative and stationary expenditures	7,04	12,4	8,9	12,6	14,0	14,6
Educational materials	20,0	39,8	39,1	33,1	17,0	7,0
Expenditures on utilities	198,0	203,0	154,2	186,6	220,0	221,1

Expenditures on transport and communication services	14,4	18,8	6,9	10,3	11,0	11,0
Current repairs	51,1	51,1	72,7	43,0	10,0	216,5
Total:	852,44	1006,8	01065,9	11159,3	11262,7	11509,9

Since October 2000 the school has made efforts in focusing students' attention on new pay educational services by offering a computer design course. The estimate of this additional education program is shown in *Table 59*. Cost of education of one student was 100 Rb annually, since the program embraced 24 students in the period of one year.

Table 59

Revenues and Expenditures within Pay Additional Education Program on Computerized Designing at School No. 2 in 2000

Indicators	**Amount (Rb)**
Revenues	2400
Expenditures, including:	
Wages	1540
Extra payments to wages	595,8
Supply items and service materials	24,0
Transport charges	10,0
Utilities	91,73
Payments to road fund (2.5% of revenues)	60,0
Purchase of equipment	78,29
Total expenditures:	2400

2.5. Financial and Economic Operations of Rural Secondary School No. 7 at the Schelkovsky Region, Moscow Oblast

The school was founded by the Administration of the Schelkovsky Region. At present, the school has 35 classes with 318 students. The staff includes 30 units, including administration – 3, teachers – 24, auxiliary staff – 4, service staff – 7.

Till 1998 the school was financed from the municipal (regional) budget, which covered virtually only staff wages and meals for the students. From 1998 the staff wages at municipal educational institutions came to be financed from the regional budget on a target basis under the agreement with the Governor, while other expenditure items remained to be financed from the budget of the Moscow Oblast. The budget has come to include such items as utilities, road fund, etc. In spite of this fact the actual financing by all items of budget expenditure classification was found to be less than the scheduled financing.

The given educational institution is of interest in terms of understanding the development potential of additional pay educational services at rural schools. In spite of poor paying capacity of the parents of rural school students, they show a considerable concern with a high-quality education for their children. Thus by parents' wish the school opened pay computer courses with leased computer hardware. The movement of extrabudgetary revenues and the structure of the respective expenditures are tabulated in *Table 60*.

Table 60

Extrabudgetary Revenues and Expenditures of School No. 7 over the period between 1998 and 2000, Rb

Indicator	**1998**	**1999**	**2000**

Revenues, Rb (payment by parents for pay additional services)	42 490	55 680	126 620
Expenditures:			
Rental	28 000	32 000	54 000
Wages	7 500	14 144	40 530
Extra payments to wages	2 887,5	5 445,44	15 685,11
Development fund	2 224,89	1 766,72	13 770,62
Utilities	815,36	931,84	2 634,27
Payments to road fund	1 062,25	1 392,0	-
Total expenditures:	42 490	55 680	126 620

Of special interest here is the development fund, which has received a total of 17762.23 Rb of allocations over three years. These funds were utilized for purchase of service materials, furniture, Xerox appliances.

2.6. Analysis of Financial and Economic Operations of Higher Education Institution (college) in Moscow

The college is a state educational institution implementing programs of higher vocational education. Early in 2002-2003 academic year the college had about 3.5 thousand students, over 360 teachers and about 100 non-teachers employed.

Over the last decade the budgetary allocations have been enough to cover only wages and scholarships. Thus, since the Law "On Education" came into effect, the college has been deeply involved in admitting students on a charge basis and developing various additional education programs. In 2001 the total volume of extrabudgetary revenues of the college exceeded budgetary allocations by more than two times (over 40m Rb – from the budget, over 95m Rb – from extrabudgetary sources, consequently 29% and 71%).

While 78.2% of the budgetary provisions are utilized for wages, the extrabudgetary provisions account for 33.8% for the same purpose. The basic part of the extrabudgetary revenues is utilized for other current expenditures exceeding 37m Rb and capital investments, over 14m Rb. The extrabudgetary funds cover almost entirely travel expenditures, over 3m Rb, current repairs of equipment, buildings and facilities, over 5m Rb, communication services (including Internet), over 1.2m Rb.

In 2001, budgetary share in the total payroll fund accounted for 49% versus 51% of extrabudgetary share. Budgetary share in current expenditures accounted for 33% versus 67% of extrabudgetary provisions. Finally, budgetary share in capital expenditures accounted for 4% versus 96% of extrabudgetary sources.

Thus, it may be concluded that it is precisely extrabudgetary funds that allow the college to develop.

More data on the financial situation at the college in 2001 are presented in *Tables 61-68.*

Table 61

Budgetary Financing of Higher Education Institution in 2001

Sources of Financing	**Volume**		**including PF and social allocations**	
	Total, Rb	**%**	**Total, Rb**	**Share of allocations by this item, %**
Federal Budget item, «Education»	37 330472	93.1	28 643874	76.7

Federal Budget item, «Science»	2 702263	6.7	2 702263	100.0
Earnings from leasing of federal property	51313	1.2	0	0
TOTAL:	40 084048	100	31 346137	

Table 62

Cumulative Expenditures of the Higher Education Institution by Budgetary Funds over 2001, Rb

REVENUES (funds allocated from federal budget by "Education" and "Science" items and earnings from rent)	40 091404*
EXPENDITURES	
Wages of employees:	23 083183
Extra payments to wages	8 262 954
Purchase of supply items and service materials	100000
Other current expenditures	96313
Current repairs of buildings and facilities	51313
Other current expenditures	45000
Scholarships	6 295502
Other transfers to citizens	1 699339
Purchase and upgrading of non-production equipment and durable items for government agencies	546857
TOTAL EXPENDITURES	40 084084
Balance as of 01.01.2002.	7356

Table 63

Utilization of Budgetary Funds by the Higher Education Institution by «Education» item in 2001, Rb

REVENUES (funds allocated from the federal budget by "Education" item)	37 337060
EXPENDITURES	
Wages of employees:	21 092819
Extra payments to wages	7 551055
Purchase of supply items and service materials	100000
Other current expenditures	45000
Other current expenditures	45000
Scholarships	6 295502
Other transfers to citizens	1 699339
Purchase and upgrading of non-production equipment and durable items for government agencies	546857
TOTAL EXPENDITURES	37 330472
Balance as of 01.01.2002	6588

Table 64

Utilization of Budgetary Funds of the Higher Education Institution for Research Developments in 2001, Rb

REVENUES (funds allocated from federal budget by "Science" item)	2 703031
EXPENDITURES	
Wages of employees	1 990364
Extra payments to wages	711 899
TOTAL EXPENDITURES	2 702263
Balance as of 01.01.2002	768

* Including balance of the previous year, 7 356 Rb

Table 65

Revenues and Expenditures of the Higher Education Institution from Leasing of Buildings and Facilities in 2002, Rb

REVENUES	51313
EXPENDITURES	
Wages of employees:	0
Wages of public employees	0
Wages of part-time personnel	0
Extra payments to wages	0
Purchase of supply items and service materials	0
Travel expenditures	0
Transport services	0
Communication services	0
Other current expenditures	51313
Services of research organizations	
Current repairs of equipment and stock	
Current repairs of buildings	51313
Other current expenditures	
Scholarships	
Other transfers to citizens	
Purchase and upgrading of non-production equipment and durable items for government agencies	
Construction of nonproduction objects, excluding housing	
TOTAL EXPENDITURES	51313
Balance as of 01.01.2002	0

Table 66

Extrabudgetary Revenues of the Higher Education Institution in 2001

	Rb	**%**
REVENUES	95 319711	100
Including:		
Extrabudgetary revenues from pay educational services according to academic programs	73 899243	77.6
Extrabudgetary revenues and expenditures from pay educational services according to short-term programs on additional education	7690454	8.1
Realization of the property which is no longer used in education process	274847	0.2
Research works	629800	0.7
Agreements on consultancy services	65000	0.0
Targeted scholarships	249419	0.2
Voluntary donations	2 063760	2.2
Other	9 321884	9.8
Other revenues	1125304	1.2

Table 67

Cumulative Estimate of Extrabudgetary Funds of the Higher Education Institution in 2001, Rb

REVENUES	95 319711
Balance as of 01.01.2002	603959
EXPENDITURES	
Wages of employees	24 062408
Wages of public employees	16 212318
Wages of part-time personnel	7 850090
Extra payments to wages	8 243784
Purchase of supply items and service materials	4 238097

Fuel and lubricants	161787
Other service materials and supply items	4 076310
Travel expenditures	3 030648
Transport services	251154
Communication services	1 211833
Other current expenditures	37 229182
services of research organizations	180086
Current repairs of equipment and stock	128650
Current repairs of buildings and facilities	5 256508
Other current expenditures	31 654938
Scholarships	234779
Other transfers to citizens	18000
Nonproduction equipment and durable items	35 085055
Construction of nonproduction objects	9 505813
TOTAL EXPENDITURES	93 110753
Balance as of 01.01.2002	2 812918
Profit tax (35%)	466302

Table 68

Relationship Between Budgetary and Extrabudgetary Funds of the Higher Education Institution in 2001, %

Indicators	Budgetary funds	Extrabudgetary funds
General relationship between budgetary and extrabudgetary funds	29	71
Relationship between budgetary and extrabudgetary funds in wages	49	51
Relationship between budgetary and extrabudgetary current expenditures	33	67
Relationship between budgetary and extrabudgetary capital expenditures	4	96

Annex 3. Analysis of Financial and Economic Operations of Cultural Institutions

3.1. Analysis of Financial and Economic Operations of the State Public History Library of Russia

3.1.1. General Operation Profile

The State Public History Library of Russia (SPHL) is one of the nine federal libraries under the Ministry of Culture and ranks among the country's largest libraries. In 2001 its stock of books was more than 3 million copies. In terms of its stock RPHL ranks the fourth in Russia after the Russian State Library (41 million copies), Russian National Library (33 million copies) and Russian Library of Foreign Literature (4 million copies)[40]. In 2001 RPHL employed a total of 386 people, of which 320 librarians.

RPHL occupies more than 13 thousand square meters of space, of which one half is for the stock of books. Nearly 1 thousand square meters of space and 439 seats are for the library's visitors. Since 1999 the latter grew 33.6%, reaching 42 thousand in 2001. Distribution of books and other documents ("book distribution") grew at a slower rate of 13.5% over the same period. As a result, average "book distribution" per reader declined from 47.4 in 1999 to 40.3 in 2001.

[40] Russian Public Libraries in Figures, 2001. Statistical yearbook. M., 2002 / GIVT, Ministry of Culture RF.

RPHL ranks the fourth by availability of computers and has an e-mail address and Internet access. It delivers electronic documents to users. The library has copiers and provides services of copying and scanning books and other documents from its stock.

Table 69 shows the profile of physical and labour resources, and the library's performance indicators over the last 3 years while *Table 70* shows the financing structure.

In 2001 the share of budgetary financing was 91.1% of the total while other sources accounted for 8.2% of the total. This situation is traditional for libraries. The share of extrabudgetary sources was the lowest of cultural organisations also in 1980s and 1990s.

Table 69

Resources and Performance Indicators of the State Public History (Library of Russia)

Indicator	**1999**	**2000**	**2001**
1. Premises (buildings) occupied by the cultural organisation, total *(units)*	264	264	264
including:			
- requiring overhaul	143	143	143
- in emergency condition	55	55	55
2. Area of premises (buildings) – total *(units)*	13152	13152	13152
Including:			
- for stock of books	6671	6671	6671
- for providing services to users	978	978	978
3. PC *(units)*	83	94	94
4. Copiers *(units)*	11	13	13
5. E-mail	1	1	1
6. Internet access	1	1	1
7. Seats for users *(units)*	439	439	439
8. Stock of books *(thousand copies)*	3209,805	3235,168	3259,580
- printed editions	3174,256	3199,599	3223,924
- audio/video documents	35,546	35,546	35,595
- e-books	0,003	0,023	0,061
9. Employees – total *(units)*	359	368	386
including:			
- librarians	318	304	320
10. Employees providing paid services *(units)*	40	40	40
11. Users – total *(units)*	31485	40197	42069
12. Distribution of books and other documents – total	1493,8	1758,7	1696,4
- printed editions *(thousand)*	1492,6	1756,9	1694,5
- audio/video documents *(thousand)*	0	0	0
- e-books *(thousand)*	1,2	1,8	1,9
- share of audio/video documents *(%)*	0,08	0,10	0,11
13. Average distribution of books and other documents per user *(units)*	47,4	43,8	40,3
14. Visits *(units)*	354381	395192	387512
including:			
- public events	4778	3845	3748
of which:			
- on paid basis	-	-	-

Table 70

Structure of Financing of the State Pubic History (Library of Russia)

Sources of Financing	**1999**	**2000**	**2001**
1. Federal budget			
- Rb thousand	8652,9	15886,0	24580,4
- share of total financing (%)	92,8	92,0	91,8
a) current operations			
- Rb thousand	8252,9	15591,0	24160,4
- share of total financing (%)	88,5	90,3	90,3
b) events under the Federal Special Programme			
- Rb thousand	40,0	-	420,0
- share of total financing (%)	0,4	-	1,5
c) centralised budget of the Ministry of Culture			
- Rb thousand	360,0	295,0	-
- share of total financing (%)	3,9	1,7	-
2. Revenues from primary statutory operations			
- Rb thousand	662,0	1300,0	2170,0
- share of total financing (%)	7,1	7,5	8,1
3. Other revenues and proceeds			
- Rb thousand	11,0	83,0	15,0
- share of total financing (%)	0,1	0,5	0,1
A) entrepreneurial activities			
- Rb thousand	11,0	-	-
- share of total financing (%)	0,1	-	-
B) sponsorship			
- Rb thousand	-	83,0	15,0
- share of total financing (%)	-	0,5	0,1
TOTAL			
- Rb thousand.	9325,9	17269,0	26765,4
- share of total financing (%)	100	100	100

3.1.2. Budgetary Financing

SPHL is primarily financed from the federal budget, especially as regards its current operations. Over three years these funds almost tripled in absolute terms, from Rb 8252.9 thousand in 1999 to Rb 24160.4 thousand in 2001. Moreover, their share of total financing remained practically the same: 88.5% in 1999 and 90.3% in 2001 (see *Table 70*).

Tables 71 and *72* suggest that budgetary financing of SPHL was adequate in these years. It is noteworthy that planned financing of the library's current operations (see *Table 71*, indicator 2) was every year 30% more than requested (*Table 71*, indicator 1). It is likely that the Ministry of Culture made its calculations on the basis of wage increase ratios and energy prices adjusted by the Ministry of Finance. In 1999-2001 approved budget allocations were made available to the full extent (*Table 71*, indicator 3) and at least in 2001were evenly distributed by quarters in strict conformity with the plan.

Table 71

Budgetary Financing of Current Operations of State Public History Library of Russia

Indicator	**1999**	**2000**	**2001**
1. Requested financing – total (Rb thousand)	7120,0	13250,0	20380,0
including:			
- from budget	6300,0	11967,6	18404,2
2. Approved budget allocations (Rb thousand)	8252,9	15591,0	24160,4
3. Available financing in the current year			
- Rb thousand	8252,9	15591,0	24160,4
- share of approved budget allocations (%)	100	100	100

- share of requested budgetary financing (%)	131,0	130,3	131,3
4. Cash expenditures (Rb thousand)	7545,1	15086,1	23403,7
5. Actual expenditures (Rb thousand)	7997,7	14634,0	23355,9

Table 72

2001 Quarterly Budgetary Financing of Current Operations (Budget Utilisation) by the State Public History Library of Russia, Rb thousand

Areas of Spending and Budget Classification Codes	I quarter	II quarter	III quarter	IV quarter
1. Budget allocations in current quarter – total				
- approved	3978,9	6249,5	7463,6	6468,4
- available financing	3978,9	6249,5	7463,6	6468,4
a) wages (110100)				
- approved	1448,1	3022,5	3085,8	3324,0
- available financing	1448,1	3022,5	3085,8	3324,0
b) extra payments (110200)				
- approved	518,5	1082,3	1144,0	1189,0
- available financing	518,5	1082,3	1144,0	1189,0
c) utilities payments (110700)				
- approved	386,6	387,7	977,1	187,2
- available financing	386,6	387,7	977,1	187,2
d) other current expenditures (111000)				
- approved	1149,5	1125,4	1447,7	1218,6
- available financing	1149,5	1125,4	1447,7	1218,6
e) overhaul and purchase of equipment (240120, 240300)				
- approved	298,6	430,0	511,2	300,0
- available financing	298,6	430,0	511,2	300,0
f) other expenditure items				
- approved	177,6	201,6	297,8	249,6
- available financing	177,6	201,6	297,8	249,6

Apart from current financing, SPHL received special funds under the Federal Special Programme "Russian Culture" and from the centralised fund of the Ministry of Culture. Special purpose financing was generally negligible, its share of the total financing being 4.3% in 1999, 1.7% in 2000 and 1.5% in 2001 (see *Table 70*).

Table 73 shows the structure of spending on current operations. Although these are budgeted expenditures, they adequately reflect the actually incurred costs. First, total expenditures (*Table 71*, indicator 5) differed negligibly (maximum 3-6%) from the amount credited to the library's treasury account (*Table 71*, indicator 3). Second, these funds were expended exactly as earmarked.

Table 73

Structure of Budget Spending for Current Operations of the State Public History Library* (Rb thousand)

Areas of Spending and Budget Classification Codes	1999	%	2000	%	2001	%
Wages *(110100)*	3954,7	47,9	6739,3	43,2	10880,4	45,0
- permanent staff *(110)*	3570,0	43,3	6633,1	42,5	10747,3	44,5

- free lance staff *(140)*	384,7	4,7	106,2	0,7	133,1	0,5
Extra payments *(110200)*	1522,6	18,4	2685,3	17,2	3933,8	16,3
Provisioning and disposables *(110300)*	32,4	0,4	195,7	1,3	440,0	1,8
Travel and local trips *(110400)*	4,6	0,1	49,4	0,3	45,0	0,2
Transport services *(110500)*	12,2	0,1	10,1	0,1	8,0	0,0
Communication services *(110600)*	72,6	0,9	195,0	1,3	433,6	1,8
Utilities *(110700)*	697,3	8,4	1385,1	8,9	1938,6	8,0
- building maintenance *(710)*	35,5	0,4	113,6	0,7	158,7	0,7
- heating *(720)*	300,7	3,6	489,7	3,1	711,1	2,9
- energy *(730)*	283,2	3,4	580,5	3,7	674,4	2,8
- water supply *(740)*	14,9	0,2	47,5	0,3	70,6	0,3
- rent *(750)*	63,0	0,8	126,7	0,8	150,4	0,6
- other utilities *(770)*	-		27,1	0,2	173,4	0,7
Other current expenditures for purchase of goods and services *(111000)*	1607,2	19,5	3135,3	20,1	4941,2	20,5
- repairs of equipment and stock *(020)*	N/A	N/A.	N/A.	N/A.	79,9	0,3
- current repairs of buildings and facilities *(030)*	N/A.	N/A.	N/A.	N/A.	523,9	2,2
- other current exp. *(040)***	N/A.	N/A.	N/A.	N/A.	4737,4	18,0
Overhaul and purchase of equipment *(240120, 240300)*	349,3	4,2	1195,8	7,7	1539,8	6,4
- purchase and upgrading of equipment and durable items *(120)*	207,1	2,5	457,6	2,9	760,5	3,1
- overhaul* *(330)*	142,2	1,7	738,2	4,7	779,3	3,2
TOTAL	8252,9	100,0	15591,0	100,0	24160,4	100,0

* Budgeted expenditures.

** Including expenditures for purchase and restoration of library stock and security costs.

Wages (item 110100)[41] and extra payments (item 110200) accounted for more than half of expenditures, their share of total expenditures declining over three years from 66.3% in 1999 to 61.3% in 2001. The share of expenditures for overhaul and equipment purchase (items 240120 and 240330) grew respectively from 4.2% to 6,4%.

Other current expenditures for purchase of goods and services (item 111000) which largely included purchase and restoration of library stock, and utilities (item 110700) were stable. These accounted for one-fifth and 8-9% of total expenditures respectively.

3.1.3. Accumulation and Utilisation of Extrabudgetary Financing

SPHL's extrabudgetary revenues from primary statutory operations more than tripled over three years from Rb 662.0 thousand in 1999 to Rb 2170.0 thousand in 2001 while their share of total financing changed negligibly (7.1% and 8.1% respectively − see *Table 70*).

Table 74 shows the structure of revenues from primary statutory operations. Paid cultural services including provision of information to private and corporate users accounted for more than half of these revenues (62% in 1999, 55% in 2000 and 65% in 2001). These included the following services:

- services of inter-library exchange system;

[41] Item code of economic classification of budget expenditures.

- electronic document delivery;
- copying and scanning of printed editions;
- microfilm production;
- sale of booklets published by the library;
- consulting on issues of library business;
- organisation of training courses, study tours, educational programmes;
- organisation of book exhibitions;
- presentation of third-party information materials in the library building;
- cinema and video shooting in the library building;
- excursions in the library;
- conservation and restoration of buildings.

Breakdown of indicator 2, *Table 74* shows any sizeable revenues from services specified in this list. Over three years the library's major extrabudgetary revenue item was copying and scanning of printed editions.

Table 74

Revenues from Primary Statutory Operations of the State Public History Library of Russia

Source of revenues	**1999**	**2000**	**2001**
1. Revenues from paid events	-	-	-
2. Revenues from paid cultural service including information services	411,0	710,4	1408,0
- copying and scanning	400,0	587,0	1171,0
- electronic document delivery	1,5	10,3	17,0
- information services contracted by publishers	-	110,0	150,0
- sale of information booklets published by the library	-	-	25,0
- other revenues	9,5	3,1	45,0
3. Revenues from other primary statutory operations	251,0	589,6	762,0
TOTAL	662,0	1300,0	2170,0
Employees providing paid services *(units)*	40	40	40

It should be noted that the library provides its main services related to its primary function − education − free of charge. The above paid cultural services are largely an extension.

From 1999 to 2001 revenues from paid cultural services grew 3.4 times due to higher prices and intensification (according to SPHL's chief accountant, data on provided services are not available). Moreover, the number of employees providing paid services did not change (see *Table 74*).

Over three years revenues from other primary statutory operations tripled and amounted to Rb 762.0 thousand or 35% of total revenues from primary statutory operations in 2001 (see Table 6). In the years under review SPHL did not have any revenues from paid public events. These were held on a free basis and attended by 3.7 thousand visitors in 2001 (see *Table 69*).

Table 75

Spending Structure of Revenues from Primary Statutory Operations of the State Public History Library of Russia *, Rb thousand**

Areas of Spending and Budget Classification Codes	**1999**	**%**	**2000**	**%**	**2001**	**%**

Wages *(110100)*	64,0	7,8	78,6	7,3	188,5	10,1
- permanent staff *(110)*	64,0	7,8	78,6	7,3	185,8	10,0
- free lance staff *(140)*	-	-	-	-	2,7	0,1
Extra payments *(110200)*	12,3	1,5	30,3	2,8	64,6	3,5
Provisioning and disposables *(110300)*	90,5	11,1	261,2	24,2	255,9	13,8
Travel and local trips *(110400)*	9,9	1,2	32,2	3,0	18,8	1,0
Transports services *(110500)*	26,6	3,3	13,1	1,2	23,5	1,3
Communication services *(110600)*	109,4	13,4	121,7	11,3	122,6	6,6
Utilities *(110700)*	4,2	0,5	16,4	1,5	196,9	10,6
- building maintenance *(710)*	-	-	8,5	0,8	15,4	0,8
- heating *(720)*	4,2	0,5	7,9	0,7	181,5	9,8
- energy *(730)*	-	-	-	-	-	-
- water supply *(740)*	-	-	-	-	-	-
Other current expenditures for purchase of goods and services *(111000)*	451,4	55,4	523,9	48,6	890,0	48,0
- repairs of equipment and stock *(020)*	N/A	N/A	N/A	N/A	N/A	N/A
- current repairs of buildings and facilities *(030)*	N/A	N/A	N/A	N/A	N/A	N/A
- other current exp. *(040)**	N/A	N/A	N/A	N/A	N/A	N/A
Overhaul and purchase of equipment *(240120, 240300)*	47,0	5,8	-	-	95,3	5,1
- purchase and upgrading of equipment and durable items *(120)*	27,0	3,3	-	-	95,3	5,1
- overhaul* *(330)*	20,0	2,5	-	-	-	-
TOTAL	814,9*	100,0	1077,4**	100,0	1856,1	100,0

* Used last year carry-forward balance of Rb 153.3 thousand

** Unused revenues from primary statutory operations of Rb 222.6 thousand

***Actual expenditures

Table 75 shows the spending structure of revenues from primary statutory operations (actual expenditures). In 2001 the library spent 48.0% of this amount on current expenditures for purchase of goods and services (item 111000) including for purchase and restoration of its stock of books, 13.6% − wages and extra payments (items 110100, 110200), 13.8% − provisioning and disposables (item 110300), 5.1% − overhaul and purchase of equipment, 10.6% − utilities, and 8.9% − other expenditure items.

Other revenues (entrepreneurial activities and sponsorship) were negligible and accounted for less than 1% of total financing (see *Table 70*). These revenues were spent on wages and extra payments (items 110100, 110200), and also provisioning and disposables (item 110300, see *Table 76*).

Table 76

Spending Structure of Other Revenues and Receipts of the State Public History Library of Russia, Rb thousand

Area of spending and Budget Classification Codes	1999	%	2000	%	2001	%
Wages *(110100)*	N/A.	N/A.	60,5	72,9	6,0	40
- staff employees *(110)*	N/A.	N/A.	60,5	72,9	6,0	40
Extra payments *(110200)*	N/A.	N/A.	22,5	27,1	2,0	13
Provisioning and disposables *(110300)*	N/A.	N/A.	-	-	7,0	47
TOTAL	N/A.	N/A.	83,0	100,0	15,0	100,0

3.1.4. Total Revenue Spending Structure

Analysis of the spending structure of total revenues (see *Table 77*) suggests that the library spent comparable budget and extrabudgetary amounts on:

- provisioning and disposables (110300) – Rb 440.0 thousand and Rb 262.9 thousand respectively;
- travel and local trips (110400) – Rb 45.0 thousand and Rb 18.8 thousand;
- transport services (110500) − Rb 8.0 thousand and Rb 23.5 thousand;
- communication services (110600) – Rb 433.6 thousand and Rb 122.6 thousand;
- other current expenditures and purchase of goods and services (111000) including purchase and restoration of library stock – Rb 4941.2 thousand and Rb 890.0 thousand.

Table 77

Total Revenue Spending Structure of the State Public History Library of Russia in 2001 (Rb thousand)

Areas of Spending and Budget Classification Codes	Budget	%	Statutory Operations	%	Other Revenues	%
Wages *(110100)*	10880,4	45,0	188,5	10,1	6,0	40
- permanent staff *(110)*	10747,3	44,5	185,8	10,0	6,0	40
- free lance staff *(140)*	133,1	0,5	2,7	0,1	-	-
Extra payments *(110200)*	3933,8	16,3	64,6	3,5	2,0	13
Provisioning and disposables *(110300)*	440,0	1,8	255,9	13,8	7,0	47
Travel and local trips *(110400)*	45,0	0,2	18,8	1,0	-	-
Transport services *(110500)*	8,0	0,0	23,5	1,3	-	-
Communication services *(110600)*	433,6	1,8	122,6	6,6	-	-
Utilities *(110700)*	1938,6	8,0	196,9	10,6	-	-
- building maintenance *(710)*	158,7	0,7	15,4	0,8	-	-
- heating *(720)*	711,1	2,9	181,5	9,8	-	-
- energy *(730)*	674,4	2,8	-	-	-	-
- water supply *(740)*	70,6	0,3	-	-	-	-
- building rent *(750)*	150,4	0,6			-	-
- other utilities *(770)*	173,4	0,7			-	-

Other current expenditures for purchase of goods and services *(111000)* *	4941,2	20,5	890,0	48,0	-	-
- repairs of equipment and stock *(020)*	79,9	0,3	N/A	N/A	-	-
- current repairs of buildings and facilities *(030)*	523,9	2,2	N/A	N/A	-	-
- other current exp. *(040)***	4737,4	18,0	N/A	N/A		
Overhaul and purchase of equipment *(240120, 240300)*	1539,8	6,4	95,3	5,1	-	-
- purchase and upgrading of equipment and durable items *(120)*	760,5	3,1	95,3	5,1	-	-
- overhaul* *(330)*	779,3	3,2	-	-	-	-
TOTAL	24160,4	100,0	1856,1	100,0	15,0	100,0

3.2. Analysis of Financial and Economic Operations of the Russian Academic Youth Theatre (RAYT)

3.2.1. General Profile of the Theatre's Potential and Operations

RAYT is located in one of the best theatre buildings of central Moscow in the Teatralnaya Square. However, this building requires an overhaul which is reflected in statistical reports (form 9-nk). Commercial capacity of the theatre hall is 720 seats. In addition to the main hall, the theatre has a smaller hall with capacity of 45 seats. In 2001 RAYT employed 312 people of which 113 artistic and creative personnel.

Tables 10 and 11 show the profile of physical and labour resources and RAYT performance indicators in 1999-2001.

Table 78

Resources of the Russian Academic Youth Theatre

Indicator	**1999**	**2000**	**2001**
1. Premises (buildings) occupied by the cultural institution – total (units)	1	1	1
including:			
- requiring overhaul	1	1	1
- in emergency condition	0	0	0
2. Commercial capacity of halls (seats)			
- main	722	722	720
- auxiliary	-	-	45
3. PC (units)	7	12	19
4. E-mail address	-	-	1
5. Internet access	-	-	1
6. Employees – total (units)	322	260	312
including:			
- artistic and creative staff	127	99	113
7. New productions in repertoire			
- new	4	4	5
- redesigned and resumed	-	2	-

Over the last three years the theatre operated only in its building, with 4-5 new productions a season. Performances grew 10.4% (from 249 in 1999 to 275 in 2001), average performance attendance 1.4% (from 498 to 505 spectators per performance respectively) and general attendance 12.1% (from 124.0 thousand to 139.0 thousand). *Table 79* suggests that increase of these indicators was due to children performances alone which accounted for 51.6% of the total in 2001. Box office ratio of children performances was considerably higher than those for adults, with 35% of growth in three years. Attendance of children performances grew 66% to reach 98.0 thousand in 2001 which accounted for 70.5% of general attendance.

Table 79

Performance Indicators of the Russian Academic Youth Theatre

Indicator	**1999**	**2000**	**2001**
Performances			
1. New productions in repertoire			
- new	4	4	5
- redesigned and resumed	-	2	-
2. Performances staged by theatre − total (units)	249	250	275
including:			
- in theatre building	249	250	275
of which:			
- for adults	134	145	133
- on tour within city	-	-	-
- on tour within its territory	-	-	-
- on tour in Russia outside its territory	-	-	-
3. International tour performances	-	-	-
4. Third-party performances staged in theatre building on contractual basis (units)	-	-	-
Attendance			
5. Attendance of performances staged by theatre in its building (thousand)	124,0	149,8	139,0
of which:			
- for adults	65,0	78,6	41,0
6. Average attendance of one performance staged by theatre in its building (units)	498	599	505
of which:			
- for adults	485	542	308
Theatrical services for children			
7. Children performances			
- units	115	105	142
- share of total performances (%)	46,2	42,0	51,6
8. Attendance of children performances (thousand)			
- thousand	59,0	71,2	98,0
- share of general attendance (%)	47,6	47,5	70,5
9. Average attendance of one children performance (units)	513	678	690

Table 80

Revenue Structure of the Russian Academic Youth Theatre

Sources of Revenues	**1999**	**2000**	**2001**
1. Federal budget			
- Rb thousand	6582,0	15424,2	18802,6

- share of total financing (%)	57,8	70,7	62,6
a) current operations			
- Rb thousand	6082,0	14364,2	18802,6
- share of total financing (%)	53,4	65,8	62,6
b) special creative orders, events, work and services under contracts			
- Rb thousand	500,0	1060,0	-
- share of total financing (%)	4,4	4,9	-
2. Revenues from primary statutory operations			
- Rb thousand	3573,0	6384,0	11220,0
- share of total financing (%)	31,4	29,3	37,4
3. Other revenues and proceeds			
- Rb thousand	1225,0	-	-
- share of total financing (%)	10,8	-	-
a) entrepreneurial activities			
- Rb thousand	-	-	-
- share of total financing (%)			
б) sponsorship			
- Rb thousand	1225,0	-	-
- share of total financing (%)	10,8	-	-
TOTAL			
- Rb thousand	11380,0	21808,2	30022,6
- share of total financing (%)	100	100	100

Table 80 shows RAYT's financing structure. In 2001 budget funds accounted for 62.6% of RAYT's total financing, the share of other revenues being 37.4%. These figures are characteristic of a statistically average theatre in the system of the Ministry of Culture (61% and 39% respectively[42]).

3.2.2. Budgetary Financing

RAYT's main source of financing is the federal budget which provides funds primarily for current operations. Over three years the amount of these funds tripled in absolute terms from Rb 6082.0 thousand in 1999 to Rb 18802.6 thousand in 2001. Their share of the theatre's total revenues grew from 53.4% to 62.6% respectively.

Tables 81 and *82* suggest that the budgetary financing was adequate in these years. Approved allocations for the theatre's current operations were made available to the full extent (*Table 81*, indicator 3). They were not only in 2000 (92.4%) but even in this case the actual amount of available financing was higher than requested (*Table 81*, indicator 1). Approved and available budget allocations were, at least in 2001, evenly distributed by quarters and in strict compliance with the plan (*Table 82*).

Table 81.

Budgetary Financing of Current Operations of the Russian Academic Youth Theatre

Indicator	**1999**	**2000**	**2001**
1. Finances requested by organisation – total (Rb thousand)	11230,0	21250,0	22770,0
including:			
- from budget	6000,0	13982,8	14254,7
2. Approved budget allocations (Rb thousand)	6082,0	15543,2	18802,6

[42] Theatres of the Russian Federation in Figures, 2001. Statistical Yearbook. M., 2002 / GIVT of the Ministry of Culture.

3. Available current year financing			
- Rb thousand	6082,0	14364,2	18802,6
- share of approved budget allocations (%)	100,0	92,4	100,0
- share of requested budgetary financing (%)	101,4	102,7	131,9
4. Cash expenditures (Rb thousand)	5936,0	14509,8	18595,5
5. Actual expenditures (Rb thousand)	5936,0	14509,8	18595,5

Table 82

2001 Quarterly Budgetary Financing of the Russian Academic Youth Theatre, Rb thousand

Areas of Spending and Budget Classification Codes	**I Quarter**	**II Quarter**	**III Quarter**	**IV Quarter**
1. Current quarter budget allocations − total				
- approved	4888,7	5497,2	5530,8	2885,9
- available	4888,7	5497,2	5530,8	2885,9
a) wages (110100)				
- approved	865,0	2238,0	2113,5	1576,5
- available	865,0	2238,0	2113,5	1576,5
b) extra payments (110200)				
- approved	309,7	801,2	783,2	564,4
- available	309,7	801,2	783,2	564,4
c) utilities (110700)				
- approved	364,0	358,0	506,5	104,0
- available	364,0	358,0	506,5	104,0
d) other current expenditures (111000)				
- approved	700,0	650,0	902,6	216,0
- available	700,0	650,0	902,6	216,0
e) overhaul and purchase of equipment (240120, 240300)				
- approved	2500,0	1300,0	1100,0	300,0
- available	2500,0	1300,0	1100,0	300,0
f) other expenditure items				
- approved	150,0	150,0	125,0	125,0
- available	150,0	150,0	125,0	125,0

Apart from current financing, RAYT received special funds for contracted creative orders, events, work and services. While the amount of special financing was negligible, it accounted for 4.4% and 4.9% of total financing in 1999 and 2000 respectively (see *Table 80*).

Table 83 shows the spending structure of allocations for current operations.

Table 83

Spending Structure of Budget Allocations for Current Operations of the Russian Academic Youth Theatre, Rb. thousand

Areas of Spending and Budget Classification Codes	**1999**	**%**	**2000**	**%**	**2001**	**%**
Wages (110100)	2356,0	39,7	3636,9	25,1	6793,0	36,5
- permanent staff (110)	2317,0	39,0	3592,2	24,8	6736,5	36,2
- free lance staff (140)	39,0	0,7	44,7	0,3	56,5	0,3
Extra payments (110200)	914,0	15,4	1387,0	9,5	2458,5	13,2
Provisioning and disposables (110300)			45,0	0,3	350,0	1,9

Travel and local trips (110400)						
Transport services (110500)						
Communication services (110600)			100,0	0,7	142,5	0,8
Utilities (110700)			96,5	0,7	1187,9	6,4
- building maintenance (710)			96,5	0,7	108,5	0,6
- heating (720)					468,3	2,5
- energy (730)					528,4	2,9
- water supply (740)					82,7	0,4
- building rent (750)						
- other utilities (770)						
Other current expenditures for purchase of goods and services (111000) *	1292,0	21,8	2428,8	16,7	2463,6	13,2
- repairs of equipment and stock (020)						
- current repairs of buildings and facilities (030)			348,6	2,4	324,4	1,7
- other current exp. (040) **	1292,0	21,8	2080,2	14,3	2139,2	11,5
Overhaul and purchase of equipment (240120, 240300)	1374,0	23,1	6815,6	47,0	5200,0	28,0
- purchase and upgrading of equipment and durable items (120)					1200,0	6,5
- overhaul * (330)	1374	23,1	6815,6	47,0	4000	21,5
TOTAL	5936,0	100,0	14509,8	100,0	18595,3	100,0

* Including new productions, current repertoire and tours.

** In 1999 all expenditures, except wages and fixed capital investments, were attributed to item 111040.

Wages (item 110100[43]) and extra payments (item 110200) accounted for roughly one half of these funds. In three years their share of total expenditures declined from 55.1% in 1999 to 49.7% in 2001. The share of current expenditures for purchase of goods and services (item 111000) which largely absorbed the costs of new productions, current repertoire and tours, declined from 16.7% in 2000 to 13.2% in 2001.[44]

The spending structure showed higher specific weight of expenditures for overhaul and purchase of equipment (items 240120 and 240330), and for provisioning and disposables (110300). An especially sizeable increase was observed in utilities (item 110700) − 0.7% in 2000 and 6.4% in 2001 − which grew almost 12 times in absolute terms.

3.2.3. Accumulation and Utilisation of Extrabudgetary Financing of the Russian Academic Youth Theatre

RAYT's revenues from primary statutory operations tripled over three years from Rb 3573.0 thousand in 1999 to Rb 11220.0 thousand in 2001. Their share of total revenues also grew from 31.4% to 37.4% respectively (see *Table 80*).

The theatre provided paid public services, with sale of tickets accounting for more than 80% of revenues from primary statutory operations (see *Table 84*). From 1999 to 2000 they

[43] Item code of economic classification of budget expenditures.

[44] There is no comparable data for a number of items in three years as all expenditures, except wages and fixed capital investments, were attributed to item 111040.

almost doubled (from Rb 2988.0 thousand to Rb 5799.0 thousand) due to both higher attendance and prices. From 2000 to 2001 revenues from events grew 1.6 times (from Rb 5799.0 thousand to Rb 9195.0 thousand) due to prices alone as general attendance and attendance of performances for adults declined (see *Tables 75* and *81*).

In 1999 average prices of adult and children performances were practically the same. Over three years they grew 3.7 times and 2.4 times respectively. As a result, a visit of an adult performance was 1.6 times more expensive than that for children in 2001.

Table 84

Revenues from Primary Statutory Operations of the Russian Academic Youth Theatre, Rb thousand

Source of Revenues	**1999**	**2000**	**2001**
1. Revenues from events			
- Rb thousand	2988,0	5799,0	9195,0
- share of revenues from primary stat. ops. (%)	84	91	82
2. Revenues from paid services, contractual work for organisations			
- Rb thousand	585,0	585,0	2025,0
- share of revenues from primary stat. ops (%)	16	9	18
TOTAL	3573,0	6384,0	11220,0

Table 85

Revenues from Paid Public Services (Receipts from Events) of the Russian Academic Youth Theatre

Source of Revenues	**1999**	**2000**	**2001**
Revenues from events (Rb thousand)	2988,0	5799,0	9195,0
1. Revenues from performances staged by the theatre in its building	2988,0	5799,0	9195,0
including:			
- adult performances	1580,0	3379,0	3652,0
- children performances	1408,0	2420,0	5543,0
2. Average price of attendance (Rb)			
performances staged by the theatre in its building	24,1	38,7	66,2
including:			
- adult performances	24,3	43,0	89,1
- children performances	23,9	34,0	56,6

The theatre received revenues also from other primary operations:

- sale of printed items (programmes, booklets);
- provision of services to organisations;
- performances staged by other theatres including during festivals;
- other services.

Over three years these revenues grew 3.5 times and amounted to Rb 2025.0 thousand or 18% of total revenues from primary statutory operations in 2001 (see *Table 80*).

In the period under review RAYT did not engage in entrepreneurial activities. It received sponsorship funds only in 1999 in the amount of Rb 1225.0 thousand or 10.8% of total financing (see *Table 79*).

Before 2002 the planning mechanism of extrabudgetary funds for federal level theatres differed from that of museums, libraries and clubs which were incorporated as budgetary units at the time of the centralised system of governance. It is only since 2002 that federal level theatres

had an approved budget of revenues and expenditures for extrabudgetary funds which itemised expenditures in accordance with economic classification of budgetary expenditures. Previously all expenditures, except wages and funds for overhaul and equipment purchase, had been attributed to item 11040 of budget classification for planning purposes. For this reason there is no data on use of revenues from entrepreneurial and other primary statutory operations or sponsorship in 1999-2001. The 2002 RAYT budget can give a rough idea of it (see *Table 86*). Rather, it is two budgets: 1) revenues from entrepreneurial and other gainful activities and 2) revenues from leased immovables.

In 2002 RAYT is planning to increase total extrabudgetary revenues by 2.6 times as compared to the previous year, with 40.7% of these funds to be spent for wages and extra payments (110100, 110200); 23.6% − provisioning and disposables (110300); 17.8% − other current expenditures for purchase of goods and services (111000), including new productions, current repertoire and tours; 7.5% − utilities; 2.7% − overhaul and equipment purchase; and 7.7% − other expenditures.

3.2.4. Total Revenue Spending Structure

Due to the above planning mechanism of extrabudgetary revenues for federal level theatres in the period under review, we can get an idea of RAYT's total revenue spending structure in 1999-2001 only from generalised items on the basis of reporting form 7-tz (see *Table 87*).

In 1999 overhaul and equipment purchase accounted for 11.9% of total expenditures. Other funds split more or less equally between wages/extra payments (42.4%) and other expenditures which included provisioning and disposables, travel and local trips, transport services and utilities, communication services etc. (45.6%).

Over three years wage-related expenditures (plus extra payments) grew more than 4 times and amounted to 72.7% of RAYT's total expenditures in 2001. Overhaul and equipment purchase were down 6.9%, other expenditures 20.5%. Moreover, the latter remained practically unchanged in absolute terms.

Table 86

Extrabudgetary Revenue Spending Structure of the Russian Academic Youth Theatre in 2002, Rb thousand

Areas of Spending and Budget Classification Codes	**Revenues from gainful activities**	**%**	**Revenues from lease**	**%**	**TOTAL**	**%**
Wages (110100)	6770,6	25,3	2019,7	69,9	8790,3	29,6
Extra payments (110200)	2423,7	9,0	869,7	30,1	3293,4	11,1
Provisioning and disposables (110300)	7015,9	26,2			7015,9	23,6
Travel and local trips (110400)	1000,0	3,7			1000,0	3,4
Transport services (110500)	1000,0	3,7			1000,0	3,4
Communication services (110600)	180,0	0,7			180,0	0,6
Utilities (110700)	2223,2	8,3			2223,2	7,5
- building maintenance (710)	695,6	2,6			695,6	2,3
- heating (720)	383,2	1,4			383,2	1,3
- energy (730)	741,0	2,8			741,0	2,5
- water supply (740)	123,4	0,5			123,4	0,4
- building rent (750)	80,0	0,3			80,0	0,3

- other utilities (770)	200,0	0,7			200,0	0,7
Other current expenditures for Purchase of goods and services (111000) *	5288,3	19,7			5288,3	17,8
- engineering services (770)	100,0	0,4			100,0	0,3
- repairs of equipment and stock - (020)	500,0	1,9			500,0	1,7
- current repairs of buildings and facilities (030)	276,0	1,0			276,0	0,9
- other current exp. (040)**	4412,3	16,5			4412,3	14,9
Overhaul and purchase of equipment (240120, 240300)	800,0	3,0			800,0	2,7
- purchase and upgrading of equipment and durable items (120)	800,0	3,0			800,0	2,7
Purchase of intangible assets (260200)	100,0	0,4			100,0	0,3
TOTAL	26801,7	100,0	2889,4	100,0	29691,1	100,0

Table 87

Total Revenue Spending Structure of the Russian Academic Youth Theatre, Rb thousand

Areas of Spending and Budget Classification Codes	**1999**	**%**	**2000**	**%**	**2001**	**%**
Wages (110100)	3635,0	31,2	8476,0	38,9	15950,0	53,5
Extra payments (110200)	1301,0	11,2	3034,0	13,9	5710,0	19,2
Other current expenditures (111040) *	5309,0	45,6	7552,0	34,6	6107,0	20,5
Overhaul and purchase of equipment (240120, 240300)	1389,0	11,9	2746,0	12,6	2049,0	6,9
TOTAL	11634,0	100,0	21808,0	100,0	29816,0	100,0

* This item includes the theatre's total expenditures except wages (plus extra payments) and fixed asset investments.

3.3. Analysis of Financial and Economic Operations of the Gorky Central Park of Culture and Leisure

3.3.1. General Profile of the Park's Operations

The Gorky Central Park of Culture and Leisure (Gorky Park) is subordinated to a constituent territory of the Russian Federation (Moscow), incorporated as a public entity and financed from the capital city's budget.

The Gorky Park is one of the largest in Russia. *Table 88* shows the available physical and labour resources and performance indicators of the park over the last 3 years.

Table 88

Resources and Performance Indicators of the Gorky Park

Indicator	**1999**	**2000**	**2001**
1. Total area of park (Ha)	112,7	112,7	112,7
2. Leisure facilities – total (units)	24	24	24
including:			

- requiring overhaul	11	11	7
- in emergency condition	-	-	-
3. Attractions (units)			
including:			
- mechanised	13	13	13
- small-sized and game machines	175	175	175
4. PC (units)	-	-	-
5. Employees – total (units)	304	323	322
including:			
- permanent staff	290	276	281
of which:			
- leisure specialists	80	89	112
6. Cultural, leisure and fitness events – total (units)	1250	1250	1050
including:			
- for adults	800	800	630
- for children	450	450	420
7. Paid events (of total events)			
- events	-	-	-
- attendance	-	-	-

In 2001 the park's territory of more than 100 hectares accommodated 24 leisure facilities, Russia's average being 13 per park.

The Gorky Park is characterised by high availability of attractions, with 13 mechanised attractions and 175 game machines. Russia's averages are much lower, 6 and 9 respectively.[45] Their number did not change in the period under review.

Table 89 suggests that the park's financing more than doubled over the period under review from Rb 29629.0 thousand in 1999 to Rb 64910.0 thousand in 2001. In 1999 revenues from primary statutory operations accounted for almost one half of available funds while the second half was split almost equally between funds from the city budget and entrepreneurial proceeds. Over three years the structure of financing did not change. In 2001 the share of revenues from entrepreneurial activities amounted to almost one half of the park's total revenues (42.9%) while the shares of two other sources declined (18.6% − budget; 38.5% − own revenues).

Table 89

Financial Revenue Structure of the Gorky Park

Source of Revenues	**1999**	**2000**	**2001**
1. Regional budget funds			
- Rb thousand	7924,6	10843,6	12076,4
- share of total financing (%)	26,7	24,7	18,6
a) current operations (budgeted maintenance)			
a) current operations (budgeted maintenance)			
- Rb thousand	5930,7	6650,5	9796,4
- share of total financing (%)	20,0	15,1	15,1
b) improvement of inventory			

[45] 2001 data. See: Cultural and Leisure Organisations, Parks of Culture and leisure of the Russian Federation in Figures, 2001. Statistical Yearbook. Moscow, 2002 / GIVT of the Ministry of Culture.

- Rb thousand	1993,9	4193,1	2280,0
- share of total financing (%)	6,7	9,6	3,5
2. Revenues from primary statutory operations			
- Rb thousand	14616,9	19268,7	24957,0
- share of total financing (%)	49,3	43,8	38,4
3. Other revenues and proceeds			
- Rb thousand	7087,5	13846,1	27877,3
- share of total financing (%)	24,0	31,5	42,9
a) entrepreneurial activities			
- Rb thousand	7087,5	13846,1	27877,3
- share of total financing (%)	24,0	31,5	42,9
b) sponsorship			
- Rb thousand	-	-	-
- share of total financing (%)	-	-	-
TOTAL			
- Rb thousand	29629,0	43958,4	64910,0
- share of total financing (%)	100	100	100

3.3.2 Budgetary Financing

Over three years the share of budgetary funds in the park's total financing fell from 26.7% to 18.6%. Moreover, their share grew 1.5 times in absolute terms and amounted to Rb 12076.4 thousand in 2001. This increase is largely due to the funds for the park's current operations (budgeted maintenance).

Apart from current financing, the park received funds for improvement of inventory. These funds were negligible, their shares of total financing being 6.7% in 1999 and 3.5% in 2001.

3.3.3. Extrabudgetary Financing

In 2001 extrabudgetary revenues accounted for 81.4% of the Gorky Park's total financing. This indicator was traditionally at its highest with parks of all other cultural entities under the Ministry of Culture but generally across Russia it was still lower at 62.4%.[46]

Over three years revenues from primary statutory operations grew 1.7 times from Rb 14616.9 thousand in 1999 to Rb 24957.0 in 2001. Moreover, their share of total financial proceeds declined respectively from 49.3% to 38.5%. The bulk of these revenues were generated by paid public services related to attendance of the park, its leisure facilities and attraction.

The park provides cultural services to the public on a payable basis. These revenues are largely derived from primary statutory operations − it is payment for use of attractions, services of cultural and leisure facilities (tennis courts, boat-houses, ski-house, sports floors, leisure centres etc.), park entrance fee.

The Gorky Park provides part of its services to the public free of charge. It annually accommodates more than 1000 large cultural, leisure and fitness events. In the period under review the park did not receive revenues from these events as they were held free of charge. In addition, no entrance fee is charged during public holidays such as Victory Day, City Day and some others.

Entrepreneurial activities is the second important source of extrabudgetary revenues which grew almost 4 times over three years from Rb 7087.5 thousand in 1999 to Rb 27877.3 thousand in 2001. The share of these revenues also sizeably grew. While in 1999 they accounted for one-fourth of the park's total revenues (24%), in 2001 they amounted to almost one half (42.9%).

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[46] Cultural and Leisure Organisations, Parks of Culture and leisure of the Russian Federation in Figures, 2001. Statistical Yearbook. Moscow, 2002 / GIVT of the Ministry of Culture.

3.3.4. Revenue Spending Structure

In 1999 – 2001 the Gorky Park's total revenue spending structure remained practically unchanged (see *Table 90*). Wages and extra payments accounted for nearly 40% while the rest (60%) were physical and equally treated expenditures which included provisioning and disposables, travel and local trips, transport services and utilities, communication services etc.

Table 90

Total Revenue Spending Structure of the Gorky Park, Rb thousand

Areas of Spending and Budget Classification Codes	**1999**	**%**	**2000**	**%**	**2001**	**%**
Wages (110100)	6700,3	30,0	10175,4	23,8	19547,0	29,7
Extra payments (110200)	2465,7	11,1	3726,0	8,7	7193,0	10,9
Physical and equally treated expenditures *	13114,4	58,9	28921,8	67,5	39049,0	59,4
TOTAL	22280,4	100	42823,2	100	65789,0	100

* This item included the park's total expenditures except wages (plus extra payments).

Over three years the park's wage-related expenditures almost tripled and amounted to Rb 19547.0 thousand in 2001. This was largely due to the growth of the monthly average wage which increased from Rb 1837 in 1999 to Rb 5059 in 2001, being 3.5 times higher than the countrywide average. The park's staff grew negligibly from 304 in 1999 to 322 in 2001. Moreover, this growth was attributed to free lance staff alone. The staff structure changed considerably. While in 1999 leisure specialists accounted for 40% of the total permanent staff, in 2001 they accounted for only 28% of the latter.

Annex 4. Analysis of the peculiarities of the financial and economic activities of scientific institutions

4.1. Analysis of the peculiarities of the financial and economic activities of an academy scientific research institute

The peculiarities of the financial and economic activities of an academy institute may be analyzed only by taking into account the specifics of the organization and functioning of the Russian Academy of Sciences itself (further—the RAN), including its history, traditions, and place and role of the academic elite in the structure of the Russian government (vlast'), etc. According to the Federal law "On science and state scientific technical policies" (further—the Law on Science)[47] the RAN and five branch academies are "noncommercial organizations (institutions (uchrezhdeniia)) having state status which are endowed with the right to govern their own activities and the right to possess, use, and have at its disposition property in Federal property ownership which has been transferred to them." The academies have the right to create and reorganize organizations which are a part of their structure, to assign Federal property to them, and to approve their charters, etc. The RAN and the branch academies are endowed with

[47] Adopted on 23 August 1996, №1 27-FZ. In the wording of Federal law № 111-FZ dated 19 July 1998.

the right to govern their own activities (they are self-governing organizations) and are a legal entity created without limitation of period of activities.

The institutes of the academies are their basic component (enter into them) and are independent legal entities. The legal vagueness (the "legal dilemma"[48]) which exists in these definitions, although it does permit the academies to find certain loopholes in legislation in order to achieve their own goals, at the same time also creates noticeable problems in the relationships between the academies and the institutes entering into their structures and also between the academies and agencies of the executive and legislative authorities.

The basic purpose of the RAN's activities is organizing and conducting fundamental research, facilitating the development of science in Russia, reinforcing ties between science and education and training scientific personnel of the highest qualifications on this basis, and expanding ties between science, manufacturing, and innovational activities.

The RAN operates on the basis of its charter and of the legislation of the Russian Federation (further—the RF). This permits it and the other academies to independently form the lines their work takes, at the same time receiving financing at the expense of funds from the Federal budget (Subsection 1 of Section 06 of the Federal budget "Fundamental research and facilitation of scientific technical progress"). The academies are direct recipients and the main managers of funds from the Federal budget.

As an example for analysis of the peculiarities of the financial and economic activities of an institution of academy science, an institute (further—the Institute) of the Russian Academy of Sciences was chosen that was created in the 1960s by what was still the Academy of Sciences of the USSR (in accordance with a resolution of the Presidium of the Academy of Sciences of the USSR). В 2001 г. In 2001 the Institute was accredited as a state scientific organization and has the appropriate certification. The Institute does studies in the field of the social sciences.

The overall number of employees at the Institute has fluctuated at the level of 450 to 500 persons (the number of researchers—from 300 to 350 persons). Over the past five years the overall number of people working at the Institute has declined by about ten percent, and the number of researchers—by more than thirty percent. This reduction has occured mainly owing to young employees without a degree who, having acquired experience and scientific and organizational connections while at the Institute, have preferred more highly-paid work.

At the present time two academicians, one corresponding member (academician and corresponding member are ranks) of the RAN, and more than sixty doctors of science and one hundred thirty candidates of science are working at the Institute. The share of doctors of science thereby comes to more than twenty percent of the number of researchers working, while the share of candidates of science comes to more than forty-five percent, which is a high index even for an academy institute. The number of doctors of science at the Institute has remained practically constant over recent years, while the number of candidates of science has declined insignificantly.

A post-graduate program for candidates of science has been operating at the Institute since the middle of the 1960s, and a doctoral program—since the end of the 1980s. Three dissertation councils in five specialties are in operation for consideration of dissertation works. However, the

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[48] The academies of science represent a kind of a formation of many institutions within the structure of a single "main" institution having broader rights than a "simple" institution. The academies thus act as higher scientific organizations which are legal entities and which have undergone state accreditation. After the new Civil Code was adopted the academies were supposed to bring their charters into accordance with its articles. However, this process has dragged on because the law necessary for these purposes was not prepared. Today the only special law regulating the activities of the academies is the law on science (Article 6). The most important achievement of the academies in the changing of this law and the charter, along with "independence," is the clause on the subsidiary responsibility of the property owner (that is, of the Russian Federation) for the academies' obligations. This clause, however, does not extend to the relationships between an academy and its institutes (organizations).

activity level of the training of personnel of high qualifications remains low (in comparison with the "Soviet" period) despite a certain intensification in recent years. The number of graduate students does not exceed seventy persons, while the number of persons seeking the degree of candidate of sciences does not exceed twenty. About thirty candidate's dissertations and five doctoral dissertations have been defended at the Institute over the last three years.

Despite existing financial, organizational, and personnel difficulties, the Institute endeavors to strengthen the system for training young personnel in the "profile" area of science. It is the founder of several departments at institutions of higher education. Two educational establishments are at work on its territory. This permits not only involving students in scientific work (primarily during school semesters), but also securing supplemental work and earnings for full-time employees at the Institute.

As a RAN organization the Institute possesses, uses, and has at its disposal federal property transferred to it for operational control. The register of this property has been approved by the RAN. Like many other academy institutes created during the Soviet period, the Institute possesses rather large areas, a part of which are rented out (including to RAN institutions; see Paragraph 15 of this Report). A plot of land is also assigned to it (for usage without time-limit and free of charge), which is in accordance with a clause in the Law on Science.

The Institute has been issued a "Certificate of right to perform economic activities in accordance with the founding documents within the framework of existing legislation" by the Moscow Registrations Chamber.

The average annual value of the Institute's fixed assets comprises about seventy million rubles. The share of machines and equipment in this value has dropped over recent years from twenty-two to eleven percent. Technical material provisions for scientific research activities mainly includes personal computers. There is a RAN optical fiber communications node at the Institute. The Institute has access to the Internet and possesses various office equipment.

For purposes of studying the peculiarities of the financial and economic activities of the Institute, interviews were conducted with the deputy director, the academic secretary, the chief bookkeeper, and employees at the Institute's bookkeeping office and planning division. The Institute's leadership also made the following materials available for analysis: the Institute's Charter, the Charter of the Russian Academy of Sciences, the Statute (Polozhenie) on Recording Policy, the Standardized Job descriptions, the data from bookkeeping reporting, and the plans for scientific research work. Laws, regulatory acts of the RF, and instructions and other documents regulating scientific technical activities were used during the analysis process.

Taking into account the information made available, the inquiry into the Institute's financial and economic activities was conducted basically using the years 2001 and 2002 as an example. Statistical data encompass the period from 1995 through 2000.

In anticipation of analysis of the results obtained, it has to be noted that in the last two or three years the regulatory legal base regulating financial and economic activities and manner of conducting bookkeeping and tax records (uchet) (and reporting (otchetnost')) at institutions has undergone significant changes. It did not prove possible thereby (as all who were queried noted) to eliminate contradictions and disjunctures between different types of reporting. As before, there are no completely worked out regulations (Ministry of Finance of Russia standards) on bookkeeping records for the budgetary sphere, and first of all for recording of outlays and revenue. Introduction by the Ministry of Finance and other Federal agencies of new regulatory acts in this sphere has not been accompanied by timely development and bringing to the notice of institutions of detailed and non-contradictory instructions and commentaries on how their use in financial and bookkeeping reporting is to be practiced. Under these conditions, bookkeeping services are not yet able to find their bearings completely freely in the situation which has taken shape, which makes it difficult to get non-contradictory assessments from them. Budgetary organizations find it difficult to maintain a large bookkeeping service to conduct all kinds of

recording and reporting. It is important that in 2002 the Government of the RF proposes to complete inventorying and reorganization of state funded institutions and to move from estimate-based financing to financing by state order (by orders or purchases placed by the state), which will require new changes in the bookkeeping records of budgetary organizations.

4.1.1. Description of the charter of an organization and of the contract with the director

The Institute has the status of a state institution and is a structural component of the RAN. The "profile" Department of the RAN effectuates the scientific methodological and scientific organizational guidance of the Institute. The Institute is a legal entity, a noncommercial scientific organization, it has an independent balance, and it has current accounts at the Federal Treasury of the Russian Federation.[49] The Institute has a seal depicting the State Coat of Arms of the Russian Federation (a special privilege of scientific institutions of the RAN) with an appellation and other formal attributes.

The operative Charter of the Institute was developed in 2001 and will be corrected again according to the rules of the General Meeting of the RAN conducted in May 2002. The changing of the Charter in 2001 was provided for by special resolution of the Presidium of the RAN. This resolution directed all organizations of the RAN to bring charters and other founding documents into accordance with changes in existing legislation (in particular in the Civil Code and Article 6 of the Law on Science), and also to take into account the mandatory "wishes" of the Presidium of the RAN.

The Charter determines the "rules" of the Institute's activities, taking into account operative regulatory acts, in particular the charter documents of the RAN, the resolutions of the General Meeting of the RAN and the "profile" Department of the RAN, and instructions of the Presidium and a RAN Local Office. The Institute is also guided in its activities by the Charter and Collective Agreement.

The Charter is drawn up on the basis of recommendations (including mandatory ones) from the Presidium on the structure and content of sections of charter documents of RAN institutes.[50] It includes the following sections, which accord with the requirements of the Civil Code of the RF and determine the status and manner of the activities of the Institute: I—general provisions; II—purposes and subject of activities; III—structure and Charter; IV—property and financial resources; V—governance; VI—recording and reporting; VII—reorganization and liquidation. The Charter is coordinated with the Local Office and approved by the Presidium of the RAN.

4.1.2. Peculiarities of the activities of the Institute as a state scientific institution

The peculiarities of the activities of any academy institute are determined, in our view, by the following circumstances ensuing from existing legislation and practices in the functioning of the system of academy institutes in the RAN as a whole.

- The Institute is a basic structural component of the RAN, the main purpose of which is conducting fundamental research in a particular scientific field.
- The RAN possesses the right to govern its own activities and it determines the basic lines fundamental research takes in the country. Institutes of the RAN have the right to form the basic lines their activities take and implement plans for scientific research projects.

[49] Until 2001—both current hard currency and ruble accounts in banking institutions.
[50] "Basic principles of the organization and activities of the Institute of the RAN" (standardized charter).

- The RAN possesses rights to create and reorganize academy institutes, is the main manager of budgetary funds, and determines the financing plans of institutes. At the same time it is a noncommercial organization and possesses the same rights and obligations as the institutes forming parts of it.
- Institutes of the RAN possess, use, and have disposition of property which is in Federal property ownership and which has been transferred to them in the established manner for operational control and also property acquired due to funds received for entrepreneurial activities and on other grounds not forbidden by law.
- Institutes may have branches and representative offices, participate in the activities of domestic and international organizations, and be the founder or co-founder of commercial organizations and an investor in partnerships.

The Charter regulates the financial and economic activities of the Institute, determining, first of all, its financial resources, which include:

- funds from the Federal budget allotted to the Institute in a manner established by the Presidium of the RAN;
- funds coming in as the targeted financing of studies carried out according to Federal programs, grants from state scientific foundations, and also from subsidies from international and foreign noncommercial organizations and foundations, scientific programs, competitive projects, etc.
- funds coming in from customers for execution of projects according to agreements (contracts) for producing scientific products (services);
- revenue from entrepreneurial activities envisaged by the Charter;
- revenue from renting out real estate in Federal property ownership;
- voluntary contributions and donations, other receipts not forbidden by law.

As has already been noted, the Institute possesses and has at its disposition Federal property assigned to it with the right to operational control. It does not have the right without permission of the RAN and coordination with the Agency for Managing RAN Property to alienate (mortgage, contribute to the charter funds of economic partnerships, etc) property assigned to it and acquired at the expense of budgetary funds.[51]

As Institute property ages physically and becomes obsolescent it may be written off in an established manner.

The Institute has the right to independently manage funds received for execution of jobs by order and revenue (property) acquired due to funds received from entrepreneurial activities or transferred to the Institute free of charge by legal entities and physical persons. Such Institute property is recorded on an independent balance.

4.1.3. Purposes and subject of the Institute's activities

Of special significance to analysis of financial and economic activities are the formulations in the Charter in which the rights of the Institute are designated, namely:

[51] Created in 1998 (jointly by the Presidium of the RAN and the Ministry of Property of Russia) for managing RAN property. The Agency is a Ministry of Property structure; however, its manager is appointed jointly with the RAN.

- to determine the subject matter lines studies take, to adopt and implement plans for scientific research projects, to effectuate their financial, logistical, and informational support;
- to develop estimates of outlays, including targeted financing of temporary scientific groups, receive and expend funds (in Russian and foreign currency), to form special funds from these funds (a bonus fund—from budgetary funds; a fund for material incentives for scientific and social development—from extra-budgetary funds); to use property assigned to the Institute for developing basic activities;
- to conduct fundamental and applied research, to participate in Federal and regional scientific programs, projects, forecasts, etc.;
- effectuate scientific and applied activities, conclude agreements for the execution of scientific research and applied works with state institutions (ministries, agencies, foundations, etc.), enterprises and organizations and other customers according to the Institute's activities profile on a mutually advantageous basis;
- use bank credit and bear responsibility for its targeted usage and timely return.

4.1.4. Governance of the Institute

Governance of the Institute is effectuated in accordance with existing legislation and the Charter. Guidance of the Institute's activities is effectuated by the Director, officials of the Institute, and the Academic Council in accordance with the powers assigned in the Charter.

The Institute independently forms its own organizational structure and determines its staff and the makeup of its governing organs.

The Institute conducts bookkeeping records and bookkeeping, tax, and statistical reporting in an established manner and annually presents the RAN (the planning and finances directorate) with a report on financial and economic and scientific organizational activities.

The Academic Council operates as an organ of collective governance at the Institute and is elected after elections for Director by secret ballot at a General Meeting of the Institute's research fellows by those scientists or scholars having a scholarly degree. Leading scholars or scientists from other institutes may be elected to the Academic Council. The Director is chairman of the Academic Council, and the Institute's Academic Secretary is its secretary. The makeup of the Academic Council is approved by the Local Office.

The Academic Council develops the lines the Institute's activities take and current scientific problems, discusses and approves the reports of the director and the managers of the scientific subdivisions, and also the most important results of the Institute's scientific activities, scientific reports, and publications, and it chooses the editors-in-chief of the Institute's publications, etc. Possible disagreements between the Director and the Academic Council are resolved by the RAN Local Office.

The Institute's structure includes subdivisions in accordance with the basic lines scientific research takes and with the Institute's tasks. Subdivisions, the majority of which are scientific subdivisions, function according to the regulation concerning their activities approved by the Director. Several temporary (for a period of up to five years) research groups also operate at the Institute. The basic role of subdivisions consists of forming the subject matter of scientific projects and preparation of reports, publications, etc.

The Institute's personnel (literally: collective) also takes part in governance through the General Meeting (conference) at which the Charter is adopted, the Academic Council is elected,

candidates for the position of Director are considered, and the Director's reports are discussed, etc.

4.1.5. Elections and the director's functions.

The Institute is headed by the Director. The last time the Director was elected was in 2002 at a meeting of the Institute's research fellows. The functions and powers are defined by the Institute's Charter.

Election of the director of an academy institute, according to the procedure prescribed in the RAN Charter, envisages three stages. The first is discussion of the candidates at a meeting (conference) of the Institute's research fellows. The second is election of the director at a general meeting of the Department (sic!) by secret ballot from among all registered candidates taking into account the results of discussion at the first stage. The third stage is approval of the director at the RAN Presidium (for a period of up to five years). When elections for Director are being conducted, distribution of the appropriate notification (to all the institutes of the "profile" Department) is accomplished a month before. This is done so that these institutes can nominate their own candidates. However, such a situation (especially in "old" RAN institutes) rarely arises. Traditionally in academy institutes belonging to the social sciences directors have a degree no lower than the doctor's degree (an unspoken rule is that a director should be an academician or a corresponding member). According to new rules an age qualification for directors (age seventy) has been introduced at the RAN. In the instance we are considering the Institute's directorate and Academic Council submitted to the General Meeting (more exactly, a meeting of electors, who comprised about a quarter of the research fellows), only one candidacy—that of the current Director, who has headed the Institute for more than ten years. The meeting voted for the director's candidacy practically unanimously, and he was approved in that position by the RAN Presidium. In the event that election did not take place or the candidacy was not approved, the Presidium has the right to appoint an acting director for the period until the next elections (not more than two years). A director can also be removed by the RAN Presidium upon representation by the Institute's Academic Council.

A substantial difference between the RAN Institute and agency institutions is that the RAN Presidium (or other structure) does not sign a work agreement (contract) with the director insofar as he is chosen by the Institute's collective. All the Director's rights and duties are prescribed in the Institute and RAN Charters. The Director performs the following basic functions and duties for organizing and supporting the Institute's activities:

- acts in the name of and represents the interests of the Institute, manages its property and monetary resources, bears responsibility for its safekeeping and efficient use; concludes agreements, grants powers of attorney; and opens budgetary and other accounts, etc.

- reports back to the RAN Presidium and Local Office and the Institute's Academic Council and collective on all issues relating to the Institute's activities;

- approves structure (including temporary subdivisions), manning schedule, number of structural subdivisions, and the Institute's budgetary estimate; concludes and abrogates work agreements with employees; determines the form and size of wage payments, and establishes wage increases for employees, etc.

The Director delegates a part of his powers for governing the Institute's activities to his deputies, who are elected by the Institute's Academic Council.

4.1.6. Analysis of procedures for appointing and dismissing at the Institute

In accordance with the Charter, appointments (hiring) to positions and discharge (dismissal) of employees at the Institute are effectuated by the Director.

The Director is also responsible for personnel policy at the Institute. The Director's basic efforts in this area are directed at attracting young scholars and scientists to the Institute, consolidating the best personnel, and improving the Institute's structure. However, that is difficult to do in the financial situation which has arisen in Russian science as a whole. Today about seventy percent of Institute personnel are of pension age. Young people remain at the Institute only if there is the possibility of participating in foreign projects and programs. However, it frequently happens that, having gotten the chance to "consolidate themselves" at these projects, they leave the Institute anyway, go abroad, etc.

4.1.6.1. Appointment of employees

The Institute's manning schedule of scientific technical and administrative personnel is developed in accordance with pay grades (dolzhnostnye oklady) and employee qualifications on the basis of labor legislation and is approved by the Director.

The relationships of the Institute's employees and management (relations of social partnership in the sphere of labor) arise on the basis of a work agreement and are regulated by labor legislation (since 2002 by the new Labor Code of the RF). Hiring procedures on the basis of labor legislation envisage the arising of work relations (conclusion of a work agreement).

As is provided for by labor legislation and RAN rules, research fellows and laboratory managers are hired to work at the Institute by open competition to fill vacant (freed) positions. The right to announce such competitions belongs to the Director. Research fellows taken on through a competition are approved at the Institute's Academic Council.

When employees are being hired, the rights of Institute employees and the range of duties which are established by position instructions approved by the Director are taken into account. Position instructions for personnel are compiled on the basis of standardized RAN instructions and also of the Unified Qualifications Reference Work approved by the Ministry of Labor of Russia. Position instructions for the Institute Director's deputies are approved by the Director and partially prescribed in the Charter. The Director also approves the Statutes (Polozheniia) regulating the activities of structural subdivisions and the official duties of their managers.

The work agreement, the form and content of which are defined in the Labor Code, is concluded on the basis of the employee's application and is signed by the Director.[52]

According to the Charter's clauses, the Institute has the right to establish and change (in accordance with existing legislation and the regulatory documents of the RAN and agencies of state authority) wage scale rates (salaries) and increases to them within the limits of the approved wage fund (see Paragraphs seven to ten).

A Statute on payment of wages operates at the Institute in which there is established the manner of paying rewards for facilitating and execution of scientific research contractual projects for the creation and transfer of scientific products; contracts for apprenticing (stazhirovka) and training graduate students; and agreements on organizing and conducting studies for projects supported by the state and scientific foundations, etc. Jointly with the union committee and on the basis of recommendations from RAN employee unions, a regulation has been developed on a bonus system of wage payments for all categories of housekeeping services. A procedure has

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[52] Agreements were not concluded at the Institute during the preceding period. Since 2000 agreements for new personnel are concluded for one year. Under the conditions of the shortage of qualified employees who are prepared to go to work at the Institute at the existing pay level, such a practice allows parting with random people painlessly. If the administration does not raise the question of abrogating a contract, it is considered to be automatically extended for one more year. Institute "old-timers" do not conclude contracts. More exactly, it is considered that they have concluded contracts without time limits.

been established for paying bonuses to research fellows taking into account the quality and results of their work, combining professions, attracting temporary employees, etc.

In order to retain qualified personnel, an entire system operates at the Institute of increases and bonuses at the expense of funds which have been received by agreements with customers, rental (partial), etc. These increases come to one hundred to five hundred percent. In order to retain qualified employees at the bookkeeping office, the most significant increases—up to nine hundred percent—are allotted for incentives for their activities.

4.1.6.2. Dismissing employees

In accordance with labor legislation, early abrogation (cessation) of a contract occurs (as it did previously) mainly at the wish of the employee himself (abrogation of contract at the employee's initiative) and by transfer (in agreement with other organizations).

When an employee is dismissed at the initiative of the administration, it is necessary that certain conditions be fulfilled (multiple violation of or failure to fulfill work duties, unfit for their position, etc.). Sometimes dismissal is practiced at the Institute in connection with reorganization of scientific subdivisions. Although from the point of view of organizing the scientific process at the Institute this cause for dismissal seems the best grounded one, in case it goes to court, the courts most frequently find themselves on the side of the dismissed employees.[53] When necessary to resolve these issues, the union organization and the Institute's Labor Collective Council (Work Council) take part. Active role (upon the appropriate appeal) in the defense, including in court, of institute employees is played by the RAN employees' union.

In connection with certain difficulties of a financial and organizational nature the Institute (like other budgetary organizations) tries to avoid administrative dismissals and seeks the voluntary agreement of the employee to dismissal.[54]

In accordance with the law on science and the Institute's Charter, evaluation of the qualifications of research fellows and whether they are fit for their positions is secured by the procedure of certification. Certification is conducted no less than once every five years. At a meeting of the certifications committee (there are several at the Institute—according to the number of lines science takes) the contribution of every research fellow to the fulfillment of the Institute's plans and of contract projects, his participation in the most important state programs and projects, and in competitions for financing research at the expense of budgetary funds is evaluated. Taking into account the "academy" specifics of the Institute, special significance is attached at certification to participation in competitions to receive grants from Russian (the Russian Foundation for Fundamental Research (RFFI) and the Russian Scientific Foundation for the Humanities (RGNF) and foreign foundations and also the employee's record of publications activity.

The decisions of a certifications committee (on being unfit for one's position) bear a recommendational character and are grounds for the Director to make a decision on dismissing an employee.

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[53] Taking into account the peculiarities of the scientific process on the whole, to prove the groundedness for dismissing an employee in connection with his not being up to the job, that is, that he carries out scientific work "badly," is practically impossible.

[54] One court case alone on the dismissal of an employee in connection with reorganization of a subdivision dragged on (with intermittent success) for two years.

4.1.7. Analysis of relationships with the founders of an organization

4.1.7.1. Relationships of the RAN and academy organizations

As has already been noted, the Institute is a structural component of the RAN. Taking into account the special status of academies, the RAN may be called a founder of academic institutes only to a certain theoretical degree. The relationships between the RAN and the institutes is defined by the Civil Code of the RF, by the law on science, in which their status, rights, organizational structure, etc., are considered, by the RAN Charter and the charters of the institutes, and by the resolutions and instructions of the RAN Presidium and Local Office.

According the law on science academy's Charter, the RAN (through the RAN Presidium) is endowed with the right to:

- create, reorganize, and liquidate enterprises, institutions, and organizations entering into their makeup,
- approve managers in their positions,
- define more precisely the specializations and basic lines institutes' projects take,
- assign Federal property to them,
- build major scientific sites,
- approve charters and the appointment of managers elected by institute collectives.

The Council of Directors of the RAN (a consultative-deliberative body at the RAN Presidium) operates to increase the efficiency of the RAN Presidium's work with regard to managing the institutes.

4.1.7.2. Rights and duties of the RAN in relation to the Institute

The rights and duties of the RAN in relation to the Institute are determined by its status as a self-governing organization and its role in conducting fundamental and applied scientific research on the most important problems and areas of science. The RAN acts as coordinator of fundamental scientific research carried out by academy organizations and financed at the expense of the Federal budget and approves (through the "profile" Department) the plans for the Institute's scientific research activities.

The special role of the RAN in the financial and economic activities of the Institute is determined by the fact that it is the direct recipient and main manager of Federal budget funds. The RAN Presidium approves the annual plan for the budgetary financing of the Institute.

At the same time the RAN (through the Presidium):

- approves the records of Federal property transferred to the Institute for operational control;
- evaluates efficiency of usage of this property (the balance commission does this);
- determines (in coordination with the appropriate Federal agency of executive authority authorized by the Government of the RF to manage and dispose of sites in Federal property ownership—the Agency for Managing RAN Property) the conditions under which the Institute rents out without right of purchase property in Federal property ownership, including real estate and temporarily not being used;
- accomplishes activities to improve the social welfare of research fellows (through concluding and fulfilling a branch (wage scale) agreement in the capacity of the employer's representative);
- effectuates (the not at all burdensome) monitoring of the Institute's financial and economic and scientific organizational activities. In particular, the Local Office effectuates such verification approximately once every five years.

The basic purpose of the Institute's activities as a component part of the RAN is the execution of fundamental research in the area of the social sciences.

The relationships of the Institute and the RAN with regard to scientific and economic activities are determined by the subject matter plan and are constructed on the basis of a budgetary estimate which the RAN as the manager of budgetary funds brings to the Institute. The lines research activities financed according to the budgetary estimate take are determined independently at the Institute. Technical tasks, estimates on individual lines taken, turn-over and acceptance documents, and calendar plans are not compiled and not approved by the academy.

Although in fact the entire amount of the financing of academic institutes and the RAN on the whole may be regarded as a state order placed with science for fundamental research, formally the RAN (the Presidium of the RAN) is not a state customer for such projects. Therefore the RAN and the Institute for all practical purposes do not enter into contract relations with regard to scientific research activities (see Paragraphs 11-12).

The situation could change if the RAN Presidium gets the right to be a state customer for fundamental projects. For the time being this is being obstructed by existing norms for forming orders placed by the state, by the "quiet" counteractions of non-academy science, and by the ambiguous position of the Presidium itself.

By RAN Presidium resolution, leading and young scholars and scientists at the Institute are allotted state scholarships (about thirty such scholarships were allotted in 2000-2002). Upon representation by the RAN Presidium, since 1998 two scientific schools at the Institute have been receiving support through the appropriate state program.

The Institute reports back to the RAN Local Office on scientific work performed and also to other agencies and organizations within the bounds of their competence as established by existing legislation of the RF.

If one asks oneself the simple, at first glance, question of the role of the RAN (and its structures) in the Institute's scientific and economic "life," then, in the opinion of its management (disregarding the allocation of financial resources, which in principle can also be effectuated in other ways), today to a great extent it amounts to consolidating the academy community and preserving its special status.

4.1.8. Compiling and coordinating the work plan

4.1.8.1. Procedure for compiling the work plan

Compiling and coordinating work plans at the Institute takes place in a way long since worked out at the RAN. About in September of the current year an order is issued at the Institute on developing the basic lines studies will take for the next year (the form of the tasks within the framework of the basic lines is worked out at the Institute). These tasks are given out to the subdivisions, which determine the subject matter of the projects according to profile and also determine who will carry them out. Further, management discusses and generalizes proposals by the subdivisions (laboratories, sections (otdely)) and sends the respective document (basic lines the Institute's activities take) to the RAN Local Office, which approves these lines and returns the document to the Institute for forming up the subject matter plan's project. This plan is formed up taking into account the Basic lines the Institute's scientific activities take up to 2005 (by three lines and seven sub-lines), also approved by the Local Office.

The procedures for working out the Institute's plan most vividly reflect the specifics of scientific work in the RAN system. The Institute completely independently determines the lines its scientific activities take, while the procedure for coordination at the Local Office bears a formal nature.[55] Moreover, although the RAN does determine the priority lines fundamental

[55] Sometimes communications on the subject matter plan, or reports on concrete topics may be read out and heard at the Local Office, but this occurs rarely and is most likely connected not to the Local Office's monitoring functions, but to scientific interest or organizational circumstances.

research takes and the most promising areas, the subject matter of projects at concrete Institutes nevertheless is based on intuition, experience, and the qualifications of their managers and best employees.

In this connection, the Academic Council, which discusses and coordinates the work plans of the subdivisions, is of special significance for determining the scientific lines taken at the Institute.

The work plan of the Institute as a whole is approved at the Academic Council, at the Local Office, and at the RAN Presidium.

4.1.8.2. Factors influencing compilation of the plan

The amount of financing (according to budgetary estimate from Federal budget funds) is a substantial factor when compiling the subject matter plan. Depending on the scale of financing, the Institute includes thirty to fifty topics in the subject matter plan. It is important that some plan topics may be carried out only when additional sources of financing appear. Thus an appreciable part of the Institute's projects are tied to development of program product and require good "instrumental" accompaniment, which cannot be secured exclusively on account of the budgetary estimate.[56]

Another factor is the availability of specialists with the needed qualifications. It may be noted that the list of research lines traditional for the Institute, including those which go on from year to year, and the subject matter of start-up (zadel'nyi) projects reflect to a significant degree the "list" of leading employees and their scientific interests.

It is impossible to plan the possibility of the Institute's obtaining projects by contracts and grants. At the Institute such projects are accomplished exclusively at the initiative of personnel, although their subject matter is discussed and to a certain degree monitored by management. Management evaluates how the subject matter of contract projects accords with the basic lines the Institute's activities take and with the possibilities of personnel potential and it also evaluates the legal and financial conditions for the concluding of contracts. The factor of the Institute's prestige (its "brand") is of substantial significance to this evaluation.

As to personnel participation in competitions for foundation grants, such activity is welcomed in every way at the Institute. With that, in distinction, for example, from ministerial agency organizations, some of the Institute's personnel work exclusively through grants and international projects and do not execute plan projects.

In this way, the Institute's work planning is conducted mainly within the framework of basic subject matter. A general plan of the Institute's projects for all lines taken is not compiled. Non-plan projects are taken into account only at the end of the year when the scientific and scientific organization report is being compiled (and incompletely at that). The absence even of the contours of a general plan hinders estimation of the total amount of financial resources which the Institute can receive in the current year, of the load placed on each employee by plan and extra-plan subject matter, and the securing of labor resources for each topic.

4.1.8.3. Evaluating the results of the Institute's work

The "quality control" (priemka) procedure for the results of the Institute's work also most often is of a formal nature. The subdivisions draw up scientific reports (the basic result of the Institute's scientific activities) in full and short form which are kept at the Institute and are sometimes read out and heard at the RAN Local Office.

Some reports are read out and heard at the Academic Council. The RAN Local Office receives a scientific organizational report in which only the brief content and the results of work on individual topics of the plan are given. A brief report on the Institute's work is sent to the

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[56] Because of financing limitations, by budgetary estimate computers in laboratories are upgraded only when there are supplemental sources (economic agreements, grants, etc.).

RAN Presidium (the scientific organizational section) and is used to prepare materials for the scientific and scientific organizational report to the RAN (sometimes to a RAN general meeting).

In the opinion of the academy community, monitoring on the part of the RAN of the scientific activities of the institutes should be kept to a minimum not only because of the status of academy organizations, but also because of the amounts of the financing of scientific research, which do not permit conducting them at the desired level.

Evaluation of the results of the Institute's work done through contracts and grants takes place in accordance with operative practice.

4.1.9. Determining lines and kinds of activities in the Institute's Charter

Основные направления и виды деятельности определяются Институтом самостоятельно, что отражено в положениях его Устава.The basic lines and kinds of activities are determined by the Institute independently, which is reflected in its Charter's clauses.

- As a RAN organization the Institute organizes and conducts fundamental and applied research in accordance with the plan for scientific research projects in the amounts of the budgetary allocations allotted for these purposes.
- In accordance with existing legislation, the Institute accomplishes entrepreneurial activities (scientific research activities through agreements, contracts, grants, etc.) serving the achievement of charter purposes and tasks, including which it may participate in companies.
- The Institute can execute research and development (R&D) on a contract basis within the framework of state programs and projects at various levels, develop scientific forecasts, and perform examinations within its field of expertise, etc.
- Provision is also made for the possibilities to:
    - found scientific publications, accomplish publishing activities, put out monographs, preprints, collections, articles, and methodological materials;[57]
    - cooperate with institutions of higher education (conduct scientific research, train personnel[58]);
    - effectuate the training of scientific personnel of the highest qualifications through graduate study programs, doctoral programs, and apprentice programs and organize qualifications enhancement programs for personnel;
    - conduct competitions for scientific projects, organize scientific conferences, meetings, symposiums, schools, and other scientific events (including with the participation of foreign scholars and scientists[59]);

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[57] As is the accepted thing in the academy community, great attention is devoted at the Institute to publishing activities. A number of the periodical publications founded by the Institute are published abroad and are popular in Russia. In 2000 alone twenty-six monographs were published at the Institute.

[58] As has already been noted, a number of departments at institutions of higher education function with the direct and active participation of scientists and scholars from the Institute. The Institute is the founder of two educational institutions and cooperates with foreign universities.

[59] It should be emphasized that in connection with financial limitations this kind of activities at the Institute has been curtailed to a significant degree in recent years. The chance to conduct large-scale scientific events today is basically tied to financial support from foreign (more rarely Russian) scientific foundations and organizations. Many scientific seminars are conducted exclusively due to the enthusiasm of individual scholars and scientists.

- effectuate international scientific cooperation and participate in the activities of international organizations; effectuate non-domestic economic activities;
- effectuate other kinds of activities not in contradiction to existing legislation.

4.1.10. The scale of the Institute's activities

As has already been noted, this scale is determined first of all by the amounts of budgetary allocations which are allotted the Institute within the framework of basic budgetary financing and within targeted funds. The amounts of basic budgetary financing are determined by the RAN as the main manager (according to the law on the budget) of funds from the budget for the routine financial year. The Ministry of Industry, Science, and Technology of the RF participates in preparing the proposals (applications) of the academies for the Ministry of Finance of the RF.

Financing of academy institutes is effectuated according to Subsection 01—fundamental research (of Section 06 "Financing fundamental research and facilitating scientific technical progress" of the Federal Budget) within the framework of the quotas (literally: limits) of budgetary obligations. Fundamental research is financed according to Article 270 (kind of expenditures 216—other R&D). Maintenance of institutes—according to Articles 271-280 (kind of expenditures 075—current maintenance of structures within their jurisdiction). The subject article of economic classification for projects financed through contracts is 187. Grants from the budgetary funds of the RFFI and RGNF are distributed in a targeted fashion (target articles 286, 287—RFFI and RGNF expenditures, kinds of expenditures 072—R&D through RFFI and RGNF grants).[60]

Taking into account the fundamental, on the whole, specialization of the Institute and the basic purposes of its charter activities, we would note that its personnel receive a significant quantity of grants from budgetary funds. Over the last three years they have received more than two hundred and fifty grants. In 2000 alone the Institute received about forty RGNF grants and thirty RFFI grants. At the same time the "fundamental" specifics limit the Institute's possibilities to participate in Federal Targeted Program projects.

The overall annual amount of financing for the RAN is fixed in the law on the budget for the respective year, and the Academy cannot exceed these quotas. The basic factors influencing the amounts of budgetary financing of the Academy are well known. Among them are the general economic and budgetary situation in the country, the general economic course of the government, and its policies in relation to science. Examination of these factors is beyond the framework of this study. We would only note the following. At the same time as academy institutes cannot for all practical purposes influence the increasing of their budgetary estimate, which is compiled "from the base," the RAN due to a considerable number of reasons has significant "lobbying reserves" for its interests in the Government and in the Administration of the President of the RF.[61] As a result, the share of the academies in the total "science budget" of the country is

[60] Target articles 271, 273, 274, 275, 276, 278, 279, 280 count as budgetary support for academies of science having state status and for regional branches of the RAN. Current maintenance of affairs management and of presidiums is effectuated according to Section 183 of the respective articles.

[61] In the opinion of some of the Institute's managers, the possibility the RAN leadership has to lobby actively for the interests of the Academy has a reverse side—a loss of standing and prestige for the scientific community on the whole. Many issues in science (including changing the attitudes of the executive and legislative authorities to its problems and prospects, observance by them of obligations they have accepted) depends on coordinated actions and consolidation of the stands of all the entities of scientific activities. "Pulling the blanket to one's own side of the bed" in these issues harms everyone.

increasing. At the same time the share of the budget in the amounts of financing for concrete institutes also remains significant.

In 1995-2000 the share of the Institute's funds from the Federal budget in the amount of internal outlays for R&D did not go below ninety percent (about fifty percent of all projects are financed according to the budgetary estimate) Funds from customers did not exceed nine percent of this amount. It is understandable that the amount of projects carried out under these conditions grew in accordance with the increase in the scale of budgetary financing (in 1995-2000 the amount of projects and the amount of budgetary financing of the Institute grew by 6.8 times). Despite numerous appeals to activate the efforts of academy institutes to search for extra-budgetary sources of funds, it is not very probable that the proportions indicated will change in the next few years (at least at institutes belonging to the social sciences).

When determining the actual amount of budgetary allocations which the Institute will receive in the next fiscal year, levels of financing from past years, manning schedule, and the necessity of introducing various corrective coefficients (connected to inflation, change in salaries and scales, etc.) are taken into account. Along with that, the tasks standing before the Institute, its real research potential (including personnel and the logistical base), efficiency of use of budgetary funds (results of checks made on targeted use by the Institute of budgetary funds over the previous years) are taken into account.

The scale of the Institute's entrepreneurial activities (projects according to economic agreements (khozdogovory—meaning: delivering services under legal contracts)) is basically determined by how active its personnel themselves are, by their professional reputation and personal contacts, and by their skill at submitting applications for grants, projects, etc. The circle of customers for contract projects includes budgetary organizations (academy institutes), Federal agencies of the executive authority (the Ministry of Industry and Science, the Ministry of Finances, the Ministry of Fuels and Energy, the Ministry of Economic Development, the State Committee for Statistics of Russia), regional administrations, foundations, institutions of higher education, and other structures. A characteristic feature of the Institute's scientific contacts in recent years is a certain decrease in the role of Federal "customers" and an increase in the role of regional ones. This is explained by the traditional (dating back to Soviet times) scientific ties the Institute has with the regions (including with regional academies) and its participation in scientific research on programs for the socio-economic development of the regions (in particular in 1998-2000).

4.1.11. Limitations on non-profile activities

Singling out charter and unsystematic, profile, and other kinds of the Institute's activities (which is tied to the new rules of bookkeeping recording) and their reflection in bookkeeping reporting requires the bookkeeper to be highly qualified.

The qualifications of the head bookkeeper at the Institute permits maintaining any records and any reporting. The problems are elsewhere. Instruction 107n, according to which bookkeeping recording is supposed to be conducted at institutions, has not been completely worked out and represents "working material." Other requirements for bookkeeping reporting are not distinguished by simplicity and non-contradictoriness, either. In particular, the lack of accordance between the distinguishing features of kinds of activities and the sub-accounts of bookkeeping records has not been eliminated. As long as the Institute for all practical purposes does not engage in non-profile activities, these imperfections are of no significance. However, for it, as for other state funded institutions of science, the necessity to differentiate kinds of activities will grow in the process of improving recording for purposes of taxation (including for purposes of applying tax privileges) and of bookkeeping recording of economic operations.

In its most general aspect, limitations on non-profile activities at the Institute are defined by the following clauses in the existing legislation for institutions.

** Separation of an institution's activities into charter actions (performance of actions, projects, and services envisaged by the Charter) and unsystematic actions (ones not envisaged by the Charter).* Among unsystematic actions are, for example, acquisition and installation of fixed assets, major construction, revenues other than from sales (for example, bank interest payments), etc. The Institute can acquire fixed assets and perform other actions only in those instances when such an operation is provided for in the budgetary estimate of expenditures (or in the budgetary estimates of expenditure of targeted funds).

** Separation of charter activities into basic charter activities corresponding to the institution's profile and functions, and other charter activities.* Concomitant and other services envisaged by the Institute's charter, but not basic to its profile, include, in particular, publishing activities and informational-consultative, organizational, and other services. The sphere of application of the General Economic Classifier of Kinds of Economic Activities, Products, and Services (OKDP) includes organizing and supporting the system for taxing enterprises and organizations. In this way, every state funded institution is supposed to single out the basic kind of activities corresponding to the institution's profile and functions (for example, performing R&D).

** The Institute's status as a noncommercial organization (one not having the extraction of profit as a purpose of its activities).* The Institute can effectuate entrepreneurial activities only because these activities serve to achieve the purposes for the sake of which the Institute was created.

The essence of these elucidations consists of the following. The Institute's basic charter activities and a number of concomitant (non-profile) lines taken are financed by the state. Other kinds of concomitant services envisaged by the Charter are allowed in principle by legislation, but are considered commercial ones (the state bears no financial obligations for such activities).

In 2000-2001 all of the Institute's scientific technical activities were basic ones and their share in the overall amount of projects carried out comprised one hundred percent.[62]

4.1.12. Manner of compiling the Institute's budgetary estimate of expenses

4.1.12.1. General outline for compiling the RAN budgetary estimate of expenses

The procedure for compiling the budgetary estimate of a RAN institute is examined taking the example of the preparation of the budgetary estimate of expenses for 2002.

The peculiarities of the legal status of the RAN as defined by the law on science and the RAN Charter predetermine to a significant degree the operative manner of compiling the budgetary estimate for academy institutes, the ways in which this manner deviates from the rules established by the Budgetary Code of the RF (the BK), and also the manner of the procedures implemented in other state funded institutions in the scientific technical sphere (in particular, in agency-subordinate scientific institutions). In accordance with the RAN Charter, the lines taken and priorities for forming the plan for budgetary financing for the following fiscal year are determined by a General Meeting of the RAN, while the annual plan for budgetary financing in which, in particular, distribution of funds among scientific organizations is also considered, is approved by the RAN Presidium.

Compilation of the budgetary estimate of RAN institutes for 2002 was effectuated according to the "Manner for developing and approving plans for financing scientific institutions

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[62] According to accepted methodology, calculation of amounts of scientific and scientific technical activities is done in the following way. The sum of outlays for research and development and scientific technical services is divided by the amount of projects carried out.

and other RAN budgetary recipients" approved by RAN Resolution №17 dated 23 January 2001 (further—Manner). Participation by scientific institutions and other RAN budgetary recipients in the preparation of financing plans is not envisaged in the Manner. RAN proposals for the amount of financing at the expense of funds from the Federal budget for the next year are prepared by the RAN Financial and economic Board without participation of the final budgetary recipients.

Essentially the RAN budgetary claim for 2002 (including in the context of its budgetary recipients) prepared by the Financial and economic Board and presented to the Ministry of Finances of Russia was formed taking into account the indices of RAN budgetary financing in 2001, the coefficients established by the Ministry of Finances for indexing budgetary outlays for science, and also the wage increase contemplated for 2002 in the budgetary sphere.

With overall indexation of outlays of the 2002 budget at 1.65 times, the coefficient of indexation of budgetary outlays for the section "Fundamental research and facilitation of scientific technical progress" came to 1.33 times, while the financing of RAN scientific institutions only grew by eighteen percent. As to the 1.89 times increase in wages promised by the Government, the amount of RAN budgetary financing in 2002 only allows a thirty percent growth in wages.

In this way, we would emphasize once again, the plan for financing the Institute at the expense of budgetary funds is formed without the Institute participating even formally.

After preparation of proposals for the draft of the Federal budget with reference to RAN financing, that is, of the RAN budgetary claim, the Financial and economic Board participates in its discussion and correction in accordance with the established procedure for preparing the Federal budget with regard to the section "Fundamental research and facilitation of scientific technical progress" for the routine fiscal year.

The Federal law "On the Federal budget for 2002" was adopted on 30 December 2001. On 15 January 2002 the indices for financing the academy established by this law were discussed at a session of the RAN Presidium, which approved the consolidated parameters of the plan for financing RAN scientific institutions and the program for targeted RAN Presidium outlays for 2002.

The Financial and economic Board detailed the enlarged parameters of financing to the level of individual budgetary recipients and made more precise the enlarged parameters of the plan for financing RAN scientific institutions (in particular, in connection with Appendix 31 to the Federal law in which the Government of the RF established that part of the quotas of budgetary obligations with regard to the RAN would be communicated at a later time).

After that, the RAN Presidium approved the plans for financing scientific institutions and other RAN budgetary recipients for 2002 (RAN Presidium Resolution №57 dated 19 February 2002 "On approving plans for financing RAN scientific institutions and other budgetary recipients for 2002). In accordance with this Resolution, institute directors were supposed to work out and present budgetary estimates of outlays of budgetary funds and other documents provided for by the Manner for developing and approving plans for financing scientific institutions and other RAN budgetary recipients to the Financial and economic Board by 1 March 2002.

Along with the text to Resolution № 57, the Institute received an excerpt from Appendix 1 ("the Plan for financing scientific institutions of the Russian Academy of Sciences from funds from the Federal budget for 2002"—kind of expenses 216) in which the overall amount of financing for the Institute is defined and its distribution among outlays for utilities outlays, other outlays, and wages with accruements is set.

According to this excerpt, 82.6 percent of funds from the Federal budget allotted the Institute for 2002 is intended for wages with accruements; 9.8 percent is for payment for utilities, and the remaining 7.6 percent is for other outlays.

The methodology for calculating the wages fund used by the RAN Presidium deserves attention. In accordance with the rules established for state funded institutions, the calculation is supposed to be determined on the basis of the distribution of the number of Institute employees according to the categories of the Unified Wage Scale Grid (ETS) and the wage scale salaries established by it. However, the Presidium's calculations were based on the singling out of three categories of the employed (personnel without scholarly degree, candidates of science, and doctors of science) and on the determination of the average level of wages for each of them (for example, the average wages of a doctor of sciences is taken to be equal to three thousand rubles). That is, the amount of funds allotted the Institute for payment of wages within the framework of basic budgetary financing is determined otherwise than required by the rules established for state funded institutions. We would make the remark that when the Institute's fund for payment of wages is calculated in accordance with these rules, the fund proves substantially less than the amounts set by the RAN Presidium.

Thus the Institute set about compiling the budgetary estimate of outlays for 2002 in February 2002, after receiving the RAN Presidium Resolution on approving plans for financing scientific institutions and other RAN budgetary recipients.

4.1.12.2. Stages for compiling the budgetary estimate

Compilation of the budgetary estimate of outlays of budgetary funds for 2002 amounted to distribution of the amount of financing for the Institute "released" by the Financial and economic Board according to positions in the budgetary classification of outlays (with the actually already set distribution of the overall amount by individual outlay items) and to quarters and to indication of the respective budget classification codes. The form of the budgetary estimate of outlays was standard (that is, it coincides with the form of notifications of budgetary allocations and of the quotas of budgetary obligations).

The Institute's budgetary estimate of outlays was sent to the RAN Presidium within the established time periods (before 1 March 2002). This estimate was not subjected to any corrections. That is, it sufficed that its combined indices (overall amount of financing and its distribution between wages with accruements, utilities, and other outlays) coincided with the plan for financing the Institute established by the Presidium. Detailing of these outlays by positions in the budgetary classification was effectuated by the Institute as it thought best.

Already at the end of March 2002 the Institute received from the RAN Presidium a "Notification of budgetary allocations from the Federal budget for 2002" and a "Notification on the quotas of budgetary obligations of the Federal budget for 2002." While the content of the first of these notifications coincided fully with the budgetary estimate of outlays compiled by the Institute, the second one differed from it by the indices for the fourth quarter (the respective column "Notifications on the quotas of budgetary obligations" was not filled in).

Practically simultaneously with compilation of the budgetary estimate the Institute was engaged in preparing supplementary agreements to the contracts with the resource supply organizations with which it has direct contracts (Mosenergo, Mosvodokanal, and the thermal networks. These agreements determine the amount of funds necessary to the Institute to pay for the individual kinds of utilities (true, the indices established in the agreements are subject to correction and revision during the course of the year).

After approval of all these documents the Institute presented to the territorial agency of the Federal Treasury in April 2002 the budgetary estimate for budgetary funds, the notification on the quotas of budgetary obligations, and the supplemental agreements to the contracts with the resource supply organizations. The estimate thereby is a sort of reference document for the Treasury. The notification on the quotas of budgetary obligations and the supplemental agreements are the grounds for financing the Institute at the expense of budget funds.

In connection with the fact that the Treasury received all these documents only in the second quarter of 2002, financing of the Institute in the first quarter was effectuated on the basis of the notifications of the quotas of budgetary obligations which the RAN Presidium prepared every month and sent to the Institute.

The estimate of the Institute's outlays for extra-budgetary activities was represented by two documents—the estimate of revenue and outlays according to targeted funds and the estimate of revenue and outlays according to entrepreneurial and other revenue-producing activities. The expected amounts of revenue on the whole and also its distribution by positions in the budgetary classification of outlays were presented in them. These estimates were presented to the Treasury in the first quarter of 2002. As a rule, the estimates of outlays for extra-budgetary activities are corrected over the course of the year (the overall amounts of revenue are made more precise).

Thus the Institute prepares and presents to the Treasury separate estimates of outlays for each of the three sources of its financing. The Institute does not compile a combined estimate of revenue and outlays. The grounds for financing the Institute at the expense of funds from the Federal budget is the "Notification on the quotas of budgetary obligations."

It is obvious that the sequence of compilation of the budgetary estimate of the RAN Institute described above differs from the requirements set by the Budgetary Code and the procedures implemented in other state funded institutions in the scientific technical sphere. Insofar as the procedure for compiling the estimate of outlays is set by the RAN (the direct recipient and main manager of funds from the Federal budget), the reasons for these divergences are tied both to the peculiarities of the legal status of the RAN and the given respective regulatory documents and to the extraordinary stability of the traditions and rules which have formed in it.

Taking into account these circumstances, the sequence of compilation of the Institute's estimate of outlays demonstrates distinctly the RAN's aspiration to maintain the previous way of doing things, at least within the academy system, and to change it (that is, to comply with Budgetary Code requirements) only "on the way out the door" of the way things were formerly done. In fact the RAN does not require its budgetary recipients to prepare a budgetary claim or a preliminary estimate of outlays. The Presidium determines the overall amount of financing for its budgetary recipients by itself, without the participation of the latter. And only after adoption of the law on the budget and transition to the process of executing it (and more exactly—to its stages, which are effectuated within the framework of sanctioning budget outlays) do RAN budgetary recipients begin "playing" by the general rules established by the Budgetary Code, insofar as this is necessary to the acceptance of their outlays for financing. Only when the draft of the Federal budget for 2003 was being prepared did the RAN Presidium request proposals from the Institute relating to the amount of financing for R&D at the expense of funds from the Federal budget. That is, despite the budgetary process sequence established by the Budgetary Code, the Presidium involved the Institute in the preparation of the budgetary claim for the first time. This "tardiness" only confirms the conclusion as to the RAN's inertness and its lagging behind in implementing the general norms and rules established by budgetary legislation.

4.1.13. Recording and distribution of profit in an organization

The manner of bookkeeping and tax recording operative at the present time in state funded institutions establishes that their profit may be formed only due to revenue from entrepreneurial or other revenue-producing activities. At the same time, the presence of this revenue and its reflection in the bookkeeping reporting of a state funded institution does not influence the forming of its profit directly; that is, a state funded institution may have revenue from entrepreneurial activities, but not have profit thereby.

Such a state of affairs is tied to the fact that profit is a category of tax recording, while revenue from entrepreneurial activities is one of bookkeeping recording. The divergences between these two kinds of records have intensified noticeably in the last several years. For state funded institutions these divergences are tied, in particular, to the fact that for purposes of taxation they have the right to apply both the general and the special (that is, relating to the sphere of activities of a concrete state funded institution) definitions of entrepreneurial activities contained in existing legislation.

Thus, having revenue from entrepreneurial activities, state funded institutions, in the majority of instances, can, within the framework of existing legislation, independently decide whether or not to form themselves profit and, correspondingly, form tax liabilities on it or not.

In the opinion of the Institute's management, a state funded institution has an interest in forming profit only in the event that the necessity arises of payments which can be effectuated only due to profit (what is meant is various kinds of fines, penalties, etc.), or the profit remaining after payment of a tax (the so-called tax on distribution) can be used for resolving problems important to the institution. Taking into account the fact that the new rules of bookkeeping recording in effect since 2001 permit effectuating the most various kinds of payments (including fines, penalties, etc.) at the expense of funds from Sub-article 111040 "Other current outlays," for a state funded institution the only "incentive" for forming profit is the chance to use that part of it which remains at the disposition of the institution. It is obvious that the force of this "incentive" depends directly on the scale of the funds (resources) which can be directed at forming the funds of a state funded institution which are envisaged by existing legislation. With that, the scale of the funds is evaluated not so much on an absolute scale as relatively (for example, in comparison with the overall amount of the institution's financing or "according to the value" of resolving problems important to it, etc.

A source for forming revenue at the Institute from entrepreneurial and other revenue-producing activities is funds received from customers according to contracts for execution of R&D. This kind of entrepreneurial activities is envisaged in the permission given to the Institute to open an account for recording these funds in the territorial agency of the Federal Treasury. The share of these funds in the overall amount of the Institute's financing has been at a level of ten percent the last several years. This, taking into account the absolute indices of the Institute's financing, permits the supposition that the potential size of the profit which may remain at the Institute's disposal should be evaluated as being insignificant. It is for this reason in particular that the Institute has not had a profit for many years now.

As one of the Director's deputies acknowledged, at the present time the Institute's management is discussing the problem of forming profit in 2002. This problem is tied to the fact that the necessity has already arisen several times for the Institute to pay for the medical treatment of personnel (in particular, for expensive operations conducted in life-threatening situations). The only possible source for forming these funds is the Institute's funds which are formed from profit. Thus in the event the Institute should show a profit in 2002, any decision as to forming it will be motivated by social reasons first of all.

4.1.14. The structure of the Institute's financing sources

Beginning in 2000, three basic sources for obtaining funds directed at supporting institutes and other activities are singled out in the bookkeeping reporting of state funded institutions:

- budgetary financing (which in turn is subdivided into basic and supplementary financing);
- targeted funds and receipts that do not require repayment;
- funds from entrepreneurial and other revenue-producing activities.

The correlation of these three sources of financing remained practically constant for the RAN Institute in 2000 and 2001.

65% - budgetary financing;

25% - targeted funds;

10% - funds from entrepreneurial activities.

It is obvious that the basic source of funds which the Institute has at its disposal is budgetary financing. According to estimates by the Institute's head bookkeeper and the deputy Director in charge of the financial aspects of its activities, the share of funds from entrepreneurial activities is expected to grow to fifteen to twenty percent in 2002, which naturally will lead to a change in the correlation of financing sources which has taken shape—to a lowering of the absolute weight of budgetary financing and targeted funds. However, in their opinion this change should be regarded not as some kind of turning point in the Institute's financing structure, but in a certain sense as a random splash brought about by the fact that for 2002 the Institute plans to conclude several major contracts for execution of R&D.

To evaluate the Institute's financing structure and the prospects for its dynamics it is necessary to examine the makeup of the basic sources of its funds and the concrete kinds and content of the activities due to which they are formed.

4.1.15. Budgetary financing

In accordance with the requirements of bookkeeping recording, the Institute's budgetary financing is subdivided into basic financing and supplemental sources of budgetary financing.

Basic budgetary financing is formed due to direct allotment of budgetary funds, the overall amount of which and its distribution into wages, utilities payments, and other outlays is determined by the RAN Presidium at the beginning of the current year. Thus the overall amount of basic budgetary financing of the Institute for 2002 in the amount of a little more than twenty-four million rubles was "released" by the Presidium in February 2002 (adduced in Paragraph 7 of the RAN Presidium's Resolution). Basic budgetary financing covers about fifty percent of the Institute's outlays.

Revenue received by the Institute for renting out space in a building which is in Federal property ownership but was transferred to the Institute with the right to operational control belongs among the supplemental sources of budgetary financing of the Institute. Revenue from rent, that is, supplemental sources of budgetary financing, secures fifteen percent of the overall amount of Institute financing.

The remark should be made that the Institute rents out a significant part of its space. There are about twenty renters. The thing is that the Institute's building was built at the end of the 1970s calculated on the basis of the number of people employed at it in that period—more than a thousand persons. However, the number of people employed at the Institute today has decreased by half, that is, the space which it has at its disposal substantially exceeds not only its financial possibilities, but also its real needs.

Despite the fact that the "contribution" rent makes to the overall amount of the Institute's financing is significant, management considers it the source of a number of problems which it has not been possible to resolve for many years now. We will examine here only those of them which are directly connected to the size of the revenue from rent and with its use.

The Institute's Management treats the choice of renter organizations very, very carefully and seriously. Among its renters are institutions of higher education, several academy structures (including academy institutes), and small science-intensive firms (in particular, ones connected with development of program products, etc.). That is, when rental contracts are concluded, both the sphere of activities of the renters and their reputation is taken into account.

Problems with "academy" renters arose from the very first day they appeared in the building. Decisions as to their accommodation in the Institute's building were taken by the RAN Presidium at various times. Not a one of these structures pays for utilities, motivating that by the fact that funds for these purposes are not provided for in their budgetary financing, whereas budgetary funds for paying for utilities are allotted to the Institute. However, the funds allotted the Institute within the framework of basic budgetary financing for utilities outlays are only enough to pay for the utilities "consumed" by its building for two or three months. It is namely that which compels the Institute to use funds received from renting out property to pay for utilities. The situation reached a critical point already this year, insofar as the growth of utilities payments led to the revenue from rent being insufficient to pay for utilities. The Institute was unable to find any leverage to apply to the "deadbeats." Attempts to resolve this issue through the RAN Presidium also proved useless.

Thus it can be said that the Institute is compelled to misemploy the revenue from rent: that is, not to develop scientific activities as envisaged by the respective legal acts.

It is obvious that the overall amount of the Institute's supplemental budgetary financing, everything else being equal, depends on rental rates, the level of which is set by the Agency for Managing RAN Property. When raising these rates, the Institute so informs its renters. The growth of rental payments is leading to the departure of several of the renters from the Institute. Others seek and frequently find possibilities for "privileged" payments (or maintaining the previously operative conditions). In a number of instances various academy structures (letters, petitions from RAN departments, etc.) have played the role of "defenders" of Institute renters. The Institute's Management, in particular, is being reproached for "strangling" small business when it raises the rent, and that cannot be allowed, etc. That is, in a certain sense a paradoxical situation is taking shape.

The Agency for Managing RAN Property increases rental rates, and at the same time the RAN opposes implementation of these decisions. This allows it to be said that the growth of supplementary budgetary financing for the Institute, that is, of revenue from renting out property, is being held back by opposition on the part of the RAN.

It is obvious that if any outside verifications were to be made (for example, by the Accounts Chamber), the "rent problem" might get the Institute's management into serious trouble.

The situations examined here by no means exhaust the entire set of the Institute's "rent" problems, which are discussed in Paragraph 15 of this material.

4.1.16. Targeted funds and receipts that do not require repayment

The basic source for forming these funds are grants from domestic foundations for supporting science (RFFI and RGNF, first of all), which account for up to ninety percent of the overall amount of the Institute's targeted funds. Over the last several years the Institute has had about seventy grants a year from various foundations.

More than half of the grant funds go to pay the wages of those who carry them out. From ten to twenty percent of the funds from each grant (depending on its amount) are "deducted" for overhead expenses. These funds are used in accordance with the content of subject Article 111000 "Other current outlays for purchases of goods and services" of the budgetary classification of outlays. Along with that, grant funds are used to pay for the communications services necessary to execute each grant (the Institute is not allotted budgetary funds for these purposes). Despite the undoubted significance to the Institute of the way the grant funds singled out above are used, their role in supporting the Institute's activities is determined by the fact that they are the basic source of funds for purchasing equipment (computers and other technical equipment).

In accordance with the rules of bookkeeper recording at state funded institutions, included in the makeup of the Institute's targeted funds are also funds which are at its temporary disposal and which are formed due to payments by renters for utilities and communications services, that is, which are transit payments by the Institute's renters for resources consumed and which are sent to resource supply organizations (the Institute has a direct contract with them, but its renters do not). About ten percent of the Institute's targeted funds go for these funds.

Incidentally, in distinction from utilities, all the Institute's renters pay for communications services. In management's opinion this is explained by the fact that in the one instance leverage on non-payers is directly in the Institute's hands (that is, for non-payment for communications services the Institute can simply turn off the renter's telephone), while in the other—in the instance with utilities—the Institute essentially has no leverage on non-payers among academy renters.

4.1.17. Funds from entrepreneurial activities

The sources for forming and utilizing these funds are defined in the permission to open an account for recording funds from entrepreneurial and other revenue-producing activities issued the Institute by the territorial agency of the Federal Treasury. Despite the fact that the list of possible sources for forming the Institute's funds from entrepreneurial and other revenue-producing activities contains about ten points, the basic and for all practical purposes only source of their forming in actuality is funds from customers for execution of R&D by contract.

Customers for R&D carried out by the Institute by contract are Federal agencies from the executive authority (ministries) and state funded institutions and also organizations of other forms of property ownership (in particular, the growth in the share of funds from entrepreneurial and other revenue-producing activities expected in 2002 is tied to receiving a major order for execution of R&D from a non-state company). While the overwhelming majority of the Institute's customers are budgetary structures (including ministries), the "contribution" of these two categories of customers in the overall amount of funds obtained from entrepreneurial activities practically coincides.

Up to ninety percent of the funds obtained by the Institute from entrepreneurial and other revenue-producing activities are used for wages with accruements paid out by the executor of the contracts. On the average, seven percent of these funds count as overhead outlays which are used for the general needs of the Institute in accordance with the content of subject article 111000 "Other current outlays for purchases of goods and services" of the budgetary classification of outlays. The remaining three percent of the funds to go pay for communications services, business trips, and other outlays tied to fulfilling contracts.

Thus if one evaluates the structure of the Institute's financing in accordance with the rules in effect for bookkeeping records, the share of budgetary financing (basic and supplemental) is at the level of sixty-five percent on the average.

However, the actual "contribution" of budgetary funds to the overall amount of the Institute's financing is substantially greater, which is explained by the makeup of two other sources of its financing. In actual fact, up to ninety percent of the Institute's targeted funds come from two foundations (RFFI and RGNF), which were formed at the expense of budgetary funds. True, in distinction from the Institute's budgetary financing per se, these funds are distributed on a competitive basis. If one takes into account the circumstance that part of the Institute's revenue from entrepreneurial and other activities is also formed at the expense of budgetary funds (that is, the customers for a number of R&D projects carried out by the Institute by contract are Federal ministries and other recipients of budgetary funds), the actual contribution of budgetary funds to the overall amount of the Institute's financing, as was emphasized before, exceeds ninety percent.

4.1.18. Description of the Institute's budgetary estimate of revenue and outlays

The following documents from the Institute's bookkeeping reporting for 2001 were used when describing the budgetary estimate of revenue and outlays: Form 2 "Report on executing the budgetary estimate of revenue and outlays by budgetary funds," which was compiled separately for basic budgetary financing and for supplemental financing; Form 4 "Report on executing the budgetary estimate of revenue and outlays by extra-budgetary sources," which is presented both by targeted funds and by funds obtained from entrepreneurial activities. Commentaries and elucidations to these documents were gotten from the Institute's head bookkeeper.

4.1.18.1. Budgetary estimate of the Institute's revenue and outlays by budgetary funds.

Basic budgetary financing

Execution of the estimate of revenue and outlays within the framework of basic budgetary financing is reflected in the "Report on execution of the budgetary estimate of revenue and outlays by budgetary funds" (targeted outlay article 281). The data from that report testify to the fact that basic budgetary financing was effectuated in 2001 in full accordance with the approved budgetary allocations.

The overall amount of the Institute's financing at the expense of funds from the Federal budget came to a little over twenty million rubles in 2001,[63] just as had been envisaged by the notification on budgetary allocations from the Federal budget for 2001 (the amount of quotas of budgetary obligations was somewhat less due to "zeroing" of the financing indices for the fourth quarter). As of 1 January 2001 the Institute had no remaining balance of budgetary funds.

The distribution of the overall amount of budgetary funds by groups of outlays which was set by the notification of budgetary allocations and fully financed in 2001 is characterized by the following correlations.

About eighty-three percent of the budgetary funds allotted to the Institute (more than seventeen million rubles) was used to pay for outlays according to two articles: 11011 "Wages" (sub-article 110110 "Wages for civil servants") and 110200 "Accruements for wages."

Ten percent of the overall amount of the Institute's financing (about two million rubles) went for sub-articles and elements of the outlays of Article 110700 "Payment of utilities." To evaluate the scale of the funds envisaged within the framework of the basic budgetary financing for paying for utilities it will suffice to note that in 2001 they only covered forty percent of the Institute's needs (more exactly—outlays for maintaining the Institute's building) for these funds.

The remaining seven percent of allotted budgetary funds (about one and a half million rubles) was used to pay for outlays envisaged by Subject Article 111000 (Other current outlays for purchase of goods and services." With that half a million rubles were distributed almost equally between the two sub-articles 111020 "Payment for current repairs to equipment and inventory" and 111030 "Payment for current repairs to buildings and premises," while one million rubles was directed at payment for outlays envisaged by the content of Sub-article 111040 "Other current outlays."

Analysis of the budgetary estimate of revenue and outlays by budgetary funds permits drawing the conclusion that the overall amount of basic budgetary financing is substantially less than the funds necessary to assure the normal functioning of the Institute. Moreover, budgetary financing is simply not envisaged for a number of outlays necessary to assure the Institute's functioning. This, in particular, is outlays to pay for communications services (Article 110600); scientific research, experimental design, and technological projects (Sub-article 111010); official

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[63] Here and further the indices of the Institute's estimate of revenue and outlays are rounded out and presented in millions of rubles.

travel (Article 110400), and, of course, capital investments in fixed assets (Article 240000). According to assessments by the Institute's management, the most acute problem in this list is the lack of funds for major repairs to the building (this is examined in more detail in Paragraph 15 of this material).

Supplemental budgetary financing

A source of supplemental budgetary financing is funds obtained from renting out premises in the Institute's building. The overall amount of these funds came to about seven million rubles in 2001 (or 33.3 percent of the Institute's basic budgetary financing).

The manner in effect at the present time of recording these funds on the whole is determined by Resolution of the Government of the RF № 516 dated 6 July 2001 "On implementing Article 21 of the Federal law 'On the Federal budget for 2001.'" In accordance with it, supplemental Sub-article 2010212 "Revenue from renting out property assigned to scientific service organizations of the academies of science having state status" is singled out for recording revenue received by organizations in the scientific technical sphere from renting out property in the budgetary classification of revenue. Possible ways to use funds from targeted Article "Financing outlays effectuated at the expense of funds received for renting out property assigned to state organizations" (Code 530) are also set out here. Letters and other documents from the Ministry of Finance of Russia detail this manner and make it more precise.

In the opinion of the Institute's head bookkeeper, despite the availability of these documents, a practice for recording funds obtained from rent has not yet taken form. Today practice is determined not so much by requirements ensuing from the Budgetary Code as by rules established by the main managers of budgetary funds and by territorial agencies of the Federal Treasury. Thus the Institute effectuates recording of funds obtained from rent in the way RAN (the main manager of budgetary funds) and the respective territorial agency of the Federal Treasury require. At the same time it is known that RAN institutes under the jurisdiction of different territorial agencies of the Federal Treasury operate differently on this issue.

The revenue part of the Institute's estimate for supplemental budgetary financing is determined on the basis of rental contracts it has concluded which are subjected to expert examination at the Agency for Managing RAN Property, first of to verify accordance of accrued rental payments with the established rates. After that, the RAN Presidium approves the contracts and the estimates for the supplementary budgetary financing of its institutes. The estimate of the Institute's revenue and outlays by supplementary budgetary financing for 2001 was approved by the Presidium at the beginning of the second quarter of the current year.

Renter funds are entered into the Institute's current account at the Treasury which is intended for recording supplemental budgetary financing. The grounds for their entry into the current account are the approved estimate of revenue and outlays by supplementary budgetary financing and contracts with renters.

Despite the fact that existing legislation allows utilizing these funds for financing a broad spectrum of outlays, in the Institute's estimate for 2001 they were only distributed among three articles:

- Article 110700 "Payment for utilities," to which fifty-two percent of funds received within the framework of supplemental budgetary financing were directed;
- Article 110600 "Payment for communications services" (fifteen percent of funds received from renters);
- Article 111000 "Other current outlays for purchases of goods and services," in which two sub-articles are singled out—111030 "Payment for current repairs to buildings and premises" and 111040 "Other current outlays." Of the remaining thirty-three percent of funds received from rentals, fifteen percent went for the first sub-article and, accordingly, eighteen percent for the second.

The Institute's management thinks that such a distribution of funds received from rent is forced. In actual fact, funds for paying for communications services within the framework of basic budgetary financing are not allotted the Institute at all. As to paying for utilities, the level of their basic budgetary financing corresponds, as has already been noted, to the to the sum necessary to pay for the building's requirements for these services for one quarter. The relative dimensions of funds "diverted" for current repairs to the building are a kind of consequence of the lack of funds for major repairs, which is simply essential today.

The singling out of supplementary budgetary financing funds to pay for Sub-article 111040 "Other current outlays" is brought about by the fact that they can be used to resolve a wide spectrum of the Institute's current problems (in accordance with the established composition of the outlays which can be financed at the expense of this sub-article).

This commentary allows it to be said that the funds received by the Institute due to supplementary budgetary financing are used by it not for purposes of development, but for purposes of survival and preservation.

4.1.18.2. Budgetary estimate of revenue and outlays by extra-budgetary sources

The report on execution of the budgetary estimate of revenue and outlays by extra-budgetary sources is represented in the Institute's annual bookkeeping reporting for 2001 by two Forms 4: relative to entrepreneurial activities and relative to targeted funds.

Entrepreneurial activities

Over the course of the year, changes and supplements tied to the fact that several contracts for execution of R&D were concluded by the Institute in the second and third quarters, that is, already after the estimate had been approved, were introduced into the estimate presented to the Treasury in the first quarter of the Institute's revenue and outlays by entrepreneurial activities. The revenue in the estimate corrected thusly was envisaged as being slightly more than four million rubles and was equal to outlays.

The actual execution of the estimate coincided with the planned execution both as to the overall size of revenue and outlays and as to the structure of the latter. In 2001 the Institute received more than four million rubles in 2001 for execution of R&D by contracts with customers. These funds were expended completely over the course of the year according to the possible ways these funds could be used as defined in the permit for the Institute to open a current account for recording funds received from entrepreneurial activities at a territorial agency of the Federal Treasury.

About eight-five percent of these funds was used for wages with accruements (the sum of Articles 110110 "Wages for civil servants" and 110200 "Accruements for wages").

Seven percent of these funds count as outlays for overhead. They are used for general Institute needs in accordance with the content of Sub-article 111040 "Other current outlays."

As follows from the interviews conducted with the Director's deputies, a kind of unspoken norms operate at the Institute for distributing revenue received from entrepreneurial activities (which is formed due to performing R&D on the basis of contracts concluded with customers). According to these rules, not less than eighty percent of the funds from each contract goes for wages (with accruements) for those who execute it. Distribution of these funds among those who execute the contract is determined by the project's manager. Overhead outlays by contracts, that is, funds "diverted" for general Institute needs, comprise an average of seven percent of the value of a contract (for major contracts that percentage may be lower). As a rule they are used to pay for outlays envisaged by Sub-article 111040 "Other current outlays." The remaining funds from the contract are used to pay for communications services, official travel, and acquisition of consumables directly connected to the given contract. In the opinion of the Institute's management, the changing of these rules to the detriment of those who execute contracts (for example, the growth of "diversions" to general Institute needs) may lead to a decrease in the

funds received from entrepreneurial activities. That is, execution of these rules permits maintaining the balance between the Institute's interests on the whole and the "commands" of those who execute contracts.

The remaining eight percent of funds received from entrepreneurial activities was used to pay for the communications services used by those who executed contracts (Article 110600 "Payment for communications services"); purchase of items of supply and consumables necessary to them (Sub-article 110350 "Other consumables and items of supply); business trips and official travel directly tied to execution of contracts (Article 110400 "Business trips and official travel"); current repairs and technical servicing of equipment used for execution of contracts (computer equipment, office equipment; Sub-article 111020 "Payment for current repairs to equipment and inventory").

Cash basis execution of the estimate in 2001 differed from the actual execution due to a remainder of funds as of the beginning of the year and receipt of payment for execution of projects on individual contracts only at the end of the fourth quarter, which led to the formation of leftover funds as of the end of the year (about five percent of the overall amount of funds received from entrepreneurial activities).

Analysis of the budgetary estimate of revenue and outlays by entrepreneurial activities permits the conclusion to be drawn that the use structure of these funds is in a certain sense a forced one. On the one hand, the overall amount of these funds is insufficient to resolve problems key to the Institute (major repair of the building, renewal of equipment, etc.). On the other hand, the level of wages paid in science which has become established as of today "makes" the Institute use practically all the funds received from entrepreneurial activities to preserve personnel potential, that is, for wages.

Targeted funds and receipts not requiring repayment

The source for formation of this revenue is grants and funds the Institute receives to have at its temporary disposal which are transit payments by renters for resource usage to be sent to resource supply organizations. In accordance with the bookkeeping reporting rules of state funded institutions, the use of these funds in 2001 is reflected in Form 4 of the Report on execution of the budgetary estimate of revenue and outlays by extra-budgetary sources by separate tables: correspondingly by targeted funds (that is, grants) and by funds received for an institution's temporary disposal.

The contribution of targeted funds to the overall amount of the Institute's financing came to about ten million rubles in 2001, of which nine million rubles were received through grants and one million rubles from renters as compensation for paying for utilities and communications.

Renter funds were transferred to the respective resource supply organizations completely. Insofar as the Institute did not increase the cost of the services redirected to the real consumers in comparison with the prices and rates of the resource supply organizations and the communications operator, no tax liabilities arise when this operation is performed.

About eighty percent of "grant" funds were used in 2001 to pay executor wages (with accruements). The remaining twenty percent is the level of overhead outlays established for grants, half of which outlays are expended in accordance with the content of Sub-article 111040 "Other current outlays". Along with this, grant funds (up to ten percent) went for purchase of equipment essential to the Institute (computers and other equipment).

The Institute's management recognizes that it is grants which are the basic and practically the only source of funds directed at renewing the technical equipment base. However, they are clearly insufficient to resolve that problem for the Institute as a whole.

Analysis of the Institute's budgetary estimate of revenue and outlays with regard to individual sources of financing permits one to conclude that a significant part of the funds received are used to pay wages (about eighty percent on the average, including accruements for

wages). Funds are allotted in the minimally necessary amounts for all other purposes. This confirms the fact already noted that the Institute's management considers its basic task to be preserving personnel potential.

4.1.19. Peculiarities of concluding contracts for execution of projects

4.1.19.1. Peculiarities of concluding contracts for execution of scientific research projects

Contracts for creation, transfer, and use of scientific technical products (for rendering scientific technical, engineering consultative, and other services), and also other contracts, including for joint scientific technical activities, are the basic legal form (document) of the relations between a scientific organization and the customer for scientific technical products determining responsibility for obligations taken on and their fulfillment.

The form and content of contracts (dogovory) connected to scientific technical activities are determined by articles in the Civil Code of the RF (Chapter 38). The following articles from the Civil Code are of particular significance to the scientific technical sphere:

Article 769 – defines the differences between a contracting agreement (dogovor podriada) (transfer of result) and a contract (dogovor) for execution of projects;

Article 705 – defines distribution of risks when projects are being carried out. In a contract (dogovor) for execution of projects, risk is borne by the customer, while the executor bears the risk for fulfilling a contracting agreement (podriad);

Article 769 (sic!) – defines the necessity in contracts (dogovory) for taking into account the norms regulating exclusive rights (intellectual property);

Article 770 – defines the differences between scientific research projects and experimental design projects (the executor carries out scientific research projects by himself, whereas for experimental design projects he may take on co-executors at the expense of sums allotted by the customer without the latter's agreement). The customer pays the cost for scientific research projects, whereas for experimental design projects he pays for outlays incurred.

According to law an organization may conclude a standardized contract (dogovor) and a contract containing elements of various contracts (a contract for conducting R&D, a contract for creating (transferring) scientific technical products).

To effectuate the financial and economic activities of institutions those sections of a contract are important in which their cost and manner of calculation (methods of determining cost) are assessed. The price in a contract includes compensation of the executor's expenses and the remuneration due him. The price of a project is often determined by means of an estimate which the executor compiles and the customer confirms. The price of a project may be approximate or firm. An approximate price requires the parties to coordinate.

It is mandatory that a contract contain conditions for its abrogation and for compensation to the "victimized" party, including various sanctions (fines, penalties, forfeitures, etc.) Indemnities for losses caused the customer usually occur within the limits of the cost of the projects in which defects are revealed. Lost profit is subject to indemnification only in instances provided for by the contract.

The executor of a contract is obliged to execute projects in accordance with the technical assignment, to transfer results to the customer within the specified timeframe, and to coordinate with the customer the necessity for using protected results of intellectual activities belonging to third persons and the acquisition of the rights to their use and confidentiality conditions, etc.

If not otherwise provided for by the contract, the customer has the right to use results, including those capable of legal protection, while the executor has this right for his own needs.

4.1.20. Peculiarities of concluding contracts at the Institute

The Institute concludes the most various kinds of contracts—with customers and with executors of scientific technical projects and services and also of projects and services connected to its housekeeping (khoziastvennye) activities. Federal and regional agencies of state authority and institutions and foundations prevail among the Institute's customers for scientific research projects. However, on the whole the significance to the Institute's financial and economic activities of the projects carried out by contracts is not great. The "contribution" to the Institute's budget of contracts with ministries, agencies, and institutions does not exceed five percent.

Contracts connected to the Institute's housekeeping activities have no specifics, are concluded as contracting agreements, and are not examined in this survey. "Housekeeping" projects and services are paid for according to contract conditions and to invoice bills. The exactness with which these contracts are made out is important not only from the point of view of the Institute's interests, but also from the point of view of its relationships with the Treasury.

The manner of conclusion and the form of a contract are determined by existing legislation and financial and economic practice. As a rule, the Institute concludes a standardized contract for the execution of scientific research projects.

Such a contract usually includes the following sections: introductory part, contract subject matter, project costs and manner of settlements, manner of turn-over and acceptance, responsibility of the parties, special conditions, manner of resolving disputes, effective period, and legal addresses and bank details of the parties. The technical mission, the calendar plan, the protocol for coordinating price, and the estimate of outlays are included in an appendix to the contract. The execution of scientific research projects according to contracts at the expense of budgetary funds is effectuated according to Article 130150 (subventions) and is confirmed by turn-over and acceptance documents for the projects carried out in accordance with the clauses and forms of the contract. Primarily the following subject articles are provided for in the budgetary estimate of outlays: wages for civil servants (article code 110100) and accruements for wages (110200). Of the other articles, those are included which not only permit execution of the concrete study, but also resolving certain of the Institute's financial and economic problems arising because base financing did not permit "covering" all its needs. Most often, as was noted in Paragraph 10, the following is envisaged in the estimates: acquisition of items of supply and of consumables (110300), paying for communications services (110600), paying for utilities (110700), rent (110750), and other current outlays (111000).

The Institute has no permanent legal service; however the Institute's part-time lawyer constantly looks through all contracts to be sure the norms of existing legislation and the Institute's interests are observed. The lawyer is supposed to assure that Institute personnel participating in the contract have mastered it that a signed contract is a document in accordance with which the parties have rights and obligations and bear responsibility.

The state of unregulated scientific and financial freedom, the "license" which existed for a long time in academy institutes led to a state whereby personnel find it hard to get used to the necessity of precise formulation of all application and reporting documents relating to contracts. And the most important thing is that they are finding it painful to get used to a customer wanting to get only concrete results for his money (and can demand them), and not scientific work (even very good work) in general. Most likely it is this in particular which has become one of the reasons why the Institute has not yet been able to "assemble" a voluminous portfolio of customer projects.

The Institute's bookkeeping office, which evaluates the correctness of compilation of the estimate for a contract and keeps track of all obligatory payments and other operations, also participates in writing up contracts.

All the Institute's contracts are examined and signed by the Director. The Institute's management evaluates the goals, tasks, and possibility of execution of the work within the stated

timeframes and for the payment offered by the customer and the content and form of the concrete results. When the Institute is projects executor, the list of the leading personnel who will participate in the work is usually also known. Special attention is paid to timeframes in the event the Institute is the customer for the projects.[64]

Insofar as most often the Institute is the executor of the work, the contract price is determined by the customer. Usually this price does not change in the process of concluding the contract. Methods for calculating outlays taken into account in the price for contract scientific research work exist, but are rarely used. When calculating price (outlays) the developers most often rely on their own experience, general economic norms, and bookkeeping rules.

4.1.21. Contract structure within the framework of grant support for research

As has already been noted, the basic amount of "indirect" (outside the estimate) budgetary support for research at the Institute goes through grants from state foundations which are distributed according to competitions. In 2001-2002 their share comprises approximately twenty percent of the Institute's entire budget. The peculiarities of the arising of financial and economic relations relative to the execution of projects by grants are determined by the fact that concrete personnel at the Institute participate in grants (the recipient of the grant is the manager of the competitive project subject to financing), while the funds are transferred to the Institute's account. The Institute leaves for its needs (housekeeping outlays, paying for communications services, purchase of equipment, etc.) a certain (ten to twenty percent)[65] share of these funds. The remaining funds are distributed according to the estimate which the projects manager compiles independently.

The peculiarities of grant support for science also determine the specific form of the contract concluded in connection with its execution. A contract (agreement) is concluded between a foundation (RFFI, for example) in the person of the deputy chairman and the Institute in the persons of the Director and the grant recipient.

Proceeding from the definitions of fundamental scientific research presented in the law on science and from the grants and the foundation's Charter, the following is postulated in the agreement.

- The agreement's sphere of activities is the execution of fundamental research and the obtaining by the grant recipient of a fundamental scientific result.
- The possibility is accepted of obtaining a negative result or a result not coinciding with the result assumed in the competitive application, and the grounds for the respective outlays.
- A report which has received a positive conclusion from the foundation's council of experts is acknowledged to be the result of work presented according to the grant. Monographs, articles, computer programs, etc., may be a part of the results. Applied results and intellectual property may be considered in the capacity of results additionally.

The distribution of the functions of the parties when a grant is being carried out has (by comparison with a standardized contract for scientific technical projects) simplified form. A foundation finances a project from funds from the Federal budget in the form of a targeted grant not requiring repayment to a grant recipient (often the entire sum of the grant is transferred in one installment). The manager expends the grant's funds in accordance with the declared goals and

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[64] Instances when the Institute itself is the customer for scientific projects are rare for understandable reasons. Outlays according to the respective article have not been provided for in the base budgetary estimate in recent years. These outlays are also not very great in the estimates for grants from foundations and for housekeeping contracts.

[65] At the Institute the size of this share depends on the magnitude of the grant and the informal agreement made by the Institute's management and the projects manager. Deductions cannot exceed seven to eight percent for large-scale grants.

content of the research. The organization effectuates financial and economic and technical servicing for the execution of the competitive project and affords other necessary services.

The rights and duties of the parties also have certain specifics.

A foundation finances a project in accordance with an approved estimate through an institution of the Federal Treasury. Although the agreement can be abrogated in instances defined by law and the agreement, this rarely happens in practice. Expended funds are not compensated (although the executor "at fault" and the organization may be entered into the foundation's "blacklists").

The foundation also monitors the targeted use of the funds.

The manager has the right to use funds and change executors at his discretion and to keep the grant when projects are moved to a different place. Publication of the grant's results are an obligatory condition.

The Institute maintains separate records (and reporting) of the funds of targeted financing for each competitive grant, compiles a combined estimate for all grants, is responsible for recording the expenditure of budgetary funds (including bookkeeping reporting), and presents a financial report on the grant to the foundation.

Planned annual amounts of financing for a foundation's projects and an estimate of outlays (in a "standard" structure) are an appendix to the agreement.

4.1.22. Peculiarities of implementing projects for which the state is the customer (goszakaz)

Peculiarities of financing projects for which the state is the customer

Performing R&D for state needs (at the expense of budgetary funds and extra-budgetary sources) is financed by state contract. A contract is concluded on the basis of an order (including by competition) accepted by an executor. State agencies possessing the necessary investment resources or organizations endowed by the appropriate state agency with the right to have such resources at its disposal (institutions, state enterprises) may act as the customer. The executor of an order placed by the state (goszakaz) in science is a scientific organization.

A contract may serve as an effective instrument (especially under conditions of financial limitations) for forming and implementing state demand for research and development results under market conditions. An obligatory order placed by the state (for state scientific organizations) is regulated by Article 8 Clause 2 of the law on science. The competitive basis for an order in the sphere of science and technology is based mainly on the following regulatory documents: the Federal law "On competitions for placing orders for delivery of goods, execution of projects, and rendering services for state needs" (1999), Decree of the President of the RF "On initial measures for preventing corruption and curtailing budgetary outlays when organizing purchases of products for state needs" (1997), standardized Ministry of Industry and Science of Russia regulations ("On the manner of placing orders for execution of scientific research, experimental design, and technological projects of an applied nature for state needs by means of conducting an auction (competition) and other purchase methods and on the manner of concluding state contracts" (1997), "Manner of preparing, concluding, and implementing state contracts (projects) connected to securing state needs and tasks facing the ministry of Industry and Science of Russia (2001)") and others.[66] The preferred method for placing an order for research and development is open competitions (auction, tenders, quotas).

The difficulties of introducing the contract mechanism in the sphere of science and technology in Russia which concrete scientific organizations also encounter are determined by

[66] Uniformity of preparing and writing up the documentation for an order placed by the state determines the manner.

the fact that the contract system has significant gaps here. Contracts for performing R&D were recognized as a separate kind of contract only in 1996. However, a number of problems in other areas of legislation are still unresolved (especially as to protecting rights to intellectual property created at the expense of budgetary funds), which lowers the effectiveness of using that instrument, including for the state as a participant in contractual agreement relations.

The form and content of a contract by state contract coincide by basic sections with the standardized contract for performing R&D (perhaps written out in more detail). It is noted in it that the executor obliges himself to execute the work and give it to the state customer, while the customer obliges himself to accept it and pay for it. The customer works out a draft contract and sends it to the executor, who signs the contract and returns a copy to the customer. When there are disagreements about the contract's conditions, the executor compiles a record of the disagreements and sends it to the customer (or informs him he rejects the contract). If the disagreements are not settled, the order may be given to another party. If the contract is concluded according to the results of a competition, the contract is supposed to be concluded not later than twenty days after the competition was conducted. If one of the parties declines conclusion of the contract, this issue may be examined in court. The contract contains information on the amount and cost of the work, on the timeframes for the beginning and ending, on the size and manner of financing and payment, and on the ways the obligations will be executed. If the contract is concluded according to the results of a competition, then the conditions of the contract are supposed to correspond to the announced conditions of the competition and the proposals of the executor acknowledged as the winner of the competition. When state agencies decrease budgetary funds allotted for financing R&D in an established manner, the parties coordinate and agree new timeframes and conditions for execution of the projects. The executor has the right to demand that the state customer compensate losses caused by changing the timeframes for execution of the projects. Other contract changes are allowable only upon agreement by the parties.

4.1.23. Execution by the Institute of contracts with ministries and agencies

If the logic of the budgetary process is followed, any state allocations may be regarded as an order placed by the state. As has already been noted, this consideration is all the more relevant to budgetary outlays for fundamental research. In this sense, all the Institute's projects by subject matter plan and orders from ministries and agencies may be looked upon as a special order placed by the state and not assigned on a competitive basis.[67]

Among the most important projects of this kind which the Institute has carried out in recent years are the "Prospects for the scientific technological development of Russia" and "Creation of a national network of computer telecommunications. The development of allocated informational systems for the social sciences and the humanities" projects within the framework of the Inter-Agency Program of the Ministry of Industry and Science of Russia. The programs were implemented within the framework of research on priority lines taken for developing science and technology. Funds were allotted on a basis of not requiring repayment or return (as subventions according to subject article of economic classification 130150), which allowed the Institute's management to use them rather efficiently for execution of research projects (an example of the estimate for the project is given in *Table 91*). The Institute is also participating in several projects according to the "RAN Presidium's Programs in fundamental research" (complex programs in scientific research); however, the funds obtained from that source are insignificant.

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[67] It should be emphasized that in the opinion of the Institute's management many ministries which are customers for scientific research projects (and representatives of the Ministry of Finance) have a poor understanding of the peculiarities of these activities (and their results), which explains the problems of concluding "scientific" contracts (of an "order for a process"). As has already been noted, in the case of fundamental research these problems are only getting worse.

As to a state order per se in the scientific technical field, according to existing regulatory acts its forming and placing take place only within the framework of priority lines through deliveries for federal targeted programs (the Federal Targeted Program mechanism—FTsP).

Financing of state contracts to perform research and development for each competitive topic within the framework of an order placed by the state is effectuated from Federal budget funds envisaged for execution of the Federal targeted scientific technical program "Research and development in priority lines for the development of science and technology" (FTsNTP). Financing is effectuated according to Section 0602, targeted Article 281, Kind of outlays 187 (performing R&D within the framework of the Federal Targeted Program).

Academy institutes performing research connected to developing the social sciences may participate in FTsNTP projects according to the "Directed fundamental research" block (open competitions for these programs only began being conducted in 2002).[68]

Due to the Institute's scientific profile and the specifics of the programs themselves it had not yet participated in these competitions and has not concluded contracts to execute projects according to orders placed by the state (in the strict sense of that concept).

One more reason why the Institute is in no hurry to participate in competitions to execute orders placed by the state is, in the opinion of the Institute's management, the subjectivity which exists when they are conducted. A rather widespread opinion in the scientific community is that in the majority of instances the competitions winner is known ahead of time (for each program and project), and it is realistic to participate in a competition only as a co-executor of the "future winner."

Nevertheless, the Institute's management intends to be more active in pushing personnel to prepare applications to participate in competitions within the framework of Federal Targeted Programs. This decision is explained by the simplest of considerations. The amount of funds which are allotted within the framework of research according to Federal Targeted Programs is significant (at least for the Institute), and participation in a competition and obtaining of a state order is not only prestigious, but also very advantageous to the scientific organization (being freed of taxes, etc.).

Table 91

BUDGETARY ESTIMATE OF OUTLAYS by subventions at the expense of Federal budget funds to execute a scientific endeavor according to a project of the Ministry of Industry of Science of Russia (within the framework of financing priority lines taken)*

	Codes
Ministry: Ministry of Industry and Science of Russia	139
Section:	06
Subsection	02
Targeted article:	281
Kind of outlays:	182
Subject article:	130150
Unit of measurement:	Rubles
Subject article	
1	2
Wages – total	45
Including	
Wages for civil servants	45
Accruements for the wage fund (unified social tax, includes rates for	16.4

[68] It should be emphasized that the majority of projects within the framework of the Federal Targeted Scientific Technical Program (and the Federal Targeted Program as a whole) are of an applied nature and are oriented toward introducing concrete results into the manufacturing industries. For that same reason only an insignificant part of the projects are connected to developing the social sciences.

mandatory social insurance for accidents, etc.)	
Acquisition of items of supply and consumables	
Business trips and official travel	
Paying for transport services	
Paying for communication services	1.5
Paying for utilities – total	1.6
Including:	
paying for premises maintenance	
paying for heating energy usage	
paying for heating and technological needs	
paying for water supplies to premises	
paying for rental of premises	
Paying for current repair of equipment and inventory	
Paying for current repair of buildings and structures	
Other outlays	33.9
Paying for scientific research, experimental design, and technological projects	
Capital investments in fixed assets	1.6
TOTAL OUTLAYS	100

***** The title is conditional. The table's data are given in percentages of the total.

4.1.24. Ways of implementing responsibility for an institution's obligations

The Institute's obligations and the necessity of implementing responsibility for them arise from the clauses in its Charter and from existing legislation. The institute concludes contracts in its own name, effects transactions, acquires property and personal non-property rights, has duties, and acts as plaintiff and respondent in court and in arbitration court. The rights and duties of the Institute which arise in the process of scientific and economic activities are also regulated in every contract that is concluded with the customers and executors of scientific research projects (with legal entities and physical persons) and with the suppliers of goods and services, etc.

According to its Charter, the Institute secures its obligations through the property belonging to it and by means of which recovery can be sought (including monetary resources at its disposal) according to existing legislation.[69]

The Institute bears responsibility for the results of its financial activities and for execution of its obligations to the property owner, the budget, banks, and other legal entities and physical persons. Timely settlements with the state budget, bank institutions, suppliers, contractors, and other organizations are the Institute's duty.

4.1.24.1. The Institute's responsibility for scientific results

The Institute is responsible for the quality of research conducted and the obtaining of scientific results and is accountable for its work to the "profile" Local Office of the RAN Presidium, to the customers with whom contracts have been concluded, and to the other organizations the Institute has obligations to.

Responsibility for results and for the completeness and quality of scientific research projects and services carried out by the Institute within the framework of the subject matter plan are actually the prerogative of the Institute itself and of its management and leading personnel. The Institute itself has an interest in the quality of reporting materials (by subject material plan), insofar as quality is a component of its "image," a guarantor of the preservation of the status quo,

[69] In distinction from some other state funded institutions (for example, ones subordinate to ministries and agencies), the Institute is not responsible for RAN obligations and the RAN is not responsible for Institute obligations. At the demand of the RAN Presidium this point is mandatory for the charters of its organizations.

etc. Instances of reporting materials having to have finishing work done on them are rarely encountered.

The only organ which in reality effectuates expert evaluation of the Institute's subject matter projects and evaluates their quality is the Academic Council and also the scientific community (if the projects are published).

Responsibility for quality and timely execution of projects according to contracts is defined by the content of these contracts. All the stages of its execution of (by content, timeframes, amounts, financing, etc) and sanctions for its violation are spelled out in the contract. In distinction from the subject matter plan, the execution of projects according to contracts is confirmed by turn-over and acceptance documents for the projects carried out in accordance with the statements of coordination of prices, with the structure of the prices, and with the technical tasks and calendar plans of the projects. Violation of contract conditions may require work be done to finish it (at the expense of the executor). Quality execution of contract projects is important to the Institute from the point of view of expanding its scientific activities, fortifying its standing in ministries and agencies, and attracting additional sources of financing.

4.1.24.2. Execution of financial obligations

As a state funded institution the Institute cannot help but execute its obligations (at least those connected to its charter activities). The majority of the Institute's financial obligations are determined by budgetary financing quotas, "paid" according to the estimate, and monitored by the Treasury. The Institute bears responsibility for misuse of Federal budget funds in accordance with existing legislation.

Acting in its full legal capacity, the Institute can conclude contracts for purchase and sale of material valuables, for contracting (for repair and construction of buildings, etc.), and can pay off indebtedness for such contracts from Federal budget funds or from extra-budgetary funds. Like other state funded institutions, outlay of budgetary funds at the Institute according to the articles of economic classification is effectuated in accordance with contracts and invoice bills. For example classification code 110700 is payment for utilities; 110750—rent; 110600—payment for communications services; 110300—acquisition of items of supply and consumables; 111020—payment for current repair of equipment and inventory; 111040—other current outlays (according to contracts for affording informational consultative, educational, and other services); 130150—execution of scientific research projects according to contracts (at the expense of budget funds), etc. The Treasury verifies thereby not only that the outlay articles correspond to their intended purpose, but also that the respective contracts, way-bills, and invoice bills (for purchase of office goods, materials for current housekeeping purposes, furniture and office equipment, payment for transport services, etc.) are made out correctly.

The owner (the state through the RAN) is supposed to finance the Institute's charter activities from the Federal budget. The Institute's basic problems with execution of financial obligations are connected to the fact that allotment of budgetary funds for the Institute's "maintenance" takes place not in the full amount and with great delays.[70]

Failure to execute or untimely execution of obligations according to civil law contracts entails demands on budgetary organizations to pay forfeiture. According to Article 401 of the Civil Code, an entity which has not fulfilled its obligations (or has not fulfilled them properly) and which is not a commercial organization bears responsibility only if there is fault. The Institute can effectuate settlement with counterpart contractual parties only after transfer of funds by the higher-standing manager of budgetary allocations (the RAN Presidium, which receives them from the Ministry of Finance). The Institute cannot lawfully be blamed for delay in the

[70] Most often this happens with the articles for "utilities," "paying for communications services," and a number of others.

allotment of funds (at any stage), and demands for payment of forfeiture cannot be acknowledged to be rightful. Theoretically responsibility should not ensue, either, although obligations to pay debt are retained. An exception is when established limits of the amounts of creditor indebtedness which is subject to financing from the budget are exceeded. Such an excess, which the Director is responsible for, may be found in court to be "evidence of insufficient due diligence." If the funds were allotted in a timely fashion and fully, and the Institute did not execute its obligations or misused the funds, then demands for payment of forfeiture will be found to be rightful.

A "normal" outline for the arising of obligations was presented in the preceding paragraph.[71] The real situation differs from the "regulatory" one, and the Institute can be presented with sanctions without regard to its fault. In order to avoid lengthy proceedings in that connection, the Institute most often pays for "housekeeping" contracts out of funds from renting out premises and from extra-budgetary sources (although subsequently these outlays may not reimbursed according to estimate articles). In exceptional circumstances the Institute can appeal to the RAN, which sometimes helps clear indebtednesses.

4.1.14. Implementing rights to intellectual property within the structure of an institution's property relations

According to the RAN Charter, one of the functions of the RAN is to protect the intellectual property rights of RAN scholars and scientists and organizations, participate in implementing state policies in the area of creating scientific technical achievements and technologies and involving them in economic turnover, and also assure that the obligations provided for by existing legislation to protect state, official, and commercial secrets are carried out in the RAN.

In practice these tasks are not accomplished. Util 2002 there were no structural subdivisions in the academies which could collect and generalize the available information. An exception is information presented in scientific organizational reports (on the most important results and on results subject to protection). However, information on objects of intellectual property created (on applications for issuing and receiving protective documents, on the availability of know-how, on transactions concluded which concern rights to the results of scientific technical activities, on facts of the usage of objects of intellectual property, on license contracts with foreign partners, etc.) are not fully generalized at the RAN. RAN institutes are also supposed to assure state registration of projects carried out. However, until recently this requirement was only carried out formally.

The RAN does not allot any special financial resources and does not implement special programs in support of the patenting and other activities of its institutes.[72]

At the same time academy institutes themselves are becoming more energetic at commercialization of their scientific results. In 2001 more than 350 developments ready for practical application were completed at RAN institutes. 710 applications were sent for issuance of patents on inventions. More than 470 RF patents on inventions, thirty-seven certificates on useful models, and eighteen on trademarks were received. About twenty applications were sent

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[71] An institution's estimate is supposed to cover all of its requirements thereby—to provide for the scientific process and for housekeeping needs.

[72] Since 1999 such support has been effectuated from Federal budget funds (Resolution of the Government of the RF on supporting the patents of RAN organizations and institutes). Funds are allotted for submitting applications on inventions for the purpose of protecting the rights of domestic developers on the territory of Russia and for maintaining in force patents in effect on the territory of Russia. However, the scale of such support is not very great yet.

for foreign patenting of inventions. Ninety-two patents are being supported abroad. (Data from the "Report on RAN activities in 2001".)

A Coordination Council on innovational activities was created at the RAN in 2002 for resolution of the problems examined above. The purpose of this Council's activities is to help RAN institutes organize innovational contacts with industry (in particular, on commercializing scientific results, passing on scientific results, etc.). The Coordination Council is also supposed to facilitate the creation of structures in the RAN that would directly help institutes implement their results on a commercial basis, render them an entire spectrum of services in the area of innovational management, and support their commercial activities on the whole. Thus it is intended that an Informational Consulting Center, an Innovational Agency, and a RAN Innovational Foundation be created already in the near future.

Until these structures become operational, protection of intellectual property, inventory and evaluation of non-material assets (NMA) presents a problem even for the "advanced" academy institutes, which cannot secure receipt and support of protective documents.

It is written out in the Charter of the Institute studied that it possesses exclusive rights to the results of intellectual activities and possesses the funds necessary to effectuate its activities. The Institute's rights to objects of intellectual property are regulated by legislation of the Russian Federation.

In practice the Institute's management does not yet think issues of protecting intellectual property to be ones urgent to the "life" of the organization or their resolution to promise improvement in its financial and economic position. For that reason, implementation of rights to intellectual property within the structure of the Institute's property relations is at the beginning stage. Inventory of objects which in principle could be judged intellectual property has not been conducted at the Institute.

Individual objects of intellectual property (mainly program products) were selected and assessed at the Institute several years ago. After appraisal (very approximate and conducted without any methodology at all), these objects were placed on the balance sheet (Account 11). Further, after the appearance of Instruction 107 on bookkeeping records in budgetary organizations, these objects were transferred as non-material assets (NMA) to Account 31, from which they are gradually being written off. With that, activities on inventorying (appraising) and placing objects of intellectual property on the balance sheet as NMA ended at the Institute. Management thinks that this issue is still too complicated and not yet worked out.[73] In practice the mechanism for protecting objects of intellectual property works poorly as of yet. Concrete and precise instructions for inventory and appraisal of objects of this form of property have not been worked out. On the whole there are more problems on appraisal and recording here than benefit for the Institute.

4.1.26. The Institute's critical budgetary financing problems

The majority of problems which the Institute encounters in the process of its scientific and financial and economic activities have been noted one way or another in the sections of this survey. We will dwell once more on some of the key issues in this point.

Commenting on the situation which is taking shape in Russian science and concretely at the Academy of Sciences, the Institute's management emphasized especially the permanently

[73] Resolving problems of inventory and registration of NMA for noncommercial organizations is connected, for example, to the following problems. Until 1 January 2001 there was no separate provision for bookkeeping registration of NMA. When necessary, registration of the movement of these assets was effectuated on the basis of general instructions and provisions about bookkeeping registration. Noncommercial organizations are not envisaged in the special documents of the Ministry of Finance of Russian entitled "Registration of non-material assets," and the placing of their NMA on the balance sheet is not regulated in any way (that is, essentially it does not seem possible).

existing gap between the declarations of the agencies of authority on the importance of science to the country's destiny and the real policies, which throughout recent times have expressed themselves primarily in the resolving of individual *force majeure* issues. Ambitious programs and concepts (of the "Foundations of Policy" type, etc.), while declaring the right lines development should take, show neither the instruments nor the financial resources for their implementation.

The attitude toward science taken by the authorities has also been expressed in the policies of individual agencies. For example, the Ministry of Finances, when developing new rules and ways for financing, does not wish to see the real situation in state funded institutions (including problems for which it is to blame—for example, financing delays). Under conditions when financing is planned "from the base," which does not reflect the real requirements of the institutes, "total" Treasury monitoring (even of that which it is not supposed to monitor) makes life difficult for the institutions (and even "provokes" financial violations). Issues of the national priority of science and of ways and principles of financing cannot be resolved (as many bureaucrats suppose they can) if problems of the scale of financing remain beyond the framework of discussion. It is a fine thing when institutes are able to earn some part of their budget (and specifically a small part) "on the side." However, right now the situation taking shape is such that "the lesser part is becoming the greater part," and institutions, not at their own fault, are ceasing to perform the functions for which they were created. Thus for RAN institutes contract work is often tied to giving up fundamental research. In any event, the state sustains and will sustain palpable losses (both in results and in funds expended). Therefore either budgetary financing covering one hundred percent of the Institute's basic outlays should be allotted or such institutes should be shifted to other organizational legal forms of economic activities.

As to competitive distribution of budgetary funds (which the Ministry of Finances, the Ministry of Industry and Science, etc., insist on), in the opinion of the Institute's management the large-scale introduction of this system in science, which would permit "selecting according to the results of competitions the best executor of a concrete assignment under the conditions offered by the state customer," would be effective only upon an increase in the quality of budget management on the whole and of the program targeting technologies for distributing financial resources (execution of obligations; business planning; transparent recording, monitoring, and appraisal of results; independent expert examination at all stages and levels of forming and implementing programs and projects, etc.).

The practical introduction of the contract system as an effective instrument for increasing the efficiency of resources allotted requires:

- precise definition of state needs for scientific results and of the tasks to be accomplished to fulfill them (well-grounded forming of state orders placed with science);

- improving contract concluding practices taking into account the cost of objects of intellectual property (and of objects to which there are exclusive rights);

- organizing informational consultative work and preparing specialists for scientific organizations in the area of innovational management and marketing, appraisal of the economic efficiency of projects. This would permit changing the structure of the motivation and "mentality" of scientific organizations, including in a market key (search for additional sources of financing, study of the market for science-intensive products and demand, advertising activities, etc.).

Under contemporary conditions the RAN, although it continues to play a noticeable role in the life of the institutes (a sort of academy "cover"), is yielding one position after another. All of the "reorganizational" policies of the RAN management only affect the position and interests of concrete institutes to a very slight extent. Many of the problems of the institutes which were always under the jurisdiction of the Academy are not being resolved. The most characteristic example is facilitating development of the international contacts vitally important to fundamental

science. Although the RAN and its management interact actively with international organizations and nominate Russian scholars and scientists to their guiding structures, etc., practical help to the institutes on the part of the academy in expanding international cooperation is decreasing. As a result, fewer and fewer Institute personnel are able to travel abroad (the Institute does not have its own resources for such official trips), and that number is declining from year to year.[74] International cooperation occurs basically at the expense of the receiving party (foreign partners) and grants. Support for publications, major construction, etc., is decreasing.[75]

The manner of renting out the property of RAN organizations in effect at the present time is set by the Federal law "On science and state scientific technical policies" (in the 1998 wording of the law). In accordance with it, revenue from renting out property in Federal property ownership is taken fully into account in the revenue of the Federal budget and used by organizations as a source of supplementary budgetary financing for the maintenance and development of their logistical base. It should be noted that at one time the appearance of that norm was looked upon as a major victory in the struggle for the interests of science and capable of improving substantially the financial state of academy organizations.

However, practice in implementing that norm, in the opinion of the Institute's management, has shown that these expectations were too high. Renting out property brings not only supplementary revenue, but also an entire set of problems, the resolution of which the landlord cannot cope with in a number of instances.

Some of the renters of Institute space are RAN structures quartered in the building at the decision of the Presidium on conditions of free of charge usage. That is, rental payments are not exacted from Academy renters (and there are five of them). But, as has already been noted, these renters do not pay for utilities, either, that is, they do not transfer funds to the account of the resource supply organizations with which the Institute, as the entity having the building on its balance sheet, has direct contracts. Numerous attempts to resolve that issue, including through the RAN Presidium, have proven unsuccessful. Thus, as early as 1997 the Presidium, in response to an appeal from the Institute, sent its "academy" renters a letter confirming the justice of the Institute's demands regarding paying for utilities. However, that did not change the situation, either.

Under threat of possible consequences for non-payment of utilities (and they are well known: turning off electricity, water, and heat in the building), the Institute's management is forced to pay not only its own outlays for utilities, but also the outlays of academy dead-beats. The source of funds for paying for utilities is rental payments made by other renters.

It is obvious that such use of revenue from renting does not allow the Institute to look upon it as a supplementary source of budgetary financing used to maintain and develop the logistical base. This situation had become acute by 2002: utilities outlays to maintain the building had exceeded the Institute's revenue from rent. That means that the Institute has to pay for the utilities outlays of renter dead-beats at the expense of targeted funds and of revenue received from entrepreneurial activities, which, naturally, elicits objections from management. The issue of the sources for financing utilities outlays in 2002 remains open as of now.

Another problem connected to renting is brought about by the fact that, according to the rules in effect, when choosing a renter the landord has the right to be guided only by financial aspects, that is, to proceed from the renter's abilities to fulfill strictly the conditions of the contract (pay rent and "his part" of utilities outlays), to "endure" growth in rates and tariffs.

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[74] In 1998 thirty employees took official trips abroad, in 1999—twenty-six did, and in 2000—twenty did.

[75] It is paradoxical, but institutes today have an interest in lengthy official trips abroad for their personnel not at all due to scientific, but due to financial "considerations." Official trips without retention of support affords the chance to expend the fund for paying the wages of these employees to increase the pay of those working at the Institute.

The Institute's management thinks it extraordinarily important to also take into account the nature of the renter's activities, his mentality, etc. So when contracts are concluded preference is given to renters, the activities of which "intersect" in one way or another with the scientific technical sphere, and the potential renter's reputation is also taken into account. As a result of this policy, among the Institute's renters are institutions of higher education, science intensive firms, structures affording consulting services in the area of scientific technical activities or producing program products, etc. In management's opinion, renters such as this permits ridding the Institute of contacts with doubtful (including near criminal) structures and the problems connected to them, preserving in the Institute's building the climate and atmosphere of an academy scientific institution, and, finally, expanding possibilities for developing new lines for scientific research and cooperation to take at the Institute. As to institutions of higher education (departments), their "presence" in the Institute's building fully fits into the Federal Targeted Program "State support for the integration of higher education and fundamental science," forty-four percent of the overall amount of financing for which the RAN distributes.

The only drawback to such an approach to choosing renters is, in the opinion of the Institute's management, the fact that structures such as this cannot, as a rule, endure growth in rental payments, the rates for which are set for the Institute "from above." Thus the Institute has been trying for several years already to get privileged rental conditions for institutions of higher education. Today, after involving the RAN Presidium, the Ministry of Education, the Ministry of Industry and Science, and the Ministry of Property of Russia in this problem, there are grounds for hoping for its positive resolution.

Thus it is the opinion of the Institute's management that the manner of renting in effect at the RAN needs improving. On the one hand, it is necessary to achieve strict fulfillment of the norms and rules established here (in particular, as to the renters paying for utilities), on the other—apparently it is advisable to look upon renting not only as a source of supplementary budgetary financing for RAN institutions, but also as a means of resolving a wide range of tasks (for example, integration of science and higher education, development of international scientific technical cooperation, development of energetic innovational activities, etc.). A broader look at renting at the RAN presupposes the possibility of regulating its conditions depending on the concrete problems, the resolution of which is facilitated by this or that rental contract.

One of the Institute's most acute problems is the lack of funds for major repairs. The Institute's building, built more than twenty-five years ago, has not undergone major repairs even once. In recent years the need for them is determined not only by the established norms of their periodicity or by general safety considerations, but also by the acute necessity of resolving concrete tasks connected to the fire safety system and to water insulation in the building's basement premises. The "price" of their resolution substantially exceeds the Institute's own possibilities, which, according to the estimates of its management, do not exceed three hundred thousand rubles; that is, the Institute's revenue from entrepreneurial activities and the targeted funds received by it permit paying for major repairs only within the limits of that sum.

Despite numerous appeals by the Institute's management to the RAN Presidium regarding allotment of budgetary funds for major repairs and despite the grounds for their necessity presented, financing for that article of outlays has not been provided for in the Institute's budgetary estimate for many years now. At the same time, in the opinion of the Institute's management, not long is left to wait, insofar as the lack of major repairs is already creating a real threat of catastrophe. It is namely in such instances that the RAN Presidium reacts to the Institute's requests and "responds" to its appeals.

4.2. Analysis of the peculiarities of the financial and economic activities of a state institution (institute) subordinate to a state agency

A scientific research institute (further—the Institute) of a Federal Ministry of the Russian Federation (further—the Ministry) was chosen as an example for analysis of the peculiarities of the activities of a state scientific institution subordinate to a state agency. In 2001 the Institute was accredited as a state scientific organization and it has the appropriate certification. The Institute functions in the area of the social sciences.

The overall number of personnel at the Institute in the last two years has fluctuated at a level of 130-160 persons (with an authorized number of more than 200). The greater part of the authorized number consists of researchers. Five doctors of science and thirty-two candidates of science were working at the Institute in 2001.

The areas occupied by the Institute are in Federal property ownership. The areas and other property were transferred to the Institute with the right to use them free of charge. An insignificant part of additional areas is rented.

Logistical supplies for the Institute's scientific research activities basically include personal computers joined by local area network and having Internet access (allocated channel, fiber optic connection, radio modem) and other office equipment (printers, scanners, photocopiers, etc.).

The following materials made available by the Institute's management were used for purposes of researching the peculiarities of the Institute's financial and economic activities: the Charter, the Statute on recording policy, the Statute on wages, the Standardized Job descriptions, data from bookkeeping reporting, reports on auditor and other checks, subject matter plans for scientific research projects, and also laws, regulatory acts of the RF, and instructions and other documents regulating scientific technical activities.

Interviews were conducted with the director and deputy director, the head bookkeeper, and with personnel from the bookkeeping office, the personnel department, and the Institute's planning division.

Taking into account the information made available, the analysis of financial and economic activities was effectuated basically using 2001 and the beginning of 2002 as the example. When necessary (in the instance of changes significant to the Institute), the situation characteristic of the preceding period was examined.

4.2.1. Description of the organization's charter

The Institute was created by order of the Ministry and operates on the basis of a Charter approved by order of the Ministry and registered at the Moscow Chamber of Registrations. The Institute is in the Ministry's jurisdiction, is a legal entity and a noncommercial activity, and has its own balance sheet. The Institute has a budgetary account and other accounts in domestic banks,76 a seal with an appellation, other seals, stamps, forms, and other formal attributes established for a state institution.

The activities of the Institute as a state scientific institution are determined by legislation of the Russian Federation (the Constitution of the RF, the Civil Code of the RF, the Federal law "On noncommercial organizations," the Federal law "On science and state scientific technical policy" (further—the law on science), other legislative acts, regulatory documents of the Ministry, and the Institute's Charter.

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76 Through 2001 inclusive—a budgetary account (at a branch of the Federal Treasury) and a settlement account (at a commercial bank) and since 2002 a budgetary (current) account and an entrepreneurial activities account at a branch of the Federal Treasury of the RF.

The Charter includes the following sections, which accord with the requirements of the Civil Code of the RF and determine the status and manner of the Institute's activities: I—general provisions; II—purposes and subject of activities; III—kinds of activities; IV—property and finances; V—rights and duties; VI—governance and organizational structure; VII—reorganization and liquidation.

The Charter determines that the results of the Institute's scientific activities are to be implemented in the form of scientific reports, concrete proposals for the drafts of legislative acts and regulatory documents, methodological recommendations, informational and analytical reports, program products, etc. The Institute's rights to objects of intellectual property are regulated by legislation of the Russian Federation.

A change in the Charter is usually tied to a change in legislation or to reorganization of the Institute or the Founder. In the opinion of the Institute's Director, mention in the Charter of the founder's name greatly "harms" the organization. Thus the founder Ministry has been reorganized several times in recent years (including changing its name). Changing the Charter is a rather lengthy procedure, insofar as each time it requires coordination with departments (including legal ones) of the Ministry, registration, informing all necessary levels of authority, etc. In this connection the Institute is forced to commit certain violations, not correcting the Charter each time the founder reorganizes. The founder's name is absent in the last version of the Charter, which the Institute prepared.

The Charter regulates the Institute's financial and economic activities, defining the following "positions" of its legal status:

the ability to acquire and effectuate property and personal non-property rights, have duties, and act as plaintiff and respondent in courts at various levels;

responsibility for obligations (at the expense of monetary resources at its disposal and also of property taken into account on a separate balance sheet and acquired due to revenue from entrepreneurial activities);[77]

the right to open branches and representative offices in accordance with existing legislation.

The following sources for forming Institute property are defined in the Charter:

- fixed assets and other valuables within its operational control;
- funds from the Federal budget allotted the Institute by the Ministry for research, current activities, acquisition of equipment, and major construction;
- grants from international, foreign, national, and other organizations;
- funds from implementing projects (services) placed by order and performed according to agreements (contracts) with organizations of various forms of property ownership and with physical persons;
- receipts from publishing activities, sponsor's and philanthropic payments and other sources permitted by existing legislation.

Funds allotted by the Ministry and material resources under the Institute's operational control may be used only in a targeted way in accordance with the approved budgetary estimate (and charter documents). The Institute does not have the right to alienate (dispose of) property assigned to it or property acquired due to funds allotted according to the estimate.

The Institute has the right to independently have at its disposal: funds received for execution of projects done to order and property acquired due to funds received from

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[77] When these resources are insufficient in instances provided for by existing legislation, subsidiary responsibility for the Institute's obligations is borne by the owner of the property (the Ministry). The Institute is not responsible for the Ministry's obligations.

entrepreneurial activities or transferred to the Institute free of charge by legal entities and physical persons. In particular, the Institute may create funds for material encouragement and scientific technical and social development. Resources from the funds are used according to estimates approved by the Institute's director. Funds received for entrepreneurial activities are directed by the Institute toward developing and enhancing the efficiency of charter activities, strengthening the logistical base, encouraging personnel, settling certain financial obligations, etc.

Timely settlements with the state budget, bank institutions, suppliers, contractors, and other organizations is a duty of the Institute.

Tax and customs duties privileges established by legislation for state scientific institutions apply to the Institute's resources.

For the purposes of this study it is of substantial importance that the Institute has the right to:

- determine the prospects for development and to plan current activities in accordance with the subject matter plans approved by the Ministry and with contract obligations;
- present to the Ministry proposals on changing the timeframes and amounts of projects in the event planned budgetary allocations are decreased;
- in coordination with the Ministry to use credit from banks and other organizations to support scientific research;
- do projects according to agreements (contracts);
- involve on a contract basis state and non-state scientific organizations, institutions of higher education, and enterprises for creation of temporary scientific groups of personnel; independently choose the forms for paying for their activities;
- conclude contracts and other agreements with foreign partners;
- use property assigned to the Institute for development of basic activities.

Governance of the Institute is effectuated in accordance with existing legislation and the Charter. Management of the Institute is effectuated by the Director. The Institute independently forms its organizational structure and determines its staffing and the makeup of its management organs.

The Scientific Council operates in the Institute as the organ of collective governance and effectuates its activities in accordance with a clause approved by the Director. Among the Council's tasks are: preparation of proposals for the plan and program of scientific research and discussion of the reports on their execution; developing proposals for improving the Institute's structure, placement of scientific personnel, including the managers of structural subdivisions; preparation of proposals for interactions with other organizations; preparation and conducting of certification and recertification of scientific personnel.

The Charter defines the duties which are established by the job descriptions approved by the Director and the rights of the Institute's employees. The job descriptions are compiled on the basis of standardized instructions worked out by the Ministry.

The manning schedule of the Institute's scientific technical and administrative personnel is worked out in accordance with pay grades and employee qualifications on the basis of labor legislation and is approved by the Director.

Personnel and management relationships at the Institute (relations of social partnership in the sphere of labor) arise on the basis of a work contract and are regulated by labor legislation (since 2002—by the new Labor Code of the RF).

Employee wages are established on the basis of the Unified Wage Scale Grid for paying employees at organizations in the budgetary sphere. A Statute on wages operates at the Institute in which the following is established:

- sources for forming the wages fund (the budget, supplementary financing from orders placed by the state, receipts for economic agreement activities, grants, and other sources permitted by existing legislation;
- lines taken for using the wages fund (payment of wages according to the tariff pay rates and pay grades, increases, additional payments for scholarly degrees, etc., one-time payments and increases to salaries);
- manner of establishing and timeframes of operation of increases, additional payments, and bonuses.

It is determined by the Charter that the Institute conducts bookkeeping recording and bookkeeping and statistical reporting in a manner established by legislation.

4.2.2. Description of the contract with the director

The Director is appointed to the position by the Ministry on the basis of a labor agreement (contract) according to which the Ministry gives the Director the right to manage the Institute's activities. The contract is an appendix to an order issued by the Ministry.

The contract with the Institute's Director was concluded for two years, which is not in contradiction to labor legislation, but does not conform to usual practice, according to which a contract is concluded for five years. In the opinion of the Institute's Director, concluding a two-year contract for the manager of an organization (no matter what the reasons were for this timeframe in the given concrete instance) is irrational. In the rapidly changing conditions for performing management functions in Russia, the Director has to have a pretty good command of financial planning and the basics of bookkeeping recording and be aware of changes in budget and tax legislation, etc. Getting the right skills and knowledge requires expenses and significant effort and time. One more fact must not be lost from view. In the difficult financial situation scientific organizations find themselves in (including the majority of state funded institutions) it is almost impossible to find and hire qualified bookkeeping personnel at a state institution. Thus a young and qualified specialist ("raised" at the Institute from a former programmer) worked as head bookkeeper at the Institute until 2001. Having received the necessary qualifications and work experience, he left "to make money" at a commercial structure. The qualifications of the present bookkeeper are not as high.

The Director organizes the scientific research process and economic activities and bears responsibility to the Ministry and to tax and other agencies for execution of obligations. The Director's rights and duties are regulated by existing legislation, resolutions and instructions from the Government of the RF, orders issued by the Ministry, the Institute's charter, and the contract. The Director performs the following basic functions and duties for organizing and supporting the Institute's activities:

he acts in the name of and represents the interests of the Institute, manages its property, bears responsibility for its safekeeping and efficient use, concludes contracts, grants powers of attorney, and opens budgetary and other accounts;

he approves the Institute's structure; in coordination with the Ministry (within the limits of allotted budgetary allocations and staff numbers) he determines the manning schedule; he determines the form and size of wages and establishes increases to employee wages;[78]

[78] Coordination on this point dragged on for a rather long time in the process of preparing and concluding the contract, insofar as at first the Ministry proposed to establish the Institute's structure and manning schedule by itself. The question of whose interests the Director was supposed to protect first of all was also controversial for the Ministry. "Representing the interests of the Ministry," but not of the Institute was envisaged in the contract proposed by the Ministry. Later this point was acknowledged to be unacceptable, and the "interests of the Institute" remained in the final version.

he approves, in coordination with the Scientific Council, working subject matter and other plans and the functional duties of the Institute's structural subdivisions and monitors the content and quality of scientific research projects executed and the targeted use of budgetary funds; he approves employee job descriptions and the Council's decisions;

he bears responsibility for execution of orders and instructions issued by the Ministry within the limits of its jurisdiction and taking into account the current Charter and labor agreement (contract).

Working in the position of director is his primary work. In accordance with the Charter, the Director cannot be a founder (participant) of (or in) structures producing or selling scientific technical products (services) analogous to or interchangeable with that which the Institute produces; have labor or civil legal relations with these organizations; occupy positions and execute paid work in state agencies, agencies of local self-government, at enterprises, etc.; engage in entrepreneurial activities (including individual ones) other than scientific, creative, or educational ones; participate in the management of or be a member of governing organs of other managerial entities.

Wages and conditions for abrogation of the Director's labor agreement (contract) are determined by existing legislation.

4.2.3. Analysis of procedures for appointment and dismissal

In accordance with the Charter, appointment (hiring) to a position and release from a position (dismissal) of Institute employees is the prerogative of the Director. The respective procedures are effectuated on the basis of labor legislation, which envisages the arising of labor relations on the basis of a work contract and the Charter.

Work regulations for employees are in effect at the Institute. All appropriate issues are resolved by the administration within the limits of the authority granted it.

A work contract (dogovor), the form and content of which are defined in the Labor Code, is concluded on the basis of the employee's application and is signed by the Director. [79] Work contracts arise at the Institute as the result of appointment to a position. As a rule, contracts without time-limit are concluded with full-time employees at the Institute and time-limited contracts (for one year) are concluded with outsourced employees (vneshtatnye sotrudniki). Upon expiration of the time period of the work contract (kontrakt) it can be extended or a new one concluded.

A newly hired employee has to meet qualificational requirements for the respective position.[80] Taking into account the situation which has taken shape in the scientific technical sphere, there have constantly been vacancies at the Institute in recent years (that is, the Institute's manning schedule has not been fully staffed). In reality it is difficult to attract a good specialist to work at a scientific institution. Most often vacancies are filled by employees, the professional

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[79] Previously the concluding of contracts (dogovory) was envisaged only for those working according to a work agreement (soglashenie). However, already in 2000 the Institute shifted to concluding written contracts for full-time (shtatnye) employees. Therefore the new labor legislation conditions did not catch the employees at the Institute's personnel department unawares.

[80] These requirements are laid out in the Institute's job descriptions. The job descriptions were compiled in accordance with rate (tarifno-) and qualifications characteristics according to branch-wide employee positions (worked out by the Ministry of Labor of Russia) and with the wage categories and rate and qualifications characteristics requirements for employee positions in science and scientific services (worked out by the Ministries of Science and Labor of Russia). In these job descriptions the correspondence between positions, wage categories of the Unified Wage Scale Grid and the rates and qualifications requirements is defined (level of professional education and time in the work force are taken into account). In the opinion of the Director and representatives of the Institute's personnel department, the documents of the ministries forming the basis of the job descriptions are out of date (they have been in effect since 1992) and should be re-examined.

skills and possibilities of whom are well known (for example, former employees of the Ministry or employees from organizations of similar profile). Usually it is known ahead of time what sort of research they will engage in. Therefore the acceptance procedure does not take much time and does not require additional verification of qualifications, etc. Young specialists are hired basically by time-limited contract for a year for execution of a concrete study or for work in computer technology.

Sometimes during hiring there arises the necessity of changing the manning schedule (there is a candidate for hiring, but the necessary vacancy doesn't exist). The Director has the right to make the appropriate decision (with that, the wage fund has to be corrected, too).

Early abrogation (cessation) of a contract occurs (as it did previously) mainly at the wish of the employee himself (abrogation of contract at the employee's initiative) and by transfer (in agreement with other organizations).

If an employee is dismissed at the initiative of the administration, it is necessary that certain conditions "prescribed" in labor legislation be fulfilled (multiple violation of or failure to fulfill work duties, unfit for their position, etc.). When necessary, the union organization and the Institute's Work Council participate in the resolution of these issues. The Institute tries to avoid administrative dismissals and seeks the voluntary agreement of the employee to dismissal.

In accordance with the law on science, appraisal of the qualifications of research fellows and their fitness for their positions and rating (determination of category in the Unified Wage Scale Grid) is provided by the state certification system.[81] Certification is done at the Institute once every four years.

When certification is conducted, what is taken into account is not only how actively an employee participates in subject matter and "done to order" projects at the Institute, but also his participation (individually or in temporary groups of personnel) in competitions for research financing at the expense of budgetary funds, foundations, and other sources and also how actively he publishes.

Decisions by the certifications commission (on unfitness for one's position) bear a recommendational nature and are grounds for the Director to reach a decision as to an employee's dismissal. If an employee is dismissed in connection with a decision by the commission, then usually these decisions are not re-examined (do not fail to be accepted), even in court.

Although an employee is obliged to warn the administration in writing ahead of time about abrogation of his contract and to hand over to it official documents (including financial ones), scientific technical documentation, equipment, and other things of material value, in actual practice the Institute has more than once encountered a situation when employees being dismissed (especially at the administration's initiative) have not done that. The main reason is the lack of precise regulations at the level of the scientific institution defining the results of research activities as intellectual property and determining the rights to it.

However, the administration encounters more substantial difficulties in connection with the necessity of performing final settlements with employees being dismissed. In connection with the peculiarities of compilation (planning) of the budgetary plans for the organization's revenue and outlays and with existing limitations on the scale of budgetary financing of science, scientific organizations cannot always (without damage to other ways funds could be expended) provide ahead of time in the estimate of outlays for the current year for funds for compensating

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[81] Like rate and qualifications requirements, the "Regulation on manner of conducting certification of employees at agency-subordinate institutions, organizations, and enterprises with budgetary financing" has been in effect since 1992 (worked out by the Ministry in accordance with the Basic regulations on manner of conducting certification of employees at institutions, organizations, and enterprises with budgetary financing approved by resolution of the Ministry of Labor of Russia at the Ministry of Justice of Russia on 23 October 1992 .№ 27).

employees when they are dismissed. In a number of instances the Institute was forced to expend for these purposes funds received according to contracts which could have been more effectively directed toward research work (including raising the pay of existing employees).

4.2.4. Relationships with founders

The founder of the Institute as an organization subordinate to an agency is the appropriate Federal agency of the executive authority—the Ministry. The relationships between them are defined by the Civil Code of the RF, the law on science, the Statute (Polozhenie) on the Ministry, and the Institute's Charter.

According to the law on science and the statute on the Ministry, governance of the Institute is within the jurisdiction of the Ministry. The rights and duties of the Ministry in relation to agency-subordinate organizations on the whole and the Institute in particular are determined by the following tasks of a Federal agency of the executive authority:

resource support for science and effective use of Federal budget funds allotted for conducting research and development in the "agency-subordinate" field;

forming proposals for conducting scientific research projects (within the framework of the subject matter plan of agency-subordinate organizations) and filling orders placed with science by the state (within the framework of developing priority lines taken, including applied economic research, critical technologies, etc.);

providing for the conducting of these projects in the established manner (including selection of the executors of orders placed with science by the state, determining the amount of funds allotted for research and development, providing organized support and development of the logistical base, etc.);

involving agency-subordinate organizations on the whole for working out Ministry issues, and also individual scholars, scientists, and specialists working in them;

effectuating monitoring of the financial and economic activities of agency-subordinate organizations and of the tasks and functions executed by them and envisaged by the Charter; conducting document and other checks of these organizations; verification of use by organizations of funds allotted by the Ministry in the established manner at the expense of budget funds for conducting scientific research and experimental design projects for civilian purposes, and also safekeeping of the property of organizations.

When an agency-subordinate organization is created (reorganized), the Ministry determines the purposes, lines taken, and kinds of its activities and approves and corrects charters.

The basic purpose of the Institute as an agency-subordinate institution is organizing and effectuating scientific activities to resolve issues placed before the Ministry.

Relationships of the Institute and the Ministry regarding scientific activities within the framework of the subject matter plan and its economic activities are constructed on the basis of the budgetary estimate (see Paragraphs 8-10), which the Ministry as head manager of budgetary funds brings to the Institute. Lines taken by research activities financed according to the estimate are determined by the technical tasks approved by the customer—the ministry departments having an interest in the given subject matter. Results of the work are written up as turn-over and acceptance documents.

For all remaining lines taken the Ministry acts as the customer for the Institute's scientific and scientific technical products (services). In this instance, according to the Civil Code the basic legal form of relations between them is the agreement (dogovor) (contract) for creating, transferring, and using these products (services). The Ministry guarantees (but does not always fulfill these guarantees) the financing of projects executed according to orders placed by the state. In order to receive an order placed by the state, the Institute participates on a common basis

in the respective competitions. In a number of instances the Institute (as the traditional executor of certain ministry-placed orders) receives the order as the sole executor.

According to law, executive authority agencies which have founded state scientific organizations have the right to place with them mandatory state orders for execution of scientific research and experimental development. The Institute has received such mandatory orders on numerous occasions (especially within the framework of the Ministry's international scientific technical connections, projects within the framework of inter-agency programs, etc.).

To a certain theoretical degree the Institute's subject matter plan may also be looked upon as a mandatory state-placed order (which is not distributed on a contract basis and has no timeframe).

Reorganization (liquidation) of the Institute is also within the Ministry's jurisdiction.

The Institute reports to the Ministry and also to other agencies and organizations within the limits of their jurisdiction as established by existing legislation of the RF.

As has already been noted, the Ministry bears responsibility for the Institute's obligations if the latter cannot meet its obligations independently.

4.2.5. Compiling and coordinating the work plan

Compiling and coordinating the Institute's work plans is an iterative procedure within the framework of which the necessity is taken into account (since that is envisaged in the Charter) of providing informational-analytic accompaniment to the Ministry's activities in the "agency-subordinate" sphere (including methodological, methodical, and organizational support and operational preparation of documents, reports, and inquiry reports; development of concrete recommendations for improving the regulatory base, etc.).

Compilation of the Institute's subject matter plan for the next year usually occurs at the end of the current year. By that time the approximate amount of budgetary funds which will be allotted the Institute the next year is usually known.

Within the framework of compiling the subject matter plan, the Ministry's departments[82] determine the list of the lines research takes which are most urgent to them and the desired results. In turn, the Institute proposes a list of topics which could be included in the plan taking into account the planned amount of financing, proposes ways of handling the tasks set, and also makes initiative proposals. Both management and leading personnel at the Institute participate in coordinating subject matter.

The main factor when the subject matter plan is compiled is undoubtedly the amount of funds which it is proposed the Institute be allotted within the framework of base financing (according to the budgetary estimate). In essence it is the amount of base financing in particular which determines how all-embracing (by number of topics and taking into account the theoretical cost of each topic) and in how much detail (by depth of discovery and explanation of each topic) the Institute can effect the basic purpose of its activities and provide for the Ministry's requirements. Within the framework of the plan, projects are also executed which are connected to forming and supporting statistical data bases and banks and expert and other special information necessary to provide for the scientific research process and "replies" to the Ministry's operational needs.

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[82] Usually that is the department in charge and other departments which traditionally have working contacts with the Institute.

At the same time the Institute's real possibilities (qualifications of specialists, level of logistical support[83]), the list of research lines traditional to the Institute, including those which continue from year to year, and the subject matter of beginning projects are taken into account. Insofar as for many years now the Institute has been conducting research within the framework of "ministerial" subject matter, the probable managers and basic executors of the projects are known already at the stage of coordinating the subject matter plan with the Ministry's departments. They have significant experience at interacting with the Ministry's specialists to coordinate the subject matter and content of concrete research.

According to the Charter, the Scientific Council—the organ of collective governance of the Institute—takes part in discussing and coordinating work plans. Usually the Scientific Council is brought into the discussion at the stage when the approximate "area of interests" of the Ministry's departments is already known. The possibilities for executing concrete research by means of the Institute's "forces," the qualifications of the managers of concrete projects, the overall amount of projects which can be executed within the framework of the subject matter plan, and the advisability and possibility of involving co-executors are discussed at Council sessions. The Scientific Council determines the final list of projects included in the subject matter plan.

After the procedure of discussion is gone through at the Ministry's departments and at the Scientific Council, the subject matter plan is signed by the Institute's Director and the managers of the departments, the proposals for concrete research of which have gone into the final version of the plan. The Institute's plan is approved by the First Deputy Minister.[84]

Right after the plan is approved the managers of concrete research studies begin the procedure of discussion and approval with the customers (ministry departments) ordering up the technical assignments and calendar plans by each topic. Estimates for the concrete projects entering into the subject matter plan are not compiled.[85]

Insofar as the Institute's base financing is limited, certain topics of current interest to the Ministry (ones coordinated preliminarily with the departments) are not included in the subject matter plan. In 2000-2001 this contradiction was resolved by means of allotting the Institute supplementary financing. These targeted funds ("for securing the financing of highly important national economic plans and projects") were intended for executing research on a number of

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[83] In particular, a number of the projects executed by the Institute for the Ministry require modern computer equipment and programming products. The absence or insufficiency of financial resources allotted for the respective purposes does more "harm" to the Ministry than to the Institute itself.

[84] Although the procedure for coordinating the subject matter plan at the Ministry has been formally thought through and is formally transparent, in the opinion of the Institute's management noticeable defects are inherent to it, basically of a subjective nature. In the first place, applications (zaiavki) from the departments are sometimes submitted with considerable time delays. Approval of the final version of the plan is also delayed for unexplained reasons. As a result, the beginning of projects by base subject matter may be put off for two or three months. In the second place, the departments often attempt to "foist off" on the Institute serious research which is "doomed" ahead of time to insufficient financing. As a result, the Institute is forced to execute the work in a formal sense only or to waste time and energy "extracting" additional financial resources. In the third place, a clear "shift" is visible in projects ordered up by the Ministry in the direction of subject matter relating to affairs of the day and small operational assignments not requiring research work. The Institute's management thinks this shift extremely dangerous. It is obvious that the lack of start-up research (methodical, methodological) projects lowers the quality of the information-analytical support to the Ministry's activities that the Institute (and any other organization) effectuates and lowers the level of study of managerial decisions and decreases their effectiveness.

[85] This occurs because the cost of the plan's topics can be calculated only theoretically. Attempts to calculate the "cost" of each study within the framework of the subject matter plan taking into account all the kinds of expenses and the importance and difficulty of the research, etc., leads to the plan's becoming significantly more expensive (beyond the amount of financing allotted according to the estimate). It is of substantial importance that assessments of the presumed cost of similar kinds of research within the framework of the estimate, orders placed by the state, contracts, etc., differ noticeably. Usually the "cost" thereby of a topic within the framework of the base estimate is minimal and does not reflect the real outlays for research work. Thus assessment of the cost of concrete topics is done more likely not for inclusion of topics into, but for their exclusion from the plan.

priority lines taken and for increasing the financing of individual projects in the subject matter plan. The funds were allotted according to the "subventions" article.

In 2000 the amount of resources necessary to execute the plan (as it had been assessed by the Institute and the departments) was more than that actually allotted according to the budgetary estimate of funds by about one third. Under these conditions, an attempt was undertaken to divide the subject matter plan into two parts. The first (greater) part was compiled as has been indicated in Paragraph 5.1. The second part only consisted of several topics preliminarily coordinated with the Ministry's departments and which it was planned to execute only if supplementary financing were allotted (or the budgetary estimate of outlays were increased, which is practically impossible). The form in which the plan was presented in 2000 more likely than not was of a "propagandistic" nature. The form was supposed to attract the attention of managers at the Ministry and the department in charge to the "load" which the Institute bears as an agency-subordinate organization. However, insofar as it is difficult to determine ahead of time which topics may lay claim to supplementary support, in 2001-2002 it was recognized that dividing up the subject matter plan was inadvisable.

Planning the possibilities for the Institute to receive orders executed by contract (including orders placed by the state) is rather difficult (except for continuing projects). Basically these possibilities depend on how active the Institute's personnel are and also their prestige and, what is especially important, what the attitude is toward them at the Ministry.

However, such work is being done at the Institute. In the first place, a number of studies in which the Ministry has a direct interest are done only at the Institute. In the second place, the Institute traditionally acts as the co-executor of a whole series of long-term programs and projects (with Russian and foreign executors) for which there is always the probability of concluding a contract..

As a result the Institute's general plan of projects for the year is formed from a subject matter plan (written out rather precisely) and an approximate list of projects which can be executed by contracts (including by order placed by the state and contracts with Russian and foreign customers).

Such "planning" permits assessing the financial resources which the Institute may receive in the current year and more precisely picturing how each employee will be loaded with planned and extra-plan subject matter and how each topic will be supported with work resources.

It has traditionally worked out that leading personnel participate mandatorily in executing both planned and extra-plan subject matter.

4.2.6. Existing limitations in determining lines taken, kinds, and scale of activities

Limitations ensue directly from the clauses in the Institute's Charter and are determined by its status as a state institution.

In the first place, the Institute organizes and conducts research according to the subject matter plan in the amounts of the budgetary allocations allotted for these purposes.

In the second place, it can execute research and development on a contract basis.[86] Attracting supplementary funds due to contracts does not lead (more exactly, is not supposed to lead) to a decrease in the norms and absolute amounts of allocations from the Federal budget.

In the third place, the Institute can form and replenish the data bases and banks necessary to effectuate its charter activities, participate in creating and developing interactive telecommunications networks for transmitting data; render expert and consultative services in the area of scientific technical and innovational activities; participate in international scientific and

[86] According to contracts with Federal and regional agencies of authority, with industrial and financial-credit organizations, and with other interested customers.

economic cooperation of all forms; prepare analytical materials and reports within the framework of the Ministry's international activities; effectuate publishing activities; organize and participate in conferences, seminars, and other events for exchange of scientific information and dissemination of the results of the Institute's scientific activities; and effectuate other kinds of activities not in contradiction to existing legislation.

The scale of the Institute's activities is determined first of all by the amount of budgetary allocations. Budgetary funds are allotted by the Institute according to the budgetary estimate and in targeted fashion (through subventions).

The respective amounts are determined by the Ministry as the head manager (according to the law on the budget) of budget funds for the routine fiscal year. Financing is effectuated by the Ministry according to subsection 0602—developing promising technologies and priority lines taken by scientific technical products (target article 281—R&D, kinds of outlays 216—other R&D, and 182—financing priority lines taken by science and technology) within the framework of the budgetary obligation quotas. In the event the Institute participates in projects within the framework of the Federal Targeted Program, financing is allotted according to target article 281 (kind of outlays 187—conducting R&D within the framework of the Federal Target Program). Grants from the RFFI and RGNF budgetary foundations are also distributed in a targeted way (subsection 0601, target articles 286, 287—RFFI and RGNF outlays, kinds of outlays 072—R&D by RFFI and RGNF grants).

Because of the Institute's applied specialization on the whole, the number of grants from budgetary foundations, which are oriented primarily towards supporting fundamental research, is not great at the Institute. However, it has nevertheless regularly received two or three such grants (basically according to the subject matter of start-up projects). There was one such grant in 2001. The specifics of the Institute's activities also determine its possibilities for participation in research executed within the framework of the Federal Targeted Program. The first such possibility appeared in 2002, when a competition was announced according to the "Socio-economic technologies" section within the framework of the Federal Targeted Scientific Technical Program.

It is of substantial importance that the overall annual amount of financing by agency (ministry) is fixed in the Law on the budget for the respective year, and the head managers of the funds cannot exceed these quotas. This volume depends on the general economic and budgetary situation and the government's course and its policies in relation to the sector of the economy which the Ministry is in charge of and the sectorial policies of the Ministry itself. Not dwelling on that issue in detail, we would note that due to these and other reasons the Ministry is gradually decreasing the share of funds allotted the Institute according to the budgetary estimate. However, analysis of the dynamics of the scale of the Institute's financing shows that despite amplification of the role of the program target component in state support to science organizations, the role of base financing (according to budgetary estimate) for a state institution is still significant.

In 2001 the correlation of basic financing (by budgetary estimate) and financing through subventions came to 1.9:1; in 1999 it was approximately 4:1. The share of the base in the Institute's overall financial possibilities has decreased by up to about sixty percent in recent years. According to preliminary assessments, a further decrease in the share of funds allotted according to the estimate and a growth in targeted funds should occur in 2001.

When determining the actual amount of budgetary allocations which the Institute will receive in the next fiscal year, the Ministry takes into account the levels of financing of previous years, the manning schedule, and the necessity of introducing various corrective coefficients (connected to inflation, a change in pay rates and tariffs, etc.). The tasks facing the Institute, its real research potential (including personnel and the logistical base), efficiency of using budgetary funds (the results of verifications of the Institute's targeted use of budgetary funds over the previous years) are taken into account along with this.

As to limiting the scale of the Institute's entrepreneurial activities (projects according to economic agreements (khozdogovory)), basically they are determined by how active the personnel themselves are, by their professional reputations, by their abilities to initiate contacts, and by their skills at submitting applications for grants, projects, etc. For the time being the Institute only gets about ten percent of its financial resources from within the framework of entrepreneurial activities (through economic agreements, etc.). The range of customers for projects through economic agreements include Federal organs of the legislative and executive authority, regional administrations, foundations, scientific organizations, and other structures. The role of Federal agencies of authority as customers for such projects decreased in 2000-2001.

4.2.7. Limitations on non-profile activities

Limitations on non-profile activities at the Institute[87] are defined by the following provisions which follow from existing legislation.

Separating an institution's economic activities into charter ones (performing actions, projects, and services envisaged by the Charter) and unsystematic actions (ones not envisaged by the Charter). Among the unsystematic actions bearing on the Institute's functioning are acquisition and installation of fixed assets, major construction, and revenue other than from sales,[88] etc. The Institute can acquire fixed assets and perform other actions only in instances when such an operation is envisaged in the budgetary estimate of outlays.

Separation of charter activities into basic charter ones corresponding to the profile and functions of the institution (for the performance of which it was created), and others. According to this criterion, in accordance with the Civil Code and the General Economic Classifier of Kinds of Economic Activities, Products, and Services (OKDP) the basic activities of the Institute are defined by Code 7300000 ("Research and development services"). Concomitant and other services envisaged by the Institute's charter, but not basic to its profile, include, in particular, publishing activities, informational consultative, organizational, and other services.

The Institute's status as a noncommercial organization (not having extraction of profit as a purpose of activities). The Institute can effectuate entrepreneurial activities only because they serve the achievement of the purposes for the sake of which it was created. Among the Institute's entrepreneurial activities are execution of scientific research projects according to contracts and sale of publishing products. Although publishing activities are envisaged in the Charter, they are non-profile ones and require special permission from the Ministry.

The Institute's charter activities and a number of concomitant (non-profile) lines taken are financed by the state. Other kinds of concomitant services (for example, organizing seminars, etc.) envisaged by the Charter are allowed in principle by legislation, but are considered commercial ones (the state bears no financial obligations for such activities).

4.2.8. Compiling the Institute's budgetary estimate of outlays

[87] As analysis shows, the Institute engages in non-profile activities to an insignificant scale. However, for it, as for other state funded institutions of science, delimitation of kinds of activities is of substantial significance for purposes of taxation (including for purposes of applying tax privileges) and of the bookkeeping registration of economic operations.

[88] As a state institution, the Institute does not have the right to sell fixed assets or other property without the special agreement of the Ministry (with the exception of property acquired due to revenue from entrepreneurial activities). Taking into account the insignificant scale of such revenue, these operations are not effectuated at the Institute for all practical purposes. The Institute does not rent out space. The Institute received insignificant revenue not from sales (interest payments) before 2002. In 2002 the Institute's settlement account at a commercial bank was closed.

The procedure for preparing the Institute's budgetary estimate was examined using the preparation of the estimate for outlays for 2002 as the example.[89]

Preparation of the budgetary estimate of outlays for 2002 was begun in the first quarter of 2001 after the Institute received the Ministry's letter ("Concerning the question of preparing proposals for the draft of the Federal budget for 2002 in the field of R&D financing") with the request to present proposals on the amount of R&D financing at the expense of Federal budget funds by 26 April 2001. The form for presenting these proposals and also instructions for filling it out were attached to the letter. Four sections were singled out in the form:

Section I "Financing according to Section 06 "Fundamental Research and facilitating scientific technical progress" of the Federal budget according to kinds of expenditures," to which two inquiry reports are attached (one of which is on the number and structure of those employed at the Institute as of the end of the reporting year);

Section II "Financing according to Section 06 "Fundamental research and facilitating scientific technical progress" of the Federal budget according to kinds of activities";

Section III "Financing research and development at the expense of Federal budget funds by sectors of science in 2000 (report)";

Section IV "Financing research and development at the expense of Federal budget funds for socio-economic purposes in 2000 (report)";

Proposals for financing at the expense of Federal budget funds for 2002 were presented to the Ministry (the first two sections of the form are illustrated in *Tables 92-93*) within the established timeframes and in accordance with the form set.

The amount of Federal budget funds requested by the Institute for 2002 exceeded the planned figure for the respective indicator for 2001 by 1.6 times (including by 1.7 times for expenditures for wages). It does not appear possible today to assess how well that application was grounded insofar as the Ministry has not required the Institute to present any of the calculations made for it. As the Director and the head bookkeeper acknowledged, when preparing proposals for financing, the Institute was guided by the following general considerations: you should ask for more, because "they will slice some of it off" later anyway; and the growth parameters of the application should run somewhat ahead of inflation and reflect the dynamics of the number and structure of those employed at the institute, the expected growth of wages in science, and the growth of outlays for paying for utilities in connection with the constant increase in rates.

[89] The mechanism for preparing the Institute's budgetary estimate for 2003 was "launched" in the first quarter of the current year and so far coincides with the outline for 2002.

In accordance with the Budgetary Code (BK) of the RF, financing proposals presented to the Ministry are a budgetary application (although that term is not used either in the letter nor in the attachment to it). On the whole, the form and manner of presenting the Institute's budgetary application were set by the Ministry in accordance with the requirements of the RF's BK. A deviation from the manner of preparing the budgetary estimate established in it is that the Ministry does not require the Institute to compile the budgetary application in the codes of budgetary classification cell and also to present the calculations giving the grounds for each way budgetary funds are expended.

The next stage in preparing the Institute's budgetary estimate for 2002 began in the fourth quarter of 2001. The Ministry's Administrative-Economics Board informed the Institute's Director (by way of work, by telephone) of the necessity to prepare the estimate of outlays.

The Statute (Polozhenie) on the manner of budgetary financing at the Ministry was approved by the order "On the manner of budgetary financing at the Ministry" (March 2001). The corresponding order for 2001 lost force in accordance with this order. The necessity for its cancellation and the preparation of a new Provision was motivated by the Federal law "On the Federal budget for 2001," and also by more precise definition of the functions of the Ministry's structural subdivisions. The content of the new Statute accords on the whole with the requirements of the RF's BK (including in the area of the procedures for compiling budgetary estimates of the revenue and outlays of budgetary organizations and for informing them of budgetary allocations from the Federal budget and of the quotas for budgetary obligations, etc. However, the Institute received the text of this order only at the end of 2001. In this connection, the procedure for preparing the estimate is described here as it was perceived and executed at the Institute.

Table 92

Financing according to Section 06 "Fundamental research and facilitating scientific technical progress" of the Federal budget by kinds of expenditures (zatraty)[90] *(in millions of rubles, code 037 according to the SOEI (system for processing economic information))*

	Line code	2000		2001		2002	
		Plan	Report*	Approved plan	Expected execution of the plan**	Appli-cation	Draft plan (the ministries do not fill it out)
A	B	1	2	3	4	5	6
Amount of financing according to Section 06 of the Federal budget (without taking into account funds for priority lines) (the sum of lines 03, 10)	01	3.8	3.5	5.0	5.0	8.1	
of them financing for projects executed according to Federal targeted programs	02	—	—	—	—	—	
Internal current expenditures (execution of projects by agency-subordinate organizations themselves) (the sum of lines 04,05,	03	3,8	3,5	5,0	5,0	7,4	

[90] The real indices of the Institute's budgetary application were rounded to millions of rubles in the table, which may lead to failure of the totals to coincide.

06,07, 08, 09)							
Including: expenditures for wages	04	1,6	1,6	2,3	2,3	4,0	
deductions for social needs	05	0,7	0,6	0,8	0,8	1,4	
expenditures for acquiring equipment	06	0, 5	0,5	0,2	0,4	0,2	
expenditures for energy	07	0,2	0,1	0,2	0,2	0,4	
rent	08	0,01	0, 01	0,7	0,3	0,3	
прочие затраты	09	0,7	0,5	0,7	1,0	1,2	
External expenditures (paying for projects executed by outside organizations)	10	—	—	—	—	0.7	

* According to data from the Ministry of Finances of Russia

** Taking into account a correction (0.5 million rubles) according to a letter from the Institute.

Table 93

Financing according to Section 06 "Fundamental research and facilitating scientific technical progress" on the Federal budget according to kinds of activities[91] ***(in millions of rubles, code 03 73 according to the SOEI (system for processing economic information))***

	Line code	2000 (report)	2001 (approved plan)	2002 (application)
A	**B**	**1**	**2**	**3**
Amount of financing according to Section 06 (sum of lines 19,22,23,23,25)	18	3.6	5.0	8.1
including: research and development (sum of lines 20,21)	19	3.3	4.7	7.7
of them: internal current expenditures	20	3.3	4.7	7.1
external expenditures	21	—	—	650.0
education and training of personnel	22	0.1	0.1	0.1
Scientific technical services	23	—	—	—
Management	24	0.2	0.2	0.3
Other kinds of activities	25	—	—	—

The preliminary version of the budgetary estimate of the Institute's outlays presented to the Ministry in the IV quarter of 2001 was prepared in accordance with the rules for compiling estimates in effect in 2000 and which were rescinded by the above-mentioned Ministry order in March 2001. The preliminary version of the estimate of the Institute's outlays prepared in accordance with the new Ministry requirements is presented in *Table 93*. Despite this table's heading, in it in actuality are presented the Institute's proposals for the estimate of outlays for 2001 (that is, the preliminary estimate of outlays). Along with *Table 93*, in December 2001, calculations were presented to the Ministry which give the grounds for individual lines taken by outlays (see attachments 3.1-3.3 to *Table 93*), and also a copy of the notification on the quotas for the budgetary obligations of the Federal budget for 2001, the form of which coincides with *Table 94*.

The preliminary estimate of the Institute's outlays for 2002 is presented in the budgetary classification codes section (*Table 94*). In the column "the Ministry" is presented the code of the agency classification of the Institute's outlays, that is, the code of the Ministry as the head manager of budgetary funds and to which the Institute is in agency subordination. The

[91] The real indices of *Table 93* are rounded to millions of rubles here.

following four columns of *Table 94* contain the codes of outlays in the section of the four levels of functional classification of budgetary outlays. In the column "Subject articles" the Institute's outlays are reflected in the codes of economic classification cell. And finally, the quarterly distribution of the overall sum requested by the Institute from the Federal budget for 2002 is presented in *Table 94*.

The circumstance is worthy of attention whereby the parameters of the preliminary estimate (*Table 94*) exceed the respective indices of the budgetary application (*Table 92*). The reason for these discrepancies proved unexpectedly simple: as the Director and head bookkeeper acknowledged, when the preliminary estimate was being prepared at the Institute they had already managed to forget about the existence of the budgetary application.

Tables 95-97 give a notion of the Ministry's requirements for calculations for the estimate. The preparation of two versions of the calculations for outlays for wages is connected to the decision made by the Government of the RF to increase wages in the budgetary sphere beginning 1 January 2002. In this connection *Table 95* reflects outlays for wages in accordance with the old wage rates grid (that is, the one effective before 1 January 2002), while *Table 96* is in accordance with the new one.

After the preliminary estimate of the Institute's outlays was presented to the Ministry in December 2001 an iterative process of correcting it began which led to a gradual decrease in the overall amount of outlays and to a distribution of that decrease among the individual articles. Correcting the preliminary estimate for 2002 (*Table 97*) took place over a month's time.

The essence of the procedure was that the Ministry demanded a cut in the overall amount of outlays, motivating it by limitations placed by the Ministry of Finances of Russia, and revealed what, in its view, were reserves for that cut. Thus at one of the beginning stages of correcting the estimate, the overall amount of outlays indicated in the preliminary estimate (9,042,000 rubles) was cut by 2.6 percent (basically for current outlays at the expense of decreasing outlays for communications services and payments for utilities). This work was completed for all practical purposes at the beginning of 2002, when the Ministry informed the Institute of the figure for the overall amount of outlays, proceeding from which an estimate of 6,800,000 rubles was supposed to be compiled.

Table 94

NOTIFICATION OF BUDGETARY ALLOCATIONS FROM THE FEDERAL BUDGET FOR 2002

The Ministry

(head manager of budgetary funds

(manager of budgetary funds

The Institute

(recipient of budgetary funds) – organization

In thousands of rubles

Designation	Ministry	Section	Subsection	Trg Art of Outlays	Kind of Outlays	SUBJECT ARTICLE	Year	I Quarter	II Quarter	III Quarter	IV Quarter
FUNDAMENTAL RESEARCH AND FACILITATING SCIENTIFIC TECHNICAL PROGRESS		06									
Developing promising technologies and priority lines for scientific technical progress		06	02								
R&D		06	02	281							
Other R&D		06	02	281	216						
CURRENT OUTLAYS		06	02	281	216	100000	8594	2147	2147	2149	2151
GOODS PURCHASES AND PAYING FOR SERVICES		06	02	281	216	110000	8594	2147	2147	2149	2151
Wages		06	02	281	216	110100	4538	1135	1134	1134	1135
Wages for civil servants		06	02	281	216	110110	4538	1135	1134	1134	1135
Accruements for the wages fund (unified social tax (payment), including tariffs for mandatory social insurance for accidents at work and professional illnesses)		06	02	281	216	110200	1624.6	406.1	406.1	406.2	406.2
Acquisition of items of supply and consumables		06	02	281	216	110300	205	51	51	51	52
Paying for fuel and lubricants		06	02	281	216	110340					
Other consumables and items of supply		06	02	281	216	110350	205	51	51	51	52
Business trips and official travel		06	02	281	216	110400	12	3	3	3	3
Transport services		06	02	281	216	110500	7	2	1	2	2
Paying for communications services		06	02	281	216	110600	332	83	83	83	83
Paying for utilities		06	02	281	216	110700	730	182	183	183	182
Paying for premises maintenance		06	02	281	216	110710	196	49	49	49	49
Paying for heating energy		06	02	281	216	110720	284	71	71	71	71
Paying for heating and technological needs		06	02	281	216	110721	284	71	71	71	71

Paying for gas usage		06	02	281	216	110722					
Paying for electrical energy usage		06	02	281	216	110730	74	18	19	19	18
Paying for water supplies to premises		06	02	281	216	110740	48	12	12	12	12
Paying for rental of premises, land, and other property		06	02	281	216	110750	128	32	32	32	32
Other current outlays for goods purchases and payment for services		06	02	281	216	111000	1145.4	284.9	285.9	286.8	287.8
Paying for scientific research, experimental design, and technological projects		06	02	281	216	111010	350	87	87	88	88
Paying for current repair of equipment and inventory		06	02	281	216	111020	90	22	22	23	23
Paying for current repair of buildings and structures		06	02	281	216	111030	300	75	75	75	75
Other current outlays		06	02	281	216	111040	405.4	100.9	101.9	100.8	101.8
CAPITAL OUTLAYS		**06**	**02**	**281**	**216**	**200000**	**448**	**112**	**112**	**112**	**112**
CAPITAL INVESTMENTS IN FIXED ASSETS		06	02	281	216	240000	448	112	112	112	112
Acquisition and modernization of equipment and items of long-term usage		06	02	281	216	240100	448	112	112	112	112
Acquisition and modernization of non-production equipment and items of long-term usage for state institutions		06	02	281	216	240120	448	112	112	112	112
TOTAL OUTLAYS		**06**	**02**	**281**	**216**	**800000**	**9042**	**2259**	**2259**	**2261**	**2263**

Table 95

Attachment to notification of budgetary allocations

Subject article	2001 expenditures Actual, in thousands of rubles	Application for 2002 in thousands of rubles	Percentage increase
110100 Wages	2295.0	4638.0	15% expec inflation 1.8 planned in
110300 Acquisition of items of supply and consumables	136.6	205.0	50%
110400 Business trips and official travel	10.0	12.0	20%
110500 Transport services	5.0	7.0	40%
110600 Communications services	221.0 (telephones, Internet, subscriptions to periodicals)	332.0	50%
110700 Paying for utilities	436.1	730.0	70%
110710 Paying for premises maintenance	122.4 (list of organizations on the basis of contracts with which payment occurs)	196.0	60%
110720 Paying for heat energy usage	176.9 (list of organizations on the basis of contracts with which payment occurs)	284.0	60%
110730 Paying for electrical energy usage	43.4 (list of organizations on the basis of contracts with which payment occurs)	74.0	70%
110740 Paying for water supplies			
110750 Paying for rental of premises	63.6 (name of the landlord organization)	128.0	100%
111020 Paying for current repair of equipment and inventory	76.3	90.0	20%
111040 Other current outlays	200.0	270.0	35%
240120 Acquisition and modernization of non-production equipment	220.0	448.0	100%

Table 96

DISTRIBUTION OF THE NUMBERS OF THE INSTITUTE'S PERSONNEL BY CATEGORIES AND WAGE RATES OF THE UNIFIED WAGE SCALE GRID AS OF 1 Dec. 2001 (according to the manning schedule)

Category by Unified Wage Scale Grid	Monthly salary	Number of persons	Sum
2	500-00	2	1000-00
6	750-00	1	750-00
7	830-00	1	830-00
8	910-00	8	7280-00
9	1000-00	6	6000-00
10	11000-00	10	11000-00
11	1205-00	14	16870-00
12	1300-00	7	9100-00

13	1405-00	23	32315-00
14	1510-00	22	33220-00
15	1630-00	44	71720-00
16	1755-00	43	75465-00
17	1890-00	16	30240-00
18	2025-00	3	6075-00
TOTAL:		200	301865-00
Increase for a degree	300-00 500-00	30 5	900-00 2500-00
TOTAL:		35	11500-00
Personal increase	2025-00	1	2025-00
OVERALL TOTAL:		200-00	315390-00

Table 97

DISTRIBUTION OF THE NUMBERS OF THE INSTITUTE'S PERSONNEL BY ATEGORIES AND WAGE RATES OF THE UNIFIED WAGE SCALE GRID AS OF 30 Nov. 2001 (according to the manning schedule)

Category by Unified Wage Scale Grid	Monthly salary	Number of persons	Sum
2	310-00	2	620-00
6	350-00	1	350-00
7	364-00	1	364-00
8	412-00	8	3296-00
9	466-00	6	2796-00
10	527-00	10	5270-00
11	595-00	14	8330-00
12	673-00	7	4711-00
13	760-00	23	17480-00
14	859-00	22	18898-00
15	972-00	44	42768-00
16	1078-00	43	46354-00
17	1197-00	16	19152-00
18	1329-00	3	3987-00
TOTAL:		200	174376-00
Increase for a degree	300-00 500-00	30 5	900-00 2500-00
TOTAL:		35	11500-00
Personal increase	1329-00	1	1329-00
OVERALL TOTAL:		200-00	187205-00

As a result of corrections and coordination of the Institute's preliminary estimate with the Ministry, the overall amount of outlays was cut by almost a fourth. With that, Article 110700 "Paying for utilities," from which outlays for paying for heat energy, heating and technological needs, electrical energy usage, and water supplies to premises were excluded, "suffered" the most. Outlays for paying for current repair of buildings and structures were also excluded from the preliminary estimate. The level of outlays for 2002 set by the Ministry was achieved at the expense of curtailing practically all lines taken by outlays in the preliminary estimate (thus, outlays for wages were decreased by eighteen percent).

Does such a large-scale change to the Institute's estimate mean it was insufficiently well-grounded? Taking into account the practices in the budgetary financing of scientific organization which have taken shape in recent years, it does not appear possible to give an unambiguous answer to that question.

After the estimate with the overall amount of outlays set by the Ministry was prepared, the document (with the same title of "Notification of budgetary allocations from the Federal

budget for 2002") was signed by the Institute's Director and the manager of the Ministry's Administrative-Economics Board.

In the first quarter of 2002 (in February), practically simultaneously with the completion of this work, the Institute received Notification of the quotas of Federal budget budgetary obligations for 2002 (*Table 98*) from the Ministry. The form of notification of the quotas of budgetary obligations coincides with the form of notification of budgetary allocations. The overall sums of the outlays indicated in these documents also coincide. Only their distribution by individual lines differ somewhat.

It is namely this document, "Notification of quotas of budgetary obligations of the Federal budget for 2002," detailed to the level of the Institute, which is looked upon as the budgetary estimate of outlays for budgetary activities. The Institute presents a copy of the notification to the territorial board of the Federal Treasury, which is the basis for allotting the Institute funds from the Federal budget and is the instrument for monitoring their targeted use.

Along with that, in December 2001 the Institute prepared a budgetary estimate of revenue and outlays for extra-budgetary activities, the form of which was first proposed by the Ministry and then corrected by the Treasury (*Table 95*). In January 2002 this estimate, signed by the Director and the chief of the Ministry's Administrative-Economics Board, was presented to the Treasury. The Institute's revenue was presented in the estimate as the overall amount of funds received from extra-budgetary sources (that is, without indicating their origin), and assessed for 2002 at 5,500,000 rubles (*Table 99*). The lines taken by the outlays of extra-budgetary funds were set in accordance with the codes of budgetary classification of outlays (with the exception of capital outlays, which were not singled out in the estimate of outlays of extra-budgetary funds).

Table 98

NOTIFICATION OF THE QUOTAS OF BUDGETARY OBLIGATIONS OF THE FEDERAL BUDGET FOR 2002

The Ministry

(head manager of budgetary funds

The Institute

(recipient of budgetary funds) - organization

In thousands of rubles

Designation	Min	Section	Subsection	Target Article of Outlays	Kind of Outlays	SUBJECT ARTICLE	Year	I Quarter	II Quarter	III Quarter	IV Quarter
FUNDAMENTAL RESEARCH AND FACILITATING SCIENTIFIC TECHNICAL PROGRESS		06									
Developing promising technologies and priority lines for scientific technical progress		06	02								
R&D		06	02	281							
Other R&D		06	02	281	216						
CURRENT OUTLAYS		06	02	281	216	100000	6505.0	1430.0	1625.0	1730.0	1720.0
GOODS PURCHASES AND PAYING FOR SERVICES		06	02	281	216	110000	6191.0	1430.0	1525.0	1599.0	1637.0
Wages		06	02	281	216	110100	3787.0	947.0	947.0	947.0	946.0
Wages for civil servants		06	02	281	216	110110	3787.0	947.0	947.0	947.0	946.0
Accruements for the wages fund (unified social tax (payment), including tariffs for mandatory social insurance for accidents at work and professional illnesses)		06	02	281	216	110200	1355.8	339.0	339.0	339.0	338.8
Acquisition of items of supply and consumables		06	02	281	216	110300	140.2		35.0	55.0	50.2
Paying for fuel and lubricants		06	02	281	216	110340					
Other consumables and items of supply		06	02	281	216	110350	140.2		35.0	55.0	50.2
Business trips and official travel		06	02	281	216	110400	8.0		2.0	3.0	3.0
Transport services		06	02	281	216	110500					
Paying for communications services		06	02	281	216	110600	250.0	9.0	67.0	92.0	82.0

Paying for utilities		06	02	281	216	110700	650.0	135.0	135.0	163.0	217.0
Paying for premises maintenance		06	02	281	216	110710	60.0	44.5	5.0	5.0	5.5
Paying for heat energy usage		06	02	281	216	110720					
Paying for heating and technological needs		06	02	281	216	110721					
Paying for gas usage		06	02	281	216	110722					
Paying for electrical energy usage		06	02	281	216	110730					
Paying for water supplies to premises		06	02	281	216	110740					
Paying for rental of premises, land, and other property		06	02	281	216	110750	155.0	33.0	33.0	39.0	50.0
Other utilities		06	02	281	216	110770	435.0	57.5	97.0	119.0	161.5
Other current outlays for goods purchases and paying for services		06	02	281	216	111000	314.0		100.0	131.0	83.0
Paying for scientific technical, experimental design, and technological projects		06	02	281	216	111010					
Paying for current repair of equipment and inventory		06	02	281	216	111020	80.0		21.0	33.0	26.0
Paying for current repair of buildings and structures		06	02	281	216	111030					
Other current outlays		06	02	281	216	111040	234.0		79.0	98.0	57.0
CAPITAL OUTLAYS		06	02	281	216	200000	295.0		75.0	120.0	100.0
CAPITAL INVESTMENTS IN FIXED ASSETS		06	02	281	216	240000	295.0		75.0	120.0	100.0
Acquisition and modernization of equipment and items of long-term usage		06	02	281	216	240100	295.0		75.0	120.0	100.0
Acquisition and modernization of non-production equipment and items of long-term usage for state institutions		06	02	281	216	240120	295.0		75.0	120.0	100.0
TOTAL OUTLAYS		06	02	281	216	800000	6800.0	1430.0	1700.0	1850.0	1820.0

Table 99

BUDGETARY ESTIMATE of the Institute's revenue and outlays of extra-budgetary funds for 2002 (in thousands of rubles)

Designation	**Index code**	**2002**
REVENUE		
Funds received from extra-budgetary sources	5000000	5500
TOTAL REVENUE	5000000	5500
Designation	Subject article	2002
OUTLAYS		
Current outlays	100000	5500
Goods purchases and payment for services	110000	5500
Wages	110100	2200
Wages of civil servants	110110	2200
Accruements for the wages fund (insurance payments for state social insurance for citizens)	110200	787.6
Acquisition of items of supply and consumables	110300	64
Other consumables and items of supply	110350	64
Paying for communications services	110600	0.3
Paying for utilities	110700	150
Paying for premises maintenance	110710	100
Paying for heat energy usage	110720	-
Paying for heating and technological needs	110721	-
Paying for electrical energy usage	110730	-
Paying for water supplies to premises	110740	-
Other utilities	110770	50
Other current outlays for goods purchases and payment for services	111000	1998.4
Paying for scientific research projects	111010	1000
Paying for current repair of equipment and inventory	111020	50
Other current outlays	111040	948.4
TOTAL OUTLAYS	800000	5500

The circumstance is worthy of attention whereby about eight percent of extra-budgetary funds is intended for use in 2002 to pay for communications services and utilities, which in the case of state funded institutions should be paid for at the expense of Federal budget funds. The share of wages (with accruements) in the outlays is comparatively low—fifty-four percent. The relatively high share thereby of Article 111040 "Other current outlays for goods purchases and payment for services" (over thirty-six percent) is connected to the fact that the possibilities for using funds from this article are exceedingly broad. At the same time, taking into account the possibility of correcting the "extra-budgetary estimate," the Institute ran no calculations at all that would provide grounds for the lines taken by the outlays.

The sequence of compilation of the Institute's budgetary estimate of outlays which has been examined permits singling out the characteristics of this process which are matters of principle.

In the first place, if one follows the letter of the Budgetary Code of the RF, it ought to be acknowledged that the Institute does not have a budgetary estimate of outlays and revenue as a unified planning document reflecting all its revenue and outlays. The "Notification of quotas of budgetary obligations of the Federal budget" figures here as the Institute's budgetary estimate of outlays for budgetary activities. As for the budgetary estimate of outlays for "extra-budgetary" activities, the Institute prepared it as the planning document for 2002 in

accordance with the requirements of the Ministry and the Treasury and presented it in the established manner.

In the second place, the procedure for compiling the Institute's budgetary estimate is set by the Ministry, which acts with regard to this issue on the basis of the Statute on the manner of budgetary financing at the Ministry which is approved annually by means of an order it itself issues. The content of this Statute meets the requirements of the Budgetary Code of the RF on the whole, that is, it is faithful to it in spirit, but not always to the letter. Besides that, due to a whole series of objective and subjective reasons, the Ministry violates the "rules" established by its own Statute. The cumulative effect of all these "deviations" from the Budgetary Code of the RF now manifests itself at the level of compilation of the estimate by the Institute.

In the third place, as long as the Federal budget for the next year is adopted in December of the current year at best, the requirement for strict observation of the procedures prescribed in the Budgetary Code of the RF appears unrightful and unrealistic. Thus the Federal law "On the Federal budget for 2002" was adopted on 30 December 2001 (№194-FZ).

And, finally, in the fourth place it cannot but be acknowledged that the description given of the procedure for compiling the budgetary estimate is one-sided and incomplete. That is connected to the fact that the interactions of the Ministry and the Ministry of Finances of Russia during the process of its compilation remained beyond the framework of the analysis. At the same time it is namely that level of the budgetary process (at the level of the Ministry of Finances of Russia and the head managers of budgetary funds) that to a significant degree predetermines the interactions of the managers and recipients of budgetary funds (with regard in particular to observation of the timeframes for preparing and executing the Federal budget).

4.2.9. Sources of financing the Institute: structure and dynamics

In accordance with the Instructions for bookkeeping recording at state funded institutions approved by order of the Ministry of Finances of Russia on 30 December 1999 №107n (further—Instruction №107n), beginning with the year 2000 classification is introduced of the sources of financing for state funded institutions in which are singled out three basic sources of funds directed at maintenance of an institution and at other measures:[92]

- budgetary financing;
- funds from entrepreneurial activities;
- targeted funds.

Data are presented in *Table 100* on the dynamics of Institute financing in the context of the three basic sources for 2000-2001.

Table 100

Sources of the Institute's financing

Source	2000		2001	
	Amount (in thou-sands of rubles)	Share of the overall amount (%)	A-mount (thou-sands of r/s)	Share of the overall amount (%)
Budgetary financing	3600	52.6	5233	59.6
Funds from entrepreneurial activities	42.1	0.6	864	9.8
Targeted funds and receipts not requiring repayment	3200	46.8	2685	30.6
TOTAL	6842.1	100	8782	100

The table's data confirm that the basic source of the Institute's financing is budgetary financing, the share of which in the overall amount of funds received by it grew by seven percent over the two years under consideration. That growth was due to a decrease in the share of the other source of financing—targeted funds and receipts not requiring repayment. The contribution of entrepreneurial and other revenue-producing activities to the overall amount of the Institute's financing grew by more than sixteen times over that period.

The structure of the Institute's financing which has taken shape is explained to a significant degree by the makeup of its basic sources. In this connection it seems advisable to examine the concrete kinds and content of activities due to which each of the three sources of financing takes form.

4.2.9.1. Budgetary financing

In accordance with Instruction №107n, budgetary financing subdivides into basic financing and supplementary sources of budgetary financing. Basic financing is effectuated both by means of direct allotment of budgetary funds and due to the establishment by the state of mandatory payment for performance of actions connected to the effectuation of state powers (under the condition that the Federal law on the Federal budget for the current year envisages inclusion of these kinds of payments into the makeup of non-tax budget revenue). The list of supplementary sources of budgetary financing is determined in accordance with the Federal law on the Federal budget. As to state funded institutions in the scientific technical sphere, among supplementary sources of budgetary financing is revenue from renting out property in Federal property ownership and transferred to the operational control of these institutions.

[92] The time frames for analysis of the sources of the Institute's financing are limited to 2000 and 2001. The material was prepared according to data from the Institute's bookkeeping reporting for the respective years with involvement of materials from interviews with the Director and the head bookkeeper.

The Institute's budgetary financing is formed only at the expense of basic budgetary financing, that is, of direct allotment of quotas of budgetary obligations within the limits of approved allocations according to the estimate for a year. The Institute has no supplemental sources of budgetary financing. It does not have the possibility of renting out property insofar as property was transferred to the Institute with the right to use free of charge (and not with the right to operational control, as the documents regulating formation of supplementary sources of budgetary financing of state funded institutions require). All the attempts undertaken by the Institute to resolve this problem and get permission to rent out premises have proven unsuccessful. In the Director's opinion, this not only deprives the Institute of supplementary funds, but also creates a number of problems.

4.2.9.2. Targeted funds and receipts not requiring repayment

The makeup of this source of financing state funded institutions is also regulated by Instruction №107n. Taking into account the requirements of this document and also the practice of financing agency-subordinate organizations which has taken shape, the Ministry in coordination with the Treasury recommended the Institute include in the makeup of targeted funds and receipts not requiring repayment grants from budgetary foundations supporting science and subventions, that is, budgetary funds directed to the Institute by the Ministry over the course of the year for paying for projects executed outside the subject matter plan (that is, outside the framework of basic budgetary financing). Practically all the Institute's revenue in 2000 and 2000 which belonged to targeted funds and receipts not requiring repayment are subventions. The contribution of grants to this revenue is insignificant. In the Director's opinion, the relatively high share of targeted funds in the structure of the sources for financing the Institute (despite the decrease in that share in 2001) was brought about not so much by the appearance, unexpected by the Ministry, over the course of the year of projects not included in the Institute's subject matter plan, but requiring execution, as by the incomplete financing of the Institute within the framework of basic budgetary financing. That is, the share of targeted funds in the Institute's case may be looked upon as an indirect indicator of acknowledgement by the Ministry of the insufficient level of the Institute's financing according to the estimate (on the whole, by individual projects included in the subject matter plan, and by individual lines taken by outlays).

4.2.9.3. Funds from entrepreneurial activities

While the absolute dimensions of these funds were exceedingly modest in 2000-2001, the dynamics of their relative indices certainly deserve attention: the share of these funds in the structure of the sources for financing the Institute grew from 0.6 percent in 2000 to 9.8 percent in 2001 (see *Table 96*). The danger of such dynamics consist of the fact that they may create the illusion of radical changes in the structure of the Institute's financing and be looked upon as some sort of positive tendency. The fact of the matter is that this growth reflects not so much a sharp activization of the Institute's efforts to seek supplementary sources of financing in 2001 as the extraordinarily low share of the funds received from entrepreneurial activities in 2000.

In the permit issued by the territorial agency of the Federal Treasury in the summer of 2000 to open at the Sberbank (Savings Bank) of Russia an account for recording funds received by the Institute from entrepreneurial and other revenue-producing activities, the sources of formation of these funds were defined in the following way (along with that, how these funds were to be used were defined in the permit; the legal grounds for their formation and use were also adduced, that is, references to the respective regulatory documents were given):

- customer funds for executing R&D according to contracts;
- funds from the Russian Foundation for Technological Development (RFTR);

- customer funds for creating information products and rendering services for preparing, publishing, and disseminating information on the results of scientific technical activities.

In an analogous document received by the Institute in August 2001, this list of possible sources of forming revenue from entrepreneurial and other revenue-producing activities was expanded due to the addition to it of grants received from Russian and foreign foundations, of funds from domestic, foreign, and international organizations, and also of funds received for rendering services in the organization and conducting of scientific conferences, seminars, and symposia. Along with that, in the 2001 permit the formulation of one of the sources of formation of revenue given in the 2000 permit is somewhat more detailed and precise. Thus, instead of "customer funds for creating information products and rendering services for preparing, publishing, and disseminating information on the results of scientific technical activities," there are singled out:

- funds received for making information available from state scientific technical information resources;
- funds received from sale of scientific technical products and consultative and publishing activities.

Despite the expansion in 2001 of the possible sources for forming revenue from entrepreneurial and other revenue-producing activities, both in 2000 and 2001 practically all revenue from entrepreneurial activities was received due to execution of R&D on the basis of contracts concluded with customers, that is, due to only one of the sources possible for the Institute. Less than one percent of the total sum of the Institute's revenue from entrepreneurial and other revenue-producing activities was received due to sale of a reference book published by the Institute and to revenue other than from sales (interest for Institute funds deposited in the Sberbank of Russia in 2000 and 2001).

Thus analysis of the sources of formation of the funds received by the Institute permit the conclusion that the share of the Federal budget in the overall amount of its financing exceeds ninety percent in actuality. The prospects for growth in the share of funds received from entrepreneurial and other revenue-producing activities seem exceedingly indefinite. Apparently it ought to be acknowledged that along with state funded institutions in the scientific technical sphere which really do have a multitude of financing sources there also exist those which for a large number of objective and subjective reasons are almost entirely financed from the Federal budget.

4.2.10. Recording and distribution of profit in an organization

As a result of analysis of the structure of sources of financing, the absolute and relative scales of its revenue from entrepreneurial and other revenue-producing activities have been singled out which in turn predetermine the upper limit of the amount of the Institute's possible profit.

It is necessary to give two preliminary explanations in order to assess the recording and distribution of the Institute's profit.

In the first place, in state funded institutions profit can be formed only owing to revenue received from entrepreneurial and other revenue-producing activities. However, due to the fact that the tax recording of state funded institutions is effectuated on the basis both of general and of special definitions of entrepreneurial activities, revenue from these activities reflected in bookkeeping reporting g differs, as a rule, from the respective indices in tax reporting. Even when there is revenue from entrepreneurial and other revenue-producing activities, a state funded institution may not have a profit as a base for calculating the appropriate tax; or it may

form it in its tax reporting only owing to a part of the revenue from entrepreneurial and other activities reflected in bookkeeping reporting.

Both of these variants for forming the size of taxable revenue on the basis of revenue from entrepreneurial and other revenue-producing activities were used by the Institute: in 2000 tax liabilities on profit were formed on the base of the entire sum of revenue from entrepreneurial activities reflected in bookkeeping reporting. In 2001 the Institute listed as taxable revenue only a part of the funds received by it from entrepreneurial activities.

In the second place, in the permits issued the Institute in 2000 and 2001 to open a current account for recording funds received from entrepreneurial and other revenue-producing activities, not only the sources of the formation of these funds were defined, but also the ways they are used. Practically the only source of formation of funds the Institute received from entrepreneurial activities in these two years were customer funds for executing R&D according to contracts. In 2000 they could be used only for executing R&D according to contracts. In 2001 the possible ways of using this same source were expanded due to inclusion of a number of articles of the Institute's budgetary estimate of outlays. The regulations on the possible ways of using revenue received by the Institute from entrepreneurial activities have a definite influence on the forming of tax liabilities on profit and its reflection in the tax records.

Recording and distribution of the Institute's profit is analyzed on the basis of information contained in Form №2 "Recording of profits and losses" presented to the tax inspectorate and on the basis of the report and balance of the execution of the Institute's budgetary estimate of revenue and outlays according to extra-budgetary sources (Forms 4 and 1-1 respectively of bookkeeping reporting) for 2000 and 2001. Along with that, comments and explanations by the head bookkeeper were used when the material was being prepared. Blank lines in the Institute's annual profits and losses reports are not examined in the text.

According to the profits and losses report for 2000 accepted by the tax inspectorate, the Institute's proceeds (net) from sale of goods, products, projects, and services amounted to 42,000 rubles (we would note that in accordance with the way of playing value added tax (VAT) in effect in 2000, the Institute was not a payer of that tax, that is, VAT was not deducted from the total amount of its proceeds and the Institute's net proceeds were equal to gross proceeds). The size of the proceeds coincided in 2000 with the overall magnitude of the revenue received from entrepreneurial and other revenue-producing activities and reflected in the bookkeeping reporting, which testifies to the absence of discrepancies between the bookkeeping recording of the Institute's entrepreneurial activities and their recording for purposes of taxation.

The prime cost of selling goods, products, projects, and services (outlays for entrepreneurial and other revenue-producing activities) in the Institute's Profits and Losses Report for 2000 came to 31,300 rubles.

Profit from sales represented the difference between these lines, that is, profit equaled 10,700 rubles. After payment of the tax on maintenance of housing and things in the socio-cultural sphere—30 rubles (1.5 percent of gross proceeds of 42,000 rubles) the Institute's profit from financial-economic activities came to 10,100 rubles.

Adding revenues other than from sales to this sum (interest for Institute funds placed with the Sberbank of Russia) allows one to arrive at the indicator for taxable profit in 2000—10,300 rubles, the tax on which came to 3,100 rubles.

As a result of all these calculations, the size of the Institute's profit subject to distribution in 2000 was 7,200 rubles. This profit was directed at formation of Institute funds and was distributed practically evenly between the material incentives fund and the fund for development of the logistical base.

Recording of the Institute's profit in 2001 took place somewhat differently. The discrepancy between the Institute's bookkeeping and tax reporting for entrepreneurial activities were exceedingly noticeable in 2001.

Despite the fact that the source of formation of the Institute's revenues from entrepreneurial and other revenue-producing activities as previously (as in 2000) remained customer funds received for executing R&D by contracts and funds from sale of a collection (of articles, etc.) published by the Institute (864,000 rubles all together), the Institute's tax liabilities in 2001 were formed only according to a part of these revenues, namely according to funds received for executing R&D by contracts with the state funded institution The Russian Foundation for Technological Development (RFTR).

The Institute paid VAT from funds received from a state funded institution. Generally speaking, in accordance with clauses in the Tax Code, in this instance the Institute should not have paid VAT; however, it did so. In 2001 similar situations became rather typical when contract relations arose between organizations with different rules for paying this tax. As practice has shown, in a number of instances (including this one) for the parties participating in this kind of contracts it is simpler to pay VAT than to defend one's right not to before the tax inspectorate.

Thus after deduction of VAT the proceeds from sale of goods, products, projects, and services indicated in the Institute's profits and losses report for 2001 came to 417,000 rubles.

Profit from sales (after deduction of prime cost—388,000 rubles) was directed at paying for other operational outlays (the tax on road usage). The Institute's profit from financial and economic activities after deduction of operational outlays came to 24,800 rubles in 2001.

Adding to this sum revenues other than from sales—2,000 rubles (interest from placing Institute revenues from entrepreneurial and other revenue-producing activities in the Sberbank of Russia)—and deduction of the corresponding outlays (thirty-six rubles) gives the magnitude of the Institute's taxable profit in 2001—26,800 rubles, the tax on which came to 9,400 rubles.

The 17,400 rubles remaining after payment of the tax were directed at forming Institute funds (11,800 rubles) and paying fines and debt (5,600 rubles) which could only be paid from profit.

A substantial addition to the description which has been examined of the recording and distribution of profit is the opinion of the Institute's Director and head bookkeeper about the true motivation of these processes. In particular, it was noted that objectively the Institute has no interest in forming tax liabilities for profit, that is, in forming profit from those of its revenues received from entrepreneurial and other revenue-producing activities. This is connected to the fact that the absolute dimensions of the profit remaining at the Institute's disposal are insignificant and directing them to the funds for material incentives or development of the logistical base does not permit the resolution of any problems of importance to the Institute. According to the acknowledgement of the chief bookkeeper, the only motive in 2001 for recording a part of the revenues from entrepreneurial activities as profit was the necessity of paying fines, debt, and other payments which could only be paid at the expense of profit.

4.2.11. Description of the Institute's budgetary estimate of revenues and outlays

The Institute's budgetary estimate of revenues and outlays is described on the basis of two documents from its bookkeeping reporting for 2001: Form 2 "Report on execution of the budgetary estimate of revenues and outlays by budgetary funds" (*Table* 97) and Form 4 "Report on execution of the estimate of revenues and outlays by extra-budgetary funds"

(*Tables 98,99*). The necessary explanations to and commentaries on these documents were given by the Institute's head bookkeeper.

In the "Report on execution of the budgetary estimate of revenues and outlays by budgetary funds" (*Table 101*) only those points in the economic classification of outlays according to which the Institute is financed at the expense of Federal budget funds are adduced. Comparison of columns 3 and 5 of the table testify to the fact that the obligations of the Federal budget to the Institute were fulfilled completely in 2001: its budgetary financing was effectuated in accordance with the budgetary allocations and quotas of budgetary obligations approved for that year.

We will examine the distribution of the overall amount of budgetary funds allotted the Institute in 2001 by basic points in the estimate.

Article 110100 "Wages" is represented in the Institute's estimate by two sub-articles—110110 "Wages for civil servants" and 110140 "Wages for outsourced employees." The share of these outlays in the overall amount of the Institute's budgetary financing came to about forty-seven percent in 2001.

If accruements for the wages fund (subject article 110200) are added to these outlays, then already more than sixty-three percent of budgetary funds allotted the Institute go for these two articles of the estimate which are connected to wages.

About sixteen percent of the overall amount of the Institute's budgetary financing in 2001 went for the sub-articles and elements of the outlays of article 110700 "Paying for utilities."

Subject article 111000 "Other current outlays for purchases of goods and services" is represented in the estimate by three sub-articles: 111020 "Payment for current repairs to equipment and inventory," 111030 "Payment for current repairs to buildings and premises," and 111040 "Other current outlays," for which ten percent of the budgetary funds allotted the Institute go. Worthy of attention is the fact that sub-article 111010 "Payment for scientific research, experimental design, and technological projects" is not singled out here. That is, funds for these purposes are not envisaged in the 2001 estimate. The negative consequences to the Institute of the absence of these funds are obvious: this deprives it of the possibility of ordering any R&D necessary to the Institute for the execution of its functions and substantially lowers the quality of research and development being conducted.

Sub-group of outlays 240000 "Capital investments in fixed assets" is represented in the Institute's estimate by sub-article 240120 "Acquisition and modernization of non-production equipment and items of long-term usage for state and municipal institutions." If one compares the amount of funds allotted according to that article—220,000 rubles—with the cost of the equipment necessary to the Institute (in particular, computers, copying and duplicating equipment, program support, etc.,) it is obvious that they are insufficient to satisfy these of the Institute's needs.

In the Director's opinion, budgetary funds on the whole (basic budgetary financing) "cover" not more than sixty-five percent of the Institute's real needs (when the wages fund is calculated in accordance with the wage scale grid). With that, on a number of the estimate's points the degree of satisfaction of the Institute's needs at the expense of budgetary funds is substantially lower (in particular, on sub-articles 240120 "Acquisition and modernization of non-production equipment and items of long-term usage for state and municipal institutions" and 111010 "Payment for scientific research, experimental design, and technological projects").

Whereas in 2000 the Institute had no leftovers of budgetary funds, in 2001 their overall amount exceeded 511,000 rubles, which came to 6.4 percent of the overall sum of budgetary funds allotted the Institute in 2001.

Table 101

REPORT ON EXECUTION OF THE BUDGETARY ESTIMATE OF REVENUES AND OUTLAYS BY BUDGETARY FUNDS in 2001

Index designation	Index code	Budgetary allocations approved for the year (LBO)	Leftover funds as of 1 Jan 2001	Financed in the current year	Cash basis outlays	Actual outlays	Return of unused leftover funds*)	Leftover funds as of 1 Jan 2002
1	2	3	4	5	6	7	8	9
Wages for civil servants	110110	2418.6		2418.6	2418.6	2430.5		
Wages for outsourced employees	110140	25		25	25	13.1		
Accruements for wages (insurance payments for state social insurance for citizens)	110200	874.5		874.5	813	813	61.5	
Other consumables	110350	136.6		136.6	136.6	159		
Business trips and official travel	110400	10		10	5.2	5.6	4.8	
Paying for transport services	110500	10		10	7.3	7.3	2.7	
Paying for communicatins services	110600	184		184	184	145.2	0.0	
Paying for premises maintenance	110710	90		90	90	90		
Paying for heating and technological needs	110721	125		125	125	125	0.0	
Paying for premises lighting	110730	50		50	46	45.7	4.3	
Paying for water supplies to premises	110740	64.1		64.1	30	30	34.1	
Paying for rental of premises	110750	501		501	97.1	97.1	404	
Paying for current repairs to equipment and inventory	111020	80		80	80	80		
Paying for current repairs to buildings and premises	111030	244		244	244	244	0.0	
Other current outlays	111040	200		200	200	224		
Acquisition of non-production equipment and items of long-term usage for state institutions	240120	220		220	220	220	0.0	
TOTAL OUTLAYS	800000	5232.8		5232.8	4728.7	4728.7	511.4	

It should be noted that the presence of budgetary funds leftovers at the end of the year cannot be looked upon as evidence of the ungroundedness of assertions as to the incomplete financing of domestic science or as an indicator of the quality of preparation of the Institute's budgetary estimate of outlays. The thing is that whereas over-expenditure of budgetary funds under the conditions of the existing manner of financing state funded institutions is practically impossible, the presence of leftovers ("surpluses" of a sort) is practically inevitable. In this connection the concrete reasons for the appearance of these leftovers is of interest only in those instances when what deserves attention is the amount itself (absolute and relative) of the funds returned to the budget at the end of the year (in particular, the correlation of the remainder with the total sum of the financing of the state funded institution from Federal budget funds).

About eighty percent of the funds returned to the budget by the Institute in 2001 (about 404,000 rubles) come under sub-article 110705 "Paying for rental of premises" of subject article 110700 "Paying for utilities." Their appearance is connected to the fact that in 2001 the conditions for renting the premises occupied by the Institute changed. Until 2001 the Institute was the renter of those premises and paid for them in the amounts established by the landlord (the Ministry of Property of Russia). Naturally, payment for rental of the premises was

envisaged in the estimate of outlays for 2001, too. However, at the beginning of 2001 the Institute concluded a new rental contract, in accordance with which the premises occupied by it were made available for usage free of charge, of which the Ministry, too, was informed. Coordination of this change with the Ministry of Finances of Russia and the Treasury took almost six months, over the course of which the Institute continued to receive funds according to the estimate to pay for rental of the premises. In the third and fourth quarters of 2001 funds to pay for rent were no longer transferred (the actual outlays on this line reflect payment for additional premises rented by the Institute at a different address). Thus the return of unused leftover Institute funds to the budget became some sort of result of the existing practice of financing state funded institutions, and in particular of the practice's inertness.

By amount of return of unused funds to the budget, the next point in the Institute's estimate is Article 110200 "Accruements to the wages fund." The return here is basically connected to the fact that five disabled persons work at the Institute for the wages of whom these accruements are not made.

Return of funds according to other points in the Institute's estimate is insignificant and does not require any explanations.

4.2.12. Estimate of revenues and outlays by extra-budgetary sources

4.2.12.1. Entrepreneurial activities

The report on execution of the Institute's estimate of revenues and outlays according to entrepreneurial activities over the year 2001 is represented in *Table 102*. The Institute's revenues from entrepreneurial activities (864,000 rubles) were formed owing to 855,000 rubles received from customers for executing R&D according to contracts and 9,000 rubles received from sale of a collection published by the Institute and from revenues other than from sales (interest on Institute funds placed at the Sberbank of Russia in 2001).

In accordance with the estimate of outlays (see column 4 of *Table 102*), about half of this sum (47.5 percent) was used to pay for scientific research projects executed according to Institute order (sub-article 111010 "Paying for scientific research, experimental design, and technological projects") The remaining part—754,000 rubles—was distributed according to the estimate's points in the following way:

Seventy-two percent—wages with accruements (the sum of sub-articles 110110 "Wages for civil servants" and 110200 "Accruements to the wages fund");

Twenty-two percent—sub-article 111040 "Other current outlays," the spectrum of possible ways to use the funds of which is extraordinarily broad;

Six percent—outlays to pay for communications services and current repairs to equipment and inventory.

The actual use of these funds (see columns 5-9 of *Table 102*) differs from that envisaged by the estimate: the actual execution of the estimate by outlays came to 809,000 rubles instead of the 864,000 rubles indicated in the estimate, which occurred due to sub-article 111040 "Other current outlays." Of the 102,000 rubles envisaged by the estimate, 47,000 was used (of which about 7,000 rubles went to make various kinds of payments envisaged by the content of that sub-article).

The difference between revenues and outlays came to 55,000 rubles (see column 8 of *Table 102*), of which 44,000 rubles were used to pay taxes, fees, and other payments levied owing to profit (including 9,000 rubles—tax on profit, 35,000 rubles—VAT and road usage tax, and 11,000 rubles—directed to the formation of funds.

Strictly speaking, the form of the Institute's report on execution of the estimate of revenues and outlays by entrepreneurial activities (*Table 102*) is not in complete accordance with the established rules. Thus, according to the way in effect at the present time, the sum of taxes paid by the Institute (on profit, VAT, and on road usage) should be part of sub-article

111040 “Other current outlays.” However, in *Table 102* all these taxes are paid out of the difference between the actual execution of the estimate for revenues (864,000 rubles) and outlays (809,000 rubles). The ways these 55,000 rubles were used are given in *Table 102*: 9,000 rubles—tax on profit, 35,000 rubles—VAT and road usage tax, 11,000 rubles—profit for distribution, which was directed to the formation of Institute funds. As the Institute’s head bookkeeper notes, this form was prepared in accordance with Ministry recommendations. The Treasury in turn agreed with this form of reporting.

The discrepancy between the actual execution of the estimate for outlays (809,000 rubles) and the actual outlays by entrepreneurial activities reflected on sub-account 220 (639,000 rubles) came to 170,000 rubles. This appearance is connected to the fact that part of the revenues from entrepreneurial activities received by the Institute in the last days of 2001 (170,000 rubles) came in too late to be properly written up. These funds (along with the Institute’s revenues other than from sales) formed the leftover funds as of the end of 2001—190,000 rubles.

Receipt of a part of the revenues from entrepreneurial activities in the last days of 2001 also explains to a significant degree the differences between the actual and the cash basis execution of the estimate of outlays (in coordination with the Ministry and the Treasury, a part of the outlays for 2001’s entrepreneurial activities was made in the first quarter of 2002).

4.2.12.2. Targeted funds and receipts not requiring repayment

The report on execution of the estimate of the Institute’s revenues by targeted funds and receipts not requiring repayment is presented in *Table 103*. As was already noted previously, the basic source of formation of these revenues is subventions, that is, in the Institute’s case these are budgetary funds directed to it by the Ministry to execute R&D not included in the subject matter plan.

The overall sum of the targeted funds received by the Institute in 2001 came to 2,685,000 rubles, of which 2,655,000 rubles were subventions and 30,000 rubles were a grant from the Russian Foundation for Fundamental Research (RFFI).

The overall sum of subventions received and the distribution of the RFFI grant by points of economic classification of budgetary outlays are reflected in the outlays.

After paying for the scientific research projects executed according to Institute order (Sub-article 111010 “Payment for scientific research, experimental design, and technological projects”—10,000 rubles), out of the 30,000 rubles received from RFFI, 20,000 rubles remained at the Institute’s disposal, seventy-two percent of which were spent on wages with accruements (the sum of Sub-articles 110110 “Wages for civil servants” and 110200 “Accruements to the wages fund”) and twenty-eight percent on other current outlays (Sub-article 111040).

As to the estimate of outlays by subventions, its presentation in the Report on executing the estimate of revenues and outlays by targeted funds and receipts not requiring repayment (Form 4 of bookkeeping reporting) is not required. However, the estimate of outlays according to these funds is presented to the Ministry and the Treasury.

Table 102

REPORT ON EXECUTION OF THE ESTIMATE OF REVENUES AND OUTLAYS BY EXTRA-BUDGETARY SOURCES in 2001 (Entrepreneurial activities)

Index designation	Index Code by econ-class of outlays	Line code	Approved according to estimate for the reporting period	Actual execution					Cash basis execution
				Activities relating to manufacturing products, executing projects, and rendering services	Reinvested	Other operations	Total	Funds formed from profit	
1	2	3	4	5	6	7	8	9	10
Revenues Leftover funds as of the beginning of the year		010	X	X	X	X	X	X	5
including funds on hand		011	X	X	X	X	X	X	
Reporting period revenues		020	864	855	X	9	864	X	864
Revenues of future periods		030	X	X	X	X		X	X
Outlays Outlays by executed and paid-for products, projects, and services—total	700000	040	864,3	802		7	809		636
including:									
Wages for civil servants	110110		242	242			242		161
Accruements for wages	110200		87	87			87		56
Paying for communications services	110600		18	18			18		
Paying for scientific research organizations' services	111010		410	410			410		410
Paying for current repairs to equipment and inventory	111020		5	5			5		
Other current outlays	111040		102	40		7	47		9
Taxes, fees, and other transfers due to profit		160	9	X	X	X	44	X	43
Including:		161		X	X	X		X	
Tax on profit		162	9	X	X	X	9	X	9
		163		X	X	X	35	X	35
Directed from profit to forming the institution's funds		170	X	X	X	X	11	X	X

Directed from profit to a higher-standing organization or agency		180	X	X	X	X		X	
Leftover funds as of the end of the reporting period		190	X	X	X	X	X	X	190
including funds on hand		191	X	X	X	X	X	X	
REFERENCE. Actual outlays by entrepreneurial activities (Sub-account 220) over the reporting period—total		195	X	X	X	X	638852	X	X

Table 103

Targeted funds and receipts not requiring repayment

Index designation	Index Code by econ-class of outlays	Line code	Targeted funds for maintaining the institution and for other measures						Parents' funds for maintaining a children's institution		
			From budgets at other levels			From legal entities and physical persons; other receipts					
			Approved according to estimate for the reporting period	Actual execution	Cash basis execution	Approved according to estimate for the reporting period	Actual execution	Cash basis execution	Approved according to estimate for the reporting period	Actual execution	Cash basis execution
1	2	3	4	5	6	7	8	9	10	11	12
Received Leftover funds as of the beginning of the year		200									
Received (added to the account) over the reporting period		210				2685	2685	2685			
including received from lower-standing organizations		211									
Outlays Outlays—total	600000	220				2685	2662	2682			
Received											
Leftover funds as of the beginning of the year											
Subventions	13050					2655	2632	2652			
RFFI grant						30	30	30			
Wages for civil servants	110110					4,6	4,6	4,6			
Wages for outsourced employees	110140					6	6	6			
Accruements for wages	110200					3,8	3,8	3,8			
Paying for scientific research organizations' services	111010					10	10	10			
Other current outlays	111040					5,6	5,6	5,6			
Directed to budget revenue		320									
Directed to a higher-standing organization or agency		330									

Leftover funds as of the end of the reporting period		340					23,3	2,5			
REFERENCE. Outlays written off relating to construction sites finished and handed over for putting into operation		345									

4.2.13. Peculiarities of concluding contracts for executing projects

In contemporary Russian legislation the contract (dogovor) is the basic legal instrument regulating the relations of parties and defining responsibility for obligations assumed and for their execution. The Institute concludes contracts with the executors of scientific technical projects and services,[93] and also of projects and services connected to its housekeeping activities.[94] At the same time the Institute concludes contracts (kontrakty) with customers for scientific research projects (agencies of state authority, organizations and enterprises, foundations, etc.).

In every instance the manner of conclusion and the form of a contract are defined by existing legislation and financial and economic practice. Insofar as the Institute has no permanent legal service, when necessity the form and clauses of contracts are determined by the Director jointly with employees from the bookkeeping office and the planning division. As a rule, the Institute concludes a standardized contract for execution of scientific research projects.

The content and form of contracts concluded by the Institute (the Institute as customer and the Institute as executor) accord with generally accepted rules. Usually the contract includes the following sections: introductory part, contract subject matter, project costs and manner of settlements, manner of turn-over and acceptance, responsibility of the parties, special conditions, manner of resolving disputes, effective period, and legal addresses and bank details of the parties. The technical mission, the calendar plan, the protocol for coordinating price, the estimate of outlays, and the turn-over and acceptance document are included in an appendix to the contract.

Such clauses in the contract as the sum, the forms and manner of settlements, and penalty sanctions are of importance to the organization's financial state and to how operations are reflected according to contracts in bookkeeping records. Previously at the Institute a contract came to the bookkeeper after it had already been concluded, which brought about certain difficulties when contract relations were subjected to financial analysis. Now the practice for concluding contracts has been changed, and a bookkeeping employee has the chance to familiarize himself with the documents (especially the estimate, the protocol for determining price, etc.) before the contract is signed.

The purposes and missions of the work, the ability of the executor to execute the work in the stated timeframe and for the payment offered by the customer, and the content and form of concrete results are stipulated when contracts are concluded.

It is of substantial importance that when the Institute is the executor of projects the list of the leading personnel who will be participating in the work is usually stipulated also. In the event the Institute is the customer for projects special attention is devoted to timeframes. This

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[93] Most often—with the co-executors of projects which the Institute itself executes at the expense of budget funds (according to the subject matter plan and to orders placed by the state). In recent years in connection with the difficult financial situation, the Institute, as has already been noted, has in fact lost the ability to place outside orders for scientific research projects.

[94] Contracts connected to the Institute's housekeeping activities have no specifics, are concluded as contracting agreements (dogovory podriada) (or their variants), and are not examined in this survey. "Housekeeping" projects and services are paid for according to contract conditions and according to invoice bills. In some instances a condition for concluding "housekeeping" contracts (for example, for repair or construction projects) is the running of a tender among the possible executors. The Institute usually circumvents these conditions, concluding a contract for a lesser volume of projects than is envisaged in the legislation.

is connected to the fact that the results of the projects are to become components of research for which the Institute itself is now responsible.

If the Institute plans to conclude a contract for execution of scientific research projects, it provides for outlays for the services of outside organizations in the estimate of outlays (the base estimate and estimates by separate contracts). According to the Civil Code, when executing scientific research projects, the executor is obliged to effectuate them himself. Involving third parties is possible only if the customer agrees; therefore all co-executor organizations are enumerated in the contract.

In recent years the ability to involve co-executors (if necessary) is provided for only in the estimate on entrepreneurial activities, because budgetary financing is barely adequate to maintain the Institute as a scientific institution.

Although the reverse is envisaged by legislation, in reality the Institute is unable to "punish" a co-executor for poor quality or late execution of a contract. It is of substantial importance that (according to the Civil Code) the risk for failure to execute scientific research project (not at the fault of the executor) is borne by the customer. Previously, when the Institute was able to involve a significant number of co-executors, this fact of and by itself was a kind of a guarantee of their good work—otherwise the Institute could invite in other co-executors.

If the Institute is the executor of the project, then the contract price is determined by the customer. Usually this price does not change during the process of concluding the contract. The task of the Institute's management and its leading personnel is to assess the possibility and ways of solving the tasks set by the customer and in accordance with this to present the customer with the technical mission and other documents providing grounds for the contract.

If the Institute plans to place orders for scientific research projects with co-executors, then it has to give grounds for the necessity of doing such projects, envisage the necessary outlays (in the base estimate or in the estimate of the contract projects where it is the executor), and assess the abilities of the various co-executors.

Determining the price of a contract to conduct a scientific research project is a difficult task. The price of projects has to include compensation of costs (and, possibly, include profit). The price is determined basically by means of compiling an estimate. If projects are executed in accordance with the estimate compiled by the executor, the estimate acquires force and becomes a part of the contract from the moment the estimate is approved by the customer. As a rule, the price of a project is firm. There have been practically no instances in the "history" of the Institute when the price of a contract changed.

Methodologically the procedure for calculating outlays taken into account in the price for a contract scientific research project has been very poorly worked out. Basically it is general economic norms and rules and common sense which "do the job."

The only document which has regulated this issue in the scientific technical field was developed in 1994 by the Ministry of Science of the RF jointly with the Ministry of Economics of the RF and the Ministry of Finances of the RF. For determining the price of contracts in the scientific technical sphere they approved the "Standardized methodological recommendations for planning, recording, and calculating the prime cost of scientific technical products." The necessity for developing this document was connected to the large number of contract projects which began being concluded in this sphere beginning at the end of the 1980s and to the desire of the executive authority to establish at least minimal order here. According to the developers' intent, the recommendations were supposed to assure

uniformity of principles of planning and recording when contracts for research and development are formed.

In practice the ways calculations were to be performed when determining a contract price were rarely used (*today they are obsolescent even terminologically)* basically because of the impossibility of taking the *difficulty* of scientific work into account and also *the importance and priority* of concrete research.

Thus for state scientific institutions the basis for determining outlays for wages was envisaged to be salaries or wage scales which (and this fact may be considered to be generally recognized) do not reflect specifics and do not stimulate scientific activities. Strictly speaking, the price of a contract is supposed to be determined on that same basis even today. However, under those conditions it is very difficult to find qualified executors of projects. It may be said with certainty that scientific organizations carried out only two of the points in the recommendations. They independently planned the price (prime cost) of scientific technical products and conducted recording of outlays for creating scientific technical products in accordance with the "Statute on bookkeeping recording and reporting in the RF."

Today the Institute, when it concludes contracts to execute scientific research projects (services), determines their price "at its own risk," taking into account:

its financial possibilities and the prospects for receiving funds from various sources;

the necessity of executing planned subject matter and orders placed by the state;

preceding experience at concluding contracts on similar subject matter;

the necessity of observing the rules of bookkeeping and tax recording.

It has to be emphasized that, taking into account the problems with base financing, when determining contract price, the Institute tries in all instances (the Institute as executor, the Institute as customer) to provide for (embed in the estimate) an "infrastructure" component. Although such a practice is not encouraged by the Ministry and the finance agencies, especially when budgetary funds are meant, it is prevalent everywhere.[95]

4.2.14. Peculiarities of implementing projects according to orders placed by the state

The idea of forming orders placed with science by the state (goszakaz), the idea of introducing the contract (kontraktno-dogovornyi) form when such an order is implemented in the scientific technical sphere, began being implemented in about 1996.

In science the forming and placing of an order placed by the state (in the strict sense of that concept) occurs within the framework of priority lines through the Federal targeted program mechanism. The way of financing and monitoring purchases of "scientific" projects and services for state needs is typical of the distribution of budgetary funds. Financing is effectuated within the limits of the funds envisaged for these purposes in the Federal budget and also taking into account the actual receipt of resources. Financing of purchases through competition is effectuated by the Ministry of Finances of Russia, which transfers monetary resources to state customers within the limits of budgetary assignments (by articles, sections,

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[95] For scientific institutions the ability to use the Internet (financed according to the article "Paying for communications services") is a necessary element of the scientific process. Within the framework of the base estimate the financing of communications services is being cut from year to year (when the estimate of outlays according to that article is approved, increasing coefficients are practically not applied, although communications services rates are growing). This forces scientific institutions to use "contract" funds for these purposes.

and kinds of outlays)[96] for concluding contracts according to the respective lines taken. The Treasury makes provision by means of a separate line (in the draft quotas of financing budget outlays and measures for each month) for funds for financing purchases and transfers them to the executors. Responsibility for targeted expenditure of funds lies with the executor and the state customer for projects (the Ministry and its subdivisions), and responsibility for monitoring lies with the Ministry of Finances and the Treasury.

Before 2002 the Institute did not participate in executing orders placed by the state. As has already been noted, it executed research according to priority lines in the development of science and technology. Financing of these jobs took place through Ministry instructions.[97] Funds were allotted on a basis of not requiring repayment or return. In 2000-2001 these funds were received as subventions (subject article of economic classification 130150), which allowed the Institute's management to use them more efficiently for executing research work. In 2001 the Institute received approximately thirty percent of all financial resources through subventions. The estimate of outlays at the expense of Federal budget funds by Ministry instructions (targeted article 281—R&D, kind of outlays 182—financing priority lines in science and technology) was compiled primarily by consolidated articles.[98] The estimates were signed by the Ministry's (as the customer) department managers and the Institute's Director. The receipt of funds through Ministry instructions will be continued in 2002.

Execution of scientific research projects by contract at the expense of budget funds (according to Article 130150 subventions) is confirmed by turn-over and acceptance documents for the projects executed in accordance with the protocols on coordination of prices, and in accordance with the structure of prices and with the technical tasks and calendar plans for the projects. The following subject articles were envisaged in the estimate of outlays: wages for state employees (article code 110100) and accruements for wages (110200). Of the other articles those were included which not only permitted execution of a concrete study, but also solving of certain of the Institute's financial and economic problems arising because base financing did not permit "covering" all its needs (including paying for utilities, etc.). Most often envisaged in the estimates were: acquisition of items of supply and consumables (110300), paying for communications services (110600), paying for utilities (110700), paying for rent (110750), and other current outlays (111000).

In 2002, within the framework of implementing the course toward strengthening the program target component and contract relations in science when implementing orders placed by the state, the share of the funds which the Institute will receive outside the framework of basic financing should increase.

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[96] Financing of projects is effectuated on the basis of annual quotas. Subdivisions of the Ministry (project customers for state placed orders) effectuate distribution of the quotas (amounts) of budgetary funds according to forms developed at the Ministry. It is they who inform the Treasury according to where the executor is located of the annual quotas of financing the organization which is the recipient of the funds.

[97] To a certain theoretical degree it can be considered that an order the state places for scientific technical products and services is also "conducted" through Ministry instructions. The mechanism for forming an order in this instance does not bear the nature of a contract (kontrakt) and is not tied to the running of a competition. Although the significance of that form of targeted financing is decreasing, for the time being it is not possible to relinquish it. The Ministry cannot completely assure the economic activities of agency-subordinate institutions and the execution by them of charter functions due exclusively to the estimate. The Ministry's reserve is also distributed through instructions.

[98] In 2000 by decision of the Treasury deconsolidated estimates including more than sixty points were also presented.

In 2002 an open competition was announced for the first time in which the Institute was able to take part for the right to conclude state contracts for conducting research and development executed on orders placed by the Ministry of Industry and Science of Russia (within the framework of the section "Socio-economic technologies" from the block "Directed fundamental research" from the Federal targeted scientific technical program "Research and development by priority lines for the development of science and technology" for 2002-2006).

The Institute submitted applications to participate in several projects given in the list of research and development topics from the block "Directed fundamental research." Financing of state contracts (kontrakty) for conducting research and development by each competitive topic is effectuated from Federal budget funds envisaged for executing the Federal Targeted Scientific Technical Program (Section 0602, Targeted article 281, Kind of outlays 187—conducting R&D within the framework of the Federal targeted program). The amount of funds allotted within the framework of research according to the Federal targeted program is significant (at least for the Institute), therefore participation in the competition and receipt of an order would be not only prestigious, but also very profitable to the Institute.

The difficulties of participating in that competition are due to the basically still insufficiently precisely worked out organizational procedures. Official information on the competition's conducting (in the journal "Competition" and at the Ministry's site) appears a month before the end of the timeframe for conducting the competition, which is insufficient to organize work with co-executors and to prepare a high-quality set of competition documents (which, in particular, include various kinds of information about the financial and economic and logistical condition of the organization—about the executor and co-executors, about having the rights to objects of intellectual property, about qualifications and professional reputation, etc.). In connection with this, preparing the documents is a rather difficult and labor-intensive process.

According to the results of the competition, which the Institute won, it concluded contracts with its organizer—the Ministry of Industry and Science of Russia—according to which it as the executor pledges to execute and to turn over the work to the customer (the Ministry of Industry and Science and its departments), and the latter pledges to accept and pay for *scientific research* projects according to the topics of the contracts. The conclusion and conducting of state contracts for executing research were effectuated in accordance with the "Statute on organizing and conducting competitions for the execution of scientific research projects conducted according to orders placed by the Ministry of Industry and Science of Russia, including projects forming a part of the Federal targeted programs assigned to the Ministry" (approved in 2000).

Not dwelling in detail on the contract's content, we would note several elements important to the topic of this study.

1) The technical conditions for executing the work are prescribed in the contracts, including the technical mission and the calendar plan, the manner of turn-over and acceptance, the cost of the projects, and the manner of conducting settlements.

2) Settlements for work on a state contract (including issuing an advance) are conducted between the customer and the Institute according to completed and turned-over stages in the amount of their price in accordance with the Statute on manner of budgetary financing of the Ministry of Industry and Science of Russia. Payment of the cost of projects executed minus the advance is effected by the customer on the basis of a document of acceptance of the projects.

3) The Institute pledges to provide bookkeeping records at its offices and analysis of the actual cost of work executed (by stages) and also to present the customer reporting on use of Federal budget funds in the amount of the forms envisaged by the regulatory documents of the Ministry of Finances of Russia.

4) Financing of a contract at the expense of the Federal budget may be suspended, decreased, or stopped in the event of incomplete allotment to the customer of budgetary allocations. This occurs when the respective state agencies decrease the Federal budget funds directed at paying for execution of R&D within the framework of a Federal targeted program.

Another reason may be violation by the executor of conditions and also the non-targeted use of Federal budget funds. The Institute bears responsibility for all these violations in accordance with existing legislation.

5) Execution of scientific research and experimental design projects by contract at the expense of funds from the budgets of the budgetary system of the Russian Federation are freed of taxation in accordance with Sub-paragraph 16 of Paragraph 3 of Article 149 Part 2 of the Tax Code of the RF.

6) Monitoring of the execution of projects is effectuated by the Ministry of Industry of Russia and the State Directorate of Federal Targeted Programs. For this the Institute presents all the necessary documentation on the course of the execution of projects and on the outlays which have been effected.

7) The Institute secures state registration (registratsiia) and recording (uchet) of projects executed by contract and presents a mandatory copy of the report to the All-Russian Scientific Technical Information Center.[99] The parties pledge to strictly guard confidential information obtained when executing a contract. The Institute secures the safekeeping of documentation and materials, the limiting of the range of persons cleared for information, and the concluding of agreements on confidentiality with persons cleared for confidential information. Confidential information is published only with the written permission of the customer.

8) The Institute notifies the customer of all objects of intellectual property created during implementation of a contract (of applications for issuance and receipt of protected documents, of the presence of know-how, of transactions concluded concerning rights to the results of scientific technical activities, of facts of use of objects of intellectual property, of licensing contracts with foreign partners, etc.).

9) Results obtained in the course of executing a contract and envisaged by the technical mission are the property of Russia. The rights, duties, and responsibility of the parties with regard to objects of intellectual property and other results of intellectual activities created and used in the course of execution of the contract are defined by existing legislation and the conditions of a supplementary agreement. Exclusive rights thereby belong to Russia, in the name of which the Customer and (or) the executor of the projects (the Institute) acts.

10) The technical mission for executing a scientific research project by contract contains the grounds for executing the project, a description of the executor and co-

[99] In accordance with the requirements of the Federal law dated 29 December 1994 № 77-FZ "On a mandatory copy of documents," all open R&D executed by RF organizations regardless of their organizational legal form is subject to mandatory registration.

executors and of the purpose, tasks, and initial data for conducting the project, the basic content and requirements for the study, a list of stages, timeframes for executing the stages, and the cost of the project (of the stages).

11) An estimate for conducting projects by state contract is compiled in accordance with a protocol of coordination of price and includes the following articles of outlays: wages, accruements to the wages fund (unified social tax), acquisition of items of supply and consumables, special equipment for scientific (experimental) projects, business trips and official travel, paying for transport services, paying for communications services, paying for the services of outside organizations (including paying for experimental design and technological projects), paying for current repair to buildings and structures, and other current outlays.

The Institute also presents a deciphering of the following articles of outlays to a state contract:

= outlays for wages (official positions, number of executors, time spent, average wages, the wages fund);

= outlays for acquisition of items of supply and consumables (designation of items and materials, unit of measurement, quantity, price, overall sum of outlays);

= outlays for special equipment for scientific (experimental) projects (designation, quantity, price, sum, grounds (justification));

= business trip and official travel outlays (purpose of business trip, place of business trip, average length of time, business trip and official travel per person, fares, per diem, housing, overall number of business trips, total of outlays);

= outlays for projects executed by outside organizations (designation of the co-executor organization, content, result, timeframes, sum).

Analyzing the content of a contract, it is necessary to note the asymmetry of responsibility, one exceedingly painful to the executors of projects. In particular, the executor bears responsibility for non-execution of projects (by time and content), while the customer ministry and other state agencies (for example, the Ministry of Finances) do not (neither for cutting financing nor for cessation of projects nor for violation of the rhythm of allotment of funds).

A contract is concluded for one year (regardless of the period for which the research program is planned—usually two or three years). The general conditions of state contracts provide that when the results envisaged by the contract are received, taking into account tendencies in the development of science and technology and also of the amount of financial resources allotted for implementation of the Federal Targeted Scientific Technical Program, the Ministry of Industry and Science unilaterally decides the question of extending the contract to the following stages. The contract can be extended without an additional competition for a period not exceeding the period established when the competition was announced. Understandably, in practice there are no guarantees of such an extension (regardless how the project's results are assessed). Such a practice of financing projects within the framework of a Federal targeted program (the lack of "transparent" planning, financing, and monitoring) significantly decreases the effectiveness of the results of research (for executors and customers) and of budgetary outlays for the respective purposes.

It is also important to emphasize that in the absence of the necessary regulatory base all the points in the contract connected to observing confidentiality conditions remain at the level of wishes. Substantial losses may be borne here both by the executor and the customer.

In 2002 the Institute also took part in an open competition for the right to conclude state contracts to conduct applied economics research according to orders placed by the Ministry of Industry and Science. While the two competitions mentioned are alike in a formal sense, there also exist very noticeable differences. In the first place, there are the amounts of funds allotted for each topic—they are substantially less in the second competition. Although the manner of participation in the competition was simplified (in comparison with the first one), to win it remained extremely problematical.[100]

Nevertheless, the decision was made to participate in the second competition, too, since basic budgetary financing in 2002 does not make it possible to support the Institute's ability to work at the normal level.

4.2.15. Ways of implementing responsibility for an institution's obligations

The Institute's rights and duties arising in the process of scientific and economic activities are regulated by existing legislation and are also defined in the Charter and in each contract which the Institute concludes with the customers and executors of scientific research projects (with legal entities and physical persons) and with the suppliers of goods and services.

Responsibility for the results and for the completeness and quality of scientific research projects and services executed by the Institute within the framework of the subject matter plan is determined by the technical mission, by turn-over and acceptance documents, and by reporting materials.

If the quality of the reporting materials does not satisfy the customer (Ministry departments), then the Institute at the expense of its own funds (in the instance of a scientific institution - more likely at the expense of additional time which the executors have to take) does all the work necessary for completion. Insofar as subject matter projects are financed according to estimate, this process is in no way limited. There are no real sanctions for failure to execute the subject matter plan within the limits of the current year.[101] Quality execution of the subject matter plan is more likely important to the Institute from the point of view of prospects and strengthening status at the Ministry. Besides that the Ministry usually sets the cost of plan topics at a "minimal" level, which also determines the demands made on the results.

In order to lessen the likelihood of unsatisfactory execution of planned jobs, the practice of internal examination by Institute experts exists at the Institute. In accordance with an order given by the Director, commissions have been created for acceptance of projects (regarding

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[100] Attempting formally to meet the requirements of the Ministry of Finances of the RF to strengthen the competitive bases when distributing budgetary funds, the Ministry of Industry and Science of the RF, in the opinion of the Institute's management, also announced a "formal" competition. Projects included in a competition traditionally were executed by concrete executors; therefore for the majority of topics the results of a competition were predetermined. This was clearly confirmed by the titles of the competition topics and the timeframes for consideration of applications.

[101] Except (after a time period determined by law) dismissal of the director and of personnel.

the most important lines taken by activities).[102] The commissions are headed by the Director's deputies for scientific work and organize work on expert examination of completed scientific research projects with write-up of the appropriate technical acceptance document for the projects executed. Internal expert examination of planned projects is also done by the Institute's Scientific Council, which over the course of the year assesses the progress of research conducted and the difficulties experienced by the executors and makes recommendations on the necessity of introducing changes to the work plan, etc.

Responsibility for quality and timely execution of projects by contracts (by orders placed by the state and others) is determined entirely by the content of these contracts. The higher the quality of the contract's compilation, the more accurately the responsibility of the parties for its execution (by content, timeframes, amounts, financing, etc.) and all possible violations and ensuing sanctions are prescribed. Execution of projects is confirmed by turn-over and acceptance documents for the projects executed in accordance with the protocols on coordination of prices, with the price structure, with the technical missions, and with the calendar plans of the projects.

When contract conditions (including those of a state contract) are violated or Federal budget funds are used in a non-targeted way, etc., the Institute is supposed to bear responsibility in accordance with existing legislation. Although formal sanctions (all the way to judicial and arbitrational proceedings) are envisaged for failure to execute points in the contracts,[103] the Institute, as in the preceding instance, has an interest in quality execution of contract projects basically for informal reasons (prestige, the customers' "importance," etc.). If the Institute satisfies customer requirements, then the prospects for its existence are also more favorable. Planning its activities, it can always count on the high probability of receiving orders from traditional and new customers. Having performed poor quality execution of an order, it could be deprived of supplementary financing altogether in the future.

As a budgetary institution the Institute can in fact do none other than carry out its obligations (at least those connected to charter activities). The majority of the Institute's obligations are connected to budgetary funds (limitations on acceptance of financial obligations by institutions proceed from financing quotas of which they are informed by the Ministry of finances) and are "paid" according to an estimate monitored by the Treasury. In particular, the Treasury monitors what amount of funds is written off according to concrete articles (for example, outlays for projects executed by outside organizations and enterprises). The most difficult and important obligations an institution has are to the budget (for transferring taxes and leftover budget funds).

In practice this process does not take place smoothly. The thing is that the manner envisaged by budgetary legislation assumes *complete and timely* transfer of budgetary funds to

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[102] Commissions to examine, assess, and prepare conclusions on scientific research projects executed at the Institute.

[103] In practice the Institute rarely encounters formal sanctions. If, however, the necessity arose of paying penalties and other fines for damages according to such sanctions (basically for housekeeping contracts), they were effectuated in accordance with the rules in effect (at the expense of its own funds or profit or by permission of the Ministry according to the article "other current outlays"). The Institute itself has never brought suit in court because it has neither the experience nor a full-time lawyer nor the funds for conducting such matters. This same consideration has to do with contracts connected to the Institute's housekeeping activities. It is generally known that it is practically impossible to sue the monopolists who render the majority of housekeeping services. In the instance of failure to execute "petty" housekeeping contracts, all disputes are usually resolved through informal agreements, insofar as such suits are unprofitable both for the Institute and for the contractor.

institutions. Because of the unsatisfactory state of the revenue part of the budget, these conditions are often not observed. Allotment of funds by some articles (except wages and the social tax) are effectuated with delays and not in the amount envisaged by the estimate which was approved in the established manner. From the Institute's experience it may be noted that most often "violations" of this kind occur in the first quarter and have to do, for example, with paying for utilities.

In practice damages (fines, penalties) are "levied" on an organization without regard to the degree of its guilt. Insofar as the Institute cannot always write off the damages from the budgetary account, it is forced to bring its own funds into action, and when they are lacking to appeal by letter to the Ministry (to the subsidiary respondent) with the request either to pay the damages (fines, penalties) or permit the Institute to use other articles of the estimate to pay. Generally, taking into account how over-regulated the whole procedure is, the Institute tries by all possible means (often to the detriment of its interests) to avoid such a situation and to come to an agreement with creditors.

For work contracts the Institute's responsibility is defined by the statutes of the Labor Code. Payment is supposed to be effectuated according to the wage scale grid with indexation. Envisaged are annual paid leave (in accordance with the manner accepted at scientific institutions financed from the state budget) and all kinds of additional payments (bonuses and awards) according to the results of projects being executed, this being in accordance with existing legislation and the manner envisaged for the Institute's personnel. The amount of obligations for paying wages is also determined through the amounts of outlays set in the estimate and approved within the limits of the annual assignment in accordance with the Federal law on the budget.

The relationships of an organization and an employee, as has already been noted, and their rights and duties are regulated by legislation and also by the rules, instructions, and other regulatory acts in effect at the Institute and with which the employee familiarizes himself and gives his signature to that effect. In the event a dispute arises, it is subject to settlement by means of direct negotiations between the organizer and the employee. If the dispute is not settled, it is subject to resolution in the established manner.

In summary, it should be emphasized that the Institute can improve the execution of its obligations if, in the first place, it plans the estimate of outlays and revenues more precisely, taking into account all (also including ones "unpleasant" for budgetary organizations) peculiarities of the budgetary process. In the second place, it is necessary to take a more responsible approach to the selection of the subject matter of scientific research projects, to the search for customers and executors, to the effectuating of internal expert examination of results, etc. In the third place, it is important to activate the search for supplemental sources of financing permitting the Institute to form it own funds.

4.2.16. Implementing rights to intellectual property within the structure of an institution's property relations

Inventory and assessment of the non-material assets (NMA) of scientific organizations is effectuated to improve economic relations tied to using the results of scientific technical activities. However, recording and assessing NMA represents a set of rather difficult questions not always having unambiguous and precisely worked-out answers in Russian legislation. For that reason implementation of rights to intellectual property within the structure of the Institute's property relations is at the beginning stage as of yet (inventory has been conducted

of objects which in principle could be assessed to be intellectual property, but they have not been subjected to recording as non-material assets).

The importance of resolving the task of assessing and inventorying the results of scientific technical activities obtained at the expense of the Federal budget is set by Instructions (Poruchenie) of the Government of the Russian Federation (№ MK-P7-2097S dated 19 April 2001) and by a number of other documents. At the same time it has to be noted that solving this problem for noncommercial organizations, including organizations executing orders placed by the state and receiving financing from the Federal budget, among which the Institute is one, causes certain difficulties.

Until 1 January 2001 there was no separate statute (polozhenie) for bookkeeping recording of NMA. When necessary, recording the movement of these assets was effectuated on the basis of general instructions and statutes.104 Noncommercial organizations are not given treatment in the special documents of the Ministry of Finance of Russia (Order of the Ministry of Finances of the RF № 91n "On approving the statute on bookkeeping recording "Recording non-material assets PBU (Statute on bookkeeping recording) 14/2000"), and all the "subtleties" are explicated only for commercial organizations.

The requirements placed on the definition of NMA are formulated rather rigidly in PBU 14/2000. If one follows the "ideology" of that document, the placing on the balance sheet of rights to objects of intellectual property in the capacity of non-material assets does not seem possible in non-commercial organizations (or does not make sense, insofar as it may entail serious problems with the tax inspectorate).105

The statutes connected to the problem of determining the useful timeframe for using NMA and for their amortization are contradictory. The placing of the non-material assets of noncommercial organizations on the balance sheet is also rendered difficult by a number of other statutes in existing legislation (in particular by the word-for-word interpretation of the statutes of the Civil Code).

Despite the problems enumerated above, an attempt was made at the Institute in 2001 to inventory and assess objects of intellectual property.

This work was effectuated in accordance with a Ministry order (2001). Subject to assessment were the results of the Institute's scientific technical activities obtained at the expense of Federal budget funds in 2000, namely the results of research executed in accordance with the research subject matter plan approved by the Ministry and also with instructions (orders placed) on allotment of allocations from the state budget for the securing of the financing of the programs and projects most important to the economy.

Assessment of the Institute's non-material assets was conducted on the basis of Russian legislation,106 which establishes that among the assets used in economic activities over the

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[104] The Statute on conducting bookkeeping registration and bookkeeping reporting in the RF (1998), the Plan for reporting of bookkeeping registration of the financial and economic activities of enterprises and organizations and Instructions for its application (1991), the Federal law "On bookkeeping registration" (1996).

[105] The lists in various documents of objects of intellectual property subject to registration as NMA do not coincide. Not every bookkeeper will take it upon himself to interpret expansively the points of the instructions of the Ministry of Finances of Russia (or of the tax service), even if they contradict other documents (laws, decrees) or ignore common sense. This happens with the discriminatory for noncommercial organizations ban on amortization of NMA. Safe existence in the "field" of rules of bookkeeping registration of NMA is possible when the bookkeepers at a scientific organization are sufficiently highly qualified. However, due to the difficult financial state of the majority of scientific institutions, they, as has already been noted, are unable to high such specialists.

106 For noncommercial organizations, when inventorying and assessing NMA, it is permissible to use: Ministry of Finances of Russia Order № 34n "On approving the statute on conducting bookkeeping registration and

course of a period exceeding twelve months and producing revenues are, in particular, rights arising from author's and other contracts to works of science, literature, and art and objects of closely-related rights, to computer programs, data bases, and others. Rights to objects of intellectual property may also ensue from contracts for execution of R&D, which is of special significance to scientific institutions and organizations.

Proceeding from these premises, the rights to the Institute's objects of intellectual property, written up as reports, data bases, etc., and listed in the inventory, were examined and assessed as non-material assets. Data on actual outlays for research and development performed were used as the basis for assessment.

According to Ministry order, when inventorying was being done, all the results of intellectual activities were taken into account: both those properly written up (that is, registered at the All-Russian Scientific Technical Information Center, VNTITs[107]), and those not properly written up (but only accepted by the Customer by a turn-over and acceptance document) .

Results of the Institute's activities for the preceding periods were not examined for the following reasons (except those indicated in preceding points).

Some of the information and assessments contained in the reports (with the exception of methodological and methodical developments, program maintenance, etc.) have a tendency to obsolescence.

The customer's rights to the results of scientific research projects were directly prescribed in a significant part of the contracts.

There are significant technical and organizational difficulties insofar as work on inventorying and assessing NMA is being conducted for the first time.

In accordance with the Ministry order on inventorying NMA, the assessments arrived at were entered onto the following standard forms:

unified form № INV–22 "Inventory list of non-material assets" (approved by Goskomstat (State Statistics Committee) of Russia 18 September 1998 № 88), which includes the features of the non-material assets (twenty-six properly written up objects of intellectual property and nine not properly written up) and the features of the ways of their recording and their costs;

unified form № INV–18 "checklist of results of inventorying fixed assets and non-material assets," which includes the features of the NMA and the cost and other parameters of the inventory;

list of objects of intellectual property, including reports (R&D) executed in accordance with the R&D subject matter plan approved by the Ministry and with instructions (orders placed) on allotment of allocations from the state budget for the securing of the financing of the programs and projects most important to the economy; of data bases and publications.

Forms containing information on objects of industrial property were not filled out.

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bookkeeping reporting in the Russian Federation" (in the wording of 30 December 1999 and of 24 March 2000); "Manner of including objects of intellectual property among nonmaterial assets" (approved by the Ministry of Science of Russia №R22-2-64, by Rospatent (the Russian Federation Committee on Patents and Trademarks) №10/2-20215/23 dated 13 March 1995); Ministry of Finances of Russia letter "On reflecting economic operations for contracts concluded for purchase and sale of copies of computer programs in bookkeeping registration" (2001); Ministry of Finances of Russia letter "On reflecting property acquired at the expense of the estimate of a noncommercial organization in bookkeeping registration."

[107] Since 1997 all open R&D has been subject to mandatory state registration.

Final information on inventorying and assessing NMA was passed on to the All-Russian Scientific Technical Information Center and is also kept at the Institute's financial planning division.

Due to the reasons indicated in the preceding points, objects of intellectual property were not taken into account in the current bookkeeping reporting and were not "accepted" for placement on the Institute's balance sheet. However, in the opinion of the Institute's management, the work done has proven useful from the point of view of developing experience at such studies and from the point of view of getting a full picture of the scale of the Institute's activities.

It is obvious that, for purposes of improving economic relations connected to using the results of scientific technical activities, projects for inventorying and assessing objects of intellectual property will be continued and put on a regular basis. That is the aim of the Resolution of the Government of the Russian Federation "On manner of inventory and cost assessment of the rights to results of scientific technical activities" (№ 7, dated 12 January 2002), which examines the results obtained during execution of scientific research, experimental design, and technical projects fully or partially financed at the expense of the Federal budget.[108]

The Resolution adopted a statute on inventory of these rights in which is designated the duty of Federal agencies of the executive authority to inventory rights to the results of scientific technical activities when state unitary enterprises are privatized and when organizations are reorganized or liquidated. Initiative inventory is to be conducted at the decision of the owner of the property or of the legal entity having this property in its property ownership or conducting its business or having operational control of it.

While defining the necessity of conducting inventory and its purposes, tasks, and manner, the Resolution gives no references to concrete methods, methodologies, or instructions permitting in practice to effectuate analysis of the results of scientific technical activities, including of report documentation, to make known the rights to these results, to assess potential results capable of being protected, etc.[109]

Thus for the time being issues of assessment, inventory, and recording of objects of intellectual property (and the respective rights) have not been fully worked out and remain a very difficult problem for scientific organizations.

4.2.17. The most critical problems of budgetary financing of the Institute

In the opinion of the Institute's management, complete regulation and lack of freedom to maneuver when expending budgetary funds harms the financial and economic situation at the Institute. The problem is that in the presence of palpable budgetary limitations it is impossible to plan the structure of forthcoming outlays precisely. The estimate approved by higher-standing organizations always proves less than the one declared initially and therefore practically never reflects the Institute's real needs. Besides that, the estimate which was approved is often not executed, and at scientific institutions the possibilities for obtaining supplemental funds are limited.

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[108] And also of the republican budget of the RSFSR and that part of the state budget of the USSR which formed the union budget, and of funds from state extra-budgetary funds.

[109] With the exception of reference to the government's resolution "On approving assessment standards," which also is of a very general nature, and of the necessity to develop and approve methodological recommendations on inventorying within a three-month period (by the Ministry of Property Relations of the RF).

Under these conditions, relatively free room to maneuver in managing financial resources within the limits of the estimate (with a fixed amount, for example, for "wages" articles) is simply essential. This freedom to maneuver does not mean immediate untargeted and inefficient use of budgetary funds, all the more so since this freedom to maneuver would be effectuated under monitoring by the Ministry and the Treasury, which in any event verify both the lines funds expenditures take and the rightfulness of these expenditures.

In the opinion of the Institute's director, many of the steps undertaken by the country's financial agencies proceed primordially from the assumption that the corps of directors lacks decency and has bad intentions (or that they are completely unsuited professionally to be managers). In fact the majority of directors of scientific institutions are experienced managers and, due to circumstances, rather good economists. The desire of the financial agencies to compel scientific institutions to actively seek to attract supplementary sources and to put their own funds to work at financial and economic activities should not be in contradiction to common sense. Depriving institutions (in the current economic situation) of normal base "nourishment" and over-regulating all remaining possibilities for getting supplemental funds, the financial agencies are more likely to achieve a negative effect,[110] both for the economy as a whole and for science. Moreover, the government's budgetary financial policies have already led to the curtailment of many important lines taken by research and to a reorientation of scientific organizations to the resolution of current problems of the day to the detriment of promising start-up projects.

In the opinion of the head bookkeeper, the changes effected by the financial agencies, besides total regulation, have led to noticeable complication of the entire bookkeeping recording (and reporting) effort. In particular, that has to do with correcting the estimate (when budgetary obligation quotas are changed), "re-addressing" outlays to other articles of the estimate, annulling the right to a settlements bill, etc.

A negative influence on the functioning of institutions of science is also rendered by the fact that the newly introduced rules, procedures, and ways are not accompanied by concrete instructions, explanations, and commentaries as to their practical use. The process of preparing such commentaries has been very dragged out in time. Often even the developers of the respective regulatory acts are unable to explain how to conduct reporting (recording) in practice. Instructions on bookkeeping recording at institutions, as has already been noted, is rather "raw" material, that is, it contains many gaps and contradictions. Instructions on the separate conducting of bookkeeping and tax reporting have not been worked out. Few budgetary institutions are capable of organizing such records by themselves.

This is all the more important in that as a rule an institution is unable to maintain a staff of qualified bookkeeping employees who would follow and implement all the innovations and changes.[111] Quality program support is an important help to a bookkeeper. The Institute tries to acquire all the necessary bases for bookkeeping recording. Their cost is a limitation. Besides that, the developers of these programs are unable to keep up with all the changes in budgetary, financial, and other legislation.

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[110] Refraining from all generalizations here, we would note that a large number of the instances noted in the 1990s of abuse when renting premises out are explained not so much by the bad intentions of directors (although that does occur) as by the substantial under-financing of scientific organizations (including according to articles connected to maintaining organizations and paying wages).

[111] The Institute is "saved" by its small size and also by the fact that complicated situations requiring a highly-qualified bookkeeper rarely arise.

When introducing budgetary and tax legislation and also new rules for bookkeeping recording, concluding contracts, settlements with suppliers, etc., the legislative agencies (the Ministry of Finances and others) should the real situation in the economy and science less schematically just the same. The desire to introduce new principles, rules, and ways should not contradict the objective needs of economic entities, the national interests of the country in the sphere of science and technology, and international practice. It is important that the monitoring and financing agencies themselves be ready to use the new mechanisms and ways.[112]

As an example, one may give the "Procedures for interactions of the head managers, managers, and recipients of Federal budget funds, the "Unified Energy System of Russia" joint stock company, the "Gazprom" open joint stock company, and their subsidiary and dependent companies for effectuating monitoring of timely payments by consumers of electrical and heat energy and gas." These procedures, adopted as early as 2000 and introduced beginning in 2002, instruct recipients of budgetary funds (among which the Institute is one) to conclude contracts directly with energy supply organizations and gas suppliers.

The purpose of this innovation was to bring order to expenditures and payments for energy resources and also to strengthen the responsibility of Federal agencies of authority for the economic activities of organizations financed at the expense of the budget. However, the proposed method of settlements has put institutions of science in a difficult situation.

For example, the Institute, not being the manager of real estate, effectuated payments for utilities through a major organization, the systems of which it uses. Other structures in the same kinds of conditions also acted analogously. The major organization in turn effected settlements with the energy suppliers. It is obvious that singling out the amount of energy outlays consumed for independent arrangement of contracts with suppliers is complicated for the Institute and requires additional expenses. It is also difficult for it to conclude direct contracts for utilities payments, since the premises it occupies are not on its balance sheet.

At the same time the energy supply organizations and the Ministry themselves found themselves in a difficult situation. The former—because of the simultaneous appearance of an entire army of counterpart contractors. The latter—because of the change in the estimate' structure and the absence of the corresponding quotas according to the article "rent" for 2002. (The intention is to allow scientific institutions to pay for suppliers' services according to that article.)

In the opinion of the Institute's management, a substantial factor influencing the financial state of scientific organizations is the problem of rent. The conflict of the Ministry of Finances and scientific organizations on the issue of renting out space and the ability to use at least a part of the rental payments for purposes of the development of scientific organizations (under the very strictest monitoring) has continued for several years now. Insofar as the situation in which the Institute has found itself is characteristic of many relatively "young" institutions, we will examine the issues arising here in more detail.

In the first place, despite the fact that the Institute is an agency-subordinate institution, the Ministry does not get very actively involved in issues connected to providing it with space. The space which the Institute has temporary usage of today basically was obtained through the personal efforts of the Institute's management and individual officials at the Ministry. Under

[112] This does not always happen in practice. For example, Treasury departments were not ready for transfer to them of all the accounts of budgetary organizations.

present conditions it is unlikely that any of them would agree to go down that road again. As soon as the issue of quartering the Institute was resolved the Ministry began using its territory to conduct various events, to quarter temporary work groups, etc.

In the second place, several years ago (when the Institute was occupying the premises made available to it on the condition rent be paid) at the request of the Ministry's leadership the Institute sublet a small part of its space to a noncommercial organization founded by the Ministry. Until 1999 this organization paid rent, which was entered into Federal budget revenues, and paid a part of the utilities bill.

In 2000 the Institute received rented premises to use free of charge (until 2005). According to a contract (dogovor) with the Ministry of Property of the RF,[113] the Institute in this instance, too, has the right to rent out premises (not more than twenty-five percent) to organizations which which it executes joint projects. However, in practice the Institute was unable to implement this right in the established manner. Because of the imperfection of the existing legislative base and the contradictory interpretation of individual points in the regulatory documents it was unable to conclude the necessary contract with the noncommercial organization and open a current account for recording and distribution of funds[114] received for renting out Federal property. At the same time the noncommercial organization situated in its space cannot pay its part of the utilities without violating the law.

The Institute's right to rent out a part of its premises is also confirmed by the Federal law "On the Federal budget for 2001" and by the Government Resolution on implementation of Article 21 of that law "Manner of recording in Federal budget revenues of rental payments for using Federal real estate assigned to scientific organizations, educational institutions, healthcare institutions, state museums, state institutions of culture and art, and the manner of usage of those payments." According to these documents it is of no significance to the conclusion of a rental agreement how the procedure for assigning Federal real estate to organizations was effected. What is of importance is the very fact of such assignment. Moreover, the Institute has a document (certificate of entry of Federal property into the register) on the assignment of the space occupied with the right to operational control. Despite that, the Treasury department refuses to open the Institute an account, alleging that it is not the balance-sheet holder. The space, in the opinion of the Treasury personnel, was given it for temporary possession and usage, and not for operational control. Such an interpretation is not rightful, but thus far the Institute has not been successful in showing that it is right.

In the third place, after reorganization, when the Institute's authorized number of personnel increased, the question arose of where personnel would be put. The question could have been resolved by "evicting" the noncommercial organization. For the time being that has not been done for several reasons (one can't drive colleagues out onto the street, and as of yet the Ministry cannot and does not want to decide the question of where they are to be put, etc.). Therefore the Institute is forced to rent a small area from another scientific organization (funds for rent are allotted according to the estimate).

The paradoxicalness of the situation which has taken shape is not only that the Institute is deprived of supplementary revenues. Additional outlays are borne by the Federal budget, at

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[113] The contract on transfer of real estate in Federal property ownership for use free of charge was written up in accordance with the manner applied in Moscow for all transactions relating to assignment of real estate. Instead of bilateral ones, triple contracts are concluded (between the Ministry of Property of Russia as the owner's representative—the unitary operating enterprise as balance-sheet holder, and the Institute.

[114] A current account for registration of supplementary financing at the expense of rental payments received for using Federal property transferred for temporary usage.

the expense of which the Institute's "forced" rent and the utilities payments of its actual renters are paid.

4.3. Analysis of the financial and economic activities of a scientific research institute operating under the rights of a structural subdivision at an institution of higher education

The scientific research institute (hereafter: SRI) was formed at an institution of higher education in 1965. It was created by rector's order № 300 dated 4 November 1965 on the basis of instructions from the Council of Ministers of the RSFSR and an Order from the Minister of Higher and Secondary Specialized Education of the RSFSR. The SRI is a basic structural element of the institution of higher education, by power of attorney of which it effectuates the powers of a legal entity.

The SRI has a humanities profile of activities, and theoretical and applied research have always been combined in it. At the end of the 1980s and the beginning of the 1990s the SRI became the initiator and basic developer of a number of concepts of state social policy, of a state program for developing higher education in Russia, and of a system of targeted intensive training of specialists.

4.3.1. Description of the Institute's Statute and of the contract with the director.

The SRI does not have a charter, but functions on the basis of the "Statute on the scientific research institute at ... University" which was approved by Order of the university's rector in 1993 and registered by decision of the city's Mayoral Office Chamber of Registrations. After the new Civil Code came into effect the University adopted a new Charter, while the SRI continues to operate according to the old Statute.

The Statute contains a network of sections: general statutes, basic purposes of the SRI, economic legal bases for activities, management of activities, planning, wages, records, and responsibility. The Statute contains no section on manner of reorganization and liquidation of the SRI for the reason that, as the SRI's administration states, the compilers failed to include one. In accordance with the university's Charter, any reorganization of the SRI is to be effectuated through the university's Academic Council and by decision of the university's rector with the participation of the SRI's academic council. The university's Charter was adopted in 2000, and issues of reorganizing and liquidating agency-subordinate SRIs are stipulated there. The SRI's administration is not going to introduce that section into the existing Statute insofar as it thinks there is no special necessity for it, while at the same time changing the Statute is a very labor-intensive matter requiring one to go to a lot of trouble.

In connection with the fact that the Statute was approved before the new Civil Code and other legislative and regulatory acts came into effect, a number of the statutes concerning the SRI contradict legislation in effect at the present time.

Thus the Statute concerning the SRI states that the SRI, being a structural subdivision of the university, executes the powers of a legal entity by power of attorney and uses a part of the university's property on the basis of operational control. The SRI in the name of the university concludes contracts, acquires property and non-property rights, acts as plaintiff or respondent in court, and has its own balance sheet, settlement and other accounts in banking institutions, a seal depicting the State coat of arms of the Russian Federation, letterheads and forms, and other formal attributes. At the same time in practice, according to the requirements of existing legislation, all the SRI's settlement accounts were closed and settlements both for budgetary and for extra-budgetary sources of funds go through the Treasury, insofar as the SRI is a

budgetary institution. The SRI went through accreditation at the Ministry of Education, although not by itself, but as a part of the university. The university has twenty analogous scientific centers, and all the work on accreditation was done in a centralized fashion, whereby all the documents were written up and submitted by the university. At the present time the SRI, being a structural subdivision of the university, is not accredited as a scientific organization, although the basic profile of its activities consists of performing scientific research. The SRI, being a structural subdivision of the university, enjoys all the rights and privileges granted the university.

As to property and monetary resources transferred to the SRI by the university, the powers of a legal entity are effectuated according to powers of attorney issued the SRI director by the university's rector.

The SRI's property consists of:

- fixed assets and financial and other objects transferred to the SRI by the university with rights to operational control;
- monetary resources received by the SRI from execution of economic agreements and sale of scientific products, property and monetary resources transferred to the institute by sponsors or received as the result of other of the SRI's activities and comprising SRI property.

With the university's permission the SRI can engage in entrepreneurial activities on the condition that revenues received from those activities be entirely reinvested in the development and improvement of the SRI's and the university's educational activities, including the increase of outlays for wages.

Also with the university's permission the SRI can join any associations, concerns, and joint stock companies, be a bank shareholder, and create academic scientific and production centers and technological parks.

An important feature of the SRI's financial and economic activities is that the university, according to the Statute, makes premises available to the SRI for basic activities. Operational outlays are paid by the university and partially reimbursed to it from the SRI's overhead outlays according to a norm established by the university's academic council. The SRI can thereby sell (rent out) equipment and materials not being used at the present time within the limits of the powers established by the rector's power of attorney.

The basic purposes and tasks of the SRI's activities are:

- execution of fundamental, exploratory, and applied research and development along priority lines in the social sciences and by profiles of specialist training at the university
- raising the scientific technical level and efficiency of scientific research and the quality of specialist training, assuring growth in the qualifications and professional level of SRI personnel and teachers at the university's humanities departments
- effectuating the close ties of scientific research to the educational process
- participation in the resolution of tasks of the social development of the work group and of the university.

The SRI executes the following kinds of projects:

- scientific research projects

- scientific and methodological support of the academic process and participation in the training and increasing of qualifications of specialists, including graduate students and candidates for the degree of doctor of sciences
- creation and sale of scientific products, participation in the sale of licenses and "know-how."
- preparation of practical recommendations and effectuating of expert examination for Federal and local agencies of power and control
- rendering scientific consultational services along all lines of its activities
- participation in training, retraining, and raising qualifications along all basic lines of scientific activities
- international cooperation in the area of retraining and raising the qualifications of specialists and scientific research, apprentice programs (stazhirovka) abroad for personnel and for graduate students and students, creation of joint scientific research work groups
- editing and publishing activities, publishing of subject matter collections, conference materials, etc.
- information services, organization of seminars and exhibitions, sale of the results of intellectual activities
- socio-cultural services for SRI personnel.

Thus the list of kinds of activities testifies to the fact that the SRI's scientific research is tightly bound to the academic process and to some degree services it. At the same time the SRI can engage in a whole number of other kinds of activities connected to its basic activities (consulting, conducting expert examinations, information services), which at the present time may serve as a good source of extra-budgetary funds. The fact also draws attention to itself that in the Statute attention is devoted to selling the results of intellectual activities, including sale of licenses and "know-how." However, as will be examined below (see paragraph 13), in its financial and economic activities the Institute does not use the intellectual property being created as a product and does not consider issues of sharing the rights to it in the event economic agreements are concluded (that is, when intellectual property is created at the expense of extra-budgetary funds).

4.3.2. Contract with the director

According to the Statute, the Institute is headed by a director, who acts on the basis of one person in charge (edinonachalie), manages all the activities and organizes the work of personnel, and bears legal and financial responsibility. The SRI's director by power of attorney of the university's rector acts in the name of the SRI, represents it at all agencies, conclude contracts, effectuates transactions, opens SRI accounts at the bank, issues powers of attorney, hires and dismisses personnel in accordance with existing legislation, using thereby both work contracts and other forms (contracts, contracting agreements, etc.), adopts incentive measures, and applies disciplinary penalties. The rector delegates rights of operational control of SRI property to the SRI's director. The director, according to the contract, may work under conditions of combining jobs as a teacher or in any other forms accepted at the university.

The SRI's director is appointed on a contract basis by the university's rector upon representation by the SRI's Academic Council. Usually the contract with the SRI's director is concluded for five years—the term of the rector's powers. It is said thereby in the contract

with the director that the director is the chairman of the SRI's Academic Council, and thus he can in fact nominate himself for a second and following terms. The director also reports annually on the results of his activities to the SRI's Academic Council, that is to the organ which he himself heads. At the same time the SRI's director is a member of the university's Academic Council.

The university's rector establishes for the director a salary at the level of a prorector for scientific work, an increase of fifty-percent of the basic salary, five minimum salaries for the scholarly degree of doctor of sciences, and sixty-percent of the basic salary for the rank of professor. Besides that, if the director is successful at his work he can be assigned an annual bonus. As the director put it, the section of the contract having to do with the size of remuneration is purely symbolic and is not observed. In other words, the actual size of the director's remuneration depends on what projects he himself participates in. He thinks that if the remuneration promised in the contract were actually paid, that would be a very effective method of incentive for the director to work and would make "a person [get off his butt and do something and] not just wear holes in the seat of his pants sitting out his term."

The importance of the contract consists of the fact that it makes available legitimate grounds for dismissing a director who does bad work. Previously, when no contract was concluded, it was practically impossible to dismiss the director.

According to the conditions prescribed in the contract, it may be severed:

a) by agreement of the parties;

b) at the initiative of the Rector in the event the Director systematically fails to carry out the duties entrusted to him without good cause or in the instance of a major one-time violation by the Director of legislation or of the duties envisaged by the Contract;

c) at the initiative of the Director in the event of illness or other good causes hindering the execution of the duties envisaged by the said Contract;

d) upon completion of the period of effect of the said Contract.

When the said Contract is severed on the basis of paragraphs 9a, 9c, or 9d the University pledges to assist the Director in finding employment taking his qualifications into account.

In the event intentions arise with the parties to abrogate the said Contract, the parties are supposed to present each other with written explanations of the reasons for abrogating the said Contract. All legal issues and settlements between the parties are supposed to be effected within a three-month period from the moment of receipt of the mutual written explanations of the causes for abrogation of the said Contact.

The mechanism for choosing the director includes the following stages. First a candidate for the position of director is determined by the SRI's Academic Council and is then recommended to the rector. This candidate chosen at the SRI may be added to by an alternate candidate chosen by the university. In the event another candidate is chosen at the university's full Academic Council, and not the SRI's candidate, the rector approves that other candidate. Thus it is the opinion of the university's Academic Council, and not of the SRI's Academic Council, and all the more so not of the work group, which is the determining one. The additional "filter" in the form of the university's Academic Council was introduced after the university adopted the new Charter. Previously the SRI's director was chosen only at the SRI's Academic Council and then approved by order of the rector. As of yet there is no experience at making the choice according to the university's new Charter, but it is obvious that this alarms the SRI's director.

A peculiarity of the SRI is that one deputy (for science) works by contract, while another (for marketing) works by non-term limit hire. No rational explanation for this was obtained.

Aside from the director, the SRI's organ of governance is its Academic Council. The Statute on the SRI's Academic Council is approved by the university's Academic Council.

The powers of the SRI's Academic Council include:

- examination of the basic issues of the SRI's development, approval of plans for the institute's economic and social development
- examination and formation of recommendations on reorganizing structural subdivisions of the SRI
- developing the bases of the SRI's financial and economic (khoziaistvennyi) policies
- determining the structure of the institute's organs of governance
- hearing and approving reports and plans for the scientific research activities of the SRI's subdivisions and their introduction: contract projects, training of scientific personnel, publishing works, organizing conferences, and awarding scholarly titles
- hearing the annual reports of the Director and the managers of the SRI's structural subdivisions on all issues of academic, scientific research, financial, and economic policy;
- nominating scientific works and scientific discoveries and inventions for the awarding of prizes.

4.3.2. Analysis of appointment and dismissal procedures at an organization

The statute on the SRI contains regulating norms on the basis of which the Institute's staff is formed and outsourced employees are hired. The SRI independently determines structure, staffing, numbers, forms and dimensions of employee wages, being guided by the Unified Wage Scale Grid for wages, additional payments, and other payments of an incentive nature. To secure production of scientific technical products, rendering of services, and execution of other projects the SRI can hire employees, the labor relationships with whom are written up on the basis of work contracts, contracting agreements, contracts, etc.

According to the Statute, the basic structural subdivisions or the SRI are scientific laboratories and sections (otdely). Temporary scientific and academic work groups, research centers, etc., are created to resolve operationally of problems of scientific subject matter of current interest on the basis of contracts. The SRI's structural subdivisions operate on the basis of the statutes on them approved by the SRI's director.

In comparison with the pre-reform period the number of the scientific personnel at the SRI has been cut by five times: in the period before the breakup of the USSR it comprised three hundred persons, later, at the beginning of the 1990s, it was two hundred persons, at the end of the 1990s it was one hundred, and at the present time it is about seventy persons. According to the data as of September 2002, twenty-three persons at the SRI were listed as being on budgetary financing, ten were part-time people combining jobs, and thirty-four were at the wage rates of auxiliary teaching personnel and of programmers. The latter receive wages at the rectorate and belong to a university department, but in fact work at the SRI.

The procedure itself of hiring and dismissal has not changed over the last decade: a worker writes an application to be hired, the laboratory manager puts his stamp of approval on the application, and then the director signs it. The university personnel office, at which the educational personnel union operates, is the final level of authority. All personnel movements are recorded by means of orders: on enrolment, on dismissal, on leaves, and on transfer from one position to another. There is no personnel office at the SRI at the present time; the functions of the inspector for personnel are carried out by the director's secretary. Personnel registration cards are set up for each employee on which information is set down on each employee in accordance with codes adopted in Soviet times: year of birth, education, the educational institute of which the employee is a graduate, and all changes in position and salary figures are recorded.

At the same time the system of hiring employees has undergone changes. Previously the SRI's scientific personnel were recruited on a competitive basis, and the candidacies of employees accepted onto the staff were approved by the SRI's Academic Council. Right now staff formation is done by the director personally and unilaterally, without running a competition. However, in actual fact recruiting has been suspended due to limited financing. The main problem is the lack of stable budgetary financing of the wages fund. Whereas previously there existed stable budgetary financing for the wages of full-time personnel, at the present time staffing is determined by the size of a unified order-warrant (zakaz-nariad). It is namely a unified order-warrant which serves as the source for paying wages according to staffing positions (shtatnye stavki). Those of its peculiarities which make competitive hiring of personnel difficult consist of the fact that the unified order-warrant changes arbitrarily from year to year and on the whole has a tendency to curtailment, and, besides that, it is formed only for a year, while on the basis of a competition an employee is supposed to be taken on for five years. Therefore competitive recruiting may lead to the wage rates of employees hired to work not being financially secured. According to data for the university as a whole, at the present time the unified order-warrant only secures about twenty percent of the financial requirements of the scientific subdivisions and of the university's SRI. Thus the manning schedule as such is not financed at the SRI, that is, an estimate per se for maintaining scientific research personnel at the SRI is not envisaged. Within the framework of the financing allotted by the order-warrant the SRI can effectuate any increases or curtailments of staffing. True, an increase in staffing is impossible at the present time, because of insufficient financing, and that creates problems. In the pre-reform period the SRI, like any institution, received financing in accordance with the manning schedule, and the innovation in the form of financing on the basis of a unified order-warrant does not suit the administration because in its opinion an institution should be financed on the basis of a manning schedule, and the shift to a unified order-warrant does not improve the Institute's work at all because it leads to the Institute only being able to maintain a very small staff.

At the present time by a formal accounting there are eight laboratories at the SRI, but the low level of budgetary financing has led to the institute's structure becoming eroded and in actual fact there is no specialization by kinds of activities at concrete laboratories: there is no strict division by subject matter and absolutely identical research is often conducted. In other words, the laboratories exist somewhat theoretically; in actual fact the organization has become a single laboratory.

Thus the system for managing personnel at the SRI is characterized by two interconnected factors. The first is that the system is extraordinarily centralized and is controlled by the SRI's director. The second, directly connected to centralization, is that the system of hiring, dismissing, and moving employees is simplified. For all these procedures the

number of instructions is minimized and as a rule the procedures themselves amount to a direct private talk either with the director or with the laboratory manager. Dismissal is usually argued on the basis of an inability to pay the base wage, even when calculated at twenty-five percent of the wage rate. True, in that event if the employee does not wish to leave, it is practically impossible to dismiss him. As the director put it, some employees will never leave, even if they are only paid one percent of the wage rate. And that is a real problem. Occupying "full-time" positions, these workers make it impossible to effect permanent hiring of scientific personnel who would work more effectively.

At the same time as the hiring of personnel for full-time positions is closed, hiring for execution of extra-budgetary projects occurs constantly. Employees invited to work temporarily are enrolled according to a contracting agreement. The initiators in the inviting of employees working combined jobs are the holders of contracts with outside organizations; they determine the need for personnel and bear responsibility for paying for projects in accordance with a work contract.

A serious consequence of insignificant budgetary financing is that a significant number of the SRI's employees do not work full time. The SRI's management did not conduct a policy of retaining workers at any cost, but a mass reduction in staffing was not done, either. Thus a passive observing of how events develop became the administration's position, at a result of which the most active workers, having found more highly paid work, left the SRI. For those who remained payment of wages at a part-time rate was introduced in the form of an order: employees were shifted to half-time wages, quarter-time, and even to one percent of full-time. Whereby already two years ago about eighty percent of the scientific personnel were working at one percent of full-time. The size thereby of a full-time (base) wage rate for a senior research fellow (not taking into account additional payments of various kinds) came to 350 rubles (a month). Only the administration and bookkeeping employees remained at a full-time wage rate at the SRI.

At the present time a one-percent wage rate no longer exists because it is forbidden by the university's Charter. The minimum wage for a full-time employee is now twenty-five percent of the wage rate. The compensatory strategy of employees for the low level of wages is external horizontal mobility. All employees have two or three additional jobs on a basis of combining jobs; as a rule one of them is teaching. According to the new Code of labor laws, the institute's administration is supposed to permit combining jobs. The SRI's director gives permission to combine jobs after the employee submits a written appeal to him. Insofar as it is basically scientific and teaching activities which are combined, permission for that is given to everyone. In that sense the university provides incentives to those teachers who engage in research activities and vice versa.

Practically all of the SRI's employees engage in teaching as a combined job. They teach not only at institutions of higher education (both at the university itself and at other institutions of higher education), but also in schools. Not infrequently teaching provides the basic income, one significantly exceeding earnings in the sphere of science. Such a situation suits the SRI—teaching does not allow one to lose his qualifications, and the institute's scientific potential is maintained, and at the same time the administration is not busy searching for sources of earnings for its personnel. In order that secondary employment be primarily in the educational sphere, the administration of the university itself began conducting a purposeful policy for keeping scientific personnel—by means of increasing the number of teaching positions. That was not easy to do; however the given university is one of the leading ones in the country, and according to the norms in effect, at leading universities

there can be fewer students per teacher than at the average provincial university (4:1 as against 8:1).

The rector succeeded in "dislodging" additional teaching positions, and scientific personnel got the chance to teach. The spectrum of disciplines taught is rather broad—from sociology and psychology to philosophy.

Aside from teaching, employees are engaged in other kinds of activities, of which they have preferred to keep silent. Most likely these kinds of jobs are in no way connected to scientific and teaching activities, and apparently the SRI's administration has not been informed about all of them.

The scale of secondary employment varies very much from laboratory to laboratory; there is no situation uniform to the SRI as a whole. There are a number of laboratories which have a large enough number of economic agreement (khozdogovornye) projects—the employees there are not engaged in supplemental earnings on the side at all. A number of other laboratories have all their people working at a quarter wage rate, and therefore the amount of the research activities of the employees at such laboratories comes to less than half of their work time.

4.3.3. Analysis of relationships with an organization's founder.

According to the Statute, the SRI's founder is the university—because the Statute has not been revised since 1993—and the SRI, being a structural subdivision, at the same time has the status of a legal entity by power of attorney. At the same time the university's founder (and accordingly the SRI's, too, as its structural subdivision) is the Ministry of Education of the RF. Therefore the SRI prepares annual reports on the results of its activities for the Ministry of Education of the RF, but organizationally all documents go through the university's science division, which effectuates management functions. Insofar as the SRI has double vertical subordination—to the Ministry and to the university—a separate package of documents is not prepared for the university itself. All of the SRI's accountability to the Ministry of Education, like its budgetary financing on the part of the Ministry of Education, goes through a "middleman," the university, and it is the university which acts as the manager of budgetary funds.

Insofar as the SRI was created by order of the university's rector, it is namely the university which the administration looks upon as its main founder. The SRI is completely happy with the way relations with the founder are taking shape. According to the statute on the SRI, the Institute plans its scientific and economic activities independently and presents to the university for approval a subject matter plan for state budgetary scientific research projects and also data on participation in scientific research programs and competitions for grants. The basis for the plans is scientific research included by the university's Academic Council in the university's unified order-warrant.

With that the SRI is not completely autonomous in determining the lines its activities take: the university works out general policy in the field of scientific research with the participation of the research organizations, of which more than twenty have been created at the university. A weekly conference of the directors is held at the prorector for science's office at which the most various issues are discussed—financial, issues of forming new programs, operational decisions mandatory for all the university's research institutions. The SRI presents the university with its plans, reports on basic activities, and financial reports, approval of which is effected by the university's head bookkeeper.

Besides that, the university's full Academic Council, of which the institute directors and university department deans are members, meets once a month. At a lower level the scientific council of the SRI itself and of the university department closest to it by lines of research meets—also once a month. Strategic issues of the SRI's development are discussed collegially at a Scientific Council which is joint with the university department, while the SRI's operational management is effectuated by the directorate.

The SRI does not have its own settlement account, only a university sub-account at the Sberbank division to service extra-budgetary contracts and a current account at the Treasury to conduct financial operations relating to budgetary sources of financing. Previously the SRI had had its settlement accounts at commercial banks. Later, two years ago, all settlement accounts were transferred to Sberbank, that is, to a state bank, while beginning 1 January 2002 all accounts were transferred to the Treasury.

Scientific subdivisions at institutions of higher education do not run a separate estimate, but basically operate as economic agreement (khozdogovornye) structures. The institute's director receives power of attorney from the rector to use a sub-account, being an independent legal entity through the rector's power of attorney. All budgetary funds come to the university account at the Treasury and are then divided among the subdivisions.

The structure of the relationships of the SRI, the university, and the Treasury depends on whether the funds are budgetary or extra-budgetary ones. The SRI interacts with the Treasury independently when the Institute receives budgetary funds. When receiving funds from extra-budgetary accounts the SRI also acts through the university's bookkeeping office, which then itself contacts the Treasury, sends the documents there, and after their verification and approval at the Treasury the SRI can receives the funds at the bank.

Legal issues are resolved in a centralized way, through the legal bureau at the university which was created specially for settling all the issues of the university's subdivisions. It is intended that all contracts, too, should undergo legal inspection and expert examination, but insofar as that is connected to lengthy timeframes—not less than a week, as a rule—that is not done at the SRI. The wish was expressed at the university's full Academic Council that all contracts be coordinated at the university's legal bureau. A maximum timeframe for coordination was established thereby—two weeks. Together with that, the SRI not infrequently has urgent contracts for which the work results need to be presented only two weeks from the day coordination of the contract is begun, and that makes coordination of such contracts through the university's legal bureau impossible. Simultaneously no sanctions for violating the recommended procedure for processing contacts are envisaged, either.

Formally a legal structure also exists within the SRI itself. It is a legal laboratory at which two people are on the books, but in reality are not at work there. Previously there was a rather large legal laboratory at the SRI. In connection with the great amount of work experience of the managers of the SRI's subdivisions, legal conflicts do not arise and there have been practically no legal disputes.

4.3.4. Compiling and coordinating work plans.

The SRI plans scientific and economic activities by itself and all plans are presented to the university for approval. Among them are plans for budgetary scientific research projects and plans for participating in research programs and in competitions to receive grants. Plans are compiled for a year, insofar as financing is allotted for one year. At the basis of the plan lie

those projects which have been included in the university's unified order-warrant, insofar as the SRI's unified order-warrant is a part of the university unified order-warrant.

The unified order-warrant consists of topics which are developed by the laboratories and proposed to the Ministry of Education. As a rule, the topics go on for about five years. Then, in order to receive a continuation of financing from the Ministry the subject matter is supposed to be reconsidered or at least modified. If the topic is continued, then a new aspect is supposed to be shown in it or new research methods used. Then all the topics are assembled into a unified plan for the SRI. The deputy director for budgetary topics engages in preparing the plan for the projects. The plan's final version is approved at a joint session with the laboratory managers. B The order-warrant per se as a document and the technical mission part of it enter into the unified order-warrant. An estimate is appended to the technical mission. The unified order-warrant is approved within the framework of that estimate.

The work plan for grants and contract projects are prepared by those laboratories or individual employees who conclude contracts or receive grants.

The basic stages for planning work relating to budgetary sources of financing are the following:

1. Preparation at the end of the year of a scientific and financial report on the SRI's current subject matter for the Ministry of Education of the RF.
2. Discussion of forthcoming work plans and lines to be taken is conducted at the Ministry of Education of the RF at the same time, at the end of the year, on the basis of past subject matter. The SRI's directorate is responsible for that stage.
3. Applications for new and continuing financing within the framework of the unified order-warrant are submitted to the Ministry of Education of the RF according to the results of the coordination.
4. Receipt of quotas (the sums of financing according to the unified order-warrant and budgetary programs) occurs at the beginning of the next year if the topics have gone through the approval process successfully.
5. Proceeding from the amounts of financing allotted the SRI, correcting of work plans for the year takes places at the SRI's Academic Council with the participation of the laboratory managers
6. Approval of the work plans by the SRI's director.
7. Approval of the work plan at the university's Academic Council.

At the present time two large topics are being executed within the framework of the SRI according to the unified order-warrant. At the end of the year all the laboratory managers prepare annual reports on the topics financed according to the unified order-warrant and then these topics are sent to the university's scientific division. At that same time at a conference at the SRI the list of topics for including in the next year's plan is discussed. It is theoretically intended that all topics included in the unified order-warrant will go through agency-subordinate competitive selection at the Ministry of Education, and some of them may be approved and some rejected. In practice, approval of topics takes place according to the following algorithm. The SRI plans what topics it would like to work on in the following year. Applications on these topics are submitted to the ministry, but before their submission there takes place a coordination of possible applications which the SRI's directorate conducts with ministry employees. In the course of this coordination it becomes clear which topics in

particular are of interest to the ministry employees, and this subsequently assures one hundred percent approval of the applications submitted for the competition. Practice shows that as a rule all the topics proposed by the SRI are approved and thus projects are conducted on topics of interest both to the SRI and to the ministry.

The main factor when compiling the plan undoubtedly is the amount of funds which it is intended to allot the Institute within the framework of the unified order-warrant. In essence it is namely the amount of base financing which determines how all-embracingly (by number of topics and taking into account the theoretical cost of each topic) and in what detail (by depth of discovery of each topic) the Institute can implement the basic purpose of its activities and secure the Ministry's requirements.

After financing by unified order-warrant is received the directorate gathers the laboratory managers and distribution begins of the subject matter and volumes of the projects according to each structural subdivision. As a rule, discussion and distribution is of a democratic nature, and the directorate foists practically nothing on anybody. The final decision is approved collegially. So far acute problems have not arisen in the distribution of budgetary funds—if only because the volume of budgetary financing is so insignificant that it cannot be the object of disputes.

When budgetary funds are distributed a balance between laboratories is not observed from year to year: the main criterion is the current importance and relevance of this or that subject matter in each concrete year.

Subsequently, when duties and kinds of projects are being distributed among employees of the laboratories, there are no rigid rules as to who executes what. Thus, for example, when necessary all employees engage in the collection of experimental data. This is connected in the first place to the fact that the funds available for conducting research are limited and do not permit hiring auxiliary personnel.

Distribution of kinds of projects executed depending on the sources of their financing is also absent: everyone does all kinds of work—whatever there is. The only feature of projects distribution which has taken shape historically is that workers of the older generations are inclined to the preparation of publications without leaving the work place, that is, to work connected to low mobility. Younger researchers gravitate towards projects having an empirical component. Therefore younger ones are engaged more in economic agreement projects connected to conducting polls and case studies and to marketing, etc.

Besides projects within the framework of budgetary financing, the Institute also executes research according to grants and within the framework of economic agreements. Both laboratory managers and the SRI's employees themselves individually participate in planning the participation of employees and research work groups in grant programs and economic agreement projects.

The basic kinds of competitive grant programs in which the SRI participates are initiative research projects supported by two state scientific foundations—the Russian Foundation for Fundamental Research (RFFI) and the Russian Scientific Foundation for the Humanities (RGNF). The SRI's employees noted that financing through the foundations' grants is very slight in its amounts and bears no comparison at all with the size of the grants allotted by foreign foundations. In connection with this, the activity level of personnel in the submission of applications for grants is rather low, while the SRI's administration does little to stimulate the interest of the laboratories in appealing to the foundations to get support.

The small size of the grants is not the only reason why the SRI does not count too much on grants as a source of financing. In the opinion of the Institute's administration, the grant programs of domestic foundations are corrupt and success in getting grants is achieved by those who have acquaintances, colleagues, or relatives at them. The Institute apparently has no such acquaintanceships.

The work of writing applications for grants is standardized and has no specific peculiarities at the given SRI. The conditions for submitting applications for grants and of the accounting reports for them are precisely prescribed in the conditions of the competitions published by the foundations in the open press and placed at the foundations' (Internet) sites. There are employees at the SRI who have especially successfully mastered the art of writing applications for grants, and that has become a kind of specialty of theirs. Project managers ask such people to help write grant applications, so that kind of administrative activity, connected to getting grants and accounting for them, has been put almost on a conveyor belt basis. Accounting reports for grants is also a special genre, and whether the Institute will get a grant the next time depends on the successful (including precise observation of all the rules) writing of the report and its timely submission to the foundation.

4.3.5. Limitations in determining lines and scale of the Institute's activities

The existing limitations in determining lines, kinds, and scale of activities ensue from the Statute on the Institute and are defined by its status as a basic structural subdivision of an institution:

- The Institute conducts fundamental and applied research in accordance with the plan for scientific research projects according to priority lines of science and to the training profiles of specialists at the university—in the amounts of the budgetary allocations allotted for these purposes.
- In accordance with existing legislation the SRI effectuates entrepreneurial activities (scientific research activities according to agreements (dogovory), contracts, grants, etc.) serving the achievement of charter purposes and tasks.
- The Institute may execute research and development on a contract basis within the framework of state programs and projects of various levels, conduct expert examinations, render scientific consultative services, etc.

The main limitation in the lines and scale of the SRI's activities is, in the first place, the curtailment of budgetary financing within the framework of the unified order-warrant and consequently of the possibilities for conducting the fundamental and exploratory research toward which the SRI was oriented when the USSR existed. A second factor is the small amounts of funds attracted through grants and economic agreements and the shallowing out of subject matter due to the fact that their basic financing is effectuated in the form of grants from domestic foundations. All that has led, in the first place, to a curtailment in the number of topics developed and, in the second place, to a decrease in the depth of their treatment.

Besides that, a number of lines taken have been completely lost because the specialists who were engaged in them have left. The Institute's situation would be better if it were to reconsider the profile of its activities and the basic subject matter of its projects proceeding from demand on the part of extra-budgetary customers; however, the administration is attached to the former idea of conducting projects on a "broad front."

The respective amounts of budgetary financing are determined by the Ministry of Education as the chief manager (according to the law on the budget) of budget funds for the routine fiscal year. Financing is effectuated by the Ministry according to Subsection 0602—developing promising technologies and priority lines taken by scientific technical products (target outlays article 281—R&D, kinds of outlays 216—other R&D, and 273—budgetary programs through supplemental financing) within the framework of the quotas of budgetary obligations. In the instance of Institute participation in projects within the framework of Federal targeted programs financing is allotted according to Targeted Article 281 (kind of outlays 187—conducting R&D within the framework of a Federal targeted program). Grants from the RFFI and RGNF budgetary foundations (Subsection 0601, Targeted Article 286 and 287—RFFI and RGNF outlays, kinds of outlays 072—R&D through RFFI and RGNF grants) are also distributed in a targeted way.

In turn the overall annual amount of financing by agency (ministry) is set in the Law on the budget for the respective year, and the chief managers cannot exceed those quotas. This amount depends on the general economic and budgetary situation, the government's course, and its policies with regard to the sector of the economy which the Ministry is in charge of, and on the sectorial policy of the Ministry itself. In recent years the Ministry has been gradually decreasing the share of funds allotted the Institute and the University within the framework of the unified order-warrant. The share of budgetary financing in the SRI's overall financial possibilities came to slightly more than thirty percent in 2001, and according to preliminary assessments a further decrease in the share of funds allotted according to the unified order-warrant should occur in 2002.

As to limitations on the scale of the Institute's entrepreneurial activities (projects through economic agreements), they are determined basically by how active personnel themselves are and by their professional reputation, ability to establish contacts, and skill at submitting applications for grants, projects, etc. For the time being within the framework of entrepreneurial activities (through economic agreements, etc.) the Institute receives only 21.6% relative to the sum of all sources for financing its activities. The range of customers for projects through economic agreements includes Federal agencies of the legislative and executive authorities, regional and municipal administrations, foundations, scientific organizations, and other structures.

4.3.6. Limitations on non-profile activities.

In their very kind the limitations on non-profile activities at the Institute are determined by a number of the statutes in the existing legislation for institutions. These are:

1) Separation of the economic activities of an institution into charter ones (performing actions, projects, and services envisaged by the Charter) and unsystematic actions (those not envisaged by the Charter). Among unsystematic actions are, for example, acquisition and installation of fixed assets, capital construction, revenues other than from sales (for example, payments made from bank interest), etc. The Institute can acquire fixed assets and perform other actions only in those instances where such an operation is envisaged in the budgetary estimate of outlays (or in the estimates of expenditure of targeted funds).

2) Separation of charter activities into basic charter activities corresponding to the institution's profile and functions and other activities. Concomitant and other services envisaged by the Institute's charter, but not basic to its profile, include, in particular, publishing activities and informational-consultative, organizational, and other services. Every

budgetary institution is supposed to single out the basic kind of activities corresponding to the institution's profile and functions (for example, execution of research and development).

3) The Institute's status as a noncommercial organization (one not having the extraction of profit as a purpose of its activities). The Institute may effectuate entrepreneurial activities only because they serve to achieve the purposes for the sake of which it was created.

In this way the Institute's basic charter activities and a number of concomitant (non-profile) lines are financed by the state. Other kinds of concomitant services envisaged by the Charter are allowed in principle by legislation, but are considered commercial ones (the state bears now financial obligations for such activities).

Due to the fact that the Institute operates within the makeup of an institution of higher education, the issue of limitations on non-profile activities receives additional interpretation in the given instance. The Institute's director thinks that there is one more limitation—the SRI is supposed to perform scientific research in correlation with the educational programs of the profile department. In other words, the SRI's scientific work should be conducted in accordance with the university's academic plans and proceed from them by subject matter. It is in the administration's plans to participate more actively namely in the educational process, to organize courses for retraining of personnel and enhancing their qualifications, and to get permission to issue diplomas of the respective kind.

In 2000-2001 all the Institute's activities had to do with its basic ones. The SRI does not rent out premises, although it is located in a separate building with considerable free space. According to the Statute on SRIs, the university makes premises available to the Institute for basic activities and provides the operating outlays for its maintenance, these outlays being partially reimbursed from the SRI's overhead outlays according to a norm established by the university's Academic Council. The SRI can thereby rent out only unused instruments and equipment, but not premises—within the limits of the powers established by the rector's power of attorney. At the present time the Institute is not allowed to rent out premises.

4.3.7. Compiling the Institute's estimate of outlays

According to Section 7 of the Statute on SRIs, the Institute maintains operational, bookkeeping, and statistical records (uchet) and makes the reporting (otchetnost') available to the university and to state monitoring and statistical agencies.

Preparation of the estimate according to which the actual financing of projects at the SRI is effectuated begins in the first quarter of the year, after the SRI's bookkeeping office receives the Notification on the quotas of the Federal budget's budgetary obligations for the current year (see *Table 104*, actual data for 2002). Then the SRI's bookkeeping office prepares an estimate for the university. This estimate is a part of the estimate of a university department.

The estimate is presented in the codes of budgetary classification cell. The code of the agency classification of the Institute's outlays is presented in the "Ministry" column, that is, the code of the Ministry of Education—the chief manager of budgetary funds to whom the university is in agency subordination and, accordingly, to whom the Institute is, too. The next four columns of *Table 104* contains outlay codes in the section on the four levels of functional classification of budgetary outlays. In the "subject articles" column the Institute's outlays are reflected in the codes of economic classification cell. And, finally, the quarterly distribution of

the overall sum requested by the Institute from the Federal budget for 2002 is presented in Table 14. The quotas arrive at the SRI according to two kinds of outlays: 216—the unified order-warrant (379,610,000 rubles for 2002) and 273—an especially valuable object—budgetary programs (139,860,000 rubles for 2002). By budgetary programs is understood that very same base financing, and the mechanism for receiving it, as described above for the order-warrant. The Ministry of Education is interested in the execution of certain research topics, and it announces a closed competition among the country's institutions of higher education to receive budgetary financing according to these topics. The winner of the competition receives additional funds relating to this kind of outlays to conduct the research. The funds are received, as can be seen from the quotas, only for wages. In actual fact this is a small "supplement" from the Ministry of Education to the unified order-warrant.

Research along four lines (out of the eight existing at the SRI) is conducted within the framework of budgetary financing. And in relation to these topics, as can be seen from the estimate, what is covered is only wages with accruements and a small amount of other current outlays (23,259,000 rubles for 2002, economic classification code 111040).

It is that document in particular, the "Notification on the quotas of the Federal budget's budgetary obligations for 2002," detailed to the level of the Institute, which is looked upon as the estimate of outlays for budgetary activities. There is a copy of the notification at the university's bookkeeping office, and a copy is also presented to the territorial board of the Federal Treasury by the Institute, which are the grounds for allotting the Institute Federal budget funds and is an instrument for monitoring their targeted use.

Along with this in December 2001 the Institute prepared an estimate on revenues and outlays relating to extra-budgetary activities (see *Table 105*). The SRI's bookkeeping office compiles a planned estimate of expected receipts from extra-budgetary sources for the year and sends it to the university's bookkeeping office. This estimate was presented to the Treasury in January 2002. The Institute's revenues were presented in the estimate as the overall amount of funds received from extra-budgetary sources (that is, without indication of their origin), and were assessed for 2002 at 1,495,000 rubles (*Table 105*). The lines of the outlays of extra-budgetary funds were set in accordance with the budgetary classification outlay codes. The share of wages (with accruements) in the outlays is rather high—77.3 percent. The outlays article second in magnitude is Article 111040 "Other current outlays for purchase of goods and payment for services" (8.5 percent). This is connected to the fact that the possibilities for using the funds from this article are very broad, and, taking into account the possibility of correcting the "extra-budgetary estimate, the Institute ran no calculations at all providing grounds for the outlay lines taken. As the SRI's directorate and bookkeeper acknowledged, it is very difficult to envisage all outlays ahead of time, and the university's bookkeeping office allows the estimate to be made more precise over the course of the year. Usually a more precise estimate is transmitted to the university's bookkeeping office nine months after the beginning of the fiscal year. For example, last year the SRI put transportation outlays into the estimate to the sum of 100,000 rubles, but they were not needed. As a result of the estimate being made more precise these outlays were shifted to a different article. Wages are the only stable kind of outlays. But changes are possible here, too—for example in the event that for some reason economic agreements planned were not concluded for some reason.

It is obvious on the whole that the SRI is proceeding along the path of "eating up" not only budgetary, but also extra-budgetary funds, and, for example, the share of such an article as "acquisition and modernization of non-production equipment and items of long-term usage for state institutions," according to which it would have been possible to renew the logistical

base for research, compiled only at the expense of extra-budgetary sources, comprises only 412,000 rubles.

Table 104

NOTIFICATION OF THE FEDERAL BUDGET'S QUOTAS FOR BUDGETARY OBLIGATIONS FOR 2002 In thousands of rubles

Designation	**Ministry**	**Section**	**Subsection**	**Trg Art of Outlays**	**Kind of Outlays**	**SUBJECT ARTICLE**	**Year**	**I Quarter**	**II Quarter**	**III Quarter**	**IV Quarter**
CURRENT OUTLAYS		06	02	281	216	100000	379.610	142.530	105.369	52.684	79.027
GOODS PURCHASES AND SERVICES PAYMENTS		06	02	281	216	110000	379.610	142.530	105.369	52.684	79.027
Wages		06	02	281	216	110100	262.411	87.831	77.591	38.795	58.194
Wages for civil servants		06	02	281	216	110110	262.411	87.831	77.591	38.795	58.194
Accruements for the wages fund		06	02	281	216	110200	93.940	31.440	27.778	13.889	20.833
Acquisition of supply items and consumables, TOTAL		06	02	281	216	110300	0.00	0.00	0.00	0.00	0.00
Paying for fuel and lubricants		06	02	281	216	110340	0.00				
Other consumables and supply items		06	02	281	216	110350	0.00				
Business trips and official travel		06	02	281	216	110400	0.00				
Paying for communications services		06	02	281	216	110600	0.00				
Paying for utilities		06	02	281	216	110700	0.00	0.00	0.00	0.00	0.00
Paying for premises maintenance		06	02	281	216	110710	0.00				
Other current outlays for goods purchases and payment for services, TOTAL		06	02	281	216	111000	23.259	23.259			
Paying for the services of scientific research organizations		06	02	281	216	111010	0.00				
Paying for current repairs to equipment and inventory		06	02	281	216	111020	0.00				
Paying for current repairs to buildings and structures		06	02	281	216	111030	0.00				
Other current outlays		06	02	281	216	111040	23.259	23.259			
CAPITAL OUTLAYS		06	02	281	216	200000	0.00				
CAPITAL INVESTMENTS IN FIXED ASSETS		06	02	281	216	240000	0.00				
Acquisition and modernization of non-production equipment and items of long-term usage for state institutions		06	02	281	216	240120	0.00				
TOTAL OUTLAYS		06	02	281	216	800000	379.610	142.530	105.369	52.684	79.027

Designation	Ministry	Section	Subsection	Trg Art of Outlays	Kind of Outlays	SUBJECT ARTICLE	Year	I Quarter	II Quarter	III Quarter	IV Quarter
CURRENT OUTLAYS		06	02	281	273	100000	139.860	34.965	37.762	34.965	32.168
GOODS PURCHASES AND SERVICES PAYMENTS		06	02	281	273	110000	139.860	34.965	37.762	34.965	32.168
Wages		06	02	281	273	110100	102.990	25.748	27.807	25.747	23.688
Wages for civil servants		06	02	281	273	110110	102.990	25.748	27.807	25.747	23.688
Accruements for the wages fund		06	02	281	273	110200	36.870	9.217	9.955	9.218	8.480
Acquisition of supply items and consumables, TOTAL		06	02	281	273	110300	0.00	0.00	0.00	0.00	0.00
Paying for fuel and lubricants		06	02	281	273	110340	0.00				
Other consumables and supply items		06	02	281	273	110350	0.00				
Business trips and official travel		06	02	281	273	110400	0.00				
Paying for communications services		06	02	281	273	110600	0.00				
Paying for utilities		06	02	281	273	110700	0.00	0.00	0.00	0.00	0.00
Paying for premises maintenance		06	02	281	273	110710	0.00				
Other current outlays for goods purchases and payment for services, TOTAL		06	02	281	273	111000	0.00	0.00	0.00	0.00	0.00
Paying for the services of scientific research organizations		06	02	281	273	111010	0.00				
Paying for current repairs to equipment and inventory		06	02	281	273	111020	0.00				
Paying for current repairs to buildings and structures		06	02	281	273	111030	0.00				
Other current outlays		06	02	281	273	111040	0.00				
CAPITAL OUTLAYS		06	02	281	273	200000	0.00				
CAPITAL INVESTMENTS IN FIXED ASSETS		06	02	281	273	240000	0.00				
Acquisition and modernization of non-production equipment and items of long-term usage for state institutions		06	02	281	273	240120	0.00				
TOTAL OUTLAYS		06	02	281	273	800000	139.860	34.965	37.762	34.965	32.168

Table 105

ESTIMATE of the revenues and outlays of extra-budgetary funds of the Institute at an institution of higher education for 2002.

Designation	Indicator code	2002

REVENUES		
From entrepreneurial and other revenue-producing activities	5000000	1495.0
TOTAL REVENUES	5000000	1495.0
Designation	Subject article	2002
OUTLAYS		
Wages	110100	851.3
Wages for civil servants	110110	816.9
Wages for outsourced employees	110140	34.4
Accruements for the wages fund (insurance payments for state social insurance for citizens)	110200	304.7
Acquisition of supply items and consumables, TOTAL	110300	90.9
Food	110330	20.0
Other consumables and supply items	110350	70.9
Business trips and official travel	110400	25.7
Paying for communications services	110600	9.4
Paying for utilities, TOTAL	110700	0.0
Other current outlays for goods purchases and paying for services	111000	126.9
Paying for scientific research projects	111010	6.9
Other current outlays	111040	120.0
Acquisition and modernization of non-production equipment and items of long-term usage for state institutions	240120	41.2
OUTLAYS OF THE SUBDIVISION		1450.1
Centralized (university-wide) part of overhead outlays, TOTAL		
Including overhead outlays as a percentage of revenues		3.0%
Overhead outlays in rubles		44.9
TOTAL OUTLAYS WITH THE CENTRALIZED PART	800000	1495.0

The sequence of compilation of the Institute's estimate of outlays which has been examined here permits the conclusion that the Institute does not have an estimate of outlays and revenues as a unified planning document reflecting all of its revenues and outlays. The "Notification on the quotas of the Federal budget's budgetary obligations" figures here in the capacity of the Institute's estimate of outlays for budgetary activities. As to the estimate of outlays for "extra-budgetary" activities, the Institute prepared it, as a planning document for 2002, in accordance with Ministry and Treasury requirements and presented it in the established manner.

Besides that, under conditions where the Federal budget for the next year is adopted in December of the preceding year (thus, the Federal law "On the Federal budget for 2002" was adopted 30 December 2001 (№ 194-FZ)), the requirement for strict observation of the procedures prescribed in the Budgetary Code of the RF seems unrightful and unrealistic.

4.3.8. Sources of financing the SRI: structure and dynamics

According to the Statute, financing the SRI's activities is effectuated at the expense of:

- allocations from the state budget of the RF
- funds received from execution of economic agreements
- funds received from sale of scientific products (research projects and services), including to the public

- funds from the fund for the scientific technical development of the university and the SRI
- bank credit and other sources of legitimate funds
- revenues from other activities permitted by legislation.

In accordance with the Instructions on bookkeeping records in budgetary institutions approved by order of the Ministry of Finances of Russia dated 30 December 1999 № 107n (further—Instruction № 107n), beginning in 2000 a classification of the sources of financing budgetary institutions is introduced in which three basic sources of funds intended for the maintenance of an institution and for other measures are singled out:

- budgetary financing;
- funds from entrepreneurial activities;
- targeted funds.

In Table 16 the structure of the sources of funding the university's SRI is presented in the context of the three basic sources according to the data for 2001, and in Table 17—a more detailed structure of the sources of financing scientific research at the university on the whole, according to data in the dynamics for 1998-2000.

Table 106

Sources of financing the Institute at an institution of higher education

Year **Source**	**2001 год**	
	Amount (of rubles)	**Share of the overall amount (%)**
Budgetary financing	538 725	30.54
Funds from entrepreneurial activities	380 117	21.55
Targeted funds and receipts not requiring repayment	845 000	47.91
TOTAL	1 763 842	100.00

Table 107

Structure of sources of financing research and development at the institution of higher education (data for the institution of higher education as a whole)

Years **Source**	**1998 год**		**1999 год**		**2000 год**	
	Amount (thousands of rubles)	**Share of overall amount (%)**	**Amount (thousands of rubles)**	**Share of overall amount (%)**	**Amount (thousands of rubles)**	**Share of overall amount (%)**
Unified order-warrant	6415.8	14.41	12108.6	13.10	14284.2	11.59
Grants from the Ministry of Education of the RF	1031.5	2.32	3533.5	3.82	3505.6	2.84
Scientific technical programs of the Ministry of Education of the RF	1944.2	4.37	4796.2	5.19	7024.7	5.70
Scientific technical programs of the Ministry of Science of the RF	1679.1	3.77	2468.4	2.67	1472.9	1.19
Federal targeted programs	7894.9	17.73	14637.9	15.83	20794.9	16.87
RFFI grants	10073.2	22.63	18851.7	20.39	25195.2	20.44
RGNF grants	1621	3.64	1842.4	1.99	3002.8	2.44
Economic agreements	10899.1	24.48	23021.5	24.90	34224.5	27.77

International projects	2962.5	6.65	11203.6	12.12	13757.5	11.16
TOTAL	44521.3	100.00	92463.8	100.00	123262.3	100.00

It is obvious that the share of budgetary financing (in the form of the unified order-warrant and programs of the Ministry of Education of the RF) fluctuates, having thereby a tendency to fall (from 21.1 percent in 1998 to 20.13 percent in 2000). This tendency continued in 2001-2002, too, when only the unified order-warrant secured the "base" wages for scientific personnel at institutions of higher education. The average wages according to the manning schedule per unit of the professor-teacher contingent at the university being examined was about 2500 rubles a month in 2001, while the average salary for a research fellow at the university came to 500 rubles a month. Taking into account all additions from other sources (executing research within the framework of scientific technical programs, grants, economic agreements, and international contracts), the average wages of one member of the professor-teacher contingent was approximately twice that of the pay of one research fellow.

The share of targeted financing of science at the university from state sources is also falling, while on the whole the share of targeted funds in the overall amount of financing has fallen insignificantly only due to the growth of financing within the framework of international projects, which also count as targeted financing. The share of targeted funds in the overall amount of financing fell as a result from 54.42 percent in 1998 to 52.5 percent in 2000. Finally, revenues from entrepreneurial activities at the university are growing—from 24.48 percent in 1998 to 27.77 percent in 2000. Thus the university as a whole is relying more and more on its own abilities, and not on budgetary financing of research.

As to the institution of higher education's SRI, budgetary financing is of lesser significance to it than to the university as a whole: the share of budgetary funds came to 30.54 percent in 2001, yielding in size only to targeted funds (the share of which in the structure of sources of financing the SRI was the greatest, equaling 47.91 percent). With that, at the SRI, as at the university as a whole, a decrease in financing within the framework of the unified order-warrant is occurring. Thus in 2002 the size of budgetary financing of the SRI by unified order-warrant was decreased by 19,000 rubles in comparison with the previous year. This creates serious difficulties, insofar as the minimum size of the tariff rate was doubled beginning by government Resolution beginning in December 2001. In accordance with the university rector's order, salaries at the SRI were increased by about two times, but there are insufficient funds to pay them. This has led to the number of people working at jobs financed from the budget being cut in two (see *Table 108*).

Table 108

Dynamics of the number of people working at the institution of higher education's SRI

Number of people working	2001	2002
Total	115	67
Including:		
scientific personnel financed from budget funds	46	23
external people combining jobs	10	10
at academic auxiliary personnel jobs, by contracting agreements	59	34

To assess the structure of the SRI's financing it is necessary to examine the makeup of the basic sources of its funds, and also the content of the activities due to which the funds are formed.

Budgetary sources of the SRI's financing may be of two kinds: quotas of the budgetary obligations of the Ministry of Education of the RF allotted the university and the SRI in the form of a unified order-warrant, and projects and grants of the Ministry of Education of the RF which may be financed either in the form of the Programs of the Ministry of Education of the RF or of grants from the Ministry of Education of the RF. The SRI receives budgetary funds only within the framework of the unified order-warrant; it has no grants and does not participate in the programs of the Ministry of Education of the RF.

Grants from state foundations for supporting science (RFFI and RGNF first of all), from which about two thirds of the overall amount of the SRI's targeted funds come, can be a source for forming *targeted funds*.

More than half of grant funds go for the wages of the executors. About ten percent of the funds from each grant (depending on its amount) are "deducted" for overhead outlays. These funds are used in accordance with the content of Subject article 111000 "Other current outlays for purchases of goods and services" of the budgetary classification of outlays. Besides that, three percent of the total amount of the grant is transferred to the university as overhead outlays. Along with that, grant funds are used to pay for the communications services (budgetary funds are not allotted the Institute for these purposes) necessary for execution of each grant and for business trips and official travel. Finally, grant funds are the basic source for financing purchases of equipment (computers and other equipment).

Programs of the Ministry of Industry, Sciences, and Technologies of the RF and of other ministries, projects of Federal targeted programs, and international projects and grants can be other sources of targeted funds. The SRI does not participate in these programs and has no foreign grants.

Sources for forming and using *funds from entrepreneurial activities* are defined in the permit to open an account for recording funds from entrepreneurial and other revenue-producing activities issued the Institute by the territorial agency of the Federal Treasury. The list of possible sources for forming the SRI's funds from entrepreneurial and other revenue-producing activities includes execution of R&D by economic agreements, renting out premises, and also other kinds of entrepreneurial activities. In reality the only source for forming funds from entrepreneurial activities the SRI has is funds from customers for executing R&D by economic agreements.

Federal agencies of the executive authority (ministries), municipal organizations, and organizations of other forms of property ownership are customers for R&D executed by the Institute according to contracts. The overwhelming majority of the Institute's customers are budgetary structures.

More than sixty percent of the funds received by the Institute from entrepreneurial and other revenue-producing activities are used for wages with accruements paid to the executors of the contracts. An average of nine percent of these funds have to do with overhead outlays which are used for institute-wide needs in accordance with the content of Subject article 111000 "Other current outlays for purchases of goods and services" of the budgetary classification of outlays and three percent are assigned to the university as overhead outlays. The remaining funds go to pay for communications services, business trips and official travel, and other outlays connected to executing contracts.

Thus if the structure of the institute's financing is assessed in accordance with the rules of bookkeeping recording in effect, the share of budgetary financing (basic and supplemental) is at an average level of thirty percent.

However, the actual "contribution" of budgetary funds to the overall amount of the Institute's financing is substantially higher, which is explained by the makeup of two other sources of its financing. In fact, targeted funds come from two foundations (RFFI and RGNF) which were formed at the expense of budgetary funds. True, in distinction from the Institute's budgetary financing per se, these funds are distributed on a competitive basis. If the circumstance is taken into account that part of the Institute's revenues from entrepreneurial and other activities is also formed at the expense of budgetary funds (since Federal ministries and other recipients of budgetary funds are the customers for a number of the R&D jobs executed by the Institute according to contracts), then the actual contribution of budgetary funds to the overall amount of the Institute's financing will comprise about eighty percent.

4.3.9. Description of the SRI's estimate of revenues and outlays.

As was already indicated above, the SRI's revenues consist of two parts: budgetary financing (in the form of financing according to a unified order-warrant, budgetary programs, and grants from state foundations) and extra-budgetary economic agreements. The form of the estimate according to which the SRI reports comes from the Ministry of Education of the RF and is called "The Budget of department (institute, center) for the year..." (see Table 19, according to the data for 2001). The necessary explanations of and commentaries to these documents are given by the Institute's head bookkeeper.

We will examine the distribution of the overall amount of budgetary funds allotted the Institute in 2001 according to the basic points in the estimate.

Article 110100 "Wages" is represented in the Institute's estimate by two sub-articles—110110 "Wages for civil servants" and 110140 "Wages for outsourced employees." The share of these outlays in the overall amount of the Institute's budgetary financing came to about sixty-nine percent in 2001.

If one adds to these outlays the accruements for the wages fund (subject article 110200), these two articles of the estimate which are connected to wages already account for more than ninety-three percent of all the budgetary funds allotted the Institute. This reflects the SRI's policy according to which budgetary funds within the framework of the unified order-warrant ought to be spent first of all on employee wages, and other needs financed from targeted funds and revenues from entrepreneurial activities.

Subject article 111000 "Other current outlays for goods purchases and payment for services" is represented in the estimate by sub-article 111040 "Other current outlays," which account for about three percent of the budgetary funds allotted the Institute. Worthy of attention is the fact that Sub-article 111010 "Paying for scientific research, experimental design, and technological projects" is not singled out here. Thus funds for these purposes were not envisaged in the 2001 estimate. The negative consequences to the Institute of the absence of these funds are obvious: this deprives it of the ability to order any kind of R&D the Institute might need to execute its functions from subcontractors.

Subgroup of outlays 240000 "Capital investments in fixed assets" is represented in the Institute's estimate by Sub-article 240120 "Acquisition and modernization of non-production equipment and items of long-term usage for state and municipal institutions." If one compares the amount of funds allotted according to that article—15,648 rubles—with the cost of office

equipment (in particular, computers, copier and printer equipment, program support, etc.) it is obvious that they are insufficient for purchase of even one computer.

In the Director's opinion, budgetary funds on the whole (basic budgetary financing) "cover" not more than twenty percent of the Institute's real needs (when the wages fund is calculated in accordance with the wage grid). For a number of the estimate's points the degree of satisfaction thereby of the Institute's needs at the expense of budgetary funds is substantially lower (in particular, according to Sub-articles 240120 "Acquisition and modernization of non-production equipment and items of long-term usage for state and municipal institutions" and 111010 "Paying for scientific research, experimental design, and technological projects").

With regard to targeted funds, the basic source of their formation was RFFI and RGNF grants and also subventions; that is, in the Institute's case these were budgetary funds sent it by the Ministry for executing R&D not included in the subject matter plan.

The overall sum of the targeted funds received by the Institute in 2001 came to 845,000 rubles, of which 455,000 rubles were RGNF grants, 90,000 rubles were an RFFI grant, and 300,000 rubles were subventions.

The overall sum of subventions received and the distribution of RGNF and RFFI grants by points of the economic classification of budgetary outlays are reflected in the outlays.

The basic lines of expenditure of targeted funds were wages with accruements (the sum of Sub-articles 110110 "Wages for civil servants," 110140 "Wages for outsourced employees," and 110200 "Accruements to the wages fund")—they made up 58.6 percent of all targeted outlays, and other current outlays (Sub-article 111040) made up 34.2 percent.

The Institute's revenues from entrepreneurial activities (380,117 rubles) were formed due to funds received from customers for execution of R&D according to economic agreements.

In accordance with the estimate of outlays, about eighty-four percent of this sum was used as wages with accruements (the sum of Sub-articles 110110 "Wages for civil servants," 110140 "Wages for outsourced employees," and 110200 "Accruements to the wages fund"); 9.3 percent went for Sub-article 111040 "Other current outlays," the spectrum of possible lines of use of the funds of which was extraordinarily broad; 3.7 percent went for outlays to pay for communications services and business trips and official travel. Finally, three percent was paid to the university as overhead outlays.

On the whole, overhead outlays at the SRI comprise fifteen percent, and three percent of overhead outlays are paid to the university from targeted funds and revenues from entrepreneurial activities. These funds are directed toward partial reimbursement of the SRI's overhead outlays and other university-wide needs.

Of the fifteen percent deducted for the SRI's needs, ten percent is expended for housekeeping needs and five percent to pay for administrative managerial personnel, while the remaining ten percent is directed toward the technical re-armament of the SRI.

Many remonstrances are brought about by the manner established beginning in 2001 of forming operations with monetary resources through the Treasury. The basic protest is caused by the increase in document turnover and waste of time preparing and correcting documents. Thus, for example, last year the Treasury changed the computer programs of the calculations for transferring taxes six times in three months. The volume of the requirements made on reporting documents and of the outlays required for their execution contrasts especially with the fact that the SRI has a rather meager budget with regard to the sum of all the sources.

Table 109

A department (institute, center) budget for 2001

(subdivision designation)

as of 31 December 2001, rubles

Designation of outlays	ARTICLE CODE	TOTAL		Budgetary funds	Targeted funds				Entrepreneurial activities	
		R&D by outlays	R&D by sales	Unified order-warrant	RFFI	RGNF	Other targeted funds	Total targeted funds	Execution of R&D by economic agreements—BY OUTLAYS	Execution of R&D by economic agreements—BY SALES
Wages, TOTAL	110100	971 823	971 823	370 441	59 135	271 000	34 610	364 745	236 637	236 637
Wages for civil servants	110110	876 180	876 180	342 329	59 135	266 000	34 610	359 745	174 106	174 106
Wages for outsourced employees	110140	95 643	95 643	28 112		5 000		5 000	62 531	62 531
Accruements for the wages fund	110200	345 515	345 515	132 618	21 171	97 000	12 390	130 561	82 336	82 336
Acquisition of supply items and consumables, TOTAL	110300	29 314	29 314		3 494	25 820		29 314		
Other consumables and supply items	110350	29 314	29 314		3 494	25 820		29 314		
Business trips and official travel	110400	17 545	17 545	1 218		12 000		12 000	4 327	4 327
Paying for communications services	110600	13 300	13 300		3 500			3 500	9 800	9 800
Paying for utilities	110700	0,00	0,00							
Paying for premises maintenance	110710	0,00	0,00							

Other current outlays for goods purchases and payment for services, TOTAL	111000	342 943	342 943	18 800		35 530	253 000	288 530	35 613	35 613
Paying for the services of scientific research organizations	111010	0,00	0,00							
Paying for current repairs to equipment and inventory	111020	0,00	0,00							
Paying for current repairs to buildings and structures	111030	0,00	0,00							
Other current outlays	111040	342 943	342 943	18 800		35 530	253 000	288 530	35 613	35 613
CAPITAL OUTLAYS	200000	0,00								
CAPITAL INVESTMENTS IN FIXED ASSETS	240000	15 648	15 648							
Acquisition and modernization of non-production equipment and items of long-term use for state institutions	240120	15 648	15 648	15 648						
TOTAL OUTLAYS of the subdivision		1 736 088	1 736 088	538 725	87 300	441 350	300 000	828 650	368 713	368 713
Centralized (university-wide) part of overhead outlays, TOTAL		27 754	27 754		2 700	13 650		16 350	11 404	11 404
Including overhead outlays, in rubles		27 754	27 754		2 700	13 650		16 350	11 404	11 404
Including overhead outlays as a percentage of revenues		1.6%	1.6%	0	3.0%	3.0%	0	1.9%	3.0%	3.0%
TOTAL OUTLAYS WITH THE CENTRALIZED PART	800000	1 763 842	1 763 842	538 725	90 000	455 000	300 000	845 000	380 117	380 117

4.3.10. Recording and distributing profit in an organization.

The manner in effect at the present time of keeping bookkeeping and tax records at budgetary institutions establishes that profit may only be formed due to revenues from entrepreneurial and other revenue-producing activities. At the same time the presence of these revenues and their reflection in the bookkeeping reporting of a budgetary institution does not mean the obligatory formation of profit; that is, a budgetary institution may have income from entrepreneurial activities, but not thereby have profit. Such a situation is connected to the fact that profit is a category of tax recording, while revenues from entrepreneurial activities is one of bookkeeping recording. The divergencies between these two kinds of records have increased noticeably in recent years. For budgetary institutions these divergencies are connected, in particular, to the fact that they have the right for purposes of taxation to use both general and special (that is, relating to the sphere of activities of the concrete budgetary institution) definitions of entrepreneurial activities contained in existing legislation.

Thus, having revenues from entrepreneurial activities, in the majority of cases budgetary institutions may within the framework of existing legislation by themselves independently make decisions as to whether they form themselves profit and, accordingly tax liabilities for it or not.

The category of profit is not used at the institution of higher education SRI under examination. As a rule, a budgetary institution of science has an interest in forming profit in the event the necessity arises of making payments which can be effectuated only owing to profit. This is various kinds of fines, penalties, etc., and also profit which can be directed at the purchase of new scientific equipment. Taking into account the fact that an institution of higher education SRI does not have utilities outlays, insofar as paying for utilities and the penalties and fines connected to them is the university's responsibility, the SRI has no interest in forming profit. The SRI is on the university's balance sheet and only pays for outlays for the telephone and to use the Internet. Besides that, due to the profile of its activities, the Institute does not need expensive scientific instruments and rigging, while purchase of office equipment and small equipment can be effectuated both within the framework of the quotas of budgetary funds and through grants from state scientific foundations.

4.3.11. Manner of concluding contracts for execution of projects.

The SRI concludes contracts with customers for scientific technical projects and services, but has no practice at concluding contracts with executors of scientific technical projects and services. That is, the Institute acts as an executor, but not as a customer in contract activities. Federal and regional (municipal) agencies of state authority, institutions, and foundations predominate among the Institute's customers for scientific research projects. In former times there were no few major state enterprises among the customers.

The geography of the orders placed is rather broad, which is connected to the fact that the SRI's former students and graduate students, who after graduating from the university have scattered to various regions in Russia, when necessary order up projects at their "home" Institute.

The manner of conclusion and the form of a contract is determined by existing legislation and by financial and economic practice. As a rule, the Institute concludes a standardized contract for execution of scientific research projects. Such a contract usually includes the following sections: introductory part, subject matter of the contract, cost of projects and manner of settlements, manner of turn-over and acceptance, responsibility of the parties, other conditions, manner of resolving disputes, effective period, and the parties' legal

addresses and bank details. The technical mission, calendar plan, protocol of price coordination, and an estimate of outlays are included in an appendix to the contract. At the same time, the contract forms differ, and the Institute does not use a unified form. Thus, for example, the contract with municipal formation № 7, which the Institute concluded in 2000, included these sections: introductory part, subject matter of the contract, cost of the projects and manner of settlements, manner of turn-over and acceptance of projects, responsibility of the parties, effective period of the contract, addresses and settlement accounts of the parties. Neither a manner of resolving disputes nor other conditions were stipulated. Another contract, in 2002, with the Committee on youth policy, included these sections: introductory part, subject matter of the contract, obligations of the parties, manner of financing and contract reporting, responsibility of the parties, other conditions, resolution of disputes and changing the contract, abrogation of the contract, effective period of the contract, legal addresses of the parties. In some contracts the condition is stipulated according to which the executor pledges when purchasing goods, projects, and services necessary to implement the contract to conduct an open competition or other competitive procedures for determining the subcontractor, this competition or procedures being envisaged by the Decree of the President of the RF "On first and foremost measures for preventing corruption and cutting budgetary expenditures when organizing purchase of products for state needs (dated 8 April 1997, № 305) and by the Federal Law in its development "On competitions for placing orders for supplying goods, executing projects, and rendering services for state needs" (dated 6 May 1999, № 97-FZ). A bidding process is also envisaged when purchasing equipment within the framework of a contract financed from state budget funds if the size of a one-time expenditure exceeds 250,000 rubles. The executor attempts to get around these conditions, insofar as a competition is supposed to be announced forty-five days before the purchase, and some of the SRI's contract projects go no more than two or three months. Besides that, not infrequently there are one or two suppliers of the needed equipment; that is especially characteristic of instances of acquisition of unique scientific equipment manufactured on a one-off basis by domestic SRIs. Under such conditions a competition becomes a simulation of a bidding process.

On the whole in each laboratory there is its own standardized version of a contract which has taken shape as a result of working with concrete customers and in accordance with the profiling kinds of projects, and thus the form of the contract is determined by the customer for the projects and not by the Institute.

Execution of scientific research projects by contracts at the expense of budget funds is effectuated according to Article 130150 (subventions) and is confirmed by turn-over and acceptance documents for the executed projects in accordance with the provisions and forms of the contract. Primarily the following subject matter articles are envisaged in the estimate of outlays: wages for civil servants (article code 110100) and accruements for wages (110200). Of the other articles those are included which not only permit executing a concrete study, but also solving certain of the Institute's financial and economic problems arising because base financing did not permit "covering" all of its needs. Most often business trips and official travel (110400), paying for communications services (110600), and other current outlays (111000) are envisaged in the estimates.

The stages for approving extra-budgetary contracts are the generally accepted ones: the projects manager coordinates the contract and estimate with the customer and then the contract is signed by the SRI's director and the customer's director. As a rule, coordinating contracts does not take long insofar as the price of contracts is usually not high. The Institute's management assesses the purposes, tasks, and ability to execute the project in the timeframes indicated and for the pay offered by the customer and also assesses the content and form of the

concrete results. As a rule, the list of the leading personnel who will be participating in the project is also known.

The customer determines the contract's price. Usually this price does not change during the process of concluding the contract. Methods of calculating outlays taken into account in the price of a contract scientific research project have not been worked out and for all practical purposes are not used. The starting point when determining price is expenses. The SRI does not include profit in the price of contracts. When calculating price (outlays), most often the developers rely on their own experience, general economic norms, and bookkeeping rules. It is characteristic that the economic agreements concluded by the SRI in the last two years with rare exception do not contain any provisions determining assignment of rights to intellectual property created.

Contracts which are concluded in the event the Institute receives a grant from a state scientific foundation (RFFI or RGNF) have certain specifics connected to the fact that concrete Institute personnel participate in grants (the grant recipient—the manager of the concrete project subject to financing), while the funds are transferred to the Institute's account. The Institute leaves a certain share of these funds for its needs (ten to fifteen percent), and three percent of the overall size of the grant is transferred to the university as overhead outlays. The remaining funds are distributed according to an estimate which the projects manager compiles independently. A contract (agreement) is concluded between the foundation in the person of the deputy chairman, the Institute in the person of the director, and the grant recipient.

The following is postulated in the agreement proceeding from the definitions of fundamental scientific research and grants in the Law on science and from the statutes in the Charters of the foundations.

- The sphere of activities of the agreement is the execution of fundamental research and the obtaining by the grant recipient of a fundamental scientific result.
- The possibility is accepted of the obtaining of a negative result or of a result not coinciding with the one presumed in the competitive application, and the grounds for the corresponding outlays are accepted.
- A report which has received a positive evaluation by the foundation's council of experts is recognized to be the presented result of a grant project. Monographs, articles, computer programs, etc., may be part of the makeup of the results. Applied results and intellectual property may be considered additionally in the capacity of results.

Distribution of the functions of the parties when a grant is executed has a simplified form (in comparison with a standardized contract for scientific technical projects). The foundation finances a project from Federal budget funds in the form of a targeted non-reimbursable grant to a grant recipient. The manager expends the grant funds in accordance with the announced purposes and content of the research. The organization effectuates the financial and economic and technical servicing of the execution of the competitive project and makes other necessary services available.

The rights and duties of the parties also have certain specifics.

The foundation finances the project in accordance with the approved estimate through an institution of the Federal Treasury. Expended funds are not compensated (however, an executor who has not presented a summary report on a project or has presented it with significant delay may be entered into the foundation's "blacklists"). A consequence of this is the inability to receive a grant over the course of the following three years. The foundation also independently effectuates monitoring of the targeted use of funds.

The manager has the right to use funds at his discretion and to change executors, correct the research program, and to keep the grant upon moving to a different place of work. Publication of the results of a grant is a mandatory condition.

The Institute maintains separate records (and reporting) of the targeted financing funds for each competitive grant, compiles a combined estimate for all grants, is responsible for recording expenditure of budgetary funds (including bookkeeping reporting), and presents a financial report on the grant to the foundation. Planned annual amounts of the financing of the foundation's projects and an estimate of outlays are an appendix to the agreement.

At the Institute the practice is accepted of providing incentives for those employees who have been able to find a contract for extra-budgetary financing. Such employees are supposed to get remuneration of from five to ten percent of the cost of the contract—depending on its magnitude. There are instances when an employee has facilitated the conclusion of a contract by the Institute, but he himself does not wish to participate in its execution—and the employee receives remuneration in this instance, too.

Several years ago an attempt was undertaken at the SRI to centralize work on seeking extra-budgetary funds. A special division was created for that within the makeup of the SRI headed by a deputy director for contract activities. However, the division worked ineffectively and the division was disbanded. At the present time the search for orders is conducted through individual channels arranged for by SRI personnel. As practice shows, the SRI's young employees are the most successful at the search for orders.

4.3.12. Peculiarities of implementing projects according to orders placed by the state

In the scientific sphere forming and placing state orders occurs through the mechanism of Federal targeted programs. Financing purchases through competition is effectuated by the Ministry of Finances of Russia, transferring monetary resources to state customers within the limits of budgetary assignments for concluding contracts according to the respective lines taken. The Treasury, by means of a separate line (in the drafts of the quotas for financing budget outlays and measures for each month), envisages funds for financing purchases and transfers them to the executors. Responsibility for targeted expenditure of funds lies with the executor (scientific organization) and the state customer for projects (Ministries and their subdivisions), and for monitoring—with the Ministry of Finances and the Treasury. A contract can serve as an efficient instrument (especially under conditions of financial limitations) for forming and implementing state demand for the results of research and development under market conditions. Mandatory state-placed orders (for state scientific organizations) are regulated by Article 8 Clause 2 of the Law on Science.

The difficulties of introducing the contract mechanism in the sphere of Russia's science and technology which concrete scientific organizations also encounter are determined by the fact that the contract system has significant gaps here. Contracts for executing R&D were recognized as an independent kind of contract only in 1996. However, a number of problems in other areas of legislation remain unresolved until now (especially on protecting rights to objects of intellectual property created at the expense of budgetary funds), which lowers the effectiveness of using that instrument, including also for the state as a participant in contract (kontraktno-dogovornye) relations.

If one follows the logic of the budgetary process, then any state allocations can be regarded as an order placed by the state, and therefore the unified order-warrant may be looked upon as a kind of state-placed order received not on a competitive basis. This is the

only kind of budgetary financing which the SRI receives. The Institute has not and does not take part in executing Federal targeted programs.

4.3.13. Implementing rights to intellectual property within the structure of the SRI's property relations.

The SRI's management has an exceedingly approximate notion of the issue of protecting and assigning rights to intellectual property, and, as has already been pointed out in Paragraph 11, this issue is not regulated in anyway in the contracts concluded by the Institute. The SRI's administration assumes that the rights to intellectual property created at the SRI belong both to the Institute and to the author.

A patent bureau operates at the university; however it engages in determining how subject projects are to protection and in writing up patents, while the Institute by the nature of its activities (humanities and social research) cannot have patents, and only the issue of author's rights may arise. However, so far that issue has not been worked out at the Institute in legal terms.

The Institute has not effectuated inventory and assessment of the objects of intellectual property it has. Finally, nothing is said in the Statute on SRIs about the Institute's rights to the results of its intellectual activities. There is not even the standard phrase there about the Institute's rights to objects of intellectual property being regulated by legislation of the RF.

4.3.14. Means of implementing responsibility for the Institute's obligations

The Institute's rights and duties arising in the process of its activities are regulated by existing legislation and are also defined in the Statute on SRIs and in each contract which the Institute concludes with customers for scientific research projects (with legal entities and physical persons). According to the Statute on SRIs, the Institute is liable for its debts through property by means of which recovery may be sought in accordance with existing legislation.

Responsibility for the results, completeness, and quality of scientific research projects and services executed by the Institute within the framework of a unified order-warrant is determined by the technical mission, turn-over and acceptance documents, and reporting materials. If the quality of reporting materials does not satisfy the customer (departments of the Ministry of Education), the Institute does all the necessary finishing work. However, such instances are practically never encountered. Quality execution of the subject matter plan is important to the Institute itself, insofar as that strengthens its status at the Ministry. Besides that, as has already been mentioned above, the unified order-warrant represents minimum financing of the Institute, not covering four fifths of its needs, and therefore the level of the demands made by the Ministry on the results is exceedingly fair and formal.

The only agency which can actually perform expert examination of the Institute's planned projects is its Academic Council and also the scientific community—in the event that the projects have been published in the open press.

Responsibility for quality and timely execution of contract projects is determined by the content of these contracts. In distinction from an order-warrant, execution of contract projects is confirmed by turn-over and acceptance documents for executed projects in accordance with the protocols of price coordination, the structure of prices, the technical missions, and the calendar plans of the projects.

Various means of implementing the responsibility of the parties may be envisioned in contracts. Violation of the contract's conditions may require that finishing work be done on it

(at the expense of the executor) or payment of a penalty of a certain size or compensation for damages with payment of a fine for damages or return of the monetary resources paid out. At the same time some contracts practically do not envision serious liability for failure to execute contract conditions. Thus, for example, one of the Institute's contracts with an agency of municipal government contains only one provision in the section "Responsibility of the parties;" it reads: "The executor bears responsibility for a high professional level of execution of services." Thus the higher the qualification of compilation of a contract, the more exact is the responsibility of the parties prescribed in it for its execution (by content, timeframes, volumes, financing, etc.) and all possible violations and subsequent sanctions.

Usually the Institute, as in the case of its execution of projects according to a unified order-warrant, has an interest in quality execution of contract projects. If the Institute satisfies customer requirements, then in the future it can count on a high probability of receiving orders from traditional and new customers. If it were to do poor quality execution of an order, it could be deprived of supplementary financing altogether.

As a budgetary institution the Institute actually can do none other than carry out its obligations (at least those connected to charter activities). The majority of the Institute's obligations are connected to budgetary funds (limitations on acceptance by institutions of financial obligations proceed from the quotas of financing of which they have been informed by the Ministry of Finances); they are "paid out" according to the estimate monitored by the Treasury. In particular, the Treasury monitors what volume of funds is written off according to concrete articles. The basic problems of the SRI having to do with carrying out financial obligations are connected to the fact that allotment of budgetary funds according to some articles (except wages and the social tax) is effectuated with delays and not in the amount which was envisaged according to the estimate which was approved in the established manner.

Practice is such that the greatest part of the delays in receipt of funds occurs at the beginning and the middle of the year, while there are no interruptions with allotment of financing at the end of the year. However, in that event situations sometimes arise where financing which has been allotted with significant delays is difficult to spend on what is necessary to the Institute.

From its experience the Institute has also noted that problems also arise in connection with the inexplicable policies of the Ministry of Education, which in the middle of December may send funds according to articles which are not in the SRI's profile. An example of such an article might be "Paying for funeral services when organizing and conducting measures connected to reburial of the remains of soldiers killed at war within the framework of the 'Memory Watch,'" according to which article funds were transferred to the Institute last year.

4.3.15. Critical problems with the budgetary financing of the Institute

The basic problems which the SRI encounters in the process of its financial and economic activities are laid out in the preceding paragraphs of the survey. A generalization of the key problems and concluding commentaries on the topic are given in this section.

The first and main problem which the SRI's management noted is the unclear position of the state in relation to the sphere of science, the discrepancies between the declarations which were made in programmatic documents of the type "Bases of the policies of the Russian Federation in the area of development of science and technology for the period up to 2010 and further prospects" and the actual state policies for science reflected first and foremost in the level of science financing and the approaches to resolving problems which

have gathered head in it (with the predominance of *force majeure* approaches to the resolution of individual issues in the sphere of science).

With regard to budgetary institutions the basic problem consists of their not receiving funds in the full amount for their functioning. The situation at institutions of higher education is such that budgetary money is insufficient even to cover overhead outlays. Therefore overhead outlays are covered in part from entrepreneurial activities. At the same time an approached based on budgetary institutions being supposed to earn money themselves is faulty in principle. All the more so since at the present time the scientific subdivisions of institutions of higher education are in ever greater degree supporting research at the expense of extra-budgetary funds, and that leads to their ceasing to carry out those functions for which they were created (the volume of fundamental research is being curtailed and a shallowing out of topics is proceeding, as is an accommodation to the interests of the customers for contract projects rather than to the needs of quality instruction for students and graduate students, etc.).

One more consequence of palpable budgetary limitations consists of the Institute not being able to accurately plan the structure of forthcoming outlays. Under these conditions relatively free room to maneuver in managing financial resources within the limits of the estimate would be advisable. With that there might be established several fixed articles according to which redistribution of funds is forbidden, while with regard to the remaining ones the possibility is allowed of their redistribution, first of all for those which are directed at covering an institution's housekeeping needs.

The second problem is the introduction of the treasury system of executing budgets for all the sources for financing budgetary institutions. On the one hand, that brings greater order, insofar as a budgetary institution, receiving funds from the state for its maintenance, should be transparent to the founder in its activities and effectuate its entrepreneurial activities with the knowledge of the founder. On the other hand, as of now the Treasury is a badly set up and inefficiently operating system in which significant technical delays are constantly occurring. In the opinion of the head bookkeeper, reporting could be simplified by means of introducing a unified estimate for all sources of financing, insofar as at the present time separate, but not different, recording of funds received at the institute is being done.

Simultaneously there is to be observed a tendency by the state to look upon extra-budgetary funds as budgetary ones, insofar as they are earned by the university on the basis of using state property. That means that any changes in the structure of expenditure of extra-budgetary funds require coordination and re-approval of the estimate, as also in the case of budgetary financing. And that is a complicated and lengthy process.

Study of concrete examples of the financial and economic activities of budgetary institutions of science also permits drawing the conclusion that the requirements placed on the level of projects executed within the framework of subject matter plans or a unified order-warrant are substantially lower in comparison with economic agreements and state contracts. The funds allotted are less than necessary for the normal functioning of an institution, but the level of the claims made on the quality of projects within the framework of basic financing is also accordingly less. In a number of instances that leads to scientific organizations counting on others for help rather than relying on their own capabilities.

The third problem is that the state does not use all the potential sources for financing scientific research which it has at its disposal. Thus there exist significant surplus premises at a number of institutions of higher education and especially at academy scientific organizations

and there are also construction sites where completion is long overdue[115] which could be withdrawn, unneeded sites sold, and the resources used as a source of supplemental budgetary funds for supporting scientific research at budgetary institutions. The rightfulness of such action on the part of the state with regard to budgetary institutions is assured by Article 296 of the Civil Code of the RF, according to which "the owner of property assigned to each enterprise or institution has the right to withdraw property which is surplus, unused, or being used not for its intended purpose, and to dispose of it as his discretion." And in this way excess premises could be taken by the state, and not left to the RAN for renting out. This second thing immediate generates a situation of unequal rights for RAN institutes—depending on whether or not they have surplus premises at their disposal.

The fourth problem, in the opinion of the SRI's management, goes beyond the bounds of problems of the functioning of budgetary institutions and has to do with the archaic state of the existing organizational structure of science. Under conditions of rigid financial limitations the state is not able to maintain all three of the sectors of science existing since Soviet times—the academic, institution of higher education, and branch of the economy sectors. In the entire world university science is the sector where the vast majority of fundamental research is carried out, while Academies are exclusively societal organizations and not state institutions on budgetary financing. In Russia academy institutes were always stronger in comparison with the universities from the point of view of the level of the research conducted at them and of the level of their material support (including material support to provide scientific instruments). Now, when the science system is evolving ever more in the direction of Western models, the need for the RAN as one more state institution *cum* agency is decreasing. Proceeding from "Bolivar can't hold up against a pair," much less a trio, it is advisable to direct budget funds to the strengthening of science at the universities insofar as, in the opinion of the Institute's director, the university is "youth and students, it is the nourishment for all of science, while academy science is completely cut off from life which is alive."

4.4. Analysis of the peculiarities of the financial and economic activities of a scientific production complex having the status of a State scientific center at an institution of higher education

The given institute has the organizational legal form of a state institution, but is not thereby a budgetary institution. It possesses the features of several organizational legal forms, and therefore the history of the creation of this organization is of special interest. Besides that, in recognition of the importance of the research conducted there and of its high level, the organization was awarded the status of a State scientific center; therefore a study of the advantages of the existing organizational legal form and assessment of the advisability of transforming it into the organizational form of a socially monitored noncommercial organization, features of which it already possesses, is also of interest.

[115] At the present time in the RAN property complex the amount of incomplete construction comprises about 800,000 square meters. The degree of incompletion of these sites varies from the presence of only the "zero cycle" (the foundation) to fifty to eighty percent readiness (Source: Nauchno-tekhnicheskii potential Rossii i ego ispol'zovanie (The scientific technical potential of Russia and its use). Edited by V. Kushlin and A. Folomiev. Moscow: Skanrus, 2001, Volume 1, p. 234).

4.4.1. History of the creation and evolution of the organizational legal form of activities

The scientific production complex (SPC) was created in 1988. The idea was to create a Center which would develop modern technologies in the field of micro-electronics and would train personnel. At that time creating a new organization was a very difficult task because the situation in science was constantly deteriorating. The predecessor of this SPC was a scientific production complex within an institution of higher education, the complex having been set up as a structural subdivision not having its own account or the status of a legal entity. This complex possessed a unique scientific production base; scientific research of a good level was conducted there in which a large number of specialists participated.

From the very beginning it was not planned that the SPC would be a budgetary organization. At that time, although the institution of higher education was a budgetary institution, it was not allotted financing according to a unified order-warrant, and thus there was no basic budgetary financing of scientific research at the institution of higher education.[116] Scientific research work large in volume and scale was conducted thereby at the institution of higher education, primarily in the interests of defense. Organizationally, scientific activities were effectuated through the system of SRIs which had been created at the institution of higher education. Besides that, the institution of higher education had its own production capacities.

At the first stage of creating the SPC the Ministry of Defense Industry made a building available to it. There was no budgetary financing; all activities were conducted on the basis of economic agreements. The SPC had no status as a legal entity and was a part of the institution of higher education. Organizationally it was a classical university research center approximating the Western (American) model in its parameters. A virtue of such a form is the tight connection to the institution of higher education whereby the professor-teacher contingent can use the Complex's strong scientific base. Simultaneously personnel problems do not arise with the SPC insofar as selection and instruction of students for its needs proceeds from their very first years at the institution of higher education. By 1994 the SPC's potential was already comparable to the capabilities of an advanced Russian electronics enterprise. Its scale was less; however, due to the peculiarities of the electronics industry it was considerable just the same.

This new form was given approval at the governmental level and it was decided to award the Complex the status of a State scientific center (SSC). However, in order for an organization to be able to claim SSC status it has to be a legal entity and have its own account at the bank. Therefore the SPC, in accordance with legislation in effect at the time, was registered as an "isolated subdivision" within the makeup of the institution of higher education. The concept of an isolated subdivision was not precisely stipulated; this was a form according to which the organization, on the one hand, was a part of the makeup of the institution of higher education, while on the other hand it had all the attributes of a legal entity. After that the SPC received the status of an SSC in 1994.

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[116] We would make the reminder that "unified order-warrant" is a cross-industry (sectorial) term introduced by the Ministry of Education for internal use. At the present time transition to a new term—"R&D subject matter plan"—is being effectuated. Funds within the framework of a unified order-warrant are allotted institutions of higher education in the capacity of basic financing, without a competition, according to an estimate, on the basis of plans for scientific projects which institutions of higher education present to the Ministry of Education of the RF.

The concept of an isolated subdivision changed after the new Civil Code, Part One, and the Tax Code were adopted. In the new Civil Code an isolated subdivision is defined as one isolated territorially, that is, as a subdivision outside the place where the legal entity is located (Article 55, Part One, of the Civil Code of the RF). An isolated subdivision is a branch or a representative office, and they are not legal entities. Previously what was understood as an isolated subdivision was isolation by kind of activities, and separate records of the activities of such a subdivision were maintained.

The problem arose before the SPC of its definition and registration in the new organizational legal form. The Center did not want to become completely independent of the institution of higher education, insofar as in that event there arose the question of dividing property and limiting the Center's access to library stacks and dissertation councils and problems arose in the event the Center engaged in educational activities (for the effectuating of which it was necessary to obtain a license). At the same time being a part of the makeup of the institution of higher education in the capacity of a structural subdivision was also not looked upon as an acceptable variant, insofar as in the given instance the Center would lose the status of a SSC and, accordingly, guaranteed support, and would not have been able to execute a number of projects which require licensing and accreditation as a scientific organization (executing R&D for certain customers—the Ministry of the Atomic Industry, the Ministry of Defense). Thus it was necessary to find a form under which the status of a legal entity would be kept, in the first place, while, in the second place, ties to the institution of higher education would not be interrupted. Of the forms which existed, the most acceptable was the form of a state institution. However, a state institution is created by Government resolution, and in the given instance this would also have meant reorganization of the institution of higher education and the painful procedure of transfer of assets. In the end a compromise variant was found in the form of an institution which the institution of higher education founds. This was set in the Charter. However, subsequently the Central Registrations Chamber obliged the Center to introduce an amendment to the Charter as a result of which it was transformed from an institution into a "state institution" with retention of all the rest of the conditions.

As a result, in its organizational legal form the SPC became a noncommercial scientific research organization and a state institution, but not a budgetary institution, and retained its status as an SSC. Its only founder is the institution of higher education. An institution is a less independent form than noncommercial organizations of other forms; however as of today this is the optimal possible organizational form for the Center within the framework of legislatively established forms insofar as it permits retaining access to property, being accredited as a scientific organization, and effectuating educational activities. The SSC, being a noncommercial organization, does not pursue the extraction of profit as the basic purpose of its activities. It is endowed with state property with rights to operational control, and, according to the SSC's Charter, subsidiary responsibility is borne by the owner-founder (that is, the institution of higher education), and not by the state. In its estimate the institution of higher education takes into account outlays for maintenance of the Center; however, the financing of the activities of the Center itself is not effectuated on the basis of an estimate of revenues and outlays.

At the present time a completely suitable organizational legal form of activities for such a center does not exist. Thus the account plans in effect are different for an institution and a production enterprise. While the Center has its own production operation and also a scientific complex. The form of a noncommercial scientific organization would be acceptable, but it is not legislatively defined. The concept of "scientific organization" has only been introduced in

the Law on science, while it is absent from the Civil Code, the Tax Code, and the Budgetary Code, and it is not prescribed how bookkeeping and financial records are maintained in a scientific organization.

4.4.2. Governance of a State scientific center (SSC)

The Center's structure and staffing are determined by it independently. At the present time the Center's staff comprises 220 to 240 persons, including servicing personnel, and also about eighty persons recruited to do contract work. Contracts are concluded for various periods—from a month to several years, depending on the task (project) for the implementation of which an executor is recruited. It ought to be noted that from the very beginning the Center was unable to maintain a large staff and therefore the choice was made in favor of investing in computerization of the SSC. Accordingly, overhead outlays at the SSC are not high at the present time. Thus, for example, the Ministry of the Electronics Industry requires a staff of two or two and a half times more people to maintain an analogous structure.

Governance of the Center's activities is built on principles of combining having one person in charge and collegiality. The director is the Center's one-man executive organ. The Center's director is appointed to and dismissed from the position by order of the Rector of the institution of higher education. The Center's director acts on the basis of a contract with the Founder, effectuates current management of the Center's activities, and bears personal responsibility to the Founder for the results of the activities of the scientific institution entrusted to him and for the safekeeping, targeted use, and increase of the property transferred to the Center. In the Founder's contract with the director it is stated that the director is appointed without power of attorney to govern the institution and is the personal (one-man) manager of financial resources and accounts. The same thing is written into the Center's Charter. At the same time the director does not engage in the details of financial issues, while a specialized financial and legal service has been created to resolve them. The prime duty of the director is determining the SSC's development strategy, dealing with weak spots, representing the SSC to the outside world, developing channels for activities, including financial channels, and also resolving conflicts.

The director is appointed for the effective period of the rector's powers, that is, for five years, as a rule. This is the accepted practice at institutions of higher education, because the rector may not be re-elected for a following term, while his successor may have different views on the makeup and function of the organizations instituted by the institution of higher education. Once a year the director of the SRI reports to the institution of higher education's Academic Council. A written report is also compiled where all the results of the SRI's work are presented, specifically organizational, scientific, technical, and production results. The institution of higher education's Academic Council is supposed to give its approval to the SRI's work.

In the event the SRI does unsatisfactory work the contract with the director may be severed. However, there have to be very weighty grounds for that. The SRI has representation at the Academic Council and it has base departments at the institution of higher education.

The Center's Scientific Council is the collegial organ for governing the Center. The basic functions of the Council, according to the SSC's Charter, are determining basic lines for the Center's scientific technical and social development to take, forming plans for the Center's production and teaching methods lines of activities, as well as others, monitoring their execution, and coordinating scientific research.

Management of the Council's activities is effectuated by its chairman. At the given SSC it is not the director who is the chairman, as is usually done in scientific research organizations, but a meritorious and authoritative scholar/scientist, a former rector of the founder institution of higher education, at the present time working at the Center. The candidacy of the chairman of the Scientific Council is coordinated with the founder. Due to the Council's chairman being an authoritative scholar/scientist, there is a certain dependence of the Council on the director. The director is a member of the Council, and he is supposed to sign Council decisions. In the event he does not agree with a Council decision there is supposed to be coordination and search for a compromise in order to eliminate the conflict of interests.

There is a manning schedule at the Center. The director signs orders on appointing and dismissing personnel. The manning schedule is sufficiently flexible and can change depending on the volume of current activities. A certain decentralization exists in the issue of manning the Center's staffing. Laboratory managers present applications to change staffing positions. The director does not interfere in the work of the laboratories and production operations; they themselves understand how best to divide the funds they have from contacts—between eighty or between a hundred and eighty persons. The managers only bear responsibility for work results. Dismissal is a more complicated process than hiring if it concerns full-time employees (shtatnye rabotniki) who have been hired to work for an indefinite period. According to the Code of labor laws, a contract cannot be concluded for a definite period if that employee is on the Institute's staffing. Therefore an indefinite contract is concluded with these employees and wages are the mechanism for managing the number and makeup of personnel. The size of the wages is stipulated in every contract—whether definite or indefinite. Individual wages in no way connected to the categories of the wage rate grid correspond to each staffing position (shtatnaia pozitsiia). A system of base salaries has been introduced which come to six hundred to a thousand rubles (a month) for rank and file employees and eight to nine thousand rubles for chiefs at various levels. Wages cannot be lower than the established salaries, and the director bears personal responsibility for fulfillment of that condition.. The size of salaries is tied to the main state contract which the Center concludes within the framework of the Program for supporting SSCs. All other funds come to the Institute according to contracts, execution of which are effectuated by the various laboratories. After laboratories receive a contract, they themselves determine the size of additional payments for each employee. A marketing service was created at the Institute about two years ago to seek contracts.

Overhead outlays are tied to total wages according to the sum of all contracts. As a rule, they comprise one hundred eighty percent of wages without accruements, or about twenty percent of the overall amount of the contract. The tying of overhead outlays specifically to wages occurs because if employees want to receive more, then the employees servicing their subdivisions also have to receive more.

4.4.3. Structure of revenues and outlays at a State scientific center

As follows from the history of the Center's creation, it has had no source of budgetary funds from the very beginning. Accordingly, the Institute has a settlements account which does not go through the Treasury. According to the Charter, the basis for the relationships between the Center and the customers for (consumers of) its products and services is economic agreements concluded and executed in accordance with the civil legislation of the

RF. The Center sells its products, projects, and services at prices and rates established independently or on a contract basis, and in instances provided for by legislation—at state prices.

The SSC is a completely independent organization, and the size of the funds directed at consumption, and also the lines and manner of using profit received as a result of entrepreneurial activities and remaining after payment of taxes and other mandatory payments are determined by the Center independently. Financial relationships between the founder institution of higher education and the Center arise in the following instances. In the first place, the founder institution of higher education approves the size of the profit received by the SSC and the manner of its distribution. The basis for distributing profit is the Statute on using profit, which is usually developed by the prorector within whose scope are the institution of higher education's entrepreneurial activities. According to the Charter, the institution of higher education's rector approves the SSC's financial plan to which the Scientific Council has given its approval. This manner is more acceptable to the SSC's management than the traditional one, when upon receipt of profit it was necessary to gather the work group and discuss its distribution, insofar as few members of the work group can realistically understand and calculate what profit needs to be spent on. At the SSC the Scientific Council determines what from the profit to spend on repairing energy plants, purchases of instruments, and paying for communications services, infrastructure, and transportation.

In the second place, when the financial plan is being approved the SSC coordinates with the founder institution of higher education the size of its contribution to the university's maintenance (support). Financing from the state budget does not even cover fifty percent of the amount of funds necessary to maintain the institution of higher education. The institution of higher education gets the remaining necessary funds at the expense of scientific activities and student tuition. Science is in second place in the university's revenues after paid educational services. A quota for each institution subordinate to the institution of higher education is established by means of coordination and it is also determined what exactly each organization will contribute to the maintenance of the founder institution of higher education. The SSC supports part of the institute-wide sites—the compressor station, the energy plant—which are used by all, and not just by the SSC. In numerical expression this sum came to one and a half million rubles in 2001 which the SSC allotted the institution of higher education as free (unencumbered) financial funds.

The SSC's *revenues* are formed from orders placed by the state, economic agreements, financing through the program for supporting SSCs, contracts with foreign organizations, and also loan funds gotten through competition from the Russian Foundation for Technological Development (RFTR).

The first state-placed order appeared at the Center simultaneously with its being awarded the status of an SSC. In the given instance, although the source of the funds is the state budget, the Center also does not report according by estimate. The state-placed order is allotted on a contract basis, and through state contracts concluded in 2002 the Ministry of Industry and Science issued a special Statute in which the conditions for using funds and for reporting are prescribed. Different forms of reporting are envisioned there for organizations of varying forms of property ownership. For budgetary institutions there is the estimate, for others there is price structure. There are analogous Statutes at other ministries, too.

An order placed with State scientific centers by the state is formed in the following way. The SSC presents its proposals by subject matter of projects to the Ministry of Industry, Science, and Technology (before 2000—to the Ministry of Science and Technology of the

RF). A commission of independent experts of a high level created within the structure of management of the Program examines them. The parties compromise on the size of the financing of a state-placed order. In the first years when the SSC system was coming into being the proportions of financing among almost sixty Centers took shape. In subsequent years the amount of financing allotted in the budget (according to Line 06) was distributed in accordance with the proportions established among the Centers. This balance has not been violated, insofar as an influential scholar/scientist capable of depending his organization's interests stands at the head of every SSC.

A state-placed order along the SSC line is the usual contract with a technical mission, calendar plan, and estimate of outlays. During the course of executing the job, outlays according to various articles may be changed in coordination with the customer. The overall balance of the articles is supposed to be retained thereby. Budgetary funds received by contract are "uncolored," that is, the Institute receives an advance and spends it in the way needed to organize projects at the given moment in time, and not on what has been scheduled, as would it would be the case in the event of estimate financing.

Placing of orders on a competitive basis takes places in accordance with the Decree of the President of the RF "On first and foremost measures for preventing corruption and cutting budgetary expenditures when organizing purchase of products for state needs (dated 8 April 1997, № 305) and with the Federal Law in its development "On competitions for placing orders for supplying goods, executing projects, and rendering services for state needs" (dated 6 May 1999, № 97-FZ). Each agency then compiled its package of documents on this basis of this Decree and Law.

The SSC concludes contracts according to the results of participation in a bidding process. Bidding is announced and a competition takes place over the course of forty-five days; then assessment of projects on the part of the competition commission takes place. When applications are compared, the potential of the applicants, the logistical base they have, and also the contract cost proposed by the applicant are the basic criteria.. Sometimes up to ten organizations contend for a single order, and therefore choice by written applications alone is difficult. In this event public hearings are arranged, and a commission of experts hears arguments by the contenders in favor of their projects and later comes to a final decision.

In 1994-95 financing along the SSC line comprised about eighty percent of the complex's budget; this was the most difficult time, so if it had not been for the SSC status, the scientific production complex (SPC) would not exist today. At the present time financing along the SSC line comprises twenty percent.

Aside from state-placed orders along the SSC line, the Center has state contracts with various agencies. Contract activities are effectuated according to ISO quality standards. All contracts are divided into three groups for which there are standardized rules for writing them up. The first group is R&D and the second is contracting agreements, that is, manufacture of wares according to requirements coordinated with the customer. The third type of contract is contracts for supplying products in small series. That is what the Center does at its experimental production operation. The operation is not a small one; about a hundred people work there. The Institute actively conducts seminars *cum* exhibits, inviting potential customers *cum* representatives of various organizations and enterprises. Invitations to the seminars *cum* exhibits are sent out to various regions of the country. Forty enterprises were represented at the last seminar. Each seminar is devoted to a concrete product and its promotion. The search for potential clients also proceeds through special data bases which exist at a number of ministries, and also in the Internet. These events are conducted within the

framework of the third kind of contract. But sometimes they are also arranged within the framework of the second kind of contracts—for developing concrete kinds of products.

Should there be a correlation between the three kinds of contracts? The first kind of contracts should predominate—both for acknowledgement of the Institute as a scientific organization and for the Institute's ideology as the developer of new products, and not as the producer of already existing wares. For now the Center is developing on a broad front, and that is a controversial thing. Is there a need to exert a broad grasp? Or to concentrate on certain already worked-out technologies? There is no serious experience at this, insofar as it was only a year and a half ago that the marketing section, which determines such policy, was created. Specialists with two diplomas—in engineering and in economics—work there.

Besides that, the Center takes part in exhibitions, moreover not in exhibitions *cum* conferences, but in technological shows, that is, where it is possible to find the consumer. That is an economically justified undertaking. The exhibitions are mainly domestic ones, but there are also trips abroad. The SSC pays to participate in such shows with its own funds, but contracts are practically always concluded; therefore such outlays are justified and subsequently pay for themselves.

One of the promising sources of revenues for the SSC is putting intellectual property (IP) which has been created into circulation. IP is created in the course of executing both state contracts and orders from industrial enterprises. At the present time the contract from the point of view of prescribing the rights to IP has not been completely worked through, especially in those instances when IP is created at the expense of budgetary funds. Therefore in practice an approach is usually applied which permits a maximum time delay in resolving the issue of the final distribution of rights. Usually a provision is included in a contract according to which property rights to the product created are determined "according to the results of execution of the project." This is done in the hope that by the time the project is finished explications will have been introduced into existing legislation. In instances of contracts with industry as a rule there is greater understanding of the future distribution of rights from the very beginning. Usually everything depends on the subject matter of the projects. При передаче прав заказчику работа стоит дороже. When rights are turned over to the customer the project is more expensive. In other instances, when both the SSC and the customer have rights, the project is less expensive, but the SSC can have revenue from selling licenses in the future.

Putting IP on the balance sheet is also important, because it is taken into account when determining the amortization level, and consequently is a source for renewing the Institute's logistical and instruments base. The SSC has already undertaken the first attempts to put IP on the balance sheet, but the issue of putting IP into circulation has not been worked through legislatively. There may be various degrees of protecting IP for putting it on the balance sheet, but patenting is mandatory. It may be a computer program or it may be a methodology. But on the whole there is no legislative basis yet for working normally with IP, while the tax inspectorate may cavil on various grounds. Therefore the issue of putting objects of intellectual property on the balance sheet and into circulation remains one of the very greatest problems. Thus, the Center has been registering its rights to the topology of integrated circuits and to program support. Laws on this topic were issued as early as 1992, and, besides that, a significant number of publications have been published on this topic already, however this is still no law that would cover all these problems. In that sense an excerpt from Article 17 of the Federal Law "On information, informatization, and protecting information" (dated 20 February 1995, № 24-FZ"—property rights to information systems, technologies, and means of their support—is instructive. According to that Law, information systems, technologies,

and the means of their support may be the property objects of physical persons, legal entities, and the state. A physical person or legal entity, by means of the funds of whom or which these objects were produced, acquired, or obtained through inheritance, gift, or other legal means is acknowledged to be the owner of the information system, technology, or means of their support. Information systems, technologies, and the means of their support are included in the property of the entity effectuating the rights of the owner or possessor of these objects. Information systems, technologies, and the means of their support behave like goods (products) when the rights of their developers are observed. The owner of an informational system, technology, or the means of their support determines the conditions for using these products.

That is all that an organization intending to get a patent on program support has at its disposal. Besides that, assessing the cost of IP is a separate problem. The given SSC only assesses it according to calculation of the actual outlays to create the IP.

Foreign financing is insignificant in the structure of sources and is connected to the fact that practically all the technologies created at the Center are dual-use ones. Thus due to the specifics of the work, the sources of financing the SSC are mainly Russian ones.

The SSC also resorts to loan funds, which it receives on the basis of a contract with the Russian Foundation for Technological Development (RFTR). The SSC finds returnable financing not very convenient, because funds from the RFTR cannot be included in the prime cost and can only be returned owing to (from) profit. In actuality this is a loan without interest, the loan being paid not to a bank, but to the state owing to the formation of supplementary profit. At the same time the RFTR's working mechanism is a promising one insofar as it stimulates putting IP which has been created into circulation. Since loan funds can only be returned out of profit, while profit can be formed only if production of products has begun, return turns out to be possible in the event of commercialization of the results of research and development supported by the Foundation and in the event of usage of the IP created to expand production.

The Center does not use bank loans. The banks do not give loans for research projects insofar as they are afraid the funds won't be returned, although the organization's credit history is entirely accessible to the banks. The banks charge twenty-four percent annual interest thereby, and thus this is very expensive for the Institute.

As to such a source of extra-budgetary financing as revenues from renting out premises, the SSC never rents anything out, and that is an Institute directive as a matter of principle and policy. Revenues should come from basic activities.

The structure of the SSC's *outlays* is determined in the following way. The norm for overhead outlays is calculated every year. Proceeding from the figure obtained, the amount of the contracts which need to be concluded in the given concrete year is determined. Further, half a year later a more precise determination is made of planned indicators and when necessary they are re-assessed. For example, if more orders have been taken than are necessary to cover overhead outlays, then the norm for overhead outlays in the second half of the year is lowered and employees get more wages. If, on the contrary, the amount of orders in the first half of the year proves less than planned, while the size of overhead outlays thereby remained fixed, then in the next half of the year the norm for overhead outlays is increased by five to ten percent, which means employee wages decrease. Overhead outlays usually come to 187 percent of the wages fund, while the wages fund is determined proceeding from the parameters of the preceding year.

Then materials, accruements for wages, and also profit are calculated. With that, depending on the kind of contract, funds may go in greater or lesser degrees for materials, and not for wages. The structure of outlays is determined independently by the laboratory contractors (podriadchiki) responsible for executing the particular contract.

Insofar as the SSC is inside a university, there are strong ties with young people. Средний возраст научного персонала – 38 лет. The average age of scientific personnel is thirty-eight. Quite a few young people come there. There are young folks who earn 1,500 to 2,000 dollars a month. They have taken on a multitude of topics, and they are responsible for them. The staff—administrative and management personnel—also earns a lot thereby at the expense of overhead outlays. Now they are trying to make such earnings mass earnings, and not something only a few individuals have, since it is of advantage to the Institute for people to earn a lot.

Outlays for buying new equipment is an important outlays line in the Center's budget. According to the Standardized methodological recommendations in effect on planning, recording, and calculating prime cost of scientific technical products (approved by the Ministry of the Economy of the RF, the Ministry of Finances of the RF, and the Ministry of Science of the RF on 23 May, 8 June, and 15 June 1994), equipment may be purchased only from profit; therefore one of the key elements of the Center's financial policies is receiving a profit of no lower than twenty percent—a figure which was established by means of experimentation. A twenty-percent profit is not a requirement, but a wish. If a norm of thirty percent were to be set, the Institute would not receive the necessary number of contracts, since their price would be rather high, and the Institute would lose in the competitive struggle to get them. If the profit norm were less than twenty percent, the Institute would lose the possibility to re-equip itself. Nevertheless in some instances, after coordination with the Institute's administration, a lesser profit norm is set in the contract, for example when what is proceeding is the occupying a market niche or some kind of preparatory work to secure major subsequent orders. In any event, if profit has to be relinquished, then it still has to be gotten somehow later. For example, if after execution of a profitless project the experimental production operation gets a large order, there will be profit there which will compensate for its lack at the preceding stage. In that case the Center's management decides to relinquish profit in favor of a future order.

Purchasing of new equipment can also be effectuated as a result of state investments, but to get them is extremely difficult and it happens very rarely.

Aside from financing renewal of the material and instruments base, what else is profit spent on? That would be *force majeure* circumstances and outlays—patching holes, cleaning up after wrecks. Outlays for liquidating the consequences of *force majeure* circumstances are allotted first from the overall amount of profit, and the remaining profit goes for re-equipping. The SSC's ideology is this: the need is to endeavor to direct the maximum amount of profit to the Institute's technical re-equipping. The Center specializes in a very dynamically developing field of science, and if equipment is not renewed all the time, then it is possible to fall behind rapidly and lose the ability to complete.

4.4.4. Planning kinds and lines of activities

There are three strategic lines of scientific technical activities at the Center. These lines break down into sub-lines and then into smaller topics. At the SSC they try to conclude all contracts in accordance with these lines of work in particular. There is no work plan for the year as such, since all projects are effectuated on a competitive basis. The SSC's two-year

plan work plan presented to the Ministry of Industry and Science and approved in the capacity of a state-placed order according to the SSC line is the core, the landmark for the work of the entire Institute, and contracts are tied to this plan. There is no unified plan for all projects, because there are no funds simply for maintaining the Institute according to the estimate. At the SSC they try to control the very fact of the conclusion of contracts, and also the timeframes which are allotted to execute these contracts. Contracts are interconnected. A development for contract "A" is then used in contract "B," etc. It cannot be otherwise: funds from various contracts have to be concentrated to solve certain tasks, and therefore contract projects often differ only at the last stage, and moreover not in a cardinal way, and they are more likely to have overlapped. Otherwise contracts are not concluded. One can't just grab at anything, because such a thing would be impossible to execute.

As to the kinds of activities per se, they are all defined and enumerated in the Charter. The Charter is rigid and the list of kinds and subject matter of activities is closed, and that was done consciously. Limitation to basic activities is set proceeding from the fact that the SSC goes through accreditation as a scientific organization. Therefore scientific research and development come to eighty percent at the Institute, and output of small series of wares, the so-called supply contracts (dogovora postavki), comes to twenty percent. At the same time there is also the problem of calculating the volume of basic (scientific research) activities, which are supposed to comprise not less than seventy percent in order for an organization to be able to be accredited as a scientific one. The Tax Code assumes calculation by volume of projects, while the Ministry for Taxes and Fees defines an organization's receipts (vyruchka) as being the basis for calculation. The second method of calculation is less attractive to scientific organizations, insofar as in that case projects executed through grants from state scientific foundations, and also a number of other projects of a fundamental nature, are not taken into account.

Thanks to accreditation, the SSC does not pay a tax on property or on land. There is a VAT privilege in the event a state contract is concluded. However, the SSC management looks upon that privilege as not being of substantial significance, insofar as the resulting economy of funds is very slight. This privilege is advantageous only to those institutions which spend ninety percent of their budgetary money on wages and which do not have their own production operations.

To a certain degree the Institute suffers from the lack of budgetary financing. The thing is that the orders which the SSC takes usually are for applied projects, when a concrete result needs to be gotten. However, for such activities to be successful, and also for growth and advancement, start-up (zadel) has to be created, and that can be done only at the expense of budgetary financing. Domestic enterprises are not strong enough yet to finance the creation of scientific start-ups. At the present time the only source the Center has of fundamental and exploratory research is the SSC Program. All funds allotted according to it can go for creation of a start-up, and there are no limitations of any kind. Projects within the SSC Program may be written up in two forms—in the form of a plan and of a program. A plan is the exploratory part, and a program is the applied projects. Each SSC determines for itself what is more urgent for it, while the Ministry of Industry and Science has no rigid directives, except one—the Commission of experts has to agree with the choice of the type and subject matter of the projects. According to the plan for projects, the SSC has twenty to thirty percent applied research (the program), while the remaining research is the plan, that is, exploratory and fundamental projects.

4.4.5. Possibilities for transformation into another form of organization

Transition to the status of a state noncommercial organization should favorably affect the possibilities for Institutes to implement rights to intellectual property which is created. Insofar as they would no longer be budgetary organizations in which all rights belong to the state, and implementation of projects for state needs would only occur on the basis of contracts, this mechanism would permit stipulating ahead of time the assignment of rights to objects of intellectual property which are created, assessing them, and placing them on an organization's balance sheet in a timely fashion. Existing legislation is well enough developed for that form of relationships between the state and institutes.

Finally, the Center in significant measure executes research in the interests of strengthening defense capabilities, and from that point of view the state's requirements for the Center's services are defined precisely and exhaustively; however the Center has never striven to become a commercial organization, because that would significantly limits the possibilities for its self-development. A defense order executed in a quality way absolutely must be based on performing a certain amount of fundamental and exploratory research. And that is extremely difficult to do under the conditions of a commercial organization.

On the whole, privatization of budgetary institutions of science (switching them to the form of commercial organizations) seems premature for the majority of institutes for the following reasons. In the first place, a sufficient volume of fixed assets and working capital is necessary for stable reproduction (vosproizvodstvo), and as a rule budgetary institutions of science do not possess that. In the second place, all rights to intellectual property should be registered on the balance sheet of the organizations under the article "non-material assets." Otherwise, huge material losses will occur during privatization. As study of individual examples of the financial and economic activities of SRIs of various agency subordinations has shown, the question of placing objects of intellectual property on the balance sheet is still only beginning and is encountering significant methodological problems thereby (including questions of bookkeeping records). In the third place, commercialization under conditions where the question of putting objects of intellectual property on the balance sheet has not been worked through would more likely lead to destroying the personnel potential of the institutes, insofar as the interest of the stockholders would more likely be not in the products produced by the institutes, but in their property complex.

A number of budgetary institutions of science should remain state institutions (administratively monitored noncommercial organizations). First of all these are institutes with major infrastructure and unique equipment (installations on a national scale) which is the basis for conducting unique projects. Here it is budget support namely for the material base and scientific equipment which is important. Such institutes can become international centers for performing research (along the type of the United Institute for Nuclear Research in Dubno or the sixteen international centers operating within the structure of the Siberian Branch of the RAN. However, having unique equipment is not a sufficient condition for an organization to remain a state institution, insofar as equipment support can also be effectuated within the framework of the special program "Maintenance of unique work benches and installations" (in the event that financing for it is substantially increased).

The following may be other criteria permitting determination of whether a scientific organization should remain a budgetary institution:

(1) The structure of the sources for financing the organization and the share of extra-budgetary sources and its dynamics (including the share of revenues from renting out property).

(2) The age structure of scientific personnel (the share of scholar/scientists under thirty-five).

(3) The share of fundamental research in the overall volume of projects conducted and their level (the share of publications in internationally peer-reviewed journals).

It is of absolute importance that account be taken of whether the research conducted is primarily civilian or is oriented toward defense. The set of formalized key indicators should be supplemented by expert examination with the mandatory involvement of international experts (for open organizations and projects), the purpose of which would be assessment both of the level and significance of the research and of the level of the management. The outlays for such expert examination should not be great, insofar as the functions of examination by experts are looked upon in the scientific world as being volunteer in part.

A part of the institutes with primarily defense-related subject matter may be transformed into commercial organizations, noncommercial enterprises, or publicly monitored noncommercial organizations.

The form of the functioning of RAN institutes is a separate question. One of the promising lines here is to completely integrate academy SRIs and institutions of higher education, to build academy organizations into the structure of institutions of higher education—and in that event to maintain their status as budgetary institutions. In that event all privileges to the organizations will be granted to them as educational institutions. The Federal targeted program "Integration" may be looked upon as a transition mechanism if the ideology of selecting projects to support is changed in the direction of cutting the number of establishments supported with a simultaneous increase in the amount of financing for each of the establishments. At the present time within the framework of the program the creation has been supported of one hundred fifty-four Educational scientific centers on the base of academy SRIs and institutions, these centers being a sort of prototype for a new form for organizing science. As a rule, educational scientific centers are not legal entities and are structural subdivisions of institutions of higher education. In some cases the fusion of academy SRIs and institutions of higher education has already taken place in actuality.

The unification of a number of academy SRIs and institutions of higher education also has good prospects because at the present time academy SRIs do not have licenses for educational activities, and therefore according to the letter of the law they cannot, for example, instruct students on the base of their laboratories. True, it ought to be noted that no punishment for such activities is provided for, and therefore instruction of students on the base of academy institutes is widespread.

Это Сепра

Increasing the Efficiency of Budget Expenditure on Funding Public Institutions and Management Of Public Unitary Enterprises

Increasing the Efficiency of Budget Expenditure on Funding Public Institutions and Management Of Public Unitary Enterprises

Volume II

Management Issues and Tasks of Regulation in the Sphere of Public Unitary Enterprises

Moscow
2003

The first volume contains a detailed analysis of the current legal regulation of functioning of state agencies, legislative basis of their budget financing. In this volume specific features of these issues in social sphere are analyzed, as well as recommendations on reorganization of the management system and financing of state agencies, and on reform of organizational and legal forms of their performance are provided.

Analysis of the current organizational and legal forms and specific instruments of management of public unitary enterprises, analysis of the mechanism and funding issues and the ways of reorganization of the system of public unitary enterprises as well as development of policy proposal represent major tasks in the second volume.

Obtained findings can be applied as part of a legislative basis of state regulation (including for amendments to the current normative and legal acts and for the drafting of new normative and legal documents); for development of economic programs for Russia; as specific element for a concept of long-term development of the national corporate model.

Volume I. Perfection of the System of Management and Funding of Budget Institutions

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Volume II. Management Issues and Tasks of Regulation in the Sphere of Public Unitary Enterprises

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Introduction

Gradual elimination, based on economic growth revival, of the consequences of the 1998 financial and economic crisis was the most important trend in Russia's development during the past three years. A new stage in economic transformations within the ongoing reforms the onset of which can be traced back to the middle of the year 2000 has put into focus the necessity of and the opportunities for achieving the goals of modernizing the national economy and finding solutions to social problems. It has in fact become a common notion that this would be impossible without overcoming the weakness of the State system and making it function at a higher quality level.

An important component of State regulation as applied to the sphere of property relations is State property management (or participation in such management). In the approved by the Russian Government in the autumn of 1999 Concept of the management of State property and privatization in the Russian Federation, as well as in "The Main Directions of the Socio-Economic Policy of the Government of the Russian Federation in a Long-Term Perspective" approved in the summer of 2000, three principal types of the objects of such policy were distinguished: 1) State unitary enterprises (SUE) and institutions; 2) economic entities with participation of the State; 3) immovable property. As can be seen from this list, State-owned enterprises are logically a priority object for State regulation in the sphere of property relations.

Considering the known reduction in the role of privatization in generating the budgetary system's revenues in recent years, the problem of efficient management of State property is becoming especially important. At the same time, the reform of State property management cannot be limited to providing the State with revenues from sources other than taxes. As regards the sector of unitary enterprises, the task of a more high-quality execution of their State functions and satisfying public interests, rationalization and higher quality of budgetary policy (both in expenditures and revenues) is now becoming a greatest priority.

Keeping a considerable number of enterprises (including strategic ones) in State ownership, transferring property rights from one subject of administration to another (without changing the status of State property), and inter-department conflicts all directly influence the efficiency of the currently active enterprises, and indirectly – the general economic situation in Russia.

The main goals of the present study are to make an analysis of the existing forms and methods of managing State unitary enterprises and to prepare appropriate recommendations to be applied to the present Russian situation.

At the beginning of the study, the sector of unitary enterprises is analyzed from a quantitative point of view (including their dynamics and structure), as well as from the standpoint of the existing schemes of their management (Chapter 1). Later on, in Chapter 2, the financial problems associated with the performance of SUEs on a broad scale are dealt with (the ratios of different sources, the relationships between enterprises and budgets, the principal instances of law violations associated with these, the issues of restructuring the debts to the budgetary system).

In Chapter 3, on the basis of an estimation of legal regulation of the State property rights and the concept of reforming the State sector, possible approaches to and the ways of reorganizing the sector of unitary enterprises are analyzed, including an evaluation of the prospects for transforming some SUE into other organizational and legal forms, revealing

positive and negative aspects of one of the draft laws dealing with this problem, and recommendations for changing the existing normative and legal base. The latter include amendments to the draft law on unitary enterprises which is currently being developed, final development of the Model Charter of a federal state unitary enterprise and the Model Contract with its director, as well an analysis of control and audit procedures for unitary enterprises (as exemplified by subject of the RF) (Annex 1-4). Chapter 4 is devoted to an overview and analysis of the management practice as applied to unitary enterprises at a local level (as exemplified by subject of the RF) supplemented by samples of corresponding normative and legal acts pertaining to this problem (Annex 5-8). One more appendix reviews a cumulative foreign experience of the performance of State enterprises (as exemplified by West European countries) (Annex 9).

The results obtained can be applied as follows:

- as elements of the legislative base for State regulation (including amendments to the existing normative and legal acts, as well as development of new normative and legal documents),

- to prepare programmes for Russia's development for various timespans;

- as a specific element of the concept of developing a long-term model of the national corporate sector.

Potential users of the projects's results can be the Government of the RF, the State Duma of the Federal Assembly of the RF, and the Ministry of State Property of the RF.

1. Analysis of existing organizational-legal forms and specific instruments of management of unitary state enterprises.

1.1.Quantitative analysis of unitary state enterprises in Russia

1.1.1. General survey of the place of unitary state enterprises among subjects of management

In the course of the market transformation over the last ten years the proportion of state property ownership in the Russian economy has decreased noticeably.

According to data from Goskomstat [the State Statistics Commission], proceeding from the Unified State Registry of Enterprises and Organizations of all forms of property ownership and management (EGRPO), the number of state enterprises and organizations decreased from 325,000 units as of 1 January 1995 to 151,000 as of 1 January 2001, that is, by about 2.2 times. At the same time there was noted a certain growth in the number of municipal enterprises, from 171,000 units as of 1 January 1995 to 217,000 as of 1 January 2001, or by twenty-seven percent.[1] Nevertheless, the aggregate share of state and municipal enterprises and organizations in the overall number of enterprises and organizations shrank by about 2.5 times: from 25.5 percent at the end of 1994 to 11.0 percent at the end of the year 2000. Moreover, beginning in 1998 the number of state enterprises and organization and, correspondingly, their share in the overall number of enterprises and organizations began to yield to the contribution of municipal enterprises and organizations (*Table 1*).

Table 1

Dynamics of enterprises and organizations of state and municipal forms of property ownership in Russia in the years 1995-2001

Date	State property ownership		Municipal property ownership		State and municipal property ownership	
	thousand units	in % of the overall number of enterprises and organizations	Thou-sand units	in % of the overall number of enterprises and organizations	Thousand units	in % of the overall number of enterprises and organizations
As of 1.01.1995	325	16.7	171	8.8	496	25.5
As of 1.01.1996	322	14.3	198	8.8	520	23.1
As of 1.01.1997	233	9.3	184	7.3	417	16.6
As of 1.01.1998	143	5.4	178	6.5	321	11.9
As of 1.01.1999	148	5.1	183	6.3	331	11.4
As of 1.01.2000	150	4.8	198	6.4	348	11.2
As of 1.01.2001	151	4.5	217	6.5	368	11.0

[1] Counting branches and representative offices. Rossiiskii statisticheskii ezhegodnik: Stat. sb. (Russian statistical annual: Collection of statistics): / Goskomstat of Russia. Moscow, 2000, p. 277.

Source: Russian statistical annual: Collection of statistics / Moscow, Goskomstat of Russia, 2001, p. 313, calculations by the authors.

With that it has to be noted that, despite the shrinking of the proportion of enterprises and organizations of state and municipal property ownership in the overall number of management subjects registered in the Unified State Registry of Enterprises and Organizations, their absolute number has had a tendency to grow in recent years. Thus, the number of enterprises and organizations of state property ownership, having reached a minimum of 143,000 units as of 1 January 1998, increased over the following three years by 8,000 units (the greatest growth took place in 1998 – 5,000 units). A similar picture was also observed for the sector of municipal enterprises and organizations. Over the years 1998-2000 their number increased by 39,000 units relative to the minimum of the second half of the 1990s – 178,000 units as of the end of 1997 (the greatest growth took place in the year 2000 – 19,000 units).

As a result, the number of enterprises and organizations of municipal property ownership as of 1 January 2001 exceeded the magnitude of the given indicator as of 1 January 1995 by almost twenty-seven percent, that is, as of the moment from which statistical observation has been conducted within the framework of the Unified State Registry of Enterprises and Organizations. For state enterprises and organizations the analogous indicator comprised 46.5 percent, that is, their growth after 1998 was relatively small.

With that it has to be noted that the itemized estimate of the quantitative parameters of the state and municipal form of property ownership in the Russian economy represents a great problem and requires separate consideration.

The data contained in *Table 1* are a generalized itemized estimate of the state and municipal form of property ownership in the Russian economy. Actually, unitary state and municipal enterprises comprise only a part of the enterprises and organizations of these forms of property ownership.

Table 2

Proportion of state and municipal enterprises in Russia's economy in 1995-2001

Date (as of 1	**State enterprises**	**Municipal enterprises**	**State and municipal enterprises**

January	units	in % to the total number of enterprises and organizations of the state form of property owner-ship	in % to the total number of enterprises and organizations of all forms of property owner-ship according to the Unified State Registry of Enterprises and Organi-zations	units	in % to the total number of enter-prises and organi-zations of the municipal form of property owner-ship	in % to the total number of enter-prises and organi-zations of all forms of property owner-ship accord-ing to the Unified State Registry of Enter-prises and Organi-zations	units	in % to the total number of enter-prises and organi-zations of the state and municipal forms of property owner-ship	in % to the total number of enter-prises and organi-zations of all forms of property owner-ship accord-ing to the Unified State Registry of Enter-prises and Organi-zations
1995	68141	21.0	3.5	58705	34.3	3.0	126846	25.6	6.5
1996	…	…	…	…	…	…	90784	17.5	4.0
1998	44931	31.4	1.6	43333	24.3	1.6	88264	27.5	3.2
2000	…	…	…	…	…	…	79020*	22.7	2.5

* – overall number of unitary enterprises according to data from Goskomstat of the Russian Federation; the remainder are state enterprises on the independent balance sheet on the basis of data from the State Committee of the Russian Federation on Management of State Property (hereafter: State Committee on Property of the Russian Federation)

Source: data bank of the State Committee on Property of the Russian Federation, Russian statistical annual: Collection of statistics / Moscow, Goskomstat of Russia, 2001, p. 313, T. Kordiukova, M. Galkin, A. Eigel'. Unitarnye predpriiatiia – potentsial'nyi dokhod ili potentsial'nye riski dlia regional'nykh i mestnykh administratsii? (Unitary enterprises – potential income or potential risks for regional and local administrations?) // Kredit Rossii. Analiticheskii biulleten' Reitingovoi sluzhby EA-Ratings, strategicheskogo partnera Standard & Poor's, (Russia's credit. Analytic bulletin of the Rating service EA-Ratings, of the strategic partner Standard & Poor's), № 19-20 (46-47), October 2001, p. 1, calculations by the authors.

The data presented in *Table 2* permit drawing the conclusion that state and municipal unitary enterprises on an independent balance sheet (further: SUEs and MUPs) over the course of the second half of the 1990s comprised twenty to thirty percent of all enterprises and organizations of the respective forms of property ownership. Their share in the overall number of management subjects registered at the Unified State Registry of Enterprises and Organizations (EGRPO) was very tiny; it decreased constantly from 6.5 percent as of the end of 1994 to 2.5 percent as of the beginning of the year 2000. Such quantitative estimates may elicit a certain doubt. With that one should have in mind the following aspects of the problem of determing the parameters of the state and municipal sector which are important for statistical accounting.

Differences in the data banks of Ministry of State Property (previously the State Committee on Property) of the Russian Federation and EGRPO. In the first of them what is meant are only enterprises as such. In EGRPO branches and representative offices are taken

into account. It is highly probable that if a proper accounting of branches and representative offices were run, the share of the SUE and MUP sector would grow substantially.

One more aspect of the accuracy of the accounting of the SUE and MUP sector is connected to so-called «dead enterprises.» A special study conducted by the EA-Ratings Rating Service in 2000-2001 showed that out of more than 3,100,000 enterprises and organizations registered in the Russian Federation by the beginning of the year 2000, only a quarter regularly made their accounts available to Goskomstat of the Russian Federation. Accounting discipline in the sector of unitary enterprises was on a higher level than in the economy as a whole: according to results from 1999, financial accounting was made available by 45,000 unitary enterprises (or fifty-seven percent). Among them were 26,000 MUPs, 11,000 SUEs of constituent members of the Russian Federation, and 8,000 SUEs. Comparing the latter figure with the number of federal state unitary enterprises (FSUEs) mentioned in the Concept of Managing State Property and of Privatization in the Russian Federation approved by the Government of the Russian Federation in September 1999 (13,786 units), the conclusion may be drawn that the accounting discipline for FSUEs (those which made accounts available to Goskomstat of the Russian Federation comprised fifty-eight percent of the magnitude shown in the Concept) was about on the same level as in the sector of unitary enterprises on the whole (fifty-seven percent).

Thus 34,000 unitary enterprises failed to make their accounting for the results of 1999 available. The reasons could be connected to the fact that they were in the process of reorganizing, liquidation, or bankruptcy, and also to their conducting accounting according to a simplified system due to their size (small unitary enterprises).

1.1.2. Dynamics and structure of state enterprises by forms of property ownership and branches in the 1990s

As was shown above, the sector of unitary enterprises includes enterprises owned by the Russian Federation, its subjects (republics, *krais*, *oblasts*, etc), and municipal formations. Not possessing accurate data on the number of unitary enterprises for each of these forms of property ownership, for purposes of analysis one may turn to information from the State Committee on Property of the Russian Federation data bank for state enterprises on an independent balance sheet for 1993, 1994, 1995, 1996, and 1998 (*Table 3*).

Table 3

Number and structure of state enterprises on an independent balance sheet according by form of property ownership in 1993-1998

Date	Total		Federal ownership		Republican ownership		Krai, oblast ownership		Constituent members of the Russian Federation ownership		Municipal ownership	
	units	in %	units	in %	units	in %	units	in %	units	in %	units	in %
1 Feb. 1993	199459	100	107887	54.1	11572	5.8	13573	6.8	25145	12.6	66427	33.3
1 Jan 1994, of 1993, %	156635 78.5	100	63284 58.7	40.4	10765 93.0	6.9	15633 115.2	10.0	26398 105.0	16.9	66953 100.8	42.7
1 Jan 1995, of 1994, %	126846 81.0	100	45384 71.7	35.8	10928 101.5	8.6	11829 75.7	9.3	22757 86.2	17.9	58705 87.7	46.3

1July 1995, of 1.01. 1995, %	119879 94.5	100	41629 91.7	34.7	10905 99.8	9.1	11617 98.2	9.7	22522 99.0	18.8	55728 94.9	46.5
1 Jan 1996, of 1 Jan 1995, %; of 1 July 1995, %	90778 71.6 75.7	100	33290 73.4 80.0	36.7	8209 75.1 75.3	9.0	7218 61.0 62.1	8.0	15427 67.8 68.5	17.0	42061 71.6 75.5	46.3
1 June1996, of 1996, %	88864 97.9	100	31824 95.6	35.8	7570 92.2	8.5	6885 95.4	7.7	14455 93.7	16.3	42585 101.2	47.9
1 Jan1998, of 1 Jan 1996, %; of 1 June 1996, %; of 1 Feb 1993, %	88264 97.2 99.3 44.3	100	29666 89.1 93.2 27.5	33.6	7872 95.9 104.0 68.0	8.9	7393 102.4 107.4 54.5	8.4	15265 98.9 105.6 60.7	17.3	43333 103.0 101.8 65.2	49.1
Doinikov*	87714	100	29550	3367	…	…	…	…	14528	16.6	43636	49.7

* - The number of unitary enterprises without indication of concrete data, presumably the number of state enterprises on an independent balance sheet as of the beginning of 1999.

Source: State Committee on Property of the Russian Federation data bank; I.V. Doinikov. Pravovoe regulirovanie gosudarstvennogo predprinimatel'stva: Uchebno-metodicheskoe posobie (Judicial regulating of state business enterprises: An learning and methodological textbook). Moscow: PRIOR Publishing House, 2001, 102; calculations by the authors.

The data from *Table 3* show that the basic tendency in the correlation among diverse types of state enterprises in the 1990s was the running-ahead decrease in the number of federal state enterprises (almost by four times) in comparison with state enterprises of republics within the Russian Federations and of municipal formations (by about one third). State enterprises belonging to the property ownership of krais and oblasts occupied an intermediate position among them: their number decreased by forty-five percent.

While the number of federal state enterprises decreased undeviatingly, the dynamics of state enterprises of other forms of property ownership were not so unambiguous. Thus the number of republican state enterprises in 1994 grew by 1.5 percent, and in 1996-1997 by four percent. The number of state enterprises belonging to the property ownership of krais and oblasts as of 1 January 1994 grew by sixteen percent in comparison with the beginning of 1993, while between 1 January 1996 and 1 January 1998 the number grew by 2.4 percent. For municipal enterprises the analogous indicators comprised 0.8 percent and three percent, respectively.

The factual stagnation of the privatization process which began in the summer of 1996 can be clearly seen from *Table 3*. The number of state enterprises on an independent balance sheet as of 1 January 1998 was practically unchanged in comparison with 1 Juune 1996. Moroever, the number of state enterprises had risen for all forms of property ownership (with the exception of federal ownership).

The basic results of all these processes were:

- a time and a half decrease in the share of federal state enterprises in the overall mass of state enterprises on an independent balance sheet (from fifty-four percent at the beginning of 1993 to thirty-three to thirty-seven percent in 1995-1998);

- a practically undeviating growth in the share of municipal enterprises (from one third at the beginning of 1993 to almost one half at the beginning of 1998;

- the share of state enterprises belonging to the property ownership of constituent members of the Russian Federation grew the least (from 12.6 percent at the beginning of 1993 to about seventeen or eighteen percent in the following years);

- Republican enterprises began predominating in the mass of state enterprises belonging to the property ownership of constituent members of the Russian Federation beginning in early 1996,[2] although the republics comprise less than one quarter of all constituent members of the Russian Federation, and their proportion of the aggregate population of the country as of the beginning of 1998 comprised about sixteen percent, and about thirteen percent in the gross regional product in 1997 for Russia as a whole.

The structure of state enterprises on an independent balance sheet in the 1990s is represented below (*Table 4*).

Table 4

Structure of state and municipal enterprises in Russia in 1993-1998 on independent balance sheets by branches of industry (in percentages)

Branches	**As of 1Feb 1993**	**As of 1Jan 1994**	**As of 1Jan 1995**	**As of 1July 1995**	**As of 1Jan 1996**	**As of 1June 1996**	**As of 1April 1997**	**As of 1Jan 1998**
Light industry	1.1	1.0	0.9	0.9	0.8	0.7	0.7	0.7
Food industry	2.4	2.5	2.3	2.2	1.6	1.6	1.6	1.6
Construction enterprises	7.2	7.9	7.2	6.9	5.5	5.2	4.9	4.8
Construction materials industry	1.3	1.3	1.0	1.0	0.8	0.8	0.8	0.8
Agricultural enterprises and equipment maintenance servicing for agriculture	7.2	6.8	6.4	6.8	7.1	7.2	7.2	7.2
Motor vehicle transport and motor vehicle repair enterprises	2.2	4.1	4.2	4.4	4.9	4.9	4.9	4.9
Retail trade	24.9	19.4	15.9	16.0	12.3	12.2	11.4	10.9
Wholesale trade	0.9	1.2	1.3	1.3	1.4	1.4	1.4	1.6
Public eating facilities	9.8	7.4	6.6	6.7	5.6	5.6	5.4	5.4
Consumer services	13.2	11.8	9.3	9.4	6.5	6.6	6.3	6.2
Incomplete construction sites	4.8	4.6	4.8	4.9	5.3	5.3	5.4	5.4

[2] The question of the accounting for state enterprises belonging to the property ownership of the autonomous okrugs [a territorial administrative division] remains not entirely clear. They could be counted as state enterprises of independent constituent members of the Russian Federation equated to republics, krais, and oblasts or among the state enterprises of those krais and oblasts which they comprised a part of before 1992.

Others	24.8	32.2	40.1	39.4	48.1	48.6	50.3	50.7
Total	100.0	100.0	100.0	100.0	100.0		100.0	100.0

Source: State Committee on Property of the Russian Federation, calculations by the authors.

From *Table 4* it follows that the basic tendency of changes in the industrial branch structure of state and municipal enterprises in 1993-1997 was a sharp increase, a doubling in the proportion of enterprises of the so-called «other» branches (from 24.8 percent to 50.7 percent).

It has to be explained that the official statistical accounting of the State Committee on Property of the Russian Federation singled out first of all those branches of the economy, the enterprises of which, proceeding from the norms of state programs for privatization, were subject to obligatory privatization (with not very large limitations): light industry and the food industry, construction and the construction materials industry, motor vehicle transport and motor vehicle repair enterprises (further: the motor vehicle business), retail and wholesale trade, public eating facilities and consumer services, incomplete construction sites, and also agriculture.[3] Whereas base branches of the economy (the fuel and energy complex, metallurgy, chemicals and petrochemicals, machine-building and metalworking, the timber, woodworking, and cellulose-paper industry, transport by kinds of transport, with the exception of motor vehicle transport), and also housing and utilities, branches of the social sphere, science and scientific services, and a considerable number of others, were not singled out in this classification. It is namely they which comprise the «others» category.

Aside from state enterprises of «other» branches, over the period 1993-1997 there was growth in the share of the motor vehicle business (from 2.2 percent to 4.9 percent), wholesale trade (from 0.9 percent to 1.6 percent), incomplete construction sites (from 4.8 percent to 5.4 percent). The share of agricultural enterprises and equipment maintenance servicing for agriculture remained stable (7.2 percent). Aside from the block of «other» branches, by the beginning of 1998 the proportion of practically all other branches, both those that had increased and those that decreased the share of their representation in the overall structure, did not exceed ten percent, the only exception being retail trade (about eleven percent). At the beginning of 1993 this was characteristic of consumer services (13.2 percent) along with retail trade (almost one fourth).

In connection with this there arises the legitimate question, at what level of the state sector did the processes which brought about such a growth in the proportion of branches not having strategic significance in the economy occur?

Table 5

Structure of state enterprises in Russia in 1993-1998 on independent balance sheets of federal property ownership by branches of industry

Branches	**As of 1 Feb 1993**		**As of 1 Jan 1994**		**As of 1 Jan 1995**		**As of 1 Jan 1998**	
	units	**%**	**units**	**%**	**Units**	**%**	**units**	**%**
Light industry	1273	1.2	682	1.1	286	0.6	165	0.6

[3] What is meant are enterprises for the equipment maintenance servicing of agriculture and also, to all appearances, agricultural enteprises themselves which for various reasons were not subject to standardized procedures for reforming collective farms and state farms (1992-1993) with the apportionment of land and property shares and the endowing of workers with the right of exit with them from the make-up of the collective enterprises which were formally transformed or which kept their previous status.

Food industry	2541	2.4	1476	2.3	899	2.0	445	1.5
Construction enterprises	8866	8.2	6027	9.5	3650	8.0	1539	5.2
Construction materials industry	1349	1.3	753	1.2	455	1.0	210	0.7
Agricultural enterprises and equipment maintenance servicing for agriculture	8596	8.0	3635	5.7	2904	6.4	2397	8.1
Motor vehicle transport and motor vehicle repair enterprises	2936	2.7	2188	3.5	1312	2.9	742	2.5
Retail trade	20342	18.9	7745	12.2	2775	6.1	1934	6.5
Wholesale trade	1075	1.0	406	0.6	292	0.6	172	0.6
Public eating facilities	9414	8.7	3500	5.5	1735	3.8	625	2.1
Consumer services	9989	9.3	3689	5.8	1876	4.1	905	3.1
Incomplete construction sites	7859	7.3	5028	7.9	4447	9.8	3690	12.4
Others	33557	31.1	28155	44.5	24753	54.5	16842	56.8
Total	107887	100.0	63284	100.0	45384	100.0	29666	100.0

Source: data base of the State Committee on Property of the Russian Federation, calculations by the authors.

Table 5 shows that in the structure of state enterprises on independent balance sheets of federal property ownership by branches of industry by the beginning of 1998 the share of «other» branches had grown significantly (to 56.8 percent as against 31.1 percent at the beginning of 1993).

The share of incomplete construction sites grew to about the same degree (from 7.3 percent to 12.4 percent). Aside from the block of «other» branches, this category of enterprises proved the only one, the proportion of which exceeded ten percent (at the beginning of 1993 such a one was retail trade – about nineteen percent).

The share of agricultural enterprises, which had decreased from eight percent to 5.7 percent by the beginning of 1994, began to grow in the following years and by the beginning of 1998 had returned to its initial magnitude (8.1 percent). The share of the motor vehicle business was practically unchanged over that period (2.7 and 2.5 percent). It has to be emphasized thereby that the absolute number of federal enterprises in these branches decreased: by 3.6 times in agriculture and by almost four times in the motor vehicle business. The proportion of all other branches decreased noticeably.

Changes in the structure of state enterprises of republican property ownership by branches of industry were different (*Table 6*).

Table 6

Structure of state enterprises in Russia in 1993-1998 on independent balance sheets of republican property ownership by branches of industry

Branches	**As of 1 Feb 1993**	**As of 1 Jan 1994**	**As of 1 Jan 1995**	**As of 1 Jan 1998**

	units	%	units	%	units	%	units	%
Light industry	230	2.0	288	2.7	334	3.1	189	2.4
Food industry	400	3.5	582	5.4	522	4.8	326	4.1
Construction enterprises	1929	16.7	2387	22.2	2294	21.0	1148	14.6
Construction materials industry	247	2.1	329	3.1	302	2.8	203	2.6
Agricultural enterprises and equipment maintenance servicing for agriculture	1665	14.4	2396	22.3	2235	20.5	2306	29.3
Motor vehicle transport and motor vehicle repair enterprises	551	4.8	671	6.2	588	5.4	386	4.9
Retail trade	1689	14.6	212	2.0	401	3.7	196	2.5
Wholesale trade	140	1.2	196	1.8	132	1.2	70	0.9
Public eating facilities	1427	12.3	94	0.9	15	0.1	24	0.3
Consumer services	372	3.2	186	1.7	241	2.2	347	4.4
Incomplete construction sites	786	6.8	1053	9.8	662	6.1	577	7.3
Others	2136	18.5	2371	22.0	3202	29.3	2100	26.7
Total	11572	100.0	10765	100.0	10928	100.0	7872	100.0

Source: data base of the State Committee on Property of the Russian Federation, calculations by the authors.

In the structure of republican state enterprises by branch of industry the share of «other» branches grew by less than one and a half times: from 18.5 percent at the beginning of 1993 to 26.7 percent at the beginning of 1998. But with that there took place a noticeable growth in the share of enterprises of other branches of the goods production sphere: agricultural enterprises by more than two times (from 14.4 percent to 29.3 percent), three branches of industry (light, good, and construction materials) – from 7.6 percent do 9.1 percent (in the aggregate), and also of consumer services (from 3.2 percent to 4.4 percent) and of incomplete construction sites (from 6.8 percent to 7.3 percent). The share of the motor vehicle business remained almost without change (slightly less than five percent). Only construction, retail and wholesale trade, and public eating facilities decreased their proportions in the overall structure by branches of industry.

In summary, by the beginning of 1998 the greatest proportion in the by-branch structure of republican state enterprises was occupied namely by agricultural enterprises and enterprises of «other» branches (56 percent in the aggregate). Aside from them only construction had a share exceeding one tenth (14.6 percent); at the beginning of 1993 along with construction (16.7 percent) this was characteristic of retail trade (14.6 percent) and public eating facilities (12.3 percent). It is especially necessary to note that over the years 1993-1997 the absolute number of republican agricultural enterprises grew by almost forty percent, and it practically did not lessen for the block of «other» branches.

We will now analyze changes in the branch structure of state enterprises of ***krai* and *oblast* property ownership** (*Table 7*).

Table 7

Structure of state enterprises in Russia in 1993-1998 on independent balance sheets of krai and oblast property ownership by branches of industry

Branches	**As of 1 Feb 1993**		**As of 1 Jan 1994**		**As of 1 Jan 1995**		**As of 1 Jan 1998**	
	units	**%**	**units**	**%**	**units**	**%**	**units**	**%**
Light industry	552	4.1	451	2.9	327	2.8	111	1.5
Food industry	1322	9.7	1313	8.4	923	7.8	232	3.1
Construction enterprises	2736	20.2	2992	19.1	2224	18.8	852	11.5
Construction materials industry	782	5.8	753	4.8	389	3.3	141	1.9
Agricultural enterprises and equipment maintenance servicing for agriculture	2778	20.5	3082	19.7	1786	15.1	917	12.4
Motor vehicle transport and motor vehicle repair enterprises	662	4.9	856	5.5	706	6.0	447	6.0
Retail trade	602	4.4	303	1.9	422	3.6	462	6.2
Wholesale trade	383	2.8	304	1.9	219	1.9	75	1.0
Public eating facilities	177	1.3	80	0.5	59	0.5	52	0.7
Consumer services	497	3.7	422	2.7	242	2.0	61	0.8
Incomplete construction sites	281	2.1	315	2.0	263	2.2	150	2.0
Others	2801	20.6	4762	30.5	4269	36.1	3893	52.7
Total	13573	100.0	15633	100.0	11829	100.0	7393	100.0

Source: data base of the State Committee on Property of the Russian Federation, calculations by the authors.

Like federal state enterprises, the share of «other» branches grew in the branch structure of krai and oblast state enterprises: from 20.6 percent at the beginning of 1993 do 52.7 percent at the beginning of 1998. The proportions of the majority of the remaining branches decreased. An exception were retail trade (growth from 4.4 percent to 6.2 percent), the motor vehicle business (growth from 4.9 percent do 6.0 percent), and incomplete construction sites (their share fluctated at about 2.0 percent). As at the beginning of 1993, aside from the block of «other» branches, only agricultural (12.4 percent) and construction (11.5 percent) enterprises had proportions exceeding ten percent. The majority of krai and oblast state enterprises of all branches decreased, with the exception of the block of «other» branches, where an increase of almost forty percent was observed.

Far more curious were shifts in the branch structure of enterprises of **municipal property ownership** (*Table 8*).

Table 8

Structure of state enterprises in Russia in 1993-1998 on independent balance sheets of municipal property ownership by branches of industry

Branches	As of 1 Feb 1993		As of 1 Jan 1994		As of 1 Jan 1995		As of 1 Jan1998	
	units	%	units	%	units	%	units	%
Light industry	164	0.2	187	0.3	249	0.4	144	0.3
Food industry	478	0.7	540	0.8	522	0.9	392	0.9
Construction enterprises	907	1.4	921	1.4	961	1.6	674	1.6
Construction materials industry	212	0.3	159	0.2	135	0.2	122	0.3
Agricultural enterprises and equipment maintenance servicing for agriculture	1408	2.1	1505	2.2	1253	2.1	767	1.8
Motor vehicle transport and motor vehicle repair enterprises	319	0.5	2653	4.0	2750	4.7	2725	6.3
Retail trade	27042	40.7	22067	33.0	16574	28.2	6993	16.1
Wholesale trade	264	0.4	909	1.4	971	1.7	1066	2.5
Public eating facilities	8585	12.9	7878	11.8	6539	11.1	4054	9.4
Consumer services	15371	23.1	14194	21.2	9418	16.0	4180	9.6
Incomplete construction sites	672	1.0	777	1.2	661	1.1	326	0.8
Others	11005	16.6	15163	21.6	18672	31.8	21890	50.5
Total	66427	100.0	66953	100.0	58705	100.0	43333	100.0

Source: data base of the State Committee on Property of the Russian Federation, calculations by the authors.

As in the instance of federal, krai, and oblast state enterprises, the basic shift in the branch structure of municipal enterprises was the sharp growth in the share of enterprises of «other» branches from 16.6 percent at the beginning of 1993 to 50.5 percent at the beginning of 1998. At the same time the shares of the motor vehicle business (from 0.5 percent to 6.3 percent) and retail trade (from 0.5 percent to 6.3 percent) grew to an even greater degree. Along with that, like republican state enterprises, the proportions of the branches of three branches (light, good, and constructions materials) of industry (from 1.2 percent to 1.5 percent in the aggregate), and of construction (from 1.4 percent to 1.6 percent) increased somewhat. The shares of the remaining branches in the overall structure decreased.

In summary, by the beginning of 1998, aside from the block of «other» branches, only retail trade had a proportion exceeding one tenth (slightly more than sixteen percent), while at the beginning of 1993 this was characteristic, along with retail trade, of consumer services (slightly more than twenty-three percent) and public eating facilities (about thirteen percent). It should especially be emphasized that over the period being analyzed as to municipal

property ownership there was observed an explosive increase in the absolute number of motor vehicle transport (together with motor vehicle repair) enterprises (by about 8.5 times), of wholesale trade enterprises (by more than four times), and of enterprises of «other» branches (double).

It is necessary to understand that all the changes in the number of state enterprises on an independent balance sheet in the 1990s were a consequence not only of their privatization and liquidation, but also of the differentiation of property ownership among diverse levels of [governmental] authority and between creations of new enterprises.

1.1.3. Dynamics and structure of unitary state enterprises after adoption of the Concept of managing state property and of privatization of 1999.

The beginning of a new stage in the reformation of property ownership relations in Russian was laid by the approval of the **Concept of managing state property and of privatization in the Russian Federation** (hereafter in the text: the Concept) by Decree of the Government of the Russian Federation №1024 dated 9 September 1999. By Decree of the Government of the Russian Federation №1024 dated 9 September 1999. It was namely in this document that for the first time unitary enterprises along with blocks of stock (units, shares) of the state in the capital of companies [khoziaistvennye obshchestva] (AO stock companies first of all) and real estate were singled out in the capacity of an object of state policy in the area of managing its property. Correspondingly, for the first time the number of unitary state enterprises of federal property ownership (FSUE) – 13,786 units – was named (however, without clarification of the concrete date as of when this figure was established). This figure is about half the number mentioned above of the number of federal state enterprises on independent balance sheets as of 1 January 1998 (29,666 units). The impossibility of privatization and liquidation of almost sixteen thousand unitary state enterprises over half a year's time in the context of the tortuous reversals of fortune in the economic and political development of the country in 1998-1999 is obvious enough.

In all likelihood, what we are talking about is that the database of the Ministry of State Property of the Russian Federation initially included aggregate data (how complete is a question) on the number of enterprises and institutions of this or that level of property ownership, improperly calling them state enterprises on an independent balance sheet. It is entirely possible that there was also proceeding a process of transformation of unitary enterprises into institutions during the course or reorganizations. In the Concept the number of federal institutions is given at 23,099 units.[4]

At the very same time it is impossible not to direct one's attention to the fact that the overall number of regional and municipal unitary enterprises as of 1 January 2000 according to data from Goskomstat of the Russian Federation (65,000 units) was about eleven percent more than the aggregate number of state enterprises on independent balance sheets of republican, krai, oblast, and municipal property ownership (about 58,600 units) as of 1 January 1998 according to the data base of the Ministry of State Property of the Russian Federation.

[4] In the accounting materials of the State Committee on Property of the Russian Federation «On the course of carrying out the State privatization program in 1996, improving management, and enhancing efficiency of utilization of federal property and on the tasks for 1997» (March 1997) it was said that in the Register of property ownership of the Russian Federation there is contained information about 30,582 federal state enterprises and institutions. In the draft of the Concept for management of state property (October 1998) it was said that in Russia there were 40,500 federal state enterprises and institutions (16,500 enterprises and 24,000 institutions).

The following dynamics of the absolute number of federal state unitary enterprises can also be traced by information from the Ministry of State Property of the Russian Federation. By the summer of the year 2000 after conducting energetic work in the Registry of property ownership of the Russian Federation there had been taken into account 11,200 unitary enterprises, as of 1 September 2001 – 9,855 units, and as of 1 January 2002 – 9,394 units (or about thirty-two percent fewer than was indicated in the Concept). Such a decrease in the absolute number of federal state unitary enterprises is explained by the implementation of the set of measures envisaged by the Concept directed at curtailment of their numbers (reorganization, privatization, liquidation). At the same time it cannot be asserted unambiguously that in the future the vector of the quantitative dynamics of federal state unitary enterprises will point undeviatingly toward their decrease.

Table 9

Cross-Industry Structure of Federal, Regional, and Municipal Unitary Enterprises in 2000-2002

Branches	**Federal state unitary enterprises as of 1 January 2002**		**Regional and municipal unitary enterprises as of 1 January 2002**	
	number	**share**	**number**	**share**
Industry, including	1844	19.6	6044	16.4
- machine building and metal working (minus the medical equipment industry)	879	9.4	…	…
- timber, wood working, and cellulose-paper industry	229	2.4	…	…
- printing trades industry	219	2.3	…	…
- light industry	153	1.6	…	…
- construction materials industry	83	0.9	…	…
- food industry	64	0.7	…	…
- medical industry	59	0.6	…	…
- chemical industry	42	0.4	…	…
- fuel industry	35	0.4	…	…
- electrical energy	31	0.3	…	…
- non-ferrous metallurgy	27	0.3	…	…
- ferrous metallurgy	16	0.2	…	…
- microbiological industry	7	0.1	…	…
- flour milling-groats and mixed fodder industry	-	-	…	…
Agriculture and timber	1368	14.6	2000	5.4
Transport and communications	1033	11.0	1818	4.9
Construction	988	10.5	2799	7.6
Trade and public eating facilities	909	9.7	9627	25.2
Housing and public utilities	162	1.7	10155	27.6
Others, including	3090	32.9	4477	12.2
- science and scientific services	1431	15.2	…	…
- material and technical supplies and sales	692	7.4	…	…
- health care, physical training [PT], and social welfare	226	2.4	…	1.0

- geology and mineral wealth prospecting, geodesy and hydrometerological services	218	2.3	…	…
- management	158	1.7	…	…
- culture and art	155	1.6	…	…
- other kinds of of material production activities	140	1.5	…	…
- education	60	0.6	…	0.4
- finances, credit, insurance, pensions	10	0.2	235*	0.6
Total	9394	100.0	36795**	100.0

* - finances, marketing, auditing;

**- sub-federal and municipal unitary enterprises which made financial accounting available for 1996 and 1999

Source: agency site of the Ministry of State Property of the Russian Federation www.mgi.ru (March 2002); T. Kordiukova, M. Galkin, F. Eigel'. Unitarnye predpriiatiia – potentsial'nyi dokhod ili potentsial'nye riski dlia regional'nykh i mestnykh administratsii? (Unitary enterprises – potential income or potential risks for regional and local administrations?) // Kredit Rossii. Analiticheskii biulleten' Reitingovoi sluzhby EA-Ratings, strategicheskogo partnera Standard & Poor's, (Russia's credit. Analytic bulletin of the Rating service EA-Ratings, of the strategic partner Standard & Poor's), N. 19-20 (46-47), October 2001, p. 3; TACIS project "Povyshenie effektivnosti upravleniia gosudarstvennymi i munitsipal'nymi unitarnymi predpriiatiiami" (Increasing efficiency of management of state and municipal unitary enterprises) Materials for a seminar 7 December 2001 (preliminary option). GBRW, EA-Ratings, part 1, p. 7.

From the data in *Table 9* (despite the fact that they relate to different dates), the differences in their branch structure between federal unitary enterprises on the one hand and regional and municipal ones on the other hand become obvious. They are connected in the tightest possible way with the levels of their authority warrants and with the limits of responsibility.

In the structure of regional and municipal unitary enterprises the greatest proportion belongs to housing and public utilities (27.6 percent) and trade and public eating facilities (25.2 percent), which in the aggregate make up almost fifty-three percent of all economically active subjects of that organizational-legal form. On the contrary, these branches make up only 11.4 percent in the make-up of federal unitary enterprises. At the same time in the structure of federal unitary enterprises a noticeably greater proportion is taken up by enterprises of agriculture and timber (14.6 percent against 5.4 percent in the make-up of regional and municipal unitary enterprises), transport and communications (eleven percent against 4.9 percent), but mainly other branches (almost thirty-three percent against 12.2 percent), among which more than two thirds go to science and scientific services. The proportion of industry and construction in the structure of federal enterprises (about thirty percent in the aggregate) does not different in principle from the place of these branches in the structure of regional and municipal unitary enterprises (twenty-four percent in the aggregate).

The absolute number of unitary enterprises of regional and municipal property ownership exceeded the number of federal unitary enterprises in all branches. However, it is necessary thereby to have in mind that these data differ by two years in the time of their receipt, and also that about 37,000 regional and municipal unitary enterprises forming the mass of the data during work on the TACIS project «Increasing efficiency of management of state and municipal unitary enterprises» were «alive,» that is, providing accounting to Goskomstat of the Russian Federation in 1996 and in 1999. Not making their way into it were enterprises in the process of reorganization, liquidation, and bankruptcy, and also those conducting accounting according to a simplified system due to their size (small unitary enterprises), and also, apparently, those created after 1996. On the other hand, it is obvious that creation of a registry of federal unitary enterprises is far from completion, which is

connected, in the first place, to the absence of clear demarcation of the rights of various levels of [government] authority to this or that property and to the striving in a whole number of instances of the leadership of the regions and of the unitary enterprises located in them to avoid application of accounting and control procedures by federal agencies of [governmental] authority. Thus, according to data from the Department of accounting for state-owned property at the Ministry of State Property of the Russian Federation, by the middle of the year 2000 in the sixty-nine constituent members of the Russian Federation there were discovered 1232 juridical persons [legal entities] who [which] were declared as federal in the region, but were not thereby registered with the appropriate federal agencies.

Upon detailed deaggregation of the branch structure of federal state unitary enterprises it becomes obvious that as of the beginning of 2002 the weightiest in it were the shares of science and scientific services (15.2 percent), agriculture and timber (14.6 percent), and transport and communications (eleven percent). In all these branches the absolute number of enterprises exceeds one thousand units. Close to this figure are construction (10.5 percent) and trade and public eating facilities (9.7 percent), where at the present time federal state unitary enterprises number 988 and 909, respectively. In industry, which on the whole accounts for about one fifth of all existing federal state unitary enterprises, the greatest proportion is had by machine building and metalworking (about forty-eight percent or 9.4 percent of the total number of federal state unitary enterprises in the economy). The share of material and technical supplies and sales enterprises is noticeable (7.4 percent). The proportion of all the remaining branches does not exceed 2.5 percent.

The number of federal state unitary enterprises in this or that branch reflects in great measure, on the one hand, the level of concentration of production which took shape in the pre-reform period, and on the other hand, the degree of attractiveness of the branch itself for external (not only foreign) investors and the quality of government policy for management of its property in the preceding years. Highly indicative in this regard is the extremely insignificant (up to fifty units) of federal state unitary enterprises in the branches of the fuel-energy complex, metallurgy, and chemicals, which had a high level of concentration of production for technological reasons while still within the framework of the centralized economy. With the beginning of market reforms their export specialization together with the forced integration of a large number of former state enterprises into holdings at the pre-privatization stage made the interest of private capital in them so great that the state, implementing its privatizing program, practically got out of these more attractive branches, keeping only a point property presence in the form of capital shares in stock companies. Thus in the petroleum branch only six unitary enterprises were kept, one in gas, and not a single one in petroleum-gas construction.

On the other pole were a number of branches of the manufacturing industry (machine building first of all), where the initially lesser level of concentration, added to by the crisis in sales and the unthought-through policy of «atomization» of economically active subjects at the stage of mass privatization in 1992-1994 facilitated the fact that a multitude of enterprises in them found themselves outside the field of vision of potential investors and remained state enterprises. This reflected itself in the most baleful way on the state of the science-intensive manufacturers.

1.2.Legislation regulating the standing of unitary state enterprises

1.2.1. A general survey of legislation regulating the legal status of state unitary enterprises

As the development of privatization in Russia and the curtailment of the volume of state property ownership progressed in 1992-1993 the question inevitably arose in Russia of creation of a legislative base for operational and strategic management of this sector of the economy and of mixed enterprises under the new conditions, all the more so since the situation demanded this in regard to entire branches of economic endeavor. No all-embracing mechanism or unified long-term strategy for solving this problem was worked out. The legal documents on this problem which appeared in the course of conducting mass privatization can be rather conditionally divided into three groups or directions:

- a normative base for representing the state's interests in stock companies with state participation;

- acts regulating issues of the immediate management of state-owned property;

- normative acts dedicated to such an unusual for Russia resolution of this problem as the institute of trust property ownership (trust) for management of blocks of stock owned by the state;

In the upshot in practice greatest development went to the first direction, connected to representation of the state's interests in stock companies, blocks of stock of which assigned to its ownership.

In regard to the immediate management of state-owned property right on the verge of check [voucher] and monetary privatization, what became the most important normative acts were the Decree of the Government of the Russian Federation dated 10 February 1994 №96 «On delegation of authority for management and disposal [command] of objects of federal ownership,» Ukase of the President of the Russian Federation dated 23 May 1994 №1003 «On reform of state enterprises,» contemplating creation of state enterprises with highly limited rights of operational management with regard to their property, and Ukase of the President of the Russian Federation dated 10 June 1994 №1200 «On certain measures for securing state control of the economy» in the part concerning conditions for contracts concluded with leaders of federal state enterprises.

In the last of the above documents, the mandatory terms of the contract to be signed with directors of federal state enterprises were for the first time stipulated as follows:

– contract duration of no less than three years;

– monthly guaranteed pay of at least 10-fold minimum salary;

– the enterprise’s director’s share in the enterprise’s profit, after settlement of all liabilities of the enterprise to budgets of all levels, was defined;

– the amount of the compensation to be paid to an enterprise’s director in case of an early off-hire on the initiative of the Government of the Russian Federation or a federal body of executive authority as its delegated agent;;

– the size of compensation to be paid to an enterprise’s director and his family in case of the latter’s moving into another locality in accordance with the terms of a contract;

– social security guarantees to an enterprise’s director and his family, including in the event of the director’s death or disability;

– the rights and responsibilities of an enterprise's director associated with the management of an enterprise, including the right to hire and dismiss employees, to delegate authority and manage the enterprise's property;

– the procedure for reporting by an enterprise's director;

– the procedure and conditions for an early termination of the contract;

an enterprise's director responsibility for violating the terms of the contract, the economic results of an enterprise's activity, safe upkeep and purpose-oriented use of property, including material liability for damages inflicted on the enterprise as a result of the activity or lack of activity on the part of an enterprise's director.

It was recommended that the executive authorities of subject of the RF apply the provisions of this Decree when signing contracts with the directors of state enterprises owned by the regions as state property. The Government of the RF was commissioned, within a 3-month term, to approve the procedure and forms of reporting for the directors of federal State enterprises acting on the basis of contracts signed in accordance with civil legislation[5].

By the time of the end of voucher privatization, the basic problem in issues of management of state enterprises remained the excessively great freedom of action of the director corps, this freedom having come already at the end of the 1980s after the appearance in the legal field of the time of the juridical construction of the right to complete managerial control.

This freedom granted the subject of such a right (in reality – the enterprise's leader) a wide range of authorizations in regard to the property owner's property (including independent control of financial flows and utilization of profits).

In practice under the circumstances of the growing crisis of the centralized economy and the spontaneous privatization which began at the end of the 1980s and the beginning of the 1990s such rights authorized to the leaders of state enterprises led to transfer of a part of the financial flows of these economically active subjects to satellite firms (before 1991 – to cooperatives), to the practice of concluding deals in the interests of the managers, and to incomplete receipt of income by the budget system. On this background the question of the freedoms and mechanisms of management by the state of its property became especially acute.

The new Civil Code of the Russian Federation adopted at the end of 1994 became the grounding document containing a detailed classification of all the juridical persons [legal entities] in the market economy. It was namely in it that the definition was given of a unitary enterprise as «a commercial organization not endowed with property rights to property assigned to it by the owner» (Article 113). The property of a unitary enterprise was declared indivisible, that is, it could not be allocated by contributions (shares, units) including among employees of the enterprise. Only state and municipal enterprises could be created in the form of unitary enterprises.

A detailed comparative characterization of the various types of state unitary enterprises and institutions is given in *Table 10*.

Table 10

[5] The procedure and forms of reporting for the directors of federal state enterprises acting on the basis of contracts signed in accordance with civil legislation were approved by the Decree of the Government of the RF as of 1 October, 1994, No 1112. A more detailed analysis of their content as compared to the new forms of reporting is presented in section 1.2.3.

A comparative characterization of unitary enterprises and institutions according to legislation of the Russian Federation

	Unitary enterprises (UP)		**Institutions**
	Unitary enterprises with the right to conduct economic affairs/do business (PKhV)	**Unitary enterprises with the right to operational management (POU) (state [kazennoe])**	
Base legal norms	Civil Code of the Russian Federation, Ch. 4, Art. 113-115; Ch. 19, Art. 294-300		Civil Code of the Russian Federation, Ch. 4, Art. 120; Ch. 19, Art. 294-300
Other legal norms	Principle reference of the Civil Code of the Russian Federation *to the Law on state and municipal unitary enterprises (GMUP)* (not adopted) Law on bookkeeping accounting (obligation of unitary enterprises to present accounts annually to an authorized agency) Law "On financial-industrial groups" and others. Ukases of the President of the Russian Federation, decrees of the government and documents of the Ministry of Property of the Russian Federation 1999-2002		Budgetary code – for state (state budgetary) ones The Law on noncommercial organizations – for others Executive instructions / regulations [secondary legislation issued by the executive branch of government – trans.'s note]
Peculiarities of legal position in individual kinds of activities	Executive instructions / regulations, dispositions [instructions] by ministries and agencies		Laws and other legal acts, dispositions [instructions] by ministries and agencies (in concrete spheres)
Possibility of non-state forms	Only state and municipal enterprises		State *and other* institutions are possible
Possibility of several owners	No. Only the unitary nature of the given legal person [legal entity] (French – unitaire, Latin – unitas), conditioned by: 1) only one form of property, and 2) in distinction from economic societies and associations, the owner does not lose rights to the unitary enterprise		Yes (for example, Point 1 of Article 11 of the law on education)
Base status	Commercial organization		Noncommercial organization
Base definition	= a commercial organization not endowed with property rights to the property assigned to it by the property owner. The property of a unitary enterprise is indivisible and cannot be distributed by contributions (allotments, shares). The only kind of commercial organizations having special (special purpose), and not general legal capacity (Article 49 of the Civil Code of the Russian Federation)		= an organization created by an owner for accomplishment of managerial, socio-cultural, or other functions of a noncommercial nature and financed by him completely or partially
Founding document	The charter (must contain, aside from the general requirements of Article 52 of the Civil Code of the Russian Federation, information about the subject and purposes of activities, the size of the charter capital, and the way and sources of its formation) Standard charter		Charter or individual clause confirmed by the owner (owners), or a Sample charter, or a Standard clause on an institution in a concrete sphere
Particulars of creation	By decision of an authorized state agency or agency of local self-government	For *federal state ones* – in instances envisaged by the law on state (municipal) unitary enterprises, by decision of the Government	-

		of the Russian Federation on the basis of property which is federal property. The Charter is approved by the Government of the Russian Federation (norms for other enterprises are *unclear*; previously the Ukase of the President of the Russian Federation "On reform of state enterprises" №1003 dated 23 May 1994 was applied).	
Charter capital	Cannot be less than the sum determined by the law on state or municipal unitary enterprises. If the cost of a check auction proves less than charter capital, then the charter capital must be decreased. If the cost of a check auction proves less than the size established by law, the unitary enterprise may be liquidated by order of a court.	-	-
Right to assigned property (common)	Property is state or municipal property and belongs to such an enterprise on the basis of the right to do business or the right to operational management.		By the totality of legal norms, first of all Article 296 of the Civil Code of the Russian Federation. The only kind of noncommercial organization not the owner of its property.
Beginning of rights to do business and operational management	Property becomes an object of these rights not from the moment of the taking of the decision by the owner, but from the moment of transfer of property to the enterprise or institution. In practice – from the moment property is secured on the balance sheet.		
Cessation of rights to do business and operational management	By general norms for cessation of property rights, in the instance of rightful withdrawal of the property by decision of the property owner. Upon privatization – together with the rights of state or municipal property.		
Transfer of rights to do business and operational management	Upon transfer of property rights to a state or municipal enterprise as a property complex to another owner of state or municipal property, such an enterprise retains the right to do business. Upon transfer of property rights to an institution to another person, this institution retains rights of operational management.		

Peculiarities and differences of rights to do business and rights to operational management[6]	They are (limited) rights of estate and possess all features of rights of estate. The possessor of rights to do business, like an owner and can sue for recognition of his property rights (p. 12 of Obzor VAS (Survey of the Higher Arbitration Court), letter № 13 dated 28 April 1997). They legalize the property base for independent participation in civil legal relations of juridical persons-nonproperty owners (a peculiarity of the *transitional* nature of property turnover), which is impossible in classical (developed) property turnover (law and order). The difference in principle between the right to do business (PKhV) and the right to operational management (POU) is in the volume of property rights and operational-economic independence. Only unitary (state and municipal) enterprises as a variety of commercial organizations are subjects of the right to do business. The right to do business, nevertheless, is possible for property received at the expense of income from the activities of institutions (if entrepreneurial activities are permitted by the property owner). Unitary (state) enterprises, institutions, and enterprises in private ownership are subjects of the right to operational management (POU). On the whole two varieties of the right to operational management may be singled out: for state [kazennye] enterprises and institutions (from the point of view of responsibility for obligations).

[6] The appearance of these rights is connected to the planned economy, when the state was objectively compelled to put independent juridical persons [legal entities] into property circulation – «enterprises» and «institutions,» securing them their property with a certain limited law of estate. Beginning in the 1960s this right came to be termed the «right to operational management;» subsequently in property laws it was divided into a broader in content «right to full economic conduct» intended for production enterprises and a narrower «right to operational management» intended for state budget institutions and ones analogous to them.
In 1993 a government commission (headed by Ye.T. Gaidar) proposed a radical solution to the problem: transformation of the overwhelming majority of state enterprises into joint stock companies (AO), and of a limited number of state enterprises into state enterprises (a number of intermediate documents was adopted in 1994). This idea was not implemented, and since 1995 the concept «state unitary enterprise» has been included in the Civil Code of the Russian Federation. At the same time there was prepared a draft law on state and municipal unitary enterprises which was adopted in the first reading only in 1999 and subsequently withdrawn from the State Duma. At the present time the prospects for adopting the law are unknown. This is connected, in the first place, to the exceptional convenience of the given form (state unitary enterprise -- SUE) for unmonitored management on the part of managers (the subjective factor), and, in the second place, to the necessity for radical replacement of legal mechanisms and concepts in principle (the objective factor.) The state unitary enterprise (SUE) has outlived its usefulness; however, the continuing number of enterprises of this form presupposes, apparently, the presence of a certain transitional period.

Property owner rights in relation to property	The property owner decides only questions of creating an enterprise, determining the subject and goals of activities (that is, the volume of legal capacity), reorganization and liquidation, appoints the director (leader), accomplishes monitoring, and has the right to receive a part of the profit.[7] *The right to remove, rent, or otherwise have disposal of property is absent.* Since property leaves the actual possession of the property owner-founder and is entered onto the balance of the unitary enterprise, the property owner losses the legal competence to possession and use, and, to a significant measure, to have disposal of. Removal and redistribution of property (without the agreement of the unitary enterprise, but taking into account the interests of creditors) is admissible only during reorganization and liquidation.	According to Articles 296-298 of the Civil Code of the Russian Federation. The owner of property assigned to a state [kazennoe] enterprise or institution *has the right to remove* superfluous, unused, or unused for its designated purpose property and to have disposal of it at his discretion (nonjudicially). It is presumed that the three indicated cases of removal of property are exhaustive (previously the law on property allowed removal at one's discretion)

[7] The given legal competence was already secured to a property owner in Article 5 of the Law of the RSFSR (Russian Soviet Federated Socialist Republic) dated 24 December 1990 «On property ownership in the RSFSR»

The right (of a subject of the law) to assignment of property (particularities)	According to Articles 294-295 of the Civil Code of the Russian Federation. A state or municipal unitary enterprise to which property belongs on [the basis of] the right to do business (PKhV) possesses, uses, and has disposal of this property *within limits established by the Civil Code* Limitation of the legal competence of a unitary enterprise as to ownership and usage is inadmissible at the level of *executive* instructions / regulations	According to Articles 296-298 of the Civil Code of the Russian Federation. A state [kazennoe] enterprise, and also an institution (independently of type of property owner – the state, a municipality, a juridical person) in relation to the property assigned to them implements *within the limits established by the law, in accordance with the purposes of its activities, missions of the property owner, and intended purpose of the property* the rights of ownership, usage, and having disposal of it.	
Bounds of implementation of rights on the part of a subject of the law. Right to alienate or otherwise have disposal of real estate.	The subject and purposes of a state or municipal unitary enterprise. If the actions of a unitary enterprise lead to the impossibility of utilizing property for its intended purpose (alienation or making available to other persons for long-term use) or if they limit possibilities for carrying out charter tasks, these transactions upon suit by the property owner may be declared null and void by court of law. An enterprise does not have the right to sell *real estate*, rent it out, mortgage it, enter it in the capacity of a deposit into the charter capital of companies and partnerships or otherwise have disposal of without the agreement of the property owner. An enterprise has independent disposal of the remaining (non-real estate) property if something otherwise is not provided for by law or *executive* instruction / regulation	The right to alienate or otherwise have disposal of assigned property *only with the agreement of the property owner*. This concerns both non-real estate and real estate property, if what is meant is not ready product which is being produced. A unitary enterprise has the right to have independent disposal of the latter if something else has not been established.	An institution does not have the right to alienate or otherwise have disposal of property assigned to it and [also] property acquired at the expense of resources allocated it by itemized estimate. Property which an institution has dealt with shall be obtained upon demand by the property owner from someone else's illegal possession. Thus by general rule, institutions *do not, even with the agreement of the property owner, have the right to have disposal of* (rent out, mortgage, sell, etc.) *real estate*, both that assigned to them by the property owner and that acquired at the expense of resources allocated by the property owner. They have the right to use only the monetary resources allocated according to the itemized estimate in accordance with [their] intended purpose. Thus the right to have at one's disposal (including alienation) is absent in principle, if what is meant is not monetary resources

			expended strictly according to the itemized estimate.
Rights of operational-economic activities	Unlimited in fact	Independently sells products produced if not otherwise established by law or other acts[8]	
Financing	Sources are not limited	Sources are not limited in practice[9]	By itemized estimate Completely or partially by the property owner due to transfer to the institution of monetary resources or assignment to it of other property with [on the basis of] the right to operational management (Articles 296, 298 of the Civil Code of the Russian Federation).
Profit	The property owner only has a right to a part of the profit. Norms are in a stage of discussion	The manner of distribution of income is determined by the property owner without coordination with the enterprise[10]	-

[8] By Decree of the Government of the Russian Federation dated 6 October 1994 №1138 there must be an plan-order and a plan of development of an enterprise, while relations with suppliers and consumers are constructed on an agreed [dogovornyi] basis. Independent activities are with the permission of an authorized agency.

[9] By Decree of the Government of the Russian Federation dated 6 October 1994 №1138 financing connected to fulfillment of a plan-order and others is implemented at the expense of income from sales; in the instance of insufficiency of income – from the federal fund by decision of the Government of the Russian Federation.

[10] By Decree of the Russian Federation dated 6 October 1994 №1138 – according to norms of the authorized agency for production and social activities. The free remainder is subject to withdrawal into the budget.

Right to engage in activities bringing in income	By definition	If the property owner envisaged this in the charter (regulations). Such income and property acquired at its expense are accounted for on an independent balance sheet and enter into «independent disposal» -- the conduct of economic affairs (although the latter is not named directly by the legislator) by an institution (according to legal competencies of Articles 294-295, 298 of the Civil Code of the Russian Federation). The given rule is based upon the possibility of incomplete financing by the property owner of all the necessary requirements of the institution and the necessity caused by this of limited participation of the institution-nonproperty owner in property turnover in a role close to that of unitary enterprises. Accordingly, the institute receives two kinds of property of different legal status and differently registered: 1) received according to itemized estimate, with the right to operational management (POU); 2) "earned," on a separate balance sheet, by special right of estate (factually, the right to do business (PKhV)).[11]

[11] The nature of the given right gives no doubt that this is the right to do business (PKhV) The list of rights of estate as distinct from obligatory rights is closed (P. 1 Article 216 of the Civil Code of the Russian Federation) and cannot include a right not directly envisaged by law. In the previously operative legislation the analogous situation was permitted by direct reference in P. 2 of Article 48 of the Bases of civil legislation of 1991 to the belonging of the given property to the institution with the right to complete conduct of business (KhV). In accordance with this, the rules from Article 29 of the Civil Code of the Russian Federation are applied to the right of an institution to property thusly obtained.

Status of the fruits, products, and income obtained	The fruits, products, and income obtained from the usage of property in [a status of] conduct of business (KhV) or operational management (OU), and also property acquired by a unitary enterprise or institution by agreement [dogovor] or on other grounds, *enters into the conduct of business (KhV) or operational management (OU) of the enterprise or institution* (Article 299 of the Civil Code of the Russian Federation). It is presumed that the given results become the object of the property rights of the founders of unitary enterprises and institutions, and not of the juridical persons [legal entities] themselves. After all, the property base for their appearance was the property of the property owner-founder which was at the unitary enterprise or institution on limited right of estate.		
Liability for obligations (general)	A unitary enterprise is liable for its obligations through all the property belonging to it. A unitary enterprise does not bear responsibility for the obligations of the property owner of its property. The property liability of a unitary enterprise for its obligations in principle corresponds to the general rules of civil law liability characteristic of a juridical person [legal entity].		Only through monetary resources at its disposal. Upon their insufficiency or the refusal of the principal debtor, subsidizing responsibility is borne by the property owner of the respective property (according to Article 399 of the Civil Code of the Russian Federation on subsidizing responsibility); see also Article 9 of the law «On noncommercial organizations»
Liability for obligations (particularities)	Through the entire property The property owner of the property of an enterprise founded on [the basis of] the right to do business (PKhV) is not liable for the obligations of the enterprise, with the exception of the instances in P. 3 of Article 56 of the Civil Code of the Russian Federation (if: 1) it is not otherwise provided for in the founding documents; 2) if the insolvency was caused by the property owner).	Through the entire property The subsidizing responsibility of the Russian Federation for the obligations of a federal state [kazennoe] enterprise upon insufficiency of its property (in the Civil Code). More often in standardized and concrete charters – *in the event of insufficiency of monetary resources.*	
The possibility of bankruptcy – depending on the bounds of juridical independence (according to the Civil Code of the Russian Federation, Article 25, 65).	Yes	No (the only kind of commercial organization which cannot be declared insolvent)	No (among noncommercial organizations only consumer cooperatives, philanthropic, and other foundations can be declared insolvent)
Reorganization or liquidation	By decision of an authorized agency	By decision of the Government of the Russian Federation (for federal state [kazennye] ones)	By decision of the property owner
Management agency	The manager who is appointed by the property owner or by an agency authorized by the property owner and accountable to them		Depending on the founding documents
Subsidiary enterprises	A unitary enterprise may create in the capacity of a juridical person [legal entity] another unitary enterprise, transferring to it in	-	-

	established manner a part of its property to a conduct of business status (KhV). The unitary enterprise approves the charter and appoints the manager *(detailed manner not determined). The requirements of the Civil Code of the Russian Federation on allotment as a method or reorganization of juridical persons [legal entities] (Articles 57-60) apply.*		
Liability for obligations of a subsidiary enterprise	According to P. 3 of Article 56 of the Civil Code of the Russian Federation	-	-
The possibility of accomplishing the functions of an entrusted manager	Impossible due to Article 1015 of the Civil Code of the Russian Federation		-

Sources:

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Ye. Bogatykh. Grazhdanskoe i torgovoe pravo. Ot drevnego rimskogo k sovremennomu rossiiskomu (Civil and commercial law. >From the ancient Roman to the contemporary Russian). Moscow: Kontract, 2000.

With the coming into force on 1 January 1995 of Part I of the Civil Code of the Russian Federation, the central problem of management of state property in a transitional economy, regulating the right to conduct business, was closed from the formal legal point of view. The right ceased to be complete. However, the total of six articles devoted to the right to conduct business contained in Chapters 4 and 19 of the Civil Code obviously could not become the instruments for implementation of the rights, in essence, of the state as property owner.

The federal law of 30 November 1994 (№ 52-FZ) «On putting into effect Part One of the Civil Code of the Russian Federation» established that the norms of the Code concerning unitary enterprises based on the right to conduct business (Articles 113, 114, 294, 295, 299, 300) and concerning unitary enterprises based on the right of operational management also apply respectively to state and municipal enterprises based on the right of full conducting of

business created before official publication of Part One of the Code, and also to federal state [kazennye] enterprises[12] (Articles 113, 115, 296, 297, 299, 300).

However such a law, as well as a more general one addressing state property management on the whole, has not been adopted for a long time[13]. The founding documents of these enterprises were subject to being brought into accordance with the norms of Part One of the Code in a manner and within periods of time which will be determined upon adoption of the law on state and municipal unitary enterprises.

However, such a law, as well as a more general one devoted to management of state property on the whole, was never adopted. In its absence the Government and the Ministry of State Property of Russia adopted individual normative acts devoted to certain aspects of the functioning of state unitary enterprises (SUE) (for example, on working state unitary enterprises accomplishing the running of real estate in federal ownership and sale of assets of state enterprises which are or are have been liquidated). A new law on privatization (N 123-FZ), which entered into force on 2 August 1997, also defined as one of its [privatization's] methods the transformation of state unitary enterprises after the conducting of inventory of property and auditor checks into stock companies (AO), one hundred percent of the stock of which is in state (municipal) property ownership.[14] The mid-term program for socio-economic development of the Russian Federation for the period 1997-2000 envisaged completion of the reorganization of all federal unitary enterprises on [the basis of] the right to conduct business into companies with one hundred percent state capital or into federal state [kazennye] enterprises before 1 January 1999,[15] which was not achieved.

As was already indicated above, the beginning of the new stage of reforming property ownership relations in Russia was marked by approval by Decree of the Government of the Russian Federation №1024 dated 9 September 1999 of the Concept of managing state property and of privatization in the Russian Federation (further in the text – the Concept). The fact that perhaps for the first time since 1992 the problem of managing state property was given priority over a formal change in the form of property ownership may already be considered highly symptomatic. The sharp decrease in the value of enterprises and blocks of their stock after devaluation of the ruble naturally brought about a shift of accent in the actions of the federal center in 1998-1999 toward increasing non-tax income of the budget at the expense of utilizing state property, which automatically required the introduction of precision and clarity into the relations between various agencies of [governmental] authority.

The Concept (in the new wording dated 29 November 2000) proceeds from the necessity of gradually curtailing the number of state and municipal unitary enterprises and parallel implementation of a set of measures to improve their management. The set of measures includes:

1. Determination of:

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[12] Issues of managing enterprises and institutions with right to operational management form an independent set of problems and are not considered in the given work.

[13] The whole range of problems associated with the enactment of this law in discussed in section 3.4.

[14] Thus management of state unitary enterprises are basically regulated by the Civil Code of the Russian Federation and also by agency normative acts which before 1999 were of a fragmentary nature and were not coordinated with each other.

[15] This regulation, in essence, reproduced the norm of P. 2.1 of the Basic regulations of the state program of state and municipal enterprises in the Russian Federation after 1 July 1994 approved by Ukase of the President of the Russian Federation dated 22 July 1994 № 1535.

- the range and number of unitary enterprises necessary for carrying out state functions;

- the goals of the state as applicable to each enterprise and institution.

2. Establishment of:

the manner of accounting by managers of unitary enterprises and institutions for the course of the fulfillment of the approved program (plan);

the manner of making managerial decisions upon failure to achieve a state goal or failure to fulfill a program (plan);

criteria and manner of transfer of part of the profit of an enterprise to the budget.

3. *Toughening of monitoring* of the activities of enterprises and institutions themselves and of their managers.

The main reason why the Russian government is striving to curtail the number of unitary enterprises at all levels, orienting itself in the long-term perspective to their transformation into open stock companies (OAO), one hundred percent of the stock of which is in state or municipal property ownership, or into state [kazennye] enterprises, is the drawbacks inherent to the conduct of business as a legal institute.

They are connected to the asymmetry of legal competencies of the subject of such a right and the titular property owner – the state. In the absence of a law on state and municipal unitary enterprises, their managers have great freedom of action regarding income and property, which they de facto own, use, and have at their disposal. At the same time Article 295 of the Civil Code of the Russian Federation leaves to the titular property owner a precisely outlined range of functions: 1) creation, reorganization, and liquidation of an enterprise; 2) determination of the subject and purposes of its activities; 3) appointment of the manager; 4) monitoring of property transferred with [on the basis of] the right to conduct business (PKhV); 5) the right to a part of the profits (without concrete mechanisms for implementing these rights).

It was namely the weakness of the state (lack of incentive (lack of desire) of the apparatus) in the 1990s which led to the fact that it, as property owner, never did take advantage of the rights granted it by the Civil Code of the Russian Federation (for example, to a share of the profits). Before 1999 it never did see to the drawing up of mechanisms for implementing its rights through a Charter, etc. An additional complicating factor was retention of the former norms of labor legislation effectively protecting the rights of managers of unitary enterprises and making the probability of his firing not very great at all.

The basic directions [to be taken] for the transformation of unitary enterprises were defined in the Decree of the Government of the Russian Federation dated 6 December 1999 №1348 (which will be brought up below), which in principle allows their retention in the form of unitary enterprises based on the right of doing business.

The new law «On privatization of state and municipal property» dated 21 December 2001 (N 178-FZ) which came into force in 2002 regulates in detail the manner of determining the make-up of the property complex subject to privatization of unitary enterprises (including a plot of land), and conditions and procedures for privatization related transactions.

1.2.2. Analysis of specific forms of managing state unitary enterprises

Proceeding from the fact that in the near future state unitary enterprises (SUE) will remain a component of Russia's economy, in the Conception there was envisaged the working out of a whole set of measures for state regulation of the implementation of this right by economically entities on the basis of construction of a system of relationships with their managers stimulating the efficient activities of the latter in the interests of the property owner and the direct management by state agencies of the corresponding property.

The basic means of such regulation are the Charter of the state unitary enterprise (SUE) and the contract concluded with its manager. By itself this instrument is not a new one; however, the documents adopted for fulfillment of the Concept of management of state property require bringing the Charters of state unitary enterprises into accordance with the new requirements and their registration at the Ministry of Property Relations of the Russian Federation.

Order of the Ministry of State Property of the Russian Federation dated 16 February 2000 №188-r (in the new wording dated 6 March 2001) approved *A Sample charter for a federal state unitary enterprise.* Subsequently Order of the Ministry of Property Relations of the Russian Federation dated 23 May 2000 №1-r «On measures for implementing Decrees of the Government of the Russian Federation dated 3 February 2000 №104 and 16 March 2000 №234» confirmed the special procedure of the Manner of coordination by the Ministry of Property Relations of the Russian Federation of the charters of federal state unitary enterprises (FSUE).

The second (after the charter) highly important means of regulation by the property owner of the activities of a state unitary enterprise is a contract with its manager. Contracts which managers of such enterprises are to conclude in the future with the Ministry of Property Relations of Russia must accord with the *requirements of the Sample contract with a manager of a state federal unitary enterprise* approved by Order of the Ministry of State Property of the Russian Federation dated 16 February 2000 №189-r (in the new wording dated 9 June 2000) «On approval of a sample contract with the manager of a federal state unitary enterprise.»

With that, according to Decree of the Government of the Russian Federation dated 16 March 2000 №234, *personal appointments of managers* of unitary enterprises are effected *on a competitive basis* under the condition of their *certification [attestation] once every three years*. This same document approved special regulations for conducting competition for appointment to the position of manager of a federal state unitary enterprise and for conducting certification of managers of federal state unitary enterprises. The above-mentioned order of the Ministry of Property Relations of the Russian Federation dated 23 May 2000 №1-r «On measures for implementation of Decrees of the Russian Federation dated 3 February 2000 №104 and 16 March 2000 №234» approved special procedures on the Manner of concluding, changing, and abrogation of contracts with managers of federal state unitary enterprises and on participation of representatives of the Ministry of Property Relations of the Russian Federation in the work of commissions on certification of managers of federal state unitary enterprises and on conducting a competition for appointment to the position of manager of a federal state unitary enterprise.

For purposes of implementation of the right of the state as property owner ensuing from the Civil Code of the Russian Federation to receive a part of the profit received by a state unitary enterprise (SUE), according to Decree of the Government of the Russian Federation dated 3 February 2000 №104, federal agencies of the executive authority on which are placed coordination and regulating activities in the corresponding branches (spheres of management), with the enlistment when necessary of the Ministry of Finances, for taxes and fees, and of the Ministry of Internal Affairs of the Russian Federation (including for their proposals and within

the framework of their competency), must effect *annually* with regard to federal state unitary enterprises *a determination of the size (share) of the profit* of federal state unitary enterprises *subject to transfer to the federal budget.*

Proceeding from the set of measures adopted for fulfilling the Concept of managing state property, the state as property owner, aside from registration of the new charters for federal state unitary enterprises (FSUE) and concluding of contracts with their managers, receives special levers for effecting monitoring of the activities of such enterprises and implementation of monitoring procedures.

1.2.3. Instruments for monitoring the functioning of state unitary enterprises

According to Decree of the Government of the Russian Federation dated 4 October 1999 №1116 (in the new wording dated 15 October 2001) «On approving the manner of *accounting by managers* of federal state unitary enterprises and by representatives of the Russian Federation in agencies for management of open stock companies" the manager of a federal state unitary enterprise *every quarter* sends to the Ministry of State Property of the Russian Federation and to the federal agency of the executive authority effecting coordination and regulation of activities in the corresponding branch (sphere of management) a report in the form according to Appendix №1. It consists of five sections.

I. General information about an enterprise and its manager.

II. Basic indicators of activities.

1. Indicators for generalized information:

- data on profit (losses): profit (loss), including sums transferred to the federal budget (with requisitions of documents confirming a given fact), and indebtednesses according to them;

- data on accounts payable (the overall sum and the sum in arrears, including individually allocated sums on indebtedness to the federal budget, state extra-budgetary funds, on payment of labor, and also the length of delay of wages);

- data on receivables (the overall sum, including individually allocated sums for payment of purchases of products for state needs (the sum from it in arrears), indebtedness of the federal budget, of the budget of a subject of the Russian Federation and of a local budget).

2. Indicators for detailed analysis

- indicators of profitability of economic activities (overall, of one's own capital, of assets, of investments);

- indicators of liquidity (coefficients of current and absolute liquidity);

- indicators of financial stability (coefficients of security through ones own resources, of the correlation of loan resources and ones own resources);

- indicators of business activeness (periods of turnover of current assets, reserves, and expenditures);

- data about fixed assets (the value of fixed assets and of mobilizational capacities, the share of fixed assets in assets, the coefficient of wear of fixed assets);

- data on the value of net assets of the enterprise;

- data on the share of settlements in other than monetary form.[16]

[16] E.g. barter transactions, or offsetting arrangements, etc. (trans.'s note)

III. Information about utilization of profit (for reorganization of production, management, and sales and for social and other purposes).

IV. Information about real estate not utilized for production purposes.

1. Real estate rented out (name and characteristics, balance sheet value, income received, including that transferred to the federal budget).

2. Real estate utilized for purposes of receiving income, including real estate mortgaged or otherwise encumbered (with the exception of real estate rented out) (name and characteristics with indication of way of utilization, balance sheet value, income received, including income transferred to the federal budget).

3. Unutilized real estate (name and characteristics, balance sheet value, coefficient of wear).

4. Proposals of the enterprise's manager for further utilization of real estate.

5. Real estate sold over the course of the reporting period (balance sheet value, income received, including income transferred to the federal budget).

V. Information about the presence of signs of bankruptcy (the presence of signs, indebtedness in arrears for monetary obligations and obligatory payments, measures taken by the manager for purposes of financial recovery of the enterprise).

Together with the report there are presented: 1) bookkeeping accounting in the make-up determined by the Federal law «On bookkeeping registry,» and the Regulation on conducting bookkeeping registry and bookkeeping accounting in the Russian Federation; 2) combined bookkeeping accounting (when an enterprise has subsidiary enterprises); 3) certificate on the presenting of a renewed map [card?] of registry of federal of federal property which the enterprise has, and also of a copy of the balance sheet report and other documents about changes of data about objects of registry; 4) certificate of participation of the enterprise in the work of subsidiary enterprises and other companies.

Annual accounting of the manager of a federal state unitary enterprise envisages directing to the Ministry of State Property of the Russian Federation and to the federal agency of the executive authority which effects coordination and regulation of activities in the corresponding branch (sphere of management), simultaneously with the annual report, a report on the financial-economic activities of the enterprise. The following issues must be reflected in the report:

- structural changes in the nomenclature of the products being put out;

- structural changes in the shares of the goods markets which the enterprise has;

- implementation of measures to improve the quality and competitiveness of the enterprise's products;

- utilization of advanced technologies and inventions in production of products and offering of services;

- fulfillment of federal investment programs;

- achievement of approved basic economic indicators of the enterprise's activities;

- if the enterprise has a program for its activities – generalized data on the course of the fulfillment of the program over the reporting period;

- information about all circumstances which violate the usual mode of functional operation of the enterprise or threaten its financial situation;

- implementation of measures to prevent the enterprise's bankruptcy;

- data about changes in the number of personnel and in the average monthly pay for the labor of the enterprise's employees, including the manager, over the report period;

- data about utilization of profit remaining at the disposal of the enterprise;

- the program for the enterprise's activities for the usual year.

For managers of federal state unitary enterprises *having stock (a share, a unit in charter capital) of foreign juridical persons*, together with an annual report and report about the enterprise's financial-economic activities, there is envisaged an annual presentation to the Ministry of Property Relations of the Russian Federation of information about participation of such enterprises in charter capitals of foreign juridical persons [legal entities] by special form.[17]

I. General information about a foreign juridical person [legal entity] in the capital of which a federal state unitary enterprise (FSUE) participates (including the size of the charter capital and the nominal value of one share of stock in hard currency evaluation, the number of shares and the size of the share of the federal state unitary enterprise (FSUE), the presence of its representatives in the management agencies [organs] of the given juridical person [legal entity]).

II. Basic indicators of a foreign juridical person [legal entity], in the capital of which a federal state unitary enterprise [FSUE] participates.

- Fixed assets;

- Data about long-term financial investments (participation in the charter capitals of subsidiary and dependent companies or other juridical persons);

- Profit (loss);

- Volume of sales of goods (services);

- Computed dividends;

- Paid-out dividends;

- Accounts payable;

- Accounts receivable;

- Presence of signs of bankruptcy;

- Average yearly market value of one share of the stock of a foreign juridical person [legal entity] (in the event of market quotation of stock).

For distortion of accounting envisaged by this procedure, the managers of federal state unitary enterprises bear the liability established by the legislation of the Russian Federation.

When comparing the new forms of reporting with the old ones introduced back in 1994, one can note that in the new forms, much more attention is paid to the indices of an enterprise’s financial efficiency. Quarterly reports have begun to show indices of financial stability, business activity, data on net asset value, the share of in kind settlements. The indices of the profitability of economic activity and liquidity should be calculated in a more detailed manner (multivariantly), more detailed reporting should be done on the composition of debtor and credit indebtedness, capital asset value (in addition to assets aggregate index). A whole additional section appeared containing information on immovables that are not utilized for production purposes.

[17] Introduced supplementally by Decree of the Government of the Russian Federation dated 15 October 2001 №725.

New items are as follows: in quarterly reports – the issues of the disposal of net profits and the profit transferred to the federal budget; in yearly reports – the issues of the structural changes in the range of production, of structural changes in the shares of commodity markets occupied by an enterprise, of achieving the approved key indices of an enterprise's economic activity, when an enterprise has a programme of activity – aggregate data on its implementation during a reporting period, information on all circumstances disrupting the routine functioning of an enterprise or pose a threat to its financial stability, a programme for an enterprise's next year's activity.

Besides, yearly reports still contain old issues dealing with the implementation of measures against an enterprise's bankruptcy, utilization of high technologies and innovations in manufacturing goods and rendering services, and for improving the quality and competitiveness of an enterprise's products, the implementation of federal investment programmes, equity participation in other enterprises (shares, contributions).

At the same time, in the new reporting forms there is no special section devoted to the social welfare activity of an enterprise (signing and implementing a collective agreement, granting social benefits to employees, using social amenities and municipal facilities), only the information as to how the profits are spent, among other purposes, on welfare projects. The yearly reports still contain the values showing changes in staff number and average salary at an enterprise during a reporting period, as well as the size of the top executive's monthly average salary (this time without distinguishing the rewards from the enterprise's profits). Neither does the new reporting contain any data on capital-labour ratio, maintaining the basic structure of an enterprise's activity, availability of special-purpose budgetary funding and the areas of its spending.

The necessary unification of monitoring procedures and the imparting to them of the proper operability can be achieved by utilization of the *Registry of indicators of economic efficiency of the activities* of federal state unitary enterprises and open stock companies, the stock of which is in federal ownership. It is supposed to be created by the Ministry of State Property of Russia according to the Decree of the Government of the Russian Federation dated 11 January 2000 №23 (in the new wording dated 19 July 2001) «On a registry of indicators of economic efficiency of the activities of federal state unitary enterprises and open stock companies, the stock of which is in federal property ownership» initially for two hundred of the largest enterprises, and toward the end of 2000 for all economic entities falling under the given qualifying requirements.[18]

The *indicators of economic efficiency of the activities of an enterprise* themselves, according to Decree of the Government of the Russian Federation dated 3 February 2000 №104 (in the new wording dated 16 February 2001) «On strengthening monitoring of the activities of federal state unitary enterprises and of management of the stock of open stock companies in federal property ownership» must be *approved annually* by the federal agencies of the executive authority on which are placed coordination and regulating of activities in the corresponding branches (spheres of management) by coordination with the Ministry of the Economy of the Russian Federation.

In execution of the given decision on 18 September 2001 there was issued a joint order of the Ministry of Economic Development of Russia, the Ministry of State Property of Russia, and the Ministry for Taxes and Fees (MNS) of Russia determining the list and manner

[18] Order of the Ministry of Property Relations dated 10 July 2000 №183-r approved the Methodological recommendations for organizing and analyzing the efficiency of the activities of federal state unitary enterprises (FSUE) and open stock companies (OAO), the stock of which is in federal property ownership

of determining the indicators of economic efficiency for unitary enterprises and open stock companies, the stock of which is in federal property ownership (registered by the Ministry of Justice of Russia 19 November 2001 № 3043).

For unitary enterprises this document determined altogether four indicators of economic efficiency of activities (the approved and actually achieved magnitudes of which must be fixed in the Registry):

- the proceeds (net) from the sale of goods, products, works, services (minus the added value tax, excises, and analogous obligatory payments);

- net profit;

- the part of the profit subject to transfer to the federal budget;

- net assets.

The appearance of the given document allowed the Ministry of State Property of Russia to begin work on practical formation of the Registry of indicators of economic efficiency of the activities of federal state unitary enterprises.

After the Ministry of Economic Development of the RF, the Ministry of State Property of the RF and the Ministry of Taxes and Levies had come to the conclusion that the four abovesaid indices should be regarded as those reflecting the activity of unitary enterprises and be applied to estimate their efficiency, an issue was raised about the necessity for federal executive authorities to annually approve the programmes of activity for their subordinate unitary enterprises.

As of 10 April, 2002, the Government of the RF approved Decree No 228 "On measures aimed at improving efficient utilization of federal property assigned to federal state unitary enterprises to be used in their economic activity" which stipulated that federal executive authorities were to approve the programmes of federal SUE's activity; a special form for such a programme was established, as well as the Rules for development and approval of programmes of activity, and definitions of the share of the profits of State unitary enterprises to be transferred to the federal budget.

The programme of the activity of FSUE must contain 4 parts.

Part I. A brief estimation of an enterprise's programme of activity for the preceding year and in the first half of the current year (including an analysis of the causes of a possible deviation of the actual figures showing an enterprise's activity from the previously approved ones).

Part II. Measures aimed at an enterprise's development.

Part III. An enterprise's budget for the planning period (financial backing for the programme).

Part IV. Indices of an enterprise's activity for the planning period.

The content of Parts II-IV should be discussed in more detail.

In Part II, total expenditures (on quarterly and annual basis) and expected effects to be seen during the two years subsequent to the planning year in supply-and-sales, production, finances-and-investments and social spheres. A detailed classification of the measures to be taken in a particular sphere is presented.

Section 1 "Supply-and-sales sphere" includes the following measures:

– modernization of the existing systems for analysis and prognosis of market conditions and market development, as well as implementation of new systems;

– developing activities involving purchases of supplies, raw materials and semi-finished goods for production of commodities (works, services);

– developing transport-and-warehouse system;

– developing activities involving sales of commodities (works, services) produced by an enterprise and trading these on sales markets;

– improving competitiveness;

– developing markets and attracting new consumers.

Section 2 “Production sphere” envisages the following measures:

– technical instrumentation and reequipment of production of commodities (works, services);

– improvement of existing technologies and implementation of new ones;

– laying-up, writing-off and alienating idle or worn-out manufacturing facilities;

– development and improvement of production programmes, implementation of programmes for a change of specialization;

– decreasing materials-output ratio, power consumption and capital intensity of production;

– ensuring occupational safety and ecological security of production.

In Section 3 “Finances-and-investments sphere”, the following measures are envisaged:

– developing an optimal structure of an enterprise’s assets and ensuring an enterprise’s financial stability;

– improving the mechanisms for attracting and utilizing credit resources;

– ensuring an enterprise’s investment attractiveness;

– improving tax planning and developing optimal taxation;

– improving accounting policy;

– improving the efficiency of long-term and short-term financial investments of an enterprise;

– decreasing costs;

– improving profitability.

Section 4 “Social sphere” envisages the following measures:

– improving the existing systems of social security for an enterprise’s employees and their families and implementing new systems;

– optimization of the expenditures on the upkeep of medical-and-sanitary, cultural and housing-and-communal sphere.

The measures taken in every of those spheres must develop along one of the following lines:

Developing (updating) the material and technical base.

Research and information support.

Improving personnel qualification level.

For each of the section and for all the measures as a whole, the sources of funding must be specified (net profit, amortization, federal budget resources, loans (credits), other sources).

The expected effect of the measures taken is understood as a predicted increase (decrease) of an enterprise's net profit as a result of the measures implemented during the planning year; during the first year following the planning year, and the second year following the planning year.

Part III presents a detailed budget of an enterprise for the planning period.

The revenue part of its budget includes the balance of resources as of the beginning of a period, proceeds from sales of commodities (works, services) and other revenues (operating income, non-sales proceeds, extraordinary revenues, funding according to credit agreements, budgetary allocations, and other kinds of special-purpose funding).

An enterprise's expenditures are divided into capital and current expenditures.

Within capital expenditures, the costs of producing or purchasing property, reconstruction and modernization costs, and financial investments in one of the above-mentioned spheres (supply-and-sales, production, finances-and-investments and social spheres) are distinguished.

Within current expenditures, production cost of commodities (works, services), commercial costs, management costs, operating costs, non-sales costs, payment-for labour costs, payments to and from the budget ("profits tax to be paid to the federal budget" is entered as a separate item), and payments for credits and loans are distinguished.

The balance of this Part is the value of budget surplus (deficit), with separately entered residuals as of the end of a period.

Part IV is devoted to the indices reflecting the activity of a unitary enterprise during a planning period (one quarter, one year, and two years following the planning year). These are the above-mentioned four indices selected by the Ministry of Economic Development of the RF, the Ministry of State Property of the RF and the Ministry of Taxes and Levies in 2001 as estimates of their activity:

(net) product (works, services) proceeds (minus value added tax and similar mandatory payments);

net profits (losses);

net asset value;

share of the profits to be transferred to the federal budget.

For enterprises producing important (strategic) commodities (works, services), a federal executive body may set additional target figures. Planned additional targets for in kind realization can be set for 3 - 5 main types of commodities (works, services), among other such targets there can be average staff number, average monthly salary, costs of social security and health care programmes, and costs of implementing environment protection programmes.

Together with the programme of activity of a unitary enterprise, the Rules for developing and approving the programmes of activity and defining the part of profits of federal state unitary enterprises to be transferred to the federal budget were established.

According to this document, the top director of a FSUE submits annually by August 1, to the federal executive body to which the enterprise is subordinated, a draft programme of the activity of the enterprise for the next year developed in accordance with the established form and representing a set of measures interrelated by their terms of implementation and sources of funding. The measures included in the programme must reflect the principal directions of activity in a planning period aimed at achieving the goals set by the charter and the decrees of the Government of the RF and federal executive authorities. Together with the

draft programme, a feasibility study report on the planned measures is submitted, including the costs of their implementation and their expected effect.

Simultaneously, copies of the draft programme of the activity of an enterprise for the next year are submitted to:

- the Ministry of State Property of the RF – if total proceeds from sales of commodities (works, services) during the preceding year are equal to or exceed 50 million roubles, or the balance asset value of an enterprise as of the end of the preceding year is equal to or exceeds 20 million roubles;

- a territorial department of the Ministry of State Property of the RF – if an enterprise does not answer either of the two specified conditions.

In its turn, the federal executive body by November 1 approves the programmes of the activity of enterprises for the next year, submitting these to the Ministry of State Property of the RF within 7 days after the date of their approval. In cases when a draft programme of activity of an enterprise has not been processed by the federal executive body before the established deadline, the programme of activity of an enterprise is approved by the Ministry of State Property of the RF before December 1.

The top director of an enterprise every year, before April 1, together with a report on the activity of the enterprise during a preceding year, when necessary, submits to a federal executive body proposals on adjustments to the indices of the enterprise's activity envisaged in the programme of activity of the enterprise for the current year.

Simultaneously, these proposals are submitted to:

- the Ministry of State Property of the RF – if total proceeds from sales of commodities (works, services) during the preceding year are equal to or exceed 50 million roubles, or the balance asset value of an enterprise as of the end of the preceding year is equal to or exceeds 20 million roubles;

- a territorial department of the Ministry of State Property of the RF – if an enterprise does not answer either of the two specified conditions..

The decisions to be taken about approving the programmes of activity of FSUE are prepared by specially created boards of federal executive bodies whose purpose is to analyze the efficiency of enterprises' activity.

In an absence of a special law on State and municipal unitary enterprises which was enacted only in late 2002, an important role in monitoring their activity was played by special restricting procedures.

The above-mentioned Decree of the Government of the Russian Federation dated 3 February 2000 №104 (in the new wording dated 16 February 2001) provides for branch agencies of management having the right in the established manner to effect monitoring of usage of property belonging to an enterprise, and also analysis of the efficiency of the activities of the enterprises. When necessary the Ministry for Taxes and Fees of the Russian Federation, the Ministry of Finances, the Ministry of Internal Affairs (including according to their proposals and within the framework of their competency), and also other specialized organizations, may be enlisted for this.

It has also been established that acquisition and alienation of shares (stock, shares [units]) in the charter capitals of companies, partnerships, and organizations of other organizational-legal forms effecting activities in the market of financial services, including banks and other than bank credit organizations, are performed only with the agreement of the federal agency of the executive authority on management of state property and of the federal

agency of the executive authority upon which are placed coordination and regulation of activities in the corresponding branch (sphere of management).[19]

Additional mechanisms for monitoring agencies of state management of utilization of the property of unitary enterprises appeared in connection with adoption of the new law «On privatization of state and municipal property» dated 21 December 2001 (N 178-FZ). According to Article 14 (P. 3), from the day of approval of the forecasting plan (program) of privatization of federal property and up to the moment of transfer of the right of property ownership to property being privatized to the buyer of the property complex of a unitary enterprise or the moment of state registration of the open stock company created, the unitary enterprise does not have the right without the agreement of the property owner to:

- curtail the number of employees at the indicated unitary enterprise;

- perform transactions (several interconnected transactions), the price of which exceeds five percent of the balance sheet value of the assets of the indicated unitary enterprise as of the date of approval of its last balance sheet report or exceeds by more than fifty thousand times the minimum rate of pay for labor (MROT) established by law, and also transactions (several inter-connected transactions) connected to the possibility of alienation directly or indirectly of property, the value of which exceeds five percent of the balance sheet value of the assets of the indicated unitary enterprise as of the date of its last balance sheet report or exceeds by more than fifty thousand times the minimum rate of pay for labor (MROT) established by law;

- receive credit;

- effect the issuing of securities;

- act as the founder of partnerships or companies, and also acquire and alienate stock (shares) in the charter capital of partnerships or companies.

1.3.Conclusion

Radical reform of property relations in Russia in the last decade has led to a sharp decrease in the dimensions of the state sector in the economy. Its component operating on the basis of commercial calculation while effecting kinds of activities potentially capable of producing profits has been state (federal and regional) and municipal unitary enterprises. A quantitative evaluation of their share inside the state sector and in the economy as a whole permits one to say that the factor of the existence of unitary enterprises after completion of mass privatization is not critically significant to the macro-economic situation and the investment climate.

Over the course of 1993-1998 the number of state enterprises at the federal level decreased the most, which is a reflection of the radical and consistent policies of the federal center in the sphere of reforming property ownership relations. The opposite pole (with the least curtailment of the number of state enterprises) were the constituent republics of the Russian Federation, which possessed the greatest degree of independence in all economic issues, and municipalities, on the shoulders of which lay the basic weight of supporting the social infrastructure. An intermediate (by dynamics of the number of state enterprises) position was occupied by the krais and oblasts.

[19] Introduced supplementally by Decree of the Russian Federation dated 16 February 2001 №121 with inclusion of the given norm in the Sample Charter of a federal state unitary enterprise (FSUE) by Order of the Ministry of State Property of the Russian Federation dated 6 March 2001 №548-r.

In sum, there took shape a greatly differentiating branch structure of unitary enterprises at various levels. The domination of housing and public utilities, of trade, and of public eating facilities at the regional and municipal levels reflects the social load when fell to the lot of local authorities after demarcation of property ownership. The more mosaic-like structure (from ten to twenty percent of enterprises immediately belong to four branches) of federal unitary enterprises reflects to a certain degree the limitations on privatization, but mainly it is a limitation for the attractiveness of one or another kinds of activities during the course of the privatization process.

Up to the moment of the beginning of market transformation in 1992, state enterprises, which had dominated in the Russian economy, operated within the framework of the institute of conducting business (KhV), which had appeared in 1988. It afforded the subject of such a right (in reality – an enterprise's manager) a wide range of powers with regard to the property of the property owner (including independent management of financial flows and usage of profit). Under the circumstances of the growing crisis of the centralized economy and the beginning spontaneous privatization at the end of the 1980s and the beginning of the 1990s, these powers which managers of state enterprises had led to transfer of a part of the financial flows of these economic entities to satellite firms, to the practice of concluding transactions in the interests of managers, and to the budgetary system experiencing income shortfalls.

For the new conditions which had taken shape in the country with the beginning of market transformation, the juridical design of a unitary enterprise was defined in its general shape in 1994 by the new Civil Code of the Russian Federation. They were grouped "with commercial organizations not endowed with the right to property ownership of property assigned to them by the property owner." Only state and municipal enterprises could be created in the form of unitary enterprises.

It was assumed that the founding documents of unitary enterprises would be brought into accordance with the norms of the Civil Code in a manner and within time periods which would be determined upon adoption of a separate law on state and municipal unitary enterprises. However, such a law, just like a more general one dedicated to management of state-owned property on the whole, never was adopted. In its absence, the Government and the Ministry of State Property of Russia adopted individual normative acts dedicated to certain aspects of the functioning of state unitary enterprises (SUEs).

Such a sluggishly flowing nature was characteristic of the situation with SUEs until September 1999, when the Concept of managing state property and of privatization in the Russian Federation was adopted. Its core is the idea of gradual curtailment of the number of unitary enterprises with parallel implementation of a set of measures to improve their management, these measures being oriented toward strengthening regulation of the right to conduct business (PKhV) and toward taking account of the interests of the state as property owner.

The basic methods for such regulation are a SUE's Charter and the contract concluded with its manager. The documents adopted in execution of the Concept for managing state property require bringing SUE charters into accordance with new requirements (the *Example charter of a federal state unitary enterprise (FSUE) and the contract* with its manager which were adopted in the year 2000) and their registration at the Ministry of Property Relations of the Russian Federation. Supplementary (aside from registration of new charters and concluding of contracts with their managers) instruments for effecting monitoring of the activities of such enterprises and for implementation of monitoring procedures are *quarterly and annual accounting* by managers according to the standardized forms defined in 1999, and

indicators of the economic efficiency of the activities of an enterprise with the keeping of the corresponding Registry as well as an approvable programme of an enterprise's activity.

2. Finances and mechanisms of financing state unitary enterprises (SUE) (legal regulation, mechanisms, problems)

2.1.Internal and external sources and mechanisms of financing state unitary enterprises (SUEs)

The financial mechanism of functioning of state unitary enterprises (SUEs) in Russia springs from the norms of the Civil Code of the Russian Federation adopted at the end of 1994. Recall that Article 113 defines a unitary enterprise as «a commercial enterprise not endowed with ownership rights to property assigned to it by the owner of the property.»

The same thing is mentioned in P. 1.3 of the Sample charter of a federal state unitary enterprise (FSUE) approved by Order of the Ministry of State Property of the Russian Federation dated 16 February 2000 №188-r (in the new wording dated 6 March 2001).

At the same time in P. 2.1 of this grounding document for the given type of enterprises the dual nature of the activities of a state unitary enterprise is emphasized. They are created «...for purposes of satisfying social requirements for the results of its activities and the obtaining of profit....» This aspect is extraordinarily important, if one takes into account the specifics of the kinds of activities, during the effecting of which retention is allowed of enterprises in the form of unitary enterprises based on the right to conduct business (as well as creation of federal state [kazennye] enterprises on the base of property assigned to them).

Recall that Decree of the Government of the Russian Federation dated 6 December 1999 №1348 «On federal state unitary enterprises founded on the right to conduct business» envisages seven such situations:

- utilization of property, privatization of which is forbidden, including of property necessary for securing national security, functioning of air and water transport, and implementation of other strategic interests of the Russian Federation;

- conduct of activities directed at resolving social tasks, including sale of certain goods and services at minimal prices, and also at organizing and conducting purchasing and goods interventions for the purpose of securing the foodstuffs security of the state;

- development and manufacture of individual kinds of products in the sphere of the national interests of the Russian Federation and providing for national security;

- production of individual kinds of products which have been removed from civilian turnover or the application of which is limited in civilian turnover;

- conduct of activities envisaged by federal laws exclusively for state unitary enterprises;

- effecting of individual subsidized kinds of activities, running factories at a loss;

- effecting scientific and scientific technical activities in branches connected to the securing of national security.

It is obvious that when conducting activities, at least on the second and sixths of the above-indicated signs, the obtaining of profit, in essence, is not presupposed. On the remaining ones – along with the obtaining of profit, a state of loss or low profitability may be entirely likely.

The Sample charter of a federal state unitary enterprise (FSUE) also defines the sources of formation of an enterprise's property which are factually mechanisms of financing. They may be divided into internal and external ones.

Among the internal ones are: 1) profit received as a result of economic activities, 2) amortized deductions, 3) dividends (income) coming from companies and partnerships, in the charter capitals of which the Enterprise participates.

All others may be regarded as external ones. In turn, budgetary ones (capital investments and subsidies from the budget and special-purpose budgetary financing) and extra-budgetary ones (loan resources, include credits from banks and other credit organizations) stand out among them. A distinction in principle from stock companies is the absence in a number of external sources of financing stock and bonds, because the organizational-legal form itself of a unitary enterprise does not allow the possibility of apportioning property by contributions (shares, units), and, consequently, the issuing of securities. One more, purely symbolic external source of financing is voluntary deposits (donations) from organizations and citizens.

The basic reproductive scheme for state unitary enterprises (SUE) in the 1990s was self-financing at the expense of internal sources. The reasons for this came to the expensiveness of bank credit, mistrust of the banking sector for the rest of the economy, and the extremely sparse possibilities for budgetary financing. It should be recognized that problems of this kind over the course of the entire first decade of market reforms were also pressing for the overwhelming majority of economic entities of other organizational-legal forms (open stock companies [OAO], closed stock companies [ZAO], limited liability partnerships [TOO], and limited liability companies [OOO]), which found themselves unable to take advantage of external sources of financing. This is even more true of usage of the securities market.

The sample charter of a federal state unitary enterprise (FSUE) assigns to enterprises the right to independently have disposal of the results of productive activities, products put out (except instances established by legislative acts of the Russian Federation), net profit received which remains at the disposal of the Enterprise after payment of taxes and other obligatory payments established by legislation of the Russian Federation and transfer to the federal budget of part of the profit from usage of the Enterprise's profit.

A part of the net profit remaining at the disposal of the Enterprise may be directed at increasing the Enterprise's charter capital. At the same time P. 3.5 of the Sample charter of a federal state unitary enterprise (FSUE) postulates that an increase in the charter capital of the Enterprise may be accomplished both at the expense of additional transfer to it of property and at the expense of existing assets. A special norm regulates procedures for decreasing a charter capital. It consists, in the instance of a decrease in net assets of an enterprise according to the results of the financial year to a magnitude less than the size of the charter capital, the agency which made the decision on creation of the Enterprise effects in the established manner a decrease in the charter capital. The Enterprise thereby is obliged to inform its creditors of this in writing.

The part of the net profit remaining at the disposition of the Enterprise is utilized by the Enterprise in the established manner, including for:

- introduction and mastery of new equipment and technologies and measures for protection of labor and the environment;

- creation of funds for the Enterprise, including ones intended to cover losses;

- development and expansion of the financial-economic activities of the Enterprise and the replenishment of turnover resources;

- construction, reconstruction, renewal of basic funds;

- performing scientific research works, experimental design works, study of the state of the market and consumer demand, marketing;

- purchase of foreign currency, other currency and material valuables, and securities;

- advertising of the Enterprise's products and services;

- acquisition and construction of housing (individual shares) for employees of the Enterprise needing improved living conditions in accordance with the legislation of the Russian Federation;

- material stimulation, training, and enhancement of qualifications of employees of the Enterprise;

- other ways of utilizing net profit, including taking into account of the provisions of the collective agreement;

P. 3.12 and 3.13 of the Sample Charter of a federal state unitary enterprise (FSUE) are devoted to the manner of creating the financial funds of an enterprise formed at the expense of net profit remaining at the disposal of the Enterprise.

Only the manner of creation and utilization of the Reserve fund are more or less precisely regulated: its concrete magnitudes in percentages of the charter fund and of the share of net profit must be established in the Enterprise's charter. This fund is intended for covering its losses in the event other resources are absent and cannot be used for other purposes.

With regard to other funds (the social, housing, and material encouragement ones), it is indicated that their size, and manner of formation and utilization are established by collective agreement on the basis of operative legislation of the Russian Federation.

It has to be remembered with this that property acquired by the Enterprise at the expense of profit received is in federal property ownership, but is received into its conduct of business (KhV).

2.2.Relations of state unitary enterprises and the budget system

With regard to budgets of all levels, state unitary enterprises (SUE) must partake of a dual nature: 1) as a source of income; 2) as a recipient of budgetary resources.

Transfer by a state unitary enterprise (SUE) of part of the profit to the state as property owner of the property handed over by it for the conduct of business is provided for by legislation (Article 295 of the Civil Code of the Russian Federation); however, adoption of the Concept of managing state property and of privatization in September 1999 no applied normative base for this issue ever did appear [sic!].

Recall that according to Decree of the Government of the Russian Federation dated 3 February 2000 №104 (in the new wording dated 16 February 2001) «On strengthening monitoring over the activities of federal state unitary enterprises and over management of the stock of open stock companies in federal property ownership,» the federal agencies of the executive authority on which are placed coordination and regulation of activities in the corresponding branches (spheres of management), with the enlistment when necessary of the Ministry of Finances of the Russian Federation, the Ministry of Taxes and fees of the Russian Federation, and the Ministry of Internal Affairs of the Russian Federation, annually effect in regard to federal state unitary enterprises not only approval in coordination with the Ministry of the Economy of the Russian Federation of the indicators of economic efficiency of

activities, but also determination of *the size (share) of the profit* of federal state unitary enterprises *subject to transfer to the federal budget*. The joint order of the Ministry of Economic Development of the Russian Federation, the Ministry of State Property of the Russian Federation, and the Ministry for Taxes and Fees of the Russian Federation (registered by the Ministry of Justice of Russia on 19 November 2001) determining the list and manner of determination of the indicators of economic efficiency of the activities of federal state unitary enterprises (FSUEs) also contains among them the indicator of the part of the profit subject to transfer to the federal budget.

To increase budgetary income at the expense of the profits of state unitary enterprises, precise determination by the government of the principles of assignment of the profits of state unitary enterprises to the federal budget is necessary in the very nearest future. Several approaches exist toward the beginning of 2002. Thus, the approach of the Auditing Chamber of the Russian Federation envisages a unified norm of assignments of ninety-five percent for all state unitary enterprises. The Ministry of Economic Development contemplates calculation of individual norms for each enterprise.

As a result, in Decree No 228 approved by the Government of the RF of April 10, 2002 "On measures aimed at improving efficiency of utilization of federal property consolidated to federal state unitary enterprises by right of economic jurisdiction" it is specified that the share of an enterprise's profit of a preceding year which is to be transferred to the federal budget in a current year shall be defined annually by a decision of a federal executive body before May 1 on the basis of a report on an enterprise's activity in the preceding year and an approved programme of an enterprise's activity. The transfer of a share of profit is made by the enterprise before June 15. In case the decision is not made within the specified terms, the part of profit that is to be transferred to the federal budget during a current year is to be specified by a decision of the Ministry of State Property of the RF before June 1.

In this connection, the part of profit to be transferred to the federal budget is calculated by decreasing the preceding year's total net profit (undivided profit) of an enterprise by the costs of the measures aimed at developing the enterprise approved as part of the programme of the enterprise's activity for the current year and funded from net profits. In absence of an approved programme of an enterprise's activity for the current year (except the year 2002), the part of profits to be transferred to the federal budget in the current year is defined by decreasing the preceding year's total net profit (undivided profit) of the enterprise by the sum of mandatory payments to the enterprises's funds created in accordance with existing legislation and the enterprise's charter. Net profit (undivided profit) is defined on the basis of accounting reporting data.

When approving programmes of activity and defining the part of a FSUE's profit to be transferred to the federal budget, the federal executive body uses as a reference the planned figures of federal budget revenues generated by the profits of all subordinated enterprises which is taken into account in the draft federal budget for the year in question.

The top director of a unitary enterprise every year before April 1, together with a report on the enterprise's activity during a preceding year submits to a federal executive body proposals as to specifying the size of the share of profits to be transferred to the federal budget in the current year.

Simultaneously, these proposals are submitted to:

– Ministry of State Property of the RF – in case total proceeds from sales of commodities (works, services) during the preceding year are equal to or exceed 50 million

roubles, or the balance asset value of an enterprise as of the end of the preceding year is equal to or exceeds 20 million roubles;

- a territorial department of the Ministry of State Property of the RF – in case an enterprise does not satisfy either of the two specified conditions.

The decisions as to specifying the part of profits to be transferred to the federal budget as well as on approving the programmes of activity of unitary enterprises are made by federal executive bodies' boards for analyzing the efficiency of subordinated enterprises' activity. The actual transfers of an enterprise's part of profit to the federal budget are controlled by a federal executive body and the Ministry of State Property of the RF during the year on the basis of an analysis of quarterly reports and the data contained in the register of economic efficiency indices.

According to this document, federal executive authorities were required to submit to the Ministry of State Property of the RF the following: 1) information on the profit obtained in the year 2001 by subordinated federal state unitary enterprises, and on the part of profit to be transferred to the federal budget in 2002; 2) decisions on the approval of economic efficiency indices of each of its subordinate unitary enterprise for the year 2002, including the size of the part of profit to be transferred to the federal budget in 2002; 3) proposals as to the size of the part of profit of all subordinated federal state unitary enterprises to be transferred to the federal budget in the year 2003.

From a factual point of view, over the course of the entire first decade of market reforms in Russia the role of state unitary enterprises as a source of income for the federal budget was practically not examined. In 1993-1994 in the clause-by –clause classification of budget income, along with income from privatization there was the clause [article] «Dividends according to stock from the share of state-owned property in privatized enterprises and income from the commercial usage of objects [sites?] of state-owned property by enterprises, institutions, and organizations.»

In 1995-1998 its formulation underwent certain changes – «Income from property in federal property ownership» with breakout into dividends according to stock in federal property ownership, income from renting out property in federal property ownership, and transfers from the profits of the Central Bank of the Russian Federation (beginning in 1996). With that only the overall magnitude according to this clause [article] and the profits of the Central Bank of the Russian Federation were registered quantitatively. In the next year, 1999, a small clarification was added to the formulation of this clause [article]: what was now meant was not only income from property in federal property ownership, but also from the activities of the state (theoretically the results of the activities of federal state unitary enterprises could also have fallen under this definition).

And only after adoption of the Concept of of managing state property and of privatization in September 1999 in the law on the federal budget for the year 2000 was there detailed clause-by-clause the «Income from property in state property ownership, or from activities» with the appearance of a separate line «Payments from state enterprises» (without clarification of which enterprises were meant) and its quantitative magnitude (9,318,300,000 rubles). While in the article of the line wherein was contained the classification in principle of the non-tax income of the budget without clarification of the quantitative parameters, there was mentioned only income from the activities of the state joint Russian-Vietnamese enterprise «Vietsovpetro.» The same picture was also observed in the law on the federal budget for 2001 (9,469,700,000 rubles).

The adoption of the law on the federal budget for 2002 was marked by the belated bringing of the classification of non-tax income of the budget into accordance with the requirements of the Civil Code of the Russian Federation. For the first time there appeared mention namely of the part of the profits of federal state unitary enterprises functioning inside the country retained after payment of taxes, obligatory payments, and collections as one of the items of the budget's non-tax income. Among others, the corresponding code 2010803 was conferred upon this clause [article]. Its quantitative parameter for the current year was set at 500,000,000 rubles, which is about 24.8 times less than the income from the activities of the joint enterprise «Vietsovpetro,» which were also allocated a separate line (code 2010802).

In December 2001 the Ministry of State Property of the Russian Federation made a correction in the direction of increasing the magnitude of the budgetary mission for practically all sources of revenue (with the exception of income from the «Vietsovpetro» Joint Enterprise). The volume of transfers of federal state unitary enterprise income into the federal budget was set at 1,230,000,000 rubles, that is, it was increased by almost two and a half times in comparison with the budgetary mission for 2002. Accordingly, the share of this source in the overall volume of revenue from utilization of state property grew to 3.5 percent against 1.7 percent according to the projections of the law on the budget for 2002.

It ought to be specially noted that, according to the results of 2001, for the first time in the last five years the Ministry of State Property of the Russian Federation, among other budgetary revenue from utilization of state property, noted a transfer of federal state unitary enterprise profit in the amount of 209,600,000 rubles, which comprised 0.7 percent of its [the revenue's] overall magnitude, or 0.5 percent of the aggregate income of the federal budget from privatization and utilization of state property.

A certain notion of the role of unitary enterprises in regional budgets may be gained from a special study conducted by the EA-Ratings rating service in 2000-2001.[20] The summary net profit of municipal and sub-federal enterprises was compared in it with the incomes of municipal and regional budgets. The indicator of summary profit for that sector of enterprises in relation to the incomes of consolidated regional budgets in Russia as a whole comprised 1.1 percent in 1999, that is, potentially in the event of transfer of all the profits of the respective unitary enterprises, the budgetary system on the local level could have received 8,200,000,000 rubles, which is comparable with payments according to the land tax.

Like many other socio-economic indicators, this indicator is characterized by rather strong inter-regional differentiation.

This potential source is most significant for a number of republics within the make-up of the Russian Federation: Udmurtiia (4.1 percent of budget income), Mordoviia (4 percent), Karachaevo-Cherkessiia (3.7 percent), Marii-El (2.8 percent), Bashkortostan (2.7 percent), Iakutiia (2.1 percent). Among the other constituent members of the Russian Federation only Ivanovo (3.0 percent), Tula (2.3 percent), Vologda (2.2 percent), and Penza (2.1 percent) oblasts are comparable to them.

In twenty-two more regions the indicator analyzed comprised from one to two percent of budget income. Among them are five republics (Chuvashiia, Tatarstan, Northern Ossetia, Kabardino-Balkariia, Altai), two krais (Altai and Primorskii [Maritime]), fourteen oblasts

[20] T. Kordiukova, M. Galkin, A. Eigel'. Unitarnye predpriiatiia – potentsial'nyi dokhod ili potentsial'nye riski dlia regional'nykh i mestnykh administratsii? (Unitary enterprises – potential income or potential risks for regional and local administrations?) // Kredit Rossii. Analiticheskii biulleten' Reitingovoi sluzhby EA-Ratings, strategicheskogo partnera Standard & Poor's, (Russia's credit. Analytic bulletin of the Rating service EA-Ratings, of the strategic partner Standard & Poor's), № 19-20 (46-47), October 2001.

(Amur, Belgorod, Volvograd, Kamchatka, Kirov, Kurgan, Kursk, Moscow, Novosibirsk, Rostov, Saratov, Sverdlovsk, Ul'ianovsk, Iaroslav), and Moscow.

The capital of Russia was the unambiguous leader by absolute magnitude of the summary net profits of unitary enterprises (1,500,000,000 rubles), but upon juxtaposition of this magnitude with the income of its budget, it found itself at the very beginning of the second decade of [set of ten] leaders. Saint Petersburg (0.8 percent of budget income), presented in the mass media for a time as the best example in the entire country of the policies of local authorities for the extraction into the budget of income from property, stands out in considerable contrast on that background. Naturally, no far-reaching conclusions cannot be drawn from all that, because the object of study was namely potential transfers of profit from unitary enterprises into local budgets. While information about the real revenue coming into the budgets from that source is absent. If such revenue does occur, then it is registered in the clause [article] «Income from property in state or municipal ownership, or from activities.»

2.3.Basic violations arising in the sphere of the financial relations of state enterprises with the state

A characteristic feature of the practical functioning of state enterprises over the course of the last decade is the great number of violations of established rules and norms, a considerable part of which occur in the sphere of the financial relations of the indicated economic entities with the state. With that in the role of violators there appear both enterprises themselves and agencies of state management interacting with them. Analysis of factual materials[21] concerning various aspects of the activities of state enterprises permits singling out a number of typical violations in the sphere under consideration. We will designate below the basic kinds of violations uncovered, accompanying them with concrete examples taken from the functional practice of various state enterprises. We will point out thereby, first of all, those violations which are characteristic namely of the form of economic entities under consideration (due to the peculiarities of their status, etc). It should be remarked that certain of the violations adduced, strictly speaking, go beyond the framework of the financial relations between the enterprise and the state; however in the final analysis they appear in this sphere, too, leading, as a rule, to substantial damage to the financial interests of one of the parties (and sometimes to both at once).

1. The [improper] lowering of the magnitude of the charter capital of stock companies formed as a result of forming of joint-stock companies from state enterprises which takes place as a consequence of improper evaluation of the value of property belonging to the enterprise (its incomplete registering or registering at a [improperly] lowered value). The causes of such [improper] lowering may be both imperfection of existing procedures (in particular, ones not envisaging registering of intellectual property), and of various kinds of violation of the operative manner of evaluating property. As a result, upon subsequent privatization of the stock of the joint stock companies formed, the state under-receives significant volumes of monetary resources.

Highly indicative is the example of the turning into a joint stock company of the M.L. Mil' Memorial Moscow Helicopter Plant (MVZ) – the largest developer of helicopter equipment, which over the years it existed created more than two hundred base models of

[21] Officially published reports on the results of various checks carried out by the Auditing Chamber of the Russian Federation in the period 1998-2001 served as the sources for factual data.

military and civilian helicopters of the «Mi» make of helicopter. During transformation of the enterprise into a joint stock company in 1992 the huge intellectual property created by the enterprise at the expense of state financing was not inventoried and evaluated as to value. In the same way, the issue of the rights of the state to the results of intellectual activities was not resolved. As a result, during privatization in 1992-1993 [of?] about fifty percent of the stock of the Open Joint Stock Company (OAO) «The M.L. Mil' MVZ» the state received approximately 230,000,000 non-denominated rubles, or about 30,000 U.S. dollars (for comparison: the value of one MI-26 helicopter comprises about 8,000,000 U.S. dollars) [sic!].

During transformation into a joint stock company in 1992 of the Balakhna cellulose-paper combine – one of the largest specialized producers of newsprint on the territory of Russia – in the process of determining the magnitude of charter capital of the joint stock company being created the Ministry of State Property of Russia committed flagrant violations of operative legislation (in particular, a complete inventory of the enterprise's property was not conducted). As a result, the magnitude of the charter capital of the «Volga» Joint Stock Company (AO) proved substantially lower than the value of the property belonging to it.

During transformation into a joint stock company in 1993 of one of the largest enterprises in the metallurgical complex – the Samara V.I. Lenin Memorial Metallurgical Plant – basic production resources were evaluated according to residual value and without taking inflation into account (in accordance with the methodological instructions on evaluating the value of objects of privatization in effect at the moment), which led to underestimation by many times of their real value. As a consequence of this, the charter capital of one of the largest metallurgical plants in Europe was established at a level of only 2,200,000 U.S. dollars.

The absence of proper monitoring of procedures for determining the magnitude of the charter capital of the joint stock companies being created often led, as a result of various kinds of errors (both methodological and computational), to the magnitude obtained being distorted. In particular, errors made during calculation of the magnitude of the charter capital of the «All Russian Institute of Light Alloys» open joint stock company (OAO) led to its noticeable under-evaluation – by almost ten percent.

2. Violations by agencies of state authority of decisions taken on the make-up of property being transferred to the charter capitals of state unitary enterprises being created or of joint stock companies being formed upon transformation of state unitary enterprises into joint stock companies. As a result of various violations or of non-coordination of decisions by agencies of state authority, the charter capitals of state enterprises and joint stock companies being created on the base of state unitary enterprises are often formed in incomplete volume. Such a situation can lead to concealed privatization of the property being lost. Besides that, the absence of the necessary property in the property ownership of a joint stock company or in the conduct of business (KhV) of a state unitary enterprise can hinder the normal accomplishment by them of economic activities.

Serious violations were committed during transformation of the state enterprise «Sheremetievo International Airport» (the «MASh» State Enterprise) into a joint stock company. Order № 948-r of the Ministry of State Property of Russia dated 14 August 1996 envisaged transfer into the account for payment of the charter capital of the «Sheremetievo International Airport» (the «MASh» Open Joint Stock Company (OAO)) of the property reflected in the Act of evaluation of the value of the property of the «MASh» State Enterprise and included in the calculation of the magnitude of the charter capital. The order indicated also defined the legal assignment of the OAO «MaSh» in accordance with the Transfer act of

property and obligations from the «MASh» State Enterprise. The Transfer act included property intended for transfer to the Joint Stock Company and property remaining in state property ownership, but entering into use by the enterprise.

The content of the Transfer act had thereby substantial differences from the data adduced in the Act of evaluation of the value of the property of the state enterprise. In particular, in the Transfer act property with one hundred percent wear was reflected as property remaining in state property ownership. With that, the value of the property indicated comprised about 100,000,000 rubles, or approximately seven percent of the balance sheet value of the entire inventoried property of the state enterprise. As of the middle of 1999 between the Ministry of State Property and the «MASh» OAO there had not been concluded an agreement on the right of usage by the latter of the property with completely accrued wear. As a result, the «MASh» OAO is compelled to utilize the property indicated in its economic activities without the required legal registration [execution].

Decree №1224 of the Government of the Russian Federation dated 26 September 1997 envisaged creation at the Ministry of Agricultural Foodstuffs of Russia of the state unitary enterprise «The Federal Agency for Regulating the Foodstuffs Market» and transfer of the basic and turnover resources on the balance sheet of the Federal Foodstuffs Corporation at the Ministry of Foodstuffs of Russia which was being liquidated to the balance sheet of the enterprise which was being created with their utilization for forming the charter capital and for the effecting of purchase and goods interventions in the market for agricultural products, raw materials, and foodstuffs. However, in violation of the given order, the established resources were transferred by the Ministry of Agricultural Foodstuffs of Russia to the balance sheet of the state unitary enterprise «The Federal Agency for Regulating the Foodstuffs Market» not in their complete volume, as a result of which the charter capital of the enterprise was formed by less than half.

3. Wrongful and inefficient usage by state enterprises of monetary resources and other property (non-real estate and real estate), illegal renting out of real estate belonging to state enterprises. In many instances this leads to a loss of property and to a decrease in revenue into the federal budget.

In 1993 the state unitary enterprise «Morinraschet», on the basis of a trilateral agreement, by-passing accounts for responsible storage, transferred to Morbank in favor of the "Grin" firm (Malta) state internal loan currency bonds (OVGVZ) with a face value of 19,000,000 U.S. dollars. Contracts and customs declarations thereby confirming delivery of goods by the firm indicated to the Russian Federation to the «Morinraschet» state unitary enterprise are absent.

In 1993 the Territorial Agency of the Moscow Committee for Property of the Northern Administrative District of the City of Moscow concluded five agreements with the «Aeropit» Joint Stock Company of a Closed Type (AOZT) for rental of non-housing premises for a period of twenty-five years, establishing while doing so the right of purchase of the rented premises a year after conclusion of the rental agreement. The premises indicated were at that moment in federal property ownership and were listed on the balance sheet of the «Sheremetievo International Airport» federal state enterprise. But because the Territorial Agency coordinated its actions neither with the property owner of the real estate nor with its balance sheet holder, the renting out of the non-housing premises was wrongful.

In 1994 the «Sheremetievo International Airport» state enterprise concluded with the closed joint stock company (ZAO) «Lobnia Construction Corporation" an agreement for construction of two few-storied five-apartment housing buildings with a total of 582 square

meters floor space each. The same year the enterprise transferred to the ZAO indicated monetary resources in the sum of over 650,000 rubles. However, the housing buildings indicated were not entered onto the balance sheet of the «Sheremetievo International Airport» state enterprise and, accordingly, when the enterprise was transformed into a joint stock company they were not reflected in the property and obligations acceptance-transfer act transferred from the «Sheremetievo International Airport» state enterprise to the open joint stock company (OAO) of the same name. It should also be noted that the resources transferred for construction are not reflected in its accounts receivables. Thus the enterprise was dealt material damage in the sum of more than 650,000 rubles (or over 200,000 U.S. dollars at the exchange rate as of December 1994).

Over the course of 1994-1995 the «Sheremetievo International Airport» state enterprise became a participant in eight companies and partnerships. With that in certain instances the enterprise entered in the capacity of a contribution to the charter capital of these economic entities rights to usage of real estate. Permission from the Ministry of State Property of Russia to effect such actions was not requested by the enterprise.

In violation of Decree № 96 of the Government of the Russian Federation dated 10 February 1994 the «Sheremetievo International Airport» state enterprise without permission of the Ministry of State Property of Russia rented a part of its working premises to commercial structures. For the period from 1 July 1995 through 1 May 1996 its income from rental of the premises comprised 3,740,000 rubles or 1,100,000 U.S. dollars.

In violation of a number of operative norms, the federal state unitary enterprise «Tul'skoe,» which worked with purebreds, concluded an agreement in 1996 which envisaged delivery of purebred animals with the open joint stock company (OAO) «Zori Dona,» an enterprise which engaged in processing of animal products. It should, however, be noted that deliveries according to the given agreement were not effected.

The state corporation (GK) «Rosvooruzhenie» (Russian armaments) illegally transferred in the capacity of a contribution to the charter capital of the "Investitsionnaia kompaniia "RVS"" joint stock company of the closed type (AOZT) state internal loan currency bonds on the balance sheet of the All-Russian Amalgamation (VO) "Oboroneksport" with a nominal value of more than 40,000,000 U.S. dollars (in violation of Clause 7 of Article 114 of the Civil Code of the Russian Federation), wrongfully transferred from the hard currency account of the VO "Oboroneksport" to the hard currency account of the AOZT indicated hard currency resources in the amount of more than 1,000,000 U.S. dollars (in violation of hard currency legislation), and wrongly transferred to an intermediary enterprise (the closed joint stock company "NIKO" state internal loan currency bonds with a nominal value of over one million U.S. dollars in discharge of payables to a number of Russian enterprises (without the appropriate documents, by photocopies of the instruction agreements [dogovora-porucheniia] and proxies).

4. The presence of unitary enterprises which are neither state nor municipal ones. Such a situation arises, as a rule, when major industrial complexes are turned into joint stock companies, and, speaking generally, can lead to the loss of state property.

From the moment of transformation of the State gas concern «Gazprom» into the Russian joint stock company of the same name and through the middle of 1999 subordinate to the Russian joint stock company (RAO) (later – the open joint stock company (OAO) «Gazprom») there was a number of unitary enterprises which as of the moment of transformation were subsidiary state enterprises of the gas concern.

5. The conducting by state enterprises of kinds of activities not envisaged by charters, the effecting by them of capital investments in assets not related to their specialization, usage of budgetary resources allocated to enterprises for such purposes.

In 1997-1999 the state enterprise «Innauchtsentr» (Foreign Scientific Center) (Moscow) was accomplishing in the city of Zheleznodorozhnyi in Moscow oblast in space rented from a garage construction cooperative works for construction of a repair and operating station for servicing and storage of motor vehicle transport vehicles. The construction was conducted without technical economic grounds, and resources from the federal budget were utilized for its financing which had been allocated to enterprises and organizations of the agricultural industry complex of the city of Moscow for capital investments and capital expenditures. The activities indicated did not accord thereby with the charter of the state enterprise «Innauchtsentr.»

The deficiencies described are characteristic namely of the relations between the state and unitary enterprises; they are the direct consequence of the specific features of the organizational-legal form of the latter and of the special status of the property belonging to them, and, finally, of the special legal capacity of the given kind of economic entities. Further on we will consider a number of deficiencies characteristic not only of state enterprises, but also of juridical persons [legal entities] of other organizational-legal forms. However, for several reasons, such as imperfection of the right to conduct business (PKhV), insufficient effectiveness of monitoring the activities of state unitary enterprises (SUE) on the part of agencies of state authority, etc., these deficiencies are very often manifested namely in the relations of the state with unitary enterprises.

5.1. Inefficient utilization by state enterprises of budgetary resources allocated them, utilization of the resources indicated not for the intended purpose.

In 1996-1997 the federal state unitary enterprise (FSUE) «Tul'skoe,» which worked with purebreds, did not utilize for their intended purpose a significant part of the resources received from the leasing fund of the Ministry of Agricultural Foodstuffs of Russia, to the sum of 600,000 rubles. The purebred animals purchased at the expense of the resources indicated were supplied to six farmholdings in the Novomoskovsk district of Tula oblast without concluding the appropriate leasing agreements. Besides that, during various periods the enterprise made inefficient use of resources from the leasing fund to a total sum of about two million rubles.

During the period from 1996 through 1999 the state unitary enterprise (SUE) «Oblastnaia prodovol'stvennaia korporatsiia» (Oblast foodstuffs corporation) (city of Belgorod) did not utilize for their intended purpose more than twelve million rubles intended for financing construction of housing for citizens released into the reserves or into retirement from military service.

In 1997-1999 the state unitary enterprise (SUE) «Oblstroiinvest» (Oblast construction investments) (city of Irkutsk) – one of the largest recipients of resources from the federal budget allocated to Irkursk oblast for granting housing subsidies to citizens moving from regions in the Far North and localities equated to them – did not use for their intended purpose a part of the resources received to the sum of about four million rubles.

In 1999 the state enterprise «Innauchtekhtsentr» (Foreign scientific technical center) (city of Moscow) did not use more than 300,000 rubles allocated from the federal budget for capital expenditures, and also 200,000 rubles allocated for carrying out project and survey works for construction of a scientific production base for the Saratov branch of the enterprise. Altogether in 1999 the state enterprise «Innauchtekhtsentr» utilized for their intended purpose only about 160,000 rubles, which comprised approximately twenty percent of the overall sum

of budgetary resources received by the enterprise. The volume of inefficiently utilized resources exceeded 600,000 rubles. We would note that about 50,000 rubles were not utilized for their intended purpose.

5.2. Violations by state enterprises of the established manner of conducting and presenting bookkeeping accounting to agencies of state authority, presenting by them [state enterprises] of inauthentic or falsified data.

The bookkeeping accounting of the State Corporation (GK) «Rosvooruzhenie» for 1994 contained inauthentic information. In particular, the articles «Profits» and «Long-term financial investments» were [improperly] inflated to a sum of about sixty billion undenominated rubles.

The state unitary enterprise (SUE) «Sokoluchmebel'» (Sokol school furniture), established by the Ministry of Education of Russia and subordinated to it agency-wise, from the moment of its creation in 1995 on the base of the joint stock company of a closed type (AOZT) of the same name and up to the beginning of the year 2000 did not make bookkeeping accounting available to the ministry indicated.

In violation of operative norms, the state enterprise «Sheremetievo International Airport» in 1995 wrongfully included in the make-up of outlays expenditures for training enterprise employees at the Institute of Linguistics and at the Aviation School of Ireland according to an agreement concluded not directly with the educational institutions, but with the Irish intermediary company «Airline Development Ireland Ltd.,» and also expenditures on training employees in Great Britain, which expenditures were not confirmed by the primary bookkeeping document – an agreement between the enterprise and the educational institution. As a result, the cost of the services rendered the State Corporation «Sheremetievo International Airport was [wrongfully] increased by a sum of about 300,000 U.S. dollars.

Also in 1995 the state enterprise «Sheremetievo International Airport» effected payment through the joint stock company of a closed type (AOZT) «Aerofirst» for Cadillac and Chevrolet vehicles of foreign production to a sum of about 440,000 rubles. Subsequently certificate-bills from the private family enterprise «Yereknuk» in which the cost of the vehicles indicated was improperly lowered by many times – to 35,000 rubles – were presented to the bookkeeping offices of the state enterprise «Sheremetievo International Airport. About 4,000 rubles were paid additionally for issuance of the certificate-bill. The airport's special transport service settled accounts with the budget for taxes on acquisition of the vehicles according to the price indicated in the certificate-bill from the private family enterprise (SChP) «Yereknuk,» and not according to the actual cost paid through the joint stock company of a closed type (AOZT) «Aerofirst.» The given operation also led to an improper decrease in the magnitude of the tax on property, since the difference between the price of acquisition and the balance sheet value of the vehicles comprised more than 400,000 rubles. Thus, as a result of the actions indicated, the tax on acquisition of vehicle transport vehicles was improperly decreased by 67,000 rubles, and the tax on property for 1996-1998 – by 21,000 rubles.

In violation of operative legislation on advertising, monetary resource revenue for services afforded according to agreements was unfoundedly reflected as sponsor resources in the bookkeeping accounting of the state enterprise «Obshcherossiiskaia radiostantsiia «Maiak»» (The All-Russian Radio Station «Maiak») for 1998 and the first half of 1999. In reality, however, this revenue, the volume of which exceeded three million rubles in 1998 and comprised almost nine million rubles in the first half of 1999, was payment for broadcasting broadcasts ordered on the basis of the corresponding agreements of the radio station with clients. Besides that, things of material value on hand of a value of about 60,000 rubles, and as

of 1 July 1999 – the remnants of materials were [improperly] inflated by almost 90,000 rubles – were not taken into account on the balance sheets of the enterprise for 1998 and for the first half of 1999.

In the period from 1997 through 1999 the federal state unitary enterprise (FSUE) «Tul'skoe,» which worked with purebreds, conducted bookkeeping registration of operations according to leasing agreements concluded in accordance with norms which had gone out of force. Products of purebred animal husbandry transferred on lease to agricultural goods producers of Tula oblast were not reflected in the enterprise's bookkeeping accounting.

5.3. Transfer by clients of works accomplished at the expense of budgetary resources, and by state clients of deliveries of products for federal state needs of a part of their functions to state enterprises – executors. This substantially limits the possibilities for monitoring utilization of allocated budgetary resources and often leads to their inefficient utilization.

Decree № 688 of the Government of the Russian Federation dated 15 June 1994 envisaged creation at the expense of resources from the federal budget of specialized enterprises for producing school furniture sets. One of these production facilities was to have been created on the base of the joint stock company of a closed type (AOZT) «Sokoluchmebel'» (city of Sokol, Vologda oblast), which in 1995 was transformed into the state unitary enterprise (SUE) of the same name. The functions of the client ordering the corresponding works were laid upon the Inter-branch association «Rosuchprofstroi» (Russian school profession construction). However, in violation of the decree indicated, the association in actuality transferred a part of its functions as client to the «Sokoluchmebel'» enterprise. In particular, this enterprise effected settlements with subcontractors (except for purchase of equipment); in its [the enterprise's] make-up there was created a directorate for creating a furniture production facility.

In violation of Decree № 594 of the Government of the Russian Federation dated 26 June 1995, the Ministry of Health Care of Russia, not having received permission for this from the Government of the Russian Federation, transferred its functions as state client for organizing the conducting on a tender (competitive bidding) basis of centralized purchases of medicines for federal state needs to the state unitary enterprise (SUE) «Natsional'noe meditsinskoe agentstvo» (the National medical agency).

5.4. Violation by agencies of state authority and by state enterprises of operative norms when concluding agreements for supply of products for federal state needs, failure of state enterprises – suppliers to observe important conditions of contracts concluded, unfounded raising by them of prices for products supplied. In a number of instances this leads to inefficient expenditure of budgetary resources.

In violation of Decree № 594 of the Government of the Russian Federation dated 26 June 1995, in the agreement concluded in 1997 by the Ministry of Labor of Russia with the state unitary enterprise (SUE) «Predpriiatie material'no-tekhnicheskogo snabzheniia» (Enterprise of material and technical supply) for purchase and delivery of motor vehicle transport vehicles there were absent: calculation of agreed price, record of coordination of agreed price, calendar schedule for delivery of motor vehicle transport vehicles, properly made-out specifications for the motor vehicle transport vehicles being acquired, and description of penalties for violation of the agreement’s conditions.

In 1999 the state unitary enterprise (SUE) «Predpriiatie material'no-tekhnicheskogo snabzheniia,» in violation of the conditions of the agreement concluded in 1998 between the state unitary enterprise indicated and the Ministry of Labor of Russia, delivered two busses for

social institutions in the Maritime krai in an incomplete set, and also sent a PAZ-32050R bus not to the Social rehabilitation center for minors, orphan children, and children left without parental care of the Verkh-Iset' [Upper Iset'] district of the city of Yekaterinburg, as had been set by the agreement, but to the Center for social services for the population of the city of Yekaterinburg.

In violation of operative norms the state unitary enterprise (SUE) «Natsional'noe meditsinskoe agentstvo,» which in 1998 on behalf of the Ministry of Health Care of Russia was carrying out the functions of state client for organizing the conducting on a tender (competitive bidding) basis of centralized purchases of medicines for federal state needs, invited to participate in the competition for delivery of the sandimmun and sandimmun-neoral medical preparations only two organizations: the «Biotek» limited liability partnership (TOO) and the "Farmsnabsbyt" (Pharmaceutical supply-sales) open joint stock company (OAO), at the same time that the Ministry of Health Care of Russia in 1998 had issued permission for import of these preparations to forty-three suppliers, among which the «Biotek» limited liability partnership (TOO) and the "Farmsnabsbyt" open joint stock company (OAO) were not listed. On the basis of the competitive bidding which had been conducted, of the two participants the TOO «Biotek» was recognized as the winner, and a state contract for delivery of the medical preparation to a sum of over fifteen million rubles was concluded with it. However, subsequently, at the recommendation of the Ministry of Health Care of Russia, the state unitary enterprise «Natsional'noe meditsinskoe agentstvo» abrogated the given contract and concluded a new one, for the same sum, with the closed joint stock company (ZAO) «AO Primafarma.» With that, in violation of operative norms, the new contract was concluded without conducting competitive bidding, and its conditions were less advantageous than the conditions of the abrogated contract with the TOO «Biotek.» Analogously, at the beginning of 1999 the state unitary enterprise «Natsional'noe meditsinskoe agentstvo» concluded an additional agreement with ZAO «AO Primafarma» for delivery of sandimmun-neoral medical preparations to a sum of 67,000,000 rubles. It ought to be noted that the Ministry of Health Care of Russia and the state unitary enterprise «Natsional'noe meditsinskoe agentstvo» more than once effected placement of orders for purchase of medicines for federal state needs without conducting competitive bidding beforehand. At the beginning of 1998 on behalf of the ministry the state unitary enterprise indicated concluded, without running competitive bidding,, a contract for delivery of the sandimmun-neoral preparation with the «Rosmedkomplekt» ZAO to the sum of about 580,000 U.S. dollars. At the end of the same year the state enterprise concluded on a non-competitive basis a contract for buying and selling insulin preparations to the sum of forty million rubles with the «Bryntsalov-A» ZAO. We would note one more time that the actions indicated were effected by the Ministry of Health Care of the Russian Federation and the state unitary enterprise «Natsional'noe meditsinskoe agentstvo» in violation of the established manner of purchasing goods, works, and services for state needs.

In 1998-1999 the state unitary enterprise «Rosprod» (Russian Foodstuffs) supplied agricultural products (rice and buckwheat) for the needs of the Leningrad military district at prices substantially exceeding the average market prices in the region. Also during the period indicated the state unitary agricultural enterprises of the Leningrad military district «Leningradets,» «Kirishskii,» «Il'ichevo,» and «Shelon'» effected deliveries of agricultural products for the planned supply of troops in a number of instances at prices exceeding the average market prices at places where troops were stationed, including: by thirty to forty percent for milk, by thirty-three percent for potatoes, and by fifteen percent for eggs. The sum of the inefficient expenditures of budgetary resources due to exceeding prices for these

deliveries alone comrised about 1,200,000 rubles over the course of 1998 and 1999. Finally, in January and February of the year 2000 the state enterprises «Leningradets,» «Il'ichevo,» and «Kirishskii» effected deliveries of agricultural products (potatoes, meat, milk, and cabbage) for the planed supply of troops at prices exceeding by ten to thirty percent the average prices of the analogous products sold by agricultural goods producers of Leningrad oblast. As a result, due to the excessive prices indicated, the inefficient expenditure of budgetary resources for deliveries of agricultural products by enterprises in the Leningrad military district over two months in the year 2000 comprised about 850,000 rubles.

In violation of operative legislation, in 1999 the state unitary enterprise «State Corporation (GK) «Rosvooruzhenie» concluded with the OAO «Irkutskoe aviatsionnoe proizvodstvennoe ob'edinenie» (the Irkutsk aviation production amalgamation) a state contract for manufacture and delivery to India of ten aircraft without conducting competitive bidding for placement of a state order.

5.5. Violation by state unitary enterprises of manner and deadlines for transferring resources to the budget, the arising of indebtedness for tax and other obligatory payments, nonfulfillment by enterprises of their obligations to budgetary organizations.

In 1994-1995 the volumes of factual capital investments by the state enterprise «Sheremetievo International Airport» (GP «MASh») significantly exceeded the sum of the sources of resources for these purposes (accrued [calculated] amortization and profit). In 1994 with sources of financing investments available to the sum of 23,500,000 rubles, the actual volume of capital investments comprised 87,400,000 rubles. In 1995 the correlation of sources and the volume of actual capital investments came to 53,000,000 rubles and 236,600,000 rubles. The shortfall which arose was covered at the expense of the enterprise's turnover resources. As a result of such an approach a significant indebtedness of the enterprise for tax payments to the federal and local budgets took shape.

In 1995-1996 works were carried out on the territory of the Sheremetievo International Airport on construction of the Sheremetievo-3 Center for Business Aviation. The client for the construction was the «Sheremetievo International Airport» state enterprise, the supervisor of the project was the firm «Mac Leamur Teo Ranta» (Ireland), and the subcontractor was the firm «Konstruktor-Inzhiniring» (Croatia). On the basis of an agreement on mutual representationship (1992) concluded between the «Sheremetievo International Airport» state enterprise and the Irish firm «Airplane Development Ireland Ltd.» (ADI) and an agreement concluded on mutual cooperation (1994), accumulation of hard currency resources for the «Sheremetievo International Airport» state enterprise for implementation of the project was effected in Ireland initially in the hard currency account of the «Sheremetievo International Airport» state enterprise representative office, and subsequently – in the account of the firm "ADI" at the "Allied Irish Bank." Accumulated resources were transferred to the firm «Mac Leamur Teo Ranta» as necessary. The «Sheremetievo International Airport» state enterprise, as tax agent, should have thereby calculated and withheld income tax at the source of payment. Over the entire period of construction the «Sheremetievo International Airport» state enterprise paid the firm «Mac Leamur Teo Ranta» an advance in the sum of two million U.S. dollars. Taking into account that the owner of the resources accumulated in Ireland was the «Sheremetievo International Airport» state enterprise, in accordance with operative tax legislation the enterprise should have transferred to the budget of the Russian Federation value added tax to the amount of 334,000 U.S. dollars and tax on the income of foreign juridical persons [legal entities] at the source of payment of 333,000 U.S. dollars. The resources indicated were not transferred to the budget.

The state unitary enterprise «All-Russian Amalgamation (VO) «Almaziuvelireksport» (Diamond Jewelry Export) did not return to the account of the Ministry of Finances of Russia coupon income for 1997 on state internal loan currency bonds received [which were paid for] through the resources of liquidated and reorganized enterprises of the Glavalmazzoloto SSSR (Main Diamond and Gold of the USSR) system to the sum of over 30,000 U.S. dollars.

In violation of Ukase of the President of the Russian Federation dated 24 December 1993 № 2284, the state enterprise «Obshcherossiiskaia radiostantsiia «Maiak»» (The All-Russian Radio Station «Maiak») in 1998 and the first half of 1999 did not transfer to the federal budget resources received by it from renting out federal property which [resources] comprised over the period indicated over 5,500,000 rubles.

In 1998-1999 and the first quarter of the year 2000 the federal state unitary enterprise «Kurganskoe,» which works with purebreds, did not transfer in timely fashion as income to the federal budget resources received from lease recipients according to agreements on leasing purebred animals. As a result as of April 2000 past-due indebtednes of the enterprise for the payments indicated comprised about 900,000 rubles.

In violation of established requirements, the state unitary enterprise «Morinraschet» (Foreign maritime settlements) in 1999 did not transfer to income of the federal budget (from a special account at the Ministry of Finances of Russia) resources received by it from non-residents to the sum of more than 52,000 foreign currency rubles.

As of 1 July 1999 the state enterprise «Severnaia zheleznaia doroga» (the Northern Railway) was one of the largest entities in arrears in Iaroslavl' oblast for payments into the budget.

Highly indicative is the example of the state enterprise «Zavod imeni Maslennikova» (The Maslennikov Memorial Plant) (Samara oblast). As of the end of 1999 the plant had accumulated a highly significant budgetary indebtedness. Besides, that the enterprise was not fully accomplishing current payments. With that, however, the plant had no few monetary resources in bank accounts and was expending substantial sums of cash resources through the cashier's office.

A similar situation also took shape at the state enterprise «Likerovodochnyi zavod «Petrovskii»» (the «Petrovskii liqueur-vodka plant). In 1999 the plant, having substantial indebtedness for payments into the budget, was accumulating at its cashier's office cash monetary resources in amounts significantly exceeding the established limits. All [Not all (?)] the monetary proceeds received by the enterprise were turned over to the bank and correspondingly were not entered into the settlements account, but were expended on production-business needs and payment of wages, although in accordance with the operative rules, organizations of cash monetery circulation on the territory of the Russian Federation [which are] enterprises in arrears do not have the right to expend proceeds coming into their cash offices.

5.6. Insufficient effectiveness of actions of tax agencies in treatment of recovery of indebtedness for taxes through the property of a state enterprise debtor.

During implementation in 1999 by the tax agencies of Tambov oblast of measures for compulsory recovery of indebtedness for taxes from the «PATP»(passenger motor vehicle enterprise) state enterprise, the property arrested, which had a residual value of 270,000 rubles, was sold for 65,000 rubles, that is for less than a quarter of the residual value.

5.7. Violation by agencies of the federal treasury of the established manner of interaction with state enterprises upon entry of budgetary resources into the current accounts of the latter.

In violation of Decree of the Government of the Russian Federation № 220 dated 21 March 1994, agencies of the federal treasury of the city of Moscow upon entry into the current accounts of state enterprises of resources from the federal budget intended for capital outlays in 1997-2000 often did not require presentation by the enterprises of the documents necessary for opening financing (free financial account settlements, conclusions of extra-agency state and state ecological experts, project estimate documentation).

Also in 1997-2000 divisions of the federal treasury of the Eastern and Central administrative districts of the city of Moscow, in violation of the established manner, frequently did not effect payment for goods (works, services) acquired for development of the production base (capital outlays) from the current accounts of state enterprises, but entered the budgetary resources received into the settlement accounts of the enterprises opened at commercial banks. Such actions substantially hampered monitoring of utilization of resources from the federal budget.

5.8. Accumulation of hard currency proceeds by state exporter enterprises in accounts beyond the borders of the Russian Federation.

In violation of legislation on currency controls, the proceeds of the state enterprise «Sheremetievo International Airport» for the airport and other servicing of aircraft of foreign aviation companies for 1994-1996 to the sum of over seven million U.S. dollars were in Irish banks and were not transferred to an authorized bank on the territory of the Russian Federation.

2.4.Problems and legal norms for restructuring of budgetary indebtedness

Analysis of the given problem is included in the study taking into account the problem's significance to a state unitary enterprise as a commercial organization. Questions of deductions of profit will be considered separately. Nevertheless, the analysis undertaken in this section concerns not only state unitary enterprises, but also other organizational-legal forms.

2.4.1. Brief analysis of possible mechanisms for settling the problem of non-payments

According to the data of the RF Ministry of Taxes and Levies as of January 1, 2001, the indebtedness of enterprises and organizations to the budgetary system, including territorial highway funds, was 555.7 billion roubles, as of January 1, 2002 – 528.1 billion roubles, and as of October 1, 2002 – already 557.4 billion roubles[22]. As follows from these data, the indebtedness of enterprises to the budget, after a slight absolute decrease in 2001, in the autumn of 2002 again achieved values comparable to those of early 2001.[23] Thus we may speak of maintenance of a highly tense situation in the sphere of settlements of enterprises for obligatory payments. As a consequence, the real situation of enterprises and the prospects for their development are not very predictable or transparent, which deprives all market entities

[22] Sotsial'no-ekonomicheskoe polozhenie Rossii (Socio-economic situation in Russia). January-October 2002, p. 179.

[23] Http://www.nalog.ru/news/anons01/00180.shtml, Informational report "O selektornom soveshchanii po voprosam provedeniia restrukturizatsii zadolzhennosti po nalogam i sboram v 2001 godu" (About the selector conference on questions of conducting restructuring of indebtedness for taxes and collections in the year 2001).

without exception – managers and enterprise property owners, investors, and state agencies – of all reference points of any kind for making any decisions that are long-term at all.

Enterprises constantly under threat of bankruptcy see no sense in developing and implementing development programs. Potential investors, in turn, cannot adequately evaluate the effectiveness and riskiness of their long-term investments. State agencies, besides problems with collecting taxes and other obligatory payments, experience serious difficulties of a strategic nature, since in the conditions which have taken shape it is very difficult to determine the level of efficiency not only of a concrete business, but also of entire branches, which does not afford the possibility of forming a system of priorities in economic policy. The situation is complicated substantially by the rising number of mutual complaints from all the entities named.

The following possible normative mechanisms exist for «clearing out» the accumulated arrears indebtedness of enterprises for obligatory payments.

- tax amnesty;
- bankruptcy of debtor enterprises;
- conversion of the debts of enterprises into securities (stock, bonds, and others) of these enterprises;
- restructuring of debts.

Analysis of the given mechanisms and the possible consequences of their application is given on the respective section of this report.

The mass bankruptcy of enterprises within reasonable deadlines is impossible to effect purely technically, since by some estimates this procedure as of the middle of 2001 could have been applied to more than twenty thousand enterprises and organizations because of their indebtedness to the budgets alone at all levels. This is connected to the limited «put-through capacity» of arbitration courts, to the substantial lack of arbitration managers, and to a shortage of resources for financing their activities. Besides that, it is also necessary to take into account the time factor – practice shows that bankruptcy procedures for one average or large enterprise takes two years on the average.

In connection with what has been said above, it ought to be noted that the bankruptcy mechanism, of course, should be used by the state in practice in relation to debtor enterprises, not as a «weapon of mass destruction,» but on a highly limited scale.

Tax amnesty on a global scale is apparently also as inefficient as mass bankruptcy. Tax amnesty makes sense only in the event that enterprises, having received such an indulgence, can and want to begin immediately to clear indebtedness to remaining creditors and to regularly effect current payments to the budgets of all levels and to extra-budgetary funds. In order for enterprises to be able to do that, the amnesty should concern debts not only to the federal budget, but also to the budgets of subjects of the federation, local budgets, and extra-budgetary state funds. There are grounds for assuming that subjects of the federation and local authorities will not want to join a decision on amnesty, since they would lose leverage to pressure enterprises. If, though, the government makes a decision on amnesty only as to indebtedness to the federal budget and the pension fund, then the risk is great of mass appeals to the courts on the part of local authorities and non-state creditors. As long as the federal authorities retain the rights of the basic or major creditor, the remaining creditors often see no sense in appealing to judicial agencies. Tax amnesty would also have a negative psychological result. In the first place, a part of the enterprises would hope that this amnesty was not the last one and would cease paying current taxes. In the second place, tax amnesty for debtor

enterprises is unjust in relation to taxpayers who pay in time with all the ensuing consequences.

Conversion of indebtedness of enterprises to the federal budget into securities of these enterprises seems a rather effective mechanism. Conversion of indebtedness of enterprises to the federal budget into securities of these enterprises and subsequent sale of these securities would secure a rapid inflow of significant monetary resources into the budget (even taking into account sale for several times less than the nominal value), it would permit ridding themselves of almost hopeless debts on the part of enterprises, would stimulate development of the domestic market for promissory notes [debt obligations], and in certain instances it would permit replacing the management of inefficient enterprises, attracting strategic investors to the real sector [manufacturing as opposed to trade and services] and new, efficient property owners.

At the same time application of this mechanism has a number of limitations and drawbacks in practice. Thus, conversion of enterprise debt to the budget into stock assigned to federal property ownership can be used only when an enterprise is not threatened with bankruptcy on the part of non-state creditors. Otherwise the state, exchanging the rights of a creditor for the rights of a stockholder, when other creditors sue to have an enterprise declared bankrupt, does not strengthen its control over this enterprise, but loses it entirely. Therefore conversion of enterprise debt into stock with their subsequent assignment to state property ownership should be used extremely cautiously; decisions on each enterprise should be made case-by-case with thorough working-out of the possible consequences.

A second serious problem is that the mechanism for conversion of enterprise debt to the budget into securities is complicated and has not yet been worked out to the end.

Restructuring of debts is looked upon by the state at the present time as the basic mechanism for overcoming the problem of enterprise settlements on obligatory payments. In our opinion, debt restructuring has a number of advantages in principle. In the first place, the state does not renounce its rights as a creditor and upon nonfulfillment of its obligations by an enterprise it has the right to tear up the agreement on restructuring. In the second place, the psychological expenses inherent to the amnesty mechanism and considered above are minimized to some degree. In the third place, with preparation of an individual decision on restructuring of the debts of a concrete enterprise, achievement of an agreement with all or the largest creditors of the given enterprise becomes realistic. Restructuring of debts is also capable to a certain measure of rendering a positive influence on the investments climate in Russia – agreements on restructuring of debts to the federal budget, granting enterprises deferments, and writing off a part of the debt will give investors confidence that their resources will not go down the drain and will not go for settlement of debts, but will be utilized for enterprise development. All this permits one to speak ***of the advisability in principle of wide-scale application of the mechanism of restructuring indebtedness of enterprises for obligatory payments.***

2.4.2. Analysis of the mechanism for restructuring budgetary indebtedness as a priority instrument for the financial recovery of insolvent enterprises.

The first attempt to restructure indebtedness of enterprises to the federal budget was undertaken in 1997. After that the routine government decree intended to clarify and perfect reconstruction procedures came out every year.24

Thus the history of restructuring enterprise debt to the federal budget was opened by Decree №254 of the Government of the Russian Federation dated 5 March 1997. In accordance with this decree, restructuring was to have been accomplished by means of issuing securities (stock or bonds); enterprises were granted deferment of payment of the principal amount of debt for five years and ten years for penalties and penalty interests; a block of stock securing not less than fifty percent plus one vote at a stockholder meeting acted as collateral in securing liabilities of an enterprise in arrears in the amount of the principal debt due.

The basic drawback to the this decree was that extremely few enterprises fell under its operation, and each of them could restructure debts only after a supplemental government decree. Therefore only several major enterprises – «Noril'skii nikel',» «AvtoVAZ,» etc., were able to conduct restructuring of debt during this period.

In 1998 an attempt was undertaken to modernize the mechanism for restructuring enterprise debts to the budget – on 14 April 1998 Decree №395 of the Government of the Russian Federation «On manner of conducting restructuring of indebtedness of juridical persons [legal entities] to the federal budget in 1998» came out. The most serious difference between this decree and the preceding one (1997) was the change in the list of assets which could be collateral for the debtor's liabilities – there was envisaged the possibility of pledging the property of the organization (of its founders, participants, or property owners) or granting bank guarantees. A property complex (as it was defined by Article 132 of the Civil Code of the Russian Federation) could also be pledged. There were also other differences – the procedure for restructuring indebtedness, time periods and conditions for granting deferments of payments (for example, deferment of the principal amount of debt was granted for four years instead of five years), etc., were changed.

In view of the fact that the decree of 1998 envisaged the necessity of registering a property pledge and also envisaged a rather cumbersome procedure for registration, altogether only several tens of [dozen] enterprises were able to effectively restructure indebtedness within the framework of that decree.

We would note that both Decree №254 and Decree №395 limited substantially the possibilities for restructuring indebtedness of state unitary enterprises to the budget – in the first instance these enterprises were deprived of that possibility by definition, and in the second state unitary enterprises could present only bank guarantees, the receiving of which was extremely difficult for a debtor enterprise, as security for the agreement on restructuring.

The next innovation took place only on 3 September 1999, when Decree №1002 of the Government of the Russian Federation «On manner and time periods for conducting restructuring in 1999 of accounts payable of juridical persons [legal entities] for taxes and fees, and also indebtedness for penalties and penalty interests accrued to the federal budget» was adopted. In accordance with this decree, taxpayer declarations for restructuring indebtedness were supposed to be submitted to the tax agencies before 1 January 2001. In connection with the fact that many debtor organizations were unable to utilize this possibility in time, the Government of the Russian Federation, by Decree №1462 dated 31 December 1999, extended, in essence, the operation of Decree №1002, since the words «in 1999) were removed from the heading and the time period for submission of a declaration was extended to

24 The basic normative acts concerning restructuring of indebtedness of enterprises and organizations to the federal budget are presented in Annex 1.

1 April 2000. Besides that, several changes in the procedure for granting enterprises and organizations the right to restructure were introduced.

It should be recognized that these decrees were able to play a certain positive role – in the year 2000 over 22,000 organizations wishing to settle their indebtedness to the total sum of 164,000,000,000 rubles, or more than forty-two percent of the total sum of indebtedness, which then comprised 386,000,000,000 rubles, submitted declarations on restructuring to the tax agencies. The right to restructure indebtedness was granted to sixteen thousand organizations to a total sum of about ninety billion rubles (arrears for taxes and fees – forty-six billion rubles, penalties and penalty interests – forty-four billion rubles). One fifth of the all-Russian indebtedness to the federal budget as of the beginning of the year 2000 was factually settled.[25] An additional 3,300,000,000 rubles came into the budget over the first half of 2001 alone as a result of conducting restructuring of indebtedness.[26]

At the same time it proved impossible to resolve the problem to the end – the sum of deferred indebtedness continued to grow, and, as has already been noted, as of 1 July 2001 indebtedness of enterprises and organizations to budgets at all levels comprises one trillion fifty-eight billion rubles. Besides that, with regard to 2,500 organizations (about fifteen percent of the organizations which received the right to restructure) the tax agencies decided to annul the previously granted right to restructure tax indebtedness in connection with non-fulfillment of restructuring conditions (the total sum of restructured indebtedness of these organizations comprised six billion rubles, including 3,200,000,000 rubles for taxes and fees).[27]

The routine Decree №410 «On introduction of changes and additions to Decree № 1002 of the Government of the Russian Federation dated 3 September 1999» came out on 23 May 2001. This decree defined the new time period for submission of declarations on restructuring – before 1 December 2001. Besides that, apparently taking into account experience implementing the preceding decrees, there were introduced serious changes in the procedure for receiving the right to restructure and corrective changes in the manner of deferral. According to calculations by the Ministry for Taxes and Fees, about four hundred billion rubles of tax indebtedness of enterprises and organizations fell under the conditions of restructuring defined by this decree.[28]

Enterprises were granted the right to stage-by-stage settlement of indebtedness:

Stage I – uniform [even] payment of back taxes and fees over the course of six years, with accrual of interest for using budgetary resources, proceeding from calculation of one

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[25] Http://www.nalog.ru/news/anons01/00123.shtml, Press release for the press conference of Deputy Minister of the Russian Federation for Taxes and Collections V.I. Mishin and Manager of the Department on working with the largest taxpayers S.P. Diukov (O restrukturizatsii nalogovoi zadolzhennosti v Rossiiskoi Federatsii» (On restructuring tax indebtedness in the Russian Federation).

[26] Http://www.nalog.ru/news/anons01/00185.shtml, Press release for the press conference of Deputy Minister of the Russian Federation for Taxes and Collections V.I. Mishin «Voprosy provedeniia restrukturizatsii zadolzhennosti po naloglam i sboram» (Issues of conducting restructuring of taxes and collections indebtedness).

[27] Http://www.nalog.ru/news/anons01/00123.shtml, Press release for the press conference of Deputy Minister of the Russian Federation for Taxes and Collections V.I. Mishin and Manager of the Department on working with the largest taxpayers S.P. Diukov (O restrukturizatsii nalogovoi zadolzhennosti v Rossiiskoi Federatsii» (On restructuring tax indebtedness in the Russian Federation).

[28] Http://www.nalog.ru/about/press/2001/cond21.shtml, Meeting of the Head of the Ministry of Taxes and Collections of Russian G. Bukaev with managers of the most important Russian mass information media.

tenth of the annual rate of refinancing of the Central Bank of the Russian Federation operative as of the date when Decree № 1002 came into force (fifty-five percent)[29];

Stage II – settlement of indebtedness for penalties and penalty interests over the course of four years, without accrual of interest.

Organizations not having back taxes and fees are granted the right to settle indebtedness for penalties and penalty interests over the course of ten years.

The manner of conducting restructuring also envisages ahead-of-schedule settlement of back taxes and fees – upon settlement of half of the indebtedness and timely and full making of current payments over the course of two years, half of the debt for penalties and penalty interests is written off, and upon full settlement of indebtedness and timely and complete making of current payments over the course of four years, debt for penalties and penalty interests is written off fully.

The main condition for granting the right to restructuring is conscientious payment by the enterprise of all current debts from the beginning of 2001 until the day of submission of the declaration. On this point the restructuring procedure became more strict – in accordance with preceding wordings of Decree № 1002 debtor enterprises had to settle current tax payments only over the course of two months before the day of submission of the declaration in order to receive the right to restructure.

At the same time the procedure for consideration of restructuring indebtedness to the federal budget was simplified substantially. In accordance with Decree № 410, enterprises are now not required to receive a positive conclusion from the Federal Service of Russia for Financial Recovery and Bankruptcy (FSFO) – the tax agency over the course of thirty working days is supposed to independently consider declarations for restructuring from debtor enterprises. In the event of refusal, the debtor can attempt to eliminate the financial violations he was noticed to have and submit the declaration again. Besides that, the procedure for considering declarations has been decentralized – now the declaration with enclosure of the necessary documents for consideration and making of the appropriate decision is submitted to the territorial tax inspectorate by place of registration of the organization regardless of the sum of the indebtedness being restructured (previously the declaration with the appropriate documents was submitted to the Ministry for Taxes and Fees of Russia in the event the indebtedness exceeded twenty million rubles, to the directorate of the Ministry for Taxes and Fees of Russia of the subject of the Russian Federation if it was from five to twenty million rubles, and to the tax inspectorate by place of registration of the organization if it was less than five million rubles).

In this connection it is necessary to note specially the elimination from affairs, at least at the stage of receiving permission for restructuring indebtedness, of the Federal Service of Russia for Financial Recovery and Bankruptcy (FSFO). The thing was that to a considerable extent due to the excessive rigidness of this organization the process of restructuring could not become a genuinely mass one. Thus, applying for permission to restructure its indebtedness, instead of that, on entirely legitimate grounds, an enterprise could receive from the FSFO a declaration to the arbitration court on insolvency. That is, previously when initiating the process of restructuring indebtedness, because of non-coordination of actions of the FSFO and the tax agencies, enterprises were simply laid bare, and such a situation, of course, had an extremely negative effect on implementation of Decree №1002 in 1999-2000.

[29] The Central Bank of the Russian Federaton rate of refinancing has changed since that time, but in order that all enterprises restructuring their indebtedness in accordance with the various wordings of Decree №1002 be under equal conditions, the magnitude of the interest for deferred payments was left without change.

Decree №410 also envisages simultaneous restructuring of indebtedness to the budgets at all levels when there are petitions from territorial agencies authorized to make a decision on restructuring in the name of a subject of the Russian Federation or a municipal formation and upon coordination with them of schedules for settlement of an organization's indebtedness for obligatory payments into the budgets of the corresponding levels.

On 23 October 2001 the Government of the Russian Federation adopted Decree №742 introducing the routine correctives into Decree №1002 – for organizations which had lost the right to restructure before 12 June 2001 (before the date of coming into force of Decree № 410) this right was restored. For this it was necessary to submit a declaration to the tax agency according to where the organization is located not later than 1 December 2001. The basic condition is payment of current tax payments, sums in settlement of restructured indebtedness, and also penalties accrued for non-payment of tax payments from the moment of arising of violations of conditions for restructuring. According to preliminary estimate of the Ministry for Taxes and Fees of Russia, the number of enterprises and organizations for which the previously lost right to restructure can be restored comprises up to three thousand.[30]

In summary, the conclusion may be drawn that Decree №1002 in its form of today is the most liberal one with regards to debtor enterprises. At the same time it is rather difficult right now to predict its further fate. After all, besides the aspiration of state agencies to make the restructuring process a mass one, such an aspiration is also necessary on the part of managers and property owners of debtor enterprises, who, as before, may adopt a waiting stance, hoping for the routine concessions. In that connection we would note that such hopes might not be justified, in any event for a part of the debtor enterprises. In practically all commentaries by managers at the Ministry of Taxes and fees and managers at territorial tax agencies as to the latest changes in the time periods and manner of restructuring indebtedness to the federal budget it is said not only that all debtor enterprises who have applied will be granted the right to restructure their debts, but also that the given chance to restructure debts to the federal budget is the last one, and after 1 December 2001 (the last day of submission of declarations for restructuring) insolvency (bankruptcy) cases will be initiated on a mass basis against debtor enterprises who have not restructured their debts. Of course, these threats will most likely not be fully implemented, but that some part of the debtor enterprises will suffer is undoubtedly true.

As a result of restructuring in accordance with Decrees №410 and №742, by 4 December 2001 more than twenty-three thousand enterprises and organizations had applied to the tax agencies with declarations on restructuring indebtedness,[31] (by 1 December the tax agencies had already granted the right to reconstruct their indebtedness to more than seventeen thousand enterprises and organizations to a total sum of about two hundred billion rubles).[32]
As a result of restructuring in accordance with Decrees №410 and №742, by 4 December 2001 more than twenty-three thousand enterprises and organizations had applied to the tax agencies

[30] Http://www.nalog.ru/news/anons01/00185.shtml, Press release for the press conference of Deputy Minister of the Russian Federation for Taxes and Collections V.I. Mishin «Voprosy provedeniia restrukturizatsii zadolzhennosti po naloglam i sboram» (Issues of conducting restructuring of taxes and collections indebtedness).

[31] Http://www.nalog.ru/news/anons01/00185.shtml, Press release for the press conference of Deputy Minister of the Russian Federation for Taxes and Collections V.I. Mishin «Voprosy provedeniia restrukturizatsii zadolzhennosti po naloglam i sboram» (Issues of conducting restructuring of taxes and collections indebtedness).

[32] Http://www.nalog.ru/about/press/2001/cond21.shtml, Meeting of the Head of the Ministry of Taxes and Collections of Russian G. Bukaev with managers of the most important Russian mass information media.

with declarations on restructuring indebtedness. The management of the Ministry for Taxes and Fees of Russian rates such a result positively on the whole. As an example of a positive result of the company [campaign (sic!)] conducted, one should also note that declaration for restructuring were submitted by some of the largest taxpayers – «Rosenergoatom,» MPS (the Ministry of Railways), «AvtoVAZ,» RAO «Gazprom,» and RAO «YeES of Russia» " (the Unified Energy System of Russia).[33]

Speaking of the process of restructuring indebtedness of enterprises and organizations to the state as a whole, it has to be noted that in 2001 there appeared the possibility of an overall resolution of the problem – on 30 June 2001 Decree №489 «On manner of conducting restructuring in 2001 of debts overdue and debts deferred, penalties, and fines as of 1 November 2000 for state credits in foreign currency and associated foreign credits received under guarantee of the Government of the Russian Federation by enterprises and organizations for purchase of equipment» of the Government of the Russian Federation was adopted; on 14 July 2001 Decree №534 «On conducting restructuring in 2001 of indebtedness of juridical persons [legal entities] to the federal budget for accrued penalties and penalty interests for untimely [late] return of resources made available from the federal budget on a return basis, and deferment of payment of interest for using them as of 1 January 2001» of the Government of the Russian Federation was adopted; and, finally, on 1 October 2001 Decree №699 «On manner and conditions for restructuring indebtedness for insurance contributions to state social extra-budgetary funds, and accrued penalties and penalty interests which organizations had as of 1 January 2001» of the Government of the Russian Federation was adopted.

The most important of these decrees affecting a significantly greater number of enterprises and organizations having debts to the state is the last one. Now enterprises can restructure their indebtedness not only to budgets at all levels, but also for insurance contributions to the Pension Fund, the Fund for Social Insurance, the State fund for employment, and funds for obligatory medical insurance. We would note that the basic mass of the debts of enterprises and organizations to extra-budgetary funds comprise debts to the Pension Fund – as of 1 January 2001 arrears for contributions to that fund comprised one hundred fifty billion rubles, and debts for penalties and penalty interests – about three hundred billion rubles.

In accordance with Decree №699, debtor enterprises are granted the right of uniform [even] settlement of indebtedness to state social extra-budgetary funds for insurance contributions and fifteen percent of accumulated penalties and penalty interests over the course of five years. The remaining eighty-five percent of penalties and penalty interests can be written off.

The main condition for granting the right to restructure is conscientious payment by an enterprise of all current payments over the course of the two months preceding the month of submission of the declaration for restructuring and over the course of the time period of its consideration.

With regard to one debtor enterprise, restructuring is conducted simultaneously to all state extra-budgetary funds, moreover, if the debtor does not observe his obligations to some one fund, restructuring of debts to all remaining funds does not stop. Organizations with regard to which an insolvency (bankruptcy) case has been initiated are granted the right to

[33] Irina Skliarova, «100 tysiach predpriiatii dolzhny iavit'sia s povennoi v MNS do 30 noiabria,» (One hundred thousand enterprises have to show up at the Ministry for Taxes and Fees and admit guilt before November 30), http://www.strana.ru/print/81406.html.

restructure only upon conclusion by these organizations of a global agreement with creditors. A decision on granting the right to restructure indebtedness is made by the tax agency where the debtor enterprise is located.

It is obvious that the majority of the basic provisions of Decree №699 are similar to the basic provisions of Decree №410 dated 23 May 2001 which was considered earlier. It can be assumed that these two decrees had to be adopted as a set, in any event, without a four-month break. The time periods of adoption of Decree №699 apparently were influenced by non-coordination of the positions of the Ministry for Taxes and Fees and the state extra-budgetary funds (the Pension Fund first of all) on the question of which of these organizations would make the decision on granting debtors the right to restructure. In sum, this right, as in Decree №410, was granted by the Ministry for Taxes and Fees, which in our view is more rational – in this way greater coordination of the making of decisions is achieved and a base is laid down for creating an overall system for overcoming non-payments.[34]

Payments to the federal budget to redeem restructured debt during the 9 months of the year 2002 amounted to 41.4 billion roubles.[35]

The goal of restoring the right to restructuring for those taxpayers who at a certain pint have lost this right, having violated the conditions of restructuring, still remains important. As of today, 15,785 enterprises have lost the right to restructuring due to violation of its conditions. The total of restored arrears of payments amounted to 102.5 billion roubles. An analysis has revealed that a considerable number of taxpayers who did not satisfy the conditions of restructuring are able to restore their solvency.

In this connection, Decree of the Government of the Russian Federation of November 11, 2002 No 818 "On introducing changes and amendments to certain acts of the Government of the Russian Federation concerning the issues of restructuring credit arrears of juridical persons of their taxes and levies, insurance contributions to state extrabudgetary welfare funds, as well as arrears of charged penalties and fines".

In accordance with this Decree of the Government of the Russian Federation, a provision was introduced into the previous decrees of the Government of the Russian Federation enacted in 1999 and 2001 to the effect that the right to restructuring shall be preserved in case of an organization for which the decision as to the discontinuation of restructuring was dated between January 1 and November 1, 2002, on the latter's application submitted before Dercember 31, 2002, and in case of an organization for which the decision as to the discontinuation of restructuring was dated after November 2002, on the latter's application submitted within 90 days from the date of such a decision, on the condition that the organization in question has paid its current taxes, payments to redeem the credit indebtedness being restructures (in accordance with a duly approved schedule) and penalties charged on arrears of tax payments from the moment of the violation of the terms of

[34] We would note that the problem just the same has not been resolved to the end – the decision on restructuring a part of the indebtedness of enterprises and organizations to the state, in accordance with Decrees №489 and №534, is made by the Ministry of Finances of the Russian Federation. In these instances, apparently, a serious role was played by the specifics of these debts, besides which the scale of the problem was not so substantial.

[35] Http://www.nalog.ru/news/anons02/0215.shtml, November 28, 2002. Press release and press conference of Director of The Department of tax debt S.N. Khursevich "Itogi I perspektivy uregulirovaniia zadolzhennosti organizatsii po platezham v biudzhety vsiekh urovniei" (Results and prospects of regulating organizations' arrears of payments to budgets of all levels."

restructuring, as well as an advance fulfillment of the schedule of redemption of restructures arrears of one following quarter.

At the same time, a norm was introduced envisaging preservation of the right to restructuring (granted by the abovesaid decrees) of arrears of juridical persons that are being reorganized, of its successor(s). Completed restructuring of debts has allowed the tax authorities to focus most of their efforts on the recovery of a non-liquid part of debt by enforcement. To ensure an inevitable penalty for violations of tax legislation has become a priority for the activity of the tax authorities.

It seems important to note in conclusion that a certain easing of conditions for restructuring enterprise indebtedness under conditions of a continued tendency toward industrial growth seems entirely justified, since, on the one hand, it gives a wide range of enterprises the chance to get themselves out of the position of a dependent debtor, and, on the other hand, there exist more weighty economic preconditions for new indebtedness to the state not forming on the part of enterprises.

In order for restructuring mechanisms to work in practice with the required effectiveness it is necessary to have the appropriate and sufficiently stable legislative base. The annual adoption of Government decrees with subsequent introduction of changes into them substantially limits the scale and rates of restructuring enterprise indebtedness. Under these conditions it is necessary to consider the possibility of working out and adopting an appropriate law – this would secure not only stability of regulation, but would also permit solving the task of coordinating the federal and regional normative base concerning restructuring debts to the federal and regional budgets, and would also permit determining the principles of overall restructuring of indebtedness for all kinds of obligatory payments.

2.5.Conclusion

The financial mechanism for the functioning of unitary enterprises is not very different from the financial mechanisms of the majority of enterprises of non-state organizational-legal forms. Their basic resemblance consisted of being based on principles of commercial calculation and on reliance on self-financing at the expense of internal sources with minimal access to external ones (although for differing reasons).

In practice, unitary enterprises, like joint stock companies or partnerships, had the results of their activities at their independent disposal. That had to do both with products and profits. The weakness of the state over the course of the 1990s led to the fact that it, as property owner, never did take advantage even of those rights with regard to unitary enterprises which were granted it by the Civil Code of the Russian Federation (for example, to a share of the profit remaining with them after payment of taxes and other obligatory payments established by legislation). The belonging of unitary enterprises to state (at all levels) and municipal property ownership makes necessary the linking of the budgetary process to their activities as one of the sources of non-tax income for the budget and for recipients of budgetary resources.

Weak implementation by the state of its powers with regard to unitary enterprises had numerous violations in their activities as its inevitable consequence. Both enterprises themselves and the agencies of state management which interacted with them played the role of violators. In the final analysis, they manifest themselves in the financial sphere, leading, as a rule, to substantial damage to the financial interests of one of the parties (and sometimes both parties at once).

With this it has to be noted that many of these violations are not the direct result of the deficiencies of the status of unitary enterprises. They are connected with the negative aspects of the Russian privatizational model, with the imperfections of the budgetary, currency, and other kinds of legislation, and with its failure to be executed. Such violations are exceedingly widespread in the private sector, too.

As with enterprises of other organizational-legal forms, the problem of restructuring indebtedness to the budgets at all levels is exceedingly urgent for the sector of unitary enterprises. The results of the soft approach applied by the state in practice to the problem of budgetary indebtedness do not give great grounds for optimism. The annual (beginning in 1997) permission given enterprises to restructure their indebtedness to the budget seriously destimulates property owners and managers, in reality lowering the threshold of their responsibility for bad management of their property. To a great extent this is tied to the lack of a mechanism for recourse to such property or to the securities of enterprises for collection of budgetary indebtedness.

Moreover, an effective mechanism for bankruptcy of debtor enterprises has not yet taken shape in Russia. It is obvious that in the future resolution of this problem of budgetary indebtedness should be considered in the context of radical improvement of legislation on bankruptcy and of implementation of tax reform.

Annex to 2.4.2.

Basic normative acts concerning restructuring indebtedness of enterprises and organizations to the federal budget adopted in 1997-2001

Characteristics	**1997**	**1998**	**1999**	**2000**	**2001**
	Decree № 254 of the Government of the Russian Federation dated 5 March 1997 "On conditions and manner of restructuring indebtedness of organizations for payments into the federal budget"	Decree № 395 of the Government of the Russian Federation dated 14 April 1998 "On manner of conducting restructuring in 1998 of indebtedness of juridical persons [legal entities] to the federal budget"	Decree № 1002 of the Government of the Russian Federation dated 3 September 1999 "On manner and time periods of conducting restructuring in 1999 of accounts payable of juridical persons [legal entities] for taxes and fees and also indebtedness for accrued penalties and penalty interests to the federal budget"	Decree № 1462 of the Government of the Russian Federation dated 31 December 1999 "On introducing changes and additions to Decree № 1002 of the Government of the Russian Federation dated 3 September 1999"	Decree № 410 of the Government of the Russian Federation dated 23 May 2001 "On introducing changes and additions to Decree № 100 [1002 (sic!)] of the Government of the Russian Federation dated 3 September 1999"[36]
Time period for submission of declaration/proposal on restructuring					
	1 July 1997	1 January 1999	1 January 2000	1 April 2000	1 December 2001
Period from issuance of the decree to the last day of submission of declaration/proposal on restructuring					
	Four months	Eight and a half months	Four months	Three months	Six months
Conditions for extension / deferral					
For taxes and fees (principal amount)					
Time period	up to five years	up to four years	over the course of six years	over the course of six years	over the course of six years
Periodicity and form of payments	monthly	in equal portions no more rarely than once per quarter	in equal portions no more rarely than once per quarter	in equal portions no more rarely than once per quarter	in equal portions once per quarter (for enterprises and organizations in the energy field the schedule for settlement of indebtedness may provide for the effecting of the corresponding payments from the second year beginning from the moment the decision on restructuring is made)
For penalties and penalty interests					
Time period	up to ten years	up to ten years	over the course of ten years (for organizations having back	over the course of ten years (for organizations having back	over the course of ten years (for organizations having back

[36] Does not extend to indebtedness of organizations for the tax on sale of fuel and lubricant materials, for the tax on using motor vehicle roads, and also to penalties and fines for non-timely payment of these taxes.

			taxes and fees – over the course of four years after settlement of the the principal amount of debt, for organizations not having back taxes and fees – over the course of ten years)	taxes and fees – over the course of four years after settlement of the the principal amount of debt, for organizations not having back taxes and fees – over the course of ten years)	taxes and fees – over the course of four years after settlement of the the principal amount of debt, for organizations not having back taxes and fees – over the course of ten years)
Periodicity and form of payments	one time	Determined in the agreement on restructuring indebtedness	undetermined	undetermined	undetermined
Interest on deferred (subject to installments) sums					
Magnitude	in accordance with operative legislation	one quarter of the refinancing rate of the Central Bank of the Russian Federation operative at the moment Federal law № 42-FZ dated 26 March 1998 "On the federal budget for 1998" came into effect[37]	one tenth of the annual refinancing rate of the Central Bank of the Russian Federation operative at the moment the decree came into force	one tenth of the annual refinancing rate of the Central Bank of the Russian Federation operative at the moment Decree № 1002 came into force	one tenth of the annual refinancing rate of the Central Bank of the Russian Federation operative at the moment Decree № 1002 came into force
Periodicity and form of payments	at the end of each year of operation of the agreement on restructuring	Undetermined	quarterly	quarterly	quarterly
Possibility of partial or full writing off of indebtedness for penalties and penalty interests					
	not envisaged	Not envisaged	upon settlement of half the indebtedness, timely and full payment of current tax payments to the federal budget over the course of two years, half the debt for penalties and penalty interests is written off, and upon full settlement of indebtedness and timely and full payment of current payments over the course of four years, debt for penalties and penalty interests is written off fully	upon settlement of half the indebtedness, timely and full payment of current tax payments to the federal budget over the course of two years, half the debt for penalties and penalty interests is written off, and upon full settlement of indebtedness and timely and full payment of current payments over the course of four years, debt for penalties and penalty interests is written off fully	upon settlement of half the indebtedness, timely and full payment of current tax payments to the federal budget over the course of two years, half the debt for penalties and penalty interests is written off, and upon full settlement of indebtedness and timely and full payment of current payments over the course of four years, debt for penalties and penalty interests is written off fully
Necessary conditions for receiving the right to restructure indebtedness					
Presenting a pledge [zalog] (security) [obespechenie]	Securities (may be specially issued). Stock securing no less than 50% plus one vote at a	Property of the organization (of its founders, participants, or property owners) could	no	no	no

[37] Established by Federal law № 120-FZ dated 23 July 1998.

available	general meeting of stockholders; Bonds must be secured by pledging property or by third-party obligations[38]	serve as security[39] [as could] bank guarantees; A property complex (as defined by Article 132 of the Civil Code of the Russian Federation) could also be handed over as a pledge.			
Concluding of a global agreement with other creditors[40]	not envisaged	necessary	necessary	necessary	necessary
Effecting of current tax payments	not envisaged	not envisaged	in the course of the two months before submission of the declaration	in the course of the two months before submission of the declaration	from the beginning of 2001
Conditions for ahead-of-schedule cessation of the operation of an agreement on restructuring indebtedness/implementation of the pledge (security)					
Carrying out the schedule for settlement of indebtedness	with handover of stock as the pledge – nonpayments according to the agreement on restructuring over the course of two months in a row, or of two nonpayments according to the agreement on restructuring in the course of a year from the day of concluding this agreement; with handover of bonds as pledge – in the event of nonsettlement of bond obligations on the principal amount of debt or nonpayment of coupon income	commission of more than two nonpayments (incomplete payments)	violation of the schedule	violation of the schedule	nonpayment of payments established by the schedule, as of the first of the month following the quarter just over
Current tax payments	not envisaged	effected not in good time and (or) not in full volume	not effected in full volume	effected not in good time and (or) not in full volume	indebtedness for payment into the federal budget of current tax payments, including

[38] The given form could not be used by organizations in relation to which an insolvency (banktruptcy) case had been initiated; the time period of circulation of bonds could not exceed twenty-four months from the moment of registration of the prospectus for their issuing; registration of the prospectus for issuing was effected under condition of a one time deposit into the federal budget of five percent of the the principal amount of debt.

[39] Property of state unitary enterprises could not be pledged.

[40] For organizations in relation to which an insolvency (bankruptlcy) case had been initiated.

					advance payments (contributions) for taxes with a tax period exeeding one month, as of the first of the month following the quarter just past
Possibility of simultaneous restructuring of debt to all budgets at other levels					
	not envisaged	envisaged	envisaged	envisaged	Envisaged
Level of decision making					
	Government of the Russian Federation	tax agency when there is a resolution [zakliuchenie] from the Federal Service of Russia for Financial Recovery and Bankruptcy (FSFO)	tax agency when there is a resolution from the FSFO, if the sum of the indebtedness does not exceed 20,000,000 rubles – territorial divisions of the tax agency when there is a resolution from a territorial division of the FSFO	tax agency when there is a resolution from the FSFO, if the sum of the indebtedness does not exceed 20,000,000 rubles – territorial divisions of the tax agency when there is a resolution from a territorial division of the FSFO.	territorial divisions of the tax agency

3. Analysis of ways of reorganizing the system of state unitary enterprises

The following basic components can be singled out in the rights of the state as property owner:

- the right to participate in management of an enterprise;

- the right to receive information about the enterprise's activities and about its condition;

- the right to receive part of the income from the enterprise's activities;

- the right to sell the enterprise (or the share of its capital belonging to the state) and to receive fair compensation thereby.

Ineffectiveness of securing the given rights of the state may in principle be connected to two basic factors:

- imperfection of existing legal regulation;

- weakness of legal application of operative norms.

In practice, the interests of the state in exercise of the rights of property ownership belonging to it are violated as a consequence of the following basic causes:

- imprecision of regulation;

- specific limitations of the state's rights;

- approaches to conducting privatization (to the size of the share of capital retained in state property ownership);

- ineffectiveness of the mechanisms for representing the state's interests;

- inefficiency in the disposal of state property;

- infrastructure limitations (quantity of volumes of management in comparison with the capabilities of ministries and agencies, expenditures on management, etc.)

The very possibility of efficient implementation of the state's rights for management and disposal of state-owned property is limited by the presence of a number of problems in principle.

In the first place, due to the multitude of tasks handled by the state (political, economic, social), and also due to the variety of functions with regard to enterprises in the state sector (regulatory agency, stockholder, trustee, in some instances – client) the state experiences objective difficulties in conducting consistent policies with regard to these enterprises. Inconsistency of the state and the specificity of its interests have a negative influence on the investmental attractiveness of enterprises in the state sector and brings out impulsiveness and politicizing of the state's decisions in replacing their managers.

In the second place, the fundamental distinction of enterprises in the state sector consists of the fact that in their activities they have to combine solution of entrepreneurial tasks with satisfaction of certain social requirements (needs) which objectively contradict each other (otherwise there would be no need of enterprises subject to state control or of

special regulation of activities in certain spheres of the economy). This predetermines the problem of the efficiency of the limitations laid by the state on enterprises in the state sector, and of retaining their motivation for efficient activities, and also leads the state into the temptation of interfering from time to time in operational issues of the economic activities of enterprises in the state sector, using the rights to manage them to compensate for the negative consequences of its own decisions.

In the third place, the objective conflict of entrepreneurial tasks and social interests in the course of the activities of enterprises in the state sector hinders evaluation of management quality – it is extremely difficult to determine whether the bad financial state of an enterprise is the consequence of the necessity of observing social interests or of the low qualifications of managers, and, perhaps, also of the inefficient decisions by representatives of the state.

In the fourth place, subordination of the activities of enterprises in the state sector to satisfaction of certain social requirements does not permit identifying the efficiency of their activities exclusively with the magnitude of direct income received by the state from this or that enterprise in the form of dividends or a share of the profit; it is necessary to consider the multiplication effect for the economy as a whole (which is extraordinarily difficult to do).

3.1.Evaluation of the legal regulation of the rights of the state as property owner

The legal regulation of the activities of enterprises in the state sector and of the corresponding mechanisms for management and disposal of state-owned property is extremely imperfect for a number of reasons.

First – this is the absence of legislative regulatory norms for a number of aspects which are important in principle. Of importance is the task of working out (finishing working out) and adoption of a number of normative-legal acts, the most important of which are the laws «On state and municipal unitary enterprises,» «On management of the stock of joint stock companies in federal property ownership,» and «On nationalization.»

At the present time there are various points of view on the issue of the place and role of the executive and legislative authorities in the process of regulating property ownership relations in the country. However, the opinion that management of state-owned property is the prerogative of the executive authority is being heard more and more clearly.

Thinking this point of view objectively necessary, we nevertheless presume that it should be combined with development of legislatively established rules for the executive authority for management of state-owned property. Agencies of the legislative authority should not participate directly in the process of managing concrete enterprises in the state sector; at the same time the actions of agencies of the executive authority for managing state-owned property should be brought into a definite legislative framework.

Second. The [presently] operative norms are contradictory; frequently discrepancies in principle are to be seen not only between different normative legal acts, but also within the framework of one and the same act. Improvement of regulation

proceeds primarily not by way of systematizing, providing logic and integrity to legal regulation, securing execution of already existing norms, but by piling on new norms which in essence repeat the former ones. Therefore the task of liberating the legal field from the multitude of obsolete and inexecutable norms is extremely urgent.

Third. The [presently] operative regulations can in no way be characterized as determining precisely the «rules of the game.»

It may be stated that the requirements of many normative documents are not being fulfilled and that decisions on managing state-owned property are often connected to the adoption of individual legal acts. It is not possible to speak of unified rules for managing state-owned property, because practice itself basically took the path of exceptions to general rules.

Legal regulation of issues of managing state-owned property is clearly insufficient. That creates the basis for developing corruption and utilizing the possibilities of the state by some interest groups to the detriment of others.

The following may be listed among the most significant problems of legal regulation in the sphere of managing state-owned property:

1) Indeterminacy of requirements for the make-up of the state sector, of assignment to state property ownership of stock in joint stock companies, of exercise of the special "golden stock" right, and of grounds for utilization of the organizational-legal form of the unitary enterprise.

Under the circumstances of the growing crisis of the centralized economy and the beginning spontaneous privatization at the end of the 1980s and the beginning of the 1990s, the first reformist government of Russia, which came to power at the end of 1991, realizing the impossibility of full restoration of management of state property, which was incompatible with the general strategy of reforms anyway, took the path of hastily launching the privatization process. Therefore the base directives for the mechanisms and procedures for privatization worked out at the State Committee for management of state property of Russia (GKI RF) at the end of 1991 and the beginning of 1992 were oriented toward development of standardized privatizational procedures and their maximally broad application, having in view the minimizing of possible deviations from them for reasons of branch [of industry] specifics or regional specifics of enterprises being privatized. However, this directive was difficult to implement in practice.

The law of the RSFSR «On privatization of state and municipal enterprises» adopted already in 1991 introduced classification of objects [sites] of state property ownership by the very possibility and degree of their privatization. The provisions of Article 3 of this law envisioned the presence in the State privatization program of lists of objects [sites] not subject to privatization, and of enterprises and amalgamations, for the privatization of which permission of the Government of the Russian Federation or of the Ministry of State Property of Russia would be required. With regard to this category of enterprises the law permitted assigning control blocks of shares to state property ownership for a period of up to three years.

The structure of the State program for privatization adopted 11 June 1992, in accordance with the requirements of the law, contained the following classification of objects in various sectors of the economy by the very possibility of their privatization: 1)

objects, privatization of which was forbidden (twenty-four categories); 2) objects, the privatization of which could occur only by permission: a) of the government of the Russian Federation (fifteen categories), b) of the GKI taking into account the opinion of branch ministers (13 categories); c) in accordance with regional privatization programs (six categories); 3) objects subject to obligatory privatization (nine categories).

Ukase №1392 of the President of the Russian Federation «On measures for implementing industrial policy during privatization of state enterprises» appeared on 16 November 1992.

It limited application of the procedure for assigning to federal property ownership control blocks of stock of enterprises being privatized to ten strategically important categories of enterprises (kinds of activities), among which were communications, development and distribution of electrical energy, pumping, refining, and sale of oil and natural gas, mining and processing of precious metals and stones, radioactive and rare-earth elements, development and production of armaments and munitions, production of alcoholic products, shipments by rail, water, and air transport, R&D, specialized enterprises for construction and maintenance of sites intended for providing for national security, and wholesale trade enterprises effecting purchases for state needs, including securing export-import agreements.

However, the importance of this document for analysis of the process of the evolution of state and mixed property ownership in Russia does not end there. In accordance with its provisions there was created a normative base for holding companies created during transformation of state enterprises into joint stock companies, and there appeared an instrument of indirect state regulation of the activities of joint stock companies in the guise of «golden stock.» This security afforded the state the possibility, as its only owner, of applying the right of «veto» when a meeting of stockholders was making decisions on questions of changing the charter of a joint stock company, its reorganization and liquidation, participation in other economic entities, and alienation of property.

In May 1993 the President of the Russian Federation made a declaration on the necessity of curtailing prohibitions and limitations on privatization, which found reflection in the draft privatization program for 1993. It was planned in it to fix the maximum shares of property assigned to state property ownership by branches of the economy: electric energy – 51%, pumping of oil and gas, mining for coal, petroleum refining, petrochemicals, public utilities – 38%, machine building – 20%, metalworking, chemicals, food industry, construction, motor vehicle transport, trade, public eating facilities, consumer services – 10%. Assignment of property to state (municipal) property ownership was not envisioned for ferrous and non-ferrous metallurgy, machine building for light industry and the food industry, the timber, woodworking, and cellulose-paper industry, and production of construction materials. It was had in view that the stock of the corresponding enterprises, aside from blocks assigned to federal property ownership, would automatically become a potential object of privatization.

However, in its final wording the second State program for privatization, instituted by Ukase №2284 of the President of the Russian Federation dated 24 December 1993, contained an even more detailed classification and broader lists of enterprises, on

the privatization of which limits were placed. The list of objects forbidden to privatization increased to forty-four categories (by twenty categories); of those permitted for privatization only by decision of the government of the Russian Federation – to thirty-six categories (by twenty-one categories); of those permitted for privatization only by decision of GKI RF taking into account the opinion of branch ministries – to twenty categories (by seven categories); of those permitted for privatization in accordance with regional privatization programs – to seventeen categories (by eleven categories); at the same time the list of enterprises subject to obligatory privatization grew only to eleven categories (by two categories).

The list of the kinds of activities according to the enterprises of which the control block of stock could be assigned to federal property ownership grew to fourteen categories (to the ten indicated in the November (1992) Ukase of the President of the Russian Federation were added the patents, standardizations, and metrology [sic!] service, publishing houses and printshop enterprises for production of printed products included in the volume of deliveries for state needs, pipeline transport, and the organizations making up the «Rossiiskii tsirk» (Russian circus) company).

A new, extremely hypertrophied section (thirty-three points) by branch peculiarities of privatization appeared. Although its provisions did not envisage assigning to state property ownership control blocks of stock for additional categories of objects, nevertheless they made more concrete the manner of coordination of opinions between the GKI and the various agencies, allowing issuance of «golden stock» during privatization of the objects of seven categories (enterprises for production of tobacco products, children's food products, the wholesale book trade, objects of culture and cinematography, experimental factories belonging to the system of the Standardization Committee, production enterprises of the Ministry of Education, objects and enterprises of the medical industry, pharmaceutical depots (warehouses) and medical equipment depots, enterprises and objects of the scientific technical sphere of the chemicals complex having in their make-up technological objects with toxic materials).

Along with the obvious expansion of prohibitory and limiting lists of enterprises by possibility and degree of their privatization, the second privatization program in distinction from the first contained a more precise procedure for making decisions on privatization of objects falling under these limitations. In accordance with it, the control blocks of stock left in federal property ownership could be of three kinds: 51%, 38%, and 25.5% of ordinary stock (with the right to vote). The range of magnitude of the assigned block depending on the importance of the object being privatized was not established. Simultaneous fixing in state property ownership of «golden stock» and any other blocks of stock was also not allowed, although agencies of authority were endowed with the right to exchange a control block of stock assigned to state property ownership for this security. Dividends from stock fixed in state property ownership were directed completely at financing objects of socio-cultural and consumer designation which were transferred in the process of transformation of enterprises into joint stock companies to the balance sheet of local authorities or [objects of socio-cultural and consumer designation] remaining on the balance sheet of an enterprise, and in the event of the absence of such objects the dividends were transferred to the federal budget. There was also an instruction that the stock of enterprises privatized only by decision of agencies of state authority and

not fixed in federal property ownership had to be sold not later than four months from the moment of registration of the joint stock company and were not subject to any kind of reservation.

The basic provisions of the State program for privatization of state and municipal enterprises in the Russian Federation after 1 July 1994 put into effect by Ukase of the President of the Russian Federation №1535 dated 22 July 1994 retained the thorough detailing of objects by the very possibility and degree of privatization which had been in the second State privatization program. Moreover, before adoption by the Federal Assembly of Russia of the base law on privatization in the period after the end of the period of operation of privatization checks, a special procedure for making decisions on privatization of objects of twenty-nine categories was introduced (Appendix №3 to the Basic provisions). The range of kinds of activities for the enterprises of which decision could be made on fixing a control block of stock in federal property ownership was also expanded. It reached twenty-two categories. To those in the second privatization program were added atomic machine building, geology, geodesy and cartography, enterprises for maintenance of the gas business, enterprises and scientific technical objects of the chemical complex using toxic and explosive substances, enterprises of the medical industry producing strong-acting and poisonous preparations, state scientific centers, enterprises providing storage of state reserves and stores, foreign trade enterprises, and objects of socio-cultural designation. Only one category was removed from this list (publishing houses and print shop enterprises for production of printed products included in the volume of deliveries for state needs). The magnitude of blocks of stock which could be assigned to state property ownership was limited to only two options: 51% and 25.5 %. The Government of the Russian Federation and the GKI RF received rights to extend time periods of assignment of stock blocks left in state property ownership and their ahead-of-schedule sale.

Thus in the first half of the 1990s the normative base regulating reformation of property relations contained a rather detailed classification of enterprises (objects) on a product basis (by kinds of activities) from the point of view of the very possibility of their privatization and the limitations connected to this, in spite of the fact that the legislative authority was de facto deprived of the possibility of participating in drawing up privatization beginning in 1993. Probably exclusion of parliament from this process made the executive authority approach these issues more responsibly. At the same time it has to be noted that classification of the kinds of activities applicable to which privatizational procedures were forbidden or limited was residual with regard to the core of property reform – to the process of privatization on the whole – and was not very connected functionally to securing social blessings and public interests, the securing of which enterprises in the state sector of the economy were supposed to be engaged in.

The situation changed in a paradoxical way with adoption of the new law «On privatization of state property and on the bases [grounds] for privatization of municipal property in the Russian Federation» (123-FZ, signed by the President of the Russian Federation on 21 July 1997).

The classification of property by possibility of privatization contained only in the most general way mention of the categories of property, privatization of which was

forbidden, and of property assigned to the property ownership of the state before the making of a decision on cessation of its assignment, in the capacity of the component parts of the privatization program (P. 3 of Article 4) approved annually by the State Duma of the Russian Federation. In the forecast lists, in particular, are included open joint stock companies, upon sale of the stock of which the Government of the Russian Federation took the decision on assigning such stock to federal property ownership or on exercise of the special right to participation by the Russian Federation in the management of the open joint stock companies mentioned (the «golden stock»), and also included are open joint stock companies, with regard to the stock in federal property ownership of which the next year it is proposed to take a decision on cessation of their assignment with indication of the means of their disposal: partial or complete sale, their full sale with exercise in relation to their special right of participation of the Russian Federation in management of the open joint stock companies indicated (the «golden stock»).

In this connection a substantial deficiency of the legal regulation being introduced was the imprecision of the grounds for assigning stock to state property ownership or for exercise of the special right. No distinctions were drawn in the law on the grounds for assignment of stock (P. 1 of Article 5) or for exercise of the special right (P. 1 of Article 6), which were defined in the following way: securing the defense of the country and the security of the state, protection of the morality, health, rights, and legitimate interests of citizens of the Russian Federation. Securing the security of the state may be considered in the broad sense – in accordance with the Concept of the National security of the Russian Federation approved by Ukase №24 of the President of the Russian Federation dated 10 January 2000, which permits applying the given grounds for an exceedingly broad range of enterprises in the capital of which the state participates. Therefore, regulation at the level of the Government of the Russian Federation of grounds (there can be many of them, but they have to be precisely defined) for assignment of stock or bringing in the special right seems important.

The last (by time of adoption) legal act determining the range of the kinds of activities in which, during transformation of enterprises being privatized into joint stock companies, blocks of stock are assigned to federal property ownership and «golden stock» is utilized is Decree №1348 of the Government of the Russian Federation dated 6 December 1999. According to this document, among them are pumping, refining, and sale of oil, natural gas and gas condensate, mining of coal, production and sale of liquefied gas, geology, the functioning of pipeline transport, maintenance of the gas business, development and distribution of electrical energy, maritime and river transport, communications, construction and maintenance of objects intended for securing national security, development, production and repair of any kinds of armaments and of military and space equipment, and munitions and component articles to them, production, stockpiling, and sale of high-grade seeds, storage of grain, and production of children's food products.

However, the role of this document is not limited just to definition of the range of the kinds of activities, during accomplishment of which during transformation of enterprises being privatized into joint stock companies blocks of stock are assigned to federal property ownership or the special right is utilized. In it for the first time since the

beginning of the 1990s the grounds for utilization of such an organizational-legal form as the state unitary enterprise were openly clarified.

At the same time, in our opinion, individual provisions of the given decree elicit doubts.

In the first place, the given decree defines the list of allowable grounds for retention of unitary enterprises based on the right to conduct business [KhV], or their transformation into state [kazennye] ones, but the absence of precise division of the aggregate of these grounds for retention of the status of a unitary enterprise based on the right to conduct business, or for its transformation into a state [kazennoe] enterprise, is mistaken, since on grounds of manageability these organizational-legal forms of enterprises are substantially different.

In the second place, in the given decree the grounds for retention of unitary enterprises and the grounds for transformation of unitary enterprises into joint stock companies, one hundred percent of the stock of which is in state property ownership, are of diverse planes [of existence]: in the first instance signs of unprofitability of the corresponding activities and of their social significance are utilized, while in the second instance certain kinds of activities classified on a product basis are utilized. Because the first limiting list (grounds for retention of unitary enterprises) is not of a prohibitory nature, it turns out that with regard to an enterprise not retained as a unitary enterprise there will be no grounds after its transformation into a joint stock company for retention of one hundred percent of its stock in state property ownership. Apparently it was fear of possible loss of control over a number of strategically significant enterprises which impelled branch ministries and agencies to insist on expansion of the list of grounds for retention of unitary enterprises.

Thus it has to be stated that of and by itself the formal-juridical bringing of the privatizational process into the legislative channel did not make the grounds for the state's conducting its own entrepreneurial activities precise and clear either in the form of participation in companies or in the form of utilizing unitary enterprises.

That was hard to expect under conditions of permanent confrontation of the executive and legislative authorities, when parliament over the period 1998-2001 did not once adopt a special law on the privatization program for the routine year; in its absence the government implemented its privatizational plans by means of adopting presidential ukases, acquiring a certain degree of freedom by way of placing income from privatization beginning in 1999 not in the income part of the federal budget, but in the sources of financing the budgetary deficit. In turn, parliament initiated amendments to the laws on privatization, on the budget for 2001, and on the prohibition of transactions relating to major enterprises before adoption of the privatization program by a separate law, as the 1997 law on privatization requires. The prohibition remained in force even after adoption of amendments to the budget in February 2001. The Government, however, brought to Parliament a new law on privatization which in principle removed that process from the framework of legislative regulation. This law was adopted at the end of 2001.

It is obvious today that in the future the working out of principles, grounds, and concrete areas of state entrepreneurship should be conducted not by way of introducing clarifications into the law on privatization, but by means of adopting a special law «On

the state sector of the economy» which would define the tasks laid upon the state sector, requirements for its make-up, and basic vectors and mechanisms for optimalization and reformation both of the state sector on the whole and of the enterprises forming part of it.

2) Problems of demarcation of enterprises of the state sector between the Russian Federation and constituent members of the Russian Federation, and also of the corresponding powers to manage them.

The issue of demarcation of property into federal-owned property, state-owned property of constituent members of the Russian Federation, and municipality-owned property. Decree 3020-1 of the Supreme Soviet of the RSFSR dated 27 December 1991 regulating this issue has already become obsolete.

It is also advisable to consider the possibility of reworking several provisions requiring coordination with constituent members of the Russian Federation of the actions of federal agencies on reorganizing federal state unitary enterprises and also on appointment to positions and relieving from positions of their managers, and to evaluate the efficiency of the provisions of Decree №1151 of the Government of the Russian Federation dated 11 October 1994 «On measures for registering the interests of constituent members of the Russian Federation when managing objects of federal property ownership.»

Substantial problems are also connected to the presence of agreements on demarcation of powers between the federal center and the regions. In a number of instances rights transferred to a region for participation in management of state enterprises located on its territory, and also of the corresponding blocks of stock assigned to federal property ownership, noticeably complicate the conducting of consistent policies with regard to the state sector, since, on the one hand, agreements with constituent members of the Russian Federation to a significant degree are individual for each region, and, on the other hand, usually do not contain provisions on procedures for resolving contradictions which arise.

Certain hopes for resolution of these contradictions, to all appearances, may be tied to the overall process of demarcating powers and responsibility between the federal, regional, and municipal levels. Комиссия, созданная по указанию Президента РФ, начала работу еще в 2000 г. и к настоящему времени завершила подготовительный этап своей работы.

3) Imperfection of mechanisms for privatization and of limitations for its accomplishment

An important event in the economic life of the country was adoption of the new law “On privatization of state and municipal property” dated 21 December 2001 (№ 178-FZ).

An orientation towards continuation of the individual strategy of sales taking into account analysis of the market (solvent demand) and application of new methods of privatization were placed at its basis; this was to increase the budgetary effect of privatization. Retention of the accent on individual major transactions by liquid blocks of stock by means of auctions and special auctions is supplemented by the possibility of utilization upon the insolvency of the latter of such new methods as sales by means of public offer, without declaration of price or according to the results of proxy management.

This solves the problem of creating an instrumentality of privatization (aside from simple transformation into a joint stock company) which would permit ridding the state of non-liquid assets accompanied by simultaneous stimulation of minimal demand on the part of private persons or small business.

On the whole ten possible methods of privatization are envisaged, depending on the size of the enterprise, liquidity, or results of initial sales.

- transformation of a unitary enterprise into an open joint stock company;
- sale of state or municipal property at an auction;
- sale of the stock of open joint stock companies at a specialized auction;
- sale of state or municipal property by competitive bidding;
- sale beyond the borders of the territory of the Russian Federation of stock of open joint stock companies in state property ownership (by means of issuing and placing depositary warrants);
- sale of stock of open joint stock companies through a trade organizer on the securities market;
- sale of state or municipal property by means of public offer (that is, a Dutch auction with lowering of the price to a price cut-off point equal to the initial value when there are no buyers at the auction);
- sale of state or municipal property without announcement of the price (when sale has failed through public offering for small and mid-size enterprises);
- bringing state or municipal property into the charter capitals of open joint stock companies as a contribution;
- sale of stock of open joint stock companies according to the results of proxy management.

With that it has to be emphasized that property complexes of federal unitary enterprises and stock in federal property ownership, the value of which exceeds five million minimal [monthly] wages (MROT) may be sold: by means of transforming a unitary enterprise into an open joint stock company; at auction; at specialized auction; by means of sale beyond the borders of the territory of the Russian Federation of stock of open joint stock companies in state property ownership; by means of bringing federal property into the charter capital of a strategic joint stock company as a contribution in accordance with the normative legal acts of the President of the Russian Federation

Privatization of property not in accordance with the criteria indicated may be accomplished: by means of transforming a unitary enterprise into an open joint stock company; at auction, at a specialized auction; by competitive bidding; by means of bringing stock into the charter capital of an open joint stock company as a contribution.

In the event an auction, specialized auction, or competitive bidding for the sale of such property has been found to have failed due to the absence of bids or due to participation in it of only one buyer, privatization may be effected by other means envisaged by law.

Innovations in principle are sale of land parcels as a component part of property being privatized (which is required according to the new Land Code of the Russian

Federation) and an increase in charter capitals due to rights to intellectual property (which is important during transformation into joint stock companies and privatizations of enterprises of science-intensive branches). One more important innovation is abolition of the declarative principle of privatization. Whereas previously the declaration of a physical person or organization (aside from government initiative) was sufficient to launch the privatizational procedure, according to the new legislative bill the given initiative is not obligatory for implementation. It is also a matter of principle that the norms of this law are unified for all levels of authority in the Russian Federation.

A condition for approval of the given legislative bill by the Federal Assembly of the Russian Federation (FS RF) was a compromise multi-level system of making decisions on privatization of objects of various categories (Article 7). Approval of the list of objects, privatization of which is prohibited, was given over to the jurisdiction of the President of the Russian Federation, and regulation of property relations in the sector of the natural monopolies of nation-wide significance (RAO «YeES of Russia» (the Unified Energy System of Russia), RAO «Gazprom,» and federal unitary enterprises of rail transport) – to the jurisdiction of the FS RF (adoption of a law is required for their privatizion), and all other federal enterprises of which nothing at all is said – in reality to the jurisdiction of the Government of the Russian Federation. Privatization of the property of a subject of the Russian Federation and of property of municipal property ownership is effected by an authorized local agency.

The necessity is removed thereby of adopting a federal law on the state program for privatization of state property in the Russian Federation, and also of the annual adoption of federal laws on entering changes and supplements into the privatization program, which the preceding 1997 law on privatization required. The confrontation of the executive and legislative authority characteristic of recent years as to annual approval of the lists of objects being privatized has been overcome. Now it is contemplated that the government will annually bring in the budget draft with the program for privatization of federal objects for the following year appended to it.

The prerogative of annual approval of the forecast plan (program) for privatization of federal property now belongs exclusively to the Government of the Russian Federation. This document is supposed to contain a list of federal state unitary enterprises, stock of open joint stock companies in federal property ownership, and other federal property which it is planned to privatize in the corresponding year. The characteristics of the federal property which it is planned to privatize and the presumed time periods of privatization are indicated in the forecast plan (program). The prohibitory lists which were traditional in the 1990s are formally absent in the new privatization law, which signifies the potential possibility of privatizing almost any object.

However, this impression is deceptive. In P. 6 of Article 43 it is indicated that in the event it is not otherwise established by legislation of the Russian Federation, from the date of entry into force of this law, property which in accordance with the normative legal acts of the President of the Russian Federation issued by him before entry into force of Part one of the Civil Code of the Russian Federation and with federal laws is defined as prohibited for privatization, [and] is property which can only be in state or municipal property ownership. This norm, in essence, extrapolates into the future the norms of the

State program for privatization of state and municipal enterprises in the Russian Federation confirmed by Ukase №2284 of the President of the Russian Federation dated 24 December 1993, which relegated to the list of the privatization-prohibited objects in forty-four categories (as against twenty-four categories in the State privatization program dated 11 June 1992).

As in the previous 1997 law on privatization, legislatively unestablished are criteria determining whether an enterprise is (or is not) among those producing products having strategic significance for the securing of the national security of the state. Article 6 of the new law establishes that for purposes of implementation of a unified state policy in the sphere of privatization, the Government of the Russian Federation presents to the President of the Russian Federation for confirmation proposals on formation of a list of strategic enterprises and joint stock companies, which list includes federal state unitary enterprises effecting production of products (works, services) having strategic significance for securing the defense capability and security of the state, and protection of the morality, health, rights, and legitimate interests of citizens of the Russian Federation (further – strategic enterprises) and open joint stock companies, the stock of which is in federal property ownership and the participation of the Russian Federation in the management of which secures the strategic interests of the state, the defense capability and security of the state, and protection of the morality, health, rights, and legitimate interests of citizens of the Russian Federation (further – strategic joint stock companies).[41]

Analogously, the President of the Russian Federation is presented with proposals to enter into the list of strategic enterprises and strategic joint stock companies changes concerning the make-up of federal state unitary enterprises from the group of strategic enterprises, including for their subsequent privatization (transformation into open joint stock companies), and also proposals on the necessity and degree of participation by the Russian Federation in open joint stock companies from the group of strategic joint stock companies, including for subsequent privatization of the stock of the joint stock companies indicated. After the taking by the President of the Russian Federation of a decision on decreasing the degree of participation by the Russian Federation in the management of strategic joint stock companies or on exclusion of the respective enterprises from the group of strategic enterprises, the objects of these categories may be included in the forecast plan (program) for privatization of federal property.

In this situation, an intermediary decision was achieved. According to the President of the RF's Decree of December 21, 2001 No 1514, any amendments to the list of joint-stock societies producing products (commodities, services) of strategic importance for the

[41] Previously in the capacity of such enterprises there were usually considered those included in one of the lists approved by Decree №802 of the Government of the Russian Federation dated 12 July 1996 «On the list of enterprises and organizations of the defense complex, privatization of which is prohibited» and №784 dated 17 July 1998 «On the list of joint stock companies producing products (goods, services) having strategic significance for securint the national security of the state, stock blocks assigned to federal property ownership of which are not subject to ahead-of-schedule sale» (in numerous subsequent wordings). The criteria and principles of inclusion (exclusion) of enterprises in this or that list were absent thereby. Right now it remains absolutely unclear, whether the objects mentioned in them will enter into the lists of strategic enterprises and joint stock companies which will be approved after adoption of the new law.

State's national security and designated as federal property, whose shares are not subject to preschedule sales, the list having been approved by Decree of the RF of July 17, 1998, No 784, are to be introduced by decrees of the RF Government based on decrees of the President of the Russian Federation. The Government of the Russian Federation, before March 1, 2002, was to submit for the approval of the President of the Russian Federation lists of strategic enterprises and strategic joint-stock societies. The is no clarity as far as the list of strategic unitary enterprises is concerned.

From the text of the law one does not see a mechanism for consideration of governmental proposals by the president. For this the head of state apparently is supposed to rely on the expert evaluation of the structures immediately subordinate to him, assuming one is not talking about mechanical rubber-stamping of decisions of the government. However, it is not completely clear whether what is had in mind is the Administration of the President of the Russian Federation, the Security Council, or some other agency, which potentially opens up the possibility for lobbying for their interests by various financial-political groupings.

Nothing is said, either, in the new law about the legitimacy of the privatizational process in the event the draft of the federal budget for the routine fiscal year is not adopted by parliament. The impression is created that its authors do not admit in principle that such a development of events could occur.

A clearly negative factor is the chronic absence of a precise ahead-of-schedule strategy for privatization (aside from budgetary tasks). The starting point in its development should be determination of which enterprises in which branches under any conditions should remain in federal property ownership. Only after this is discussion possible of the list of sales in the short-, mid-, and long-term which in all obviousness is subdivided into a list of realistically salable and investmentally attractive objects and a list of unmarketables (both by financial-economic indicators and by the structure of property ownership which has already taken shape).

The unresolvedness of issues of transparency of transactions and equality of buyers under conditions of systematic corruption remain the traditional background of Russian privatization. Техника продаж в данном случае приобретает вторичный характер.

4) Imperfection of the right to conduct business (PKhV).

The right to conduct business, which had its origin in Soviet legislation, is a highly specific institute of quasi-property ownership.

Its imperfection consists of the fact that, on the one hand, the legal status of state unitary enterprises does not permit them to be full-fledged entities of the market economy, and, on the other hand, the state, being the property owner of their property, is factually deprived of developed legal instruments for managing such enterprises. Economists note that state unitary enterprises, due to their status, are limited in principle in the attraction of private capital for their development. Lawyers say that the right to conduct business (PKhV) itself was artificially constructed in Russian legislation and generates a number of legal collisions within the framework of economic turnover.

In the first place, a unitary enterprise has independent disposal of property, except real estate, and it is liable for its obligations in accordance with P. 5 of Article 113 of the

Civil Code through all the property belonging to it. Thus the enterprises operate entirely independently, while upon bankruptcy it is the state as property owner which in fact pays all its debts.

In the second place, the right to conduct business affords the possibility, by means of arbitrary legal acts, of endowing organizations which by definition can have property only on grounds of operational management with the rights of a property owner.

In the third place, enterprises as a legal category are traditionally an object, and not a subject of law; it should belong to someone as a matter of property rights. It is such confusion of concepts which generates a muddle and ambiguous interpretation of normative acts.

Representatives of ministries and agencies note the difficulties in managing state enterprises – for example, the operative legal regulations do not envisage the necessity of coordination by the director of a state enterprise with the property owner (the state) of decisions on large transactions, on transactions with affiliated entities, on setting up subsidiary enterprises without alienation of real estate, etc. It is indicative that, according to data from a poll conducted in 1997-1998, only eighteen percent of the managers of state enterprises recognized that their enterprise was under the control of state agencies of authority, while sixty-eight percent noted that in reality state enterprises are controlled by managers.

The necessity of renouncing the institute of conducting business [KhV] was realized long ago. As long ago as 23 May 1994 Ukase №1003 of the President of the Russian Federation «On reform of state enterprises» was adopted which established the prohibition on creating new enterprises based on the right of full conduct of business [KhV]. However, creation of new state unitary enterprises continued even after adoption of this ukase.[42]

The in-practice policies of the Ministry of State Property of Russia was of an ambiguous nature over the entire period after the ending of mass privatization. With regard to state unitary enterprises, the ministry stood and continues to stand for sharp curtailment of the number of existing unitary enterprises, but simultaneously with that it supports the creation of new enterprises of that organizational-legal form. The absence of clarity with regard to public interests as applied to each enterprise in the state sector in no way interfered with representatives of the Ministry of State Property of Russia on numerous occasions giving their evaluations of the efficient, in their opinion, number of enterprises in the state sector – at a level of not more than fifteen hundred. Probably this is a consequence of the controversial idea of the necessity of bringing the number of objects of state property ownership into accordance not so much with the tasks laid upon the state sector as with the managerial possibilities of the state.

Renunciation of the right to conduct business (PKhV) and transformation of state enterprises into joint stock companies seem to be entirely logical steps, and which the government has planned to do on numerous occasions. However, this process is

[42] From a formal juridical point of view nothing obstructed this, because Ukase №1003 prohibited creation of a state unitary enterprise (SUE) namely with the right of full conduct of business (KhV), which ceased to be full with the coming into force of Part one of the Civil Code of the RF on 1 January 1995.

proceeding extremely slowly, since there are substantial legal barriers standing in the way of transformation of state unitary enterprises into joint stock companies, one hundred percent of the stock of which is in state property ownership. Therefore completion of the work on and adoption of the Law «On state unitary and municipal enterprises» is necessary; this law would remove at least some of the deficiencies of the right to conduct business (PKhV) with regard to accomplishing major transactions, transactions with vested interest, and would limit the rights of subsidiary unitary enterprises.

5) Problems of transforming unitary enterprises into joint stock companies.

The inadmissibly low efficiency of management of state-owned property became a generally recognized fact in the second half of the 1990s.

Transformation of state enterprises based on the right to conduct business (PKhV) into joint stock companies, one hundred percent of the stock of which is in state property ownership – that is a sufficiently logical step in solving tasks of increasing the efficiency of the state sector, improving management of state property, and creation of prerequisites for de-statizing the economy. What is meant in this instance is only changing the organizational-legal form of enterprises in the state sector while retaining (moreover, expanding) the rights of the state in managing their activities. At the same time implementation of this scheme runs into substantial obstacles.

During the period of operation of the 1997 law on privatization, reformation of the state sector by means of transformation of unitary enterprises into joint stock companies, one hundred percent of the stock of which is in state property ownership, was held back by the absence of forecast lists, which were the grounds for privatization of major enterprises and enterprises producing strategically significant products, because this procedure, just like the bringing of state property into the charter capitals of companies, was considered one of the methods of privatization, which required the entry of the respective enterprises into the forecast lists.

A cardinal solution to the problem is the removal in principle from the operation of privatizational legislation of procedures for transforming state unitary enterprises into joint stock companies with one hundred percent of the stock assigned to federal property ownership or entered into the charter capital of another joint stock company, more than seventy-five percent of the stock of which in turn is in federal property ownership. In spite of the fact that in the new 2001 law on privatization transformation of state unitary enterprises into joint stock companies with one hundred percent of the stock in state property ownership is absent as a method of privatization, in general transformation of a unitary enterprise into an open joint stock company is recognized as one of the methods of privatization of state property with all the consequences ensuing therefrom (Article 13).

Connected with this is another highly important obstacle on the path to transforming unitary enterprises into joint stock companies – the formally continuing to operate norm of the State program for privatization of state and municipal enterprises in the Russian Federation approved by Ukase №2284 (P. 2.3.20) of the President of the Russian Federation dated 24 December 1993 that stock of enterprises being privatized and not assigned to federal property ownership must be sold in the course of four months from the moment of registration of the joint stock company and is not subject to any kind of reservation. In practice, due to a complex of reasons, this provision is not being carried

out; however, there is a legitimate basis and prerequisites for effecting the sale of all blocks of stock in federal property ownership (but not assigned).

It was namely this legal problem which brought about the aspiration of a number of branch ministries and agencies to expand the grounds for retaining enterprises in the form of a state unitary enterprise based on the right to conduct business (PKhV), since transformation of unitary enterprises into joint stock companies, one hundred percent of the stock of which is in state property ownership, does not guarantee subsequent retention of such enterprises in the state sector, being a prerequisite for their subsequent privatization.

Such an apprehension is not without grounds – the absence of precise and well-grounded criteria for retention of this or that enterprise in the state sector really does leave a wide expanse for opportunistic and subjectivist actions. Decree №1348 of the Government of the Russian Federation dated 6 December 1999 «On federal state unitary enterprises founded on the right to conduct business (PKhV)» defined the possibility of retaining state enterprises if they accomplish certain kinds of activities classified by signs of unprofitability, social significance, etc. At the same time assignment to federal property ownership of the stock of joint stock companies created as a result of transformation of state enterprises is allowed only for those of them which accomplish certain kinds of activities indicated above and classified on a product basis. Such a construction leads to agreement on transforming individual enterprises into joint stock companies automatically determining the possibility of subsequent privatization in view of the absence of functional grounds for assigning their stock to state property ownership.

It is not accidental, not having any very substantial objections to transformation per se of state unitary enterprises into joint stock companies, one hundred percent of the stock of which belongs to the state, that representatives of branch ministries and agencies at the same time consider the status of state enterprises to be a definite barrier on the way to the conducting of an unthought-out and rash privatization of enterprises in the state sector which might be effected without taking their opinion into account. Probably it was therefore namely on their part that substantial pressure was exerted in the sense of expanding the grounds for retention of enterprises in the organizational-legal form of a state unitary enterprise, which is what found its reflection in the above-mentioned Decree of the Government of the Russian Federation «On federal state unitary enterprises based on the right to conduct business (PKhV).»

In conclusion, we would note one more time that the task of transforming state enterprises into joint stock companies is important and urgent of and by itself. In the course of transformation of state enterprises into joint stock companies the state comes to have unique possibilities to solve such tasks of importance in principle as optimalization of property complexes of enterprises in the state sector (assets inefficiently utilized or not required for the basic activities of enterprises do not have to be entered into the charter capital of the joint stock companies being created), introduction to economic turnover of the rights of the state to the results of intellectual activities (the corresponding rights can be registered and entered into the charter capitals of the joint stock companies being created), optimalization of the scale of business and securing diversification of activities (effecting consolidation/integration of the property complexes of several enterprises, split-

up or removal of individual business is possible). We would note that resolving these tasks is an important condition not only for increasing the efficiency of the state sector, but also for expanding the possibilities for attracting strategic investments during the course of privatization.

At the same time, the task of transformation of state enterprises into joint stock companies must not become a goal in and of itself and be considered without connection to other vectors of reformation of the state sector, especially due to its large scale, because the mass transformation of state enterprises into joint stock companies will introduce change in principle to the make-up of the state sector and present qualitatively different and greater requirements to the system of managing state-owned property within the framework of the corporative sector when utilizing the norms of joint stock company law.

6) Specific rights of the state in managing joint stock companies

Aside from corporate law, the legislation on privatization defines a number of specific legal possibilities for the state in managing joint stock companies. Some of these possibilities arise, as in the case with private stockholders, as a consequence of certain dimensions of participation of the state in the capital of a company, others – in the event of the taking of a decision on application of the special «golden stock» right.

The new law «On privatization of state and municipal property» (N 178-FZ), which entered into force on 26 April 2002, defines the peculiarities of the legal position of open joint stock companies, the stock of which is in the property ownership of the Russian Federation, constituent members of the Russian Federation, or municipal formations, in the following way (Articles 39-40):

- stockholder rights in open joint stock companies, the stock of which is in the property ownership of the Russian Federation, shall be effected in the name of the Russian Federation by the Government of the Russian Federation and (or) by an authorized federal agency of the executive authority, a specialized state institution, or specialized state institutions;

- stockholder rights in open joint stock companies, the stock of which is in the property ownership of constituent members of the Russian Federation or of municipal formations, shall be effected in the name of constituent members of the Russian Federation and municipal formations by agencies of state authority of subjects of the Russian formation and agencies of local self-government respectively;

- representatives of the interests of the Russian Federation, constituent members of the Russian Federation, and municipal formations in the agencies of management and in the auditing commissions of open joint stock companies may be persons occupying state and municipal positions respectively, and also other persons.

- the manner of managing stock of open joint stock companies in state or municipal property ownership [and which were] created during the privatization process shall be determined by the Government of the Russian Federation, agencies of state authority of constituent members of the Russian Federation, or agencies of local self-government.

- In the event that one hundred percent of the stock of an open joint stock company is in state or municipal property ownership, the powers of the supreme agency of management of a company – a general stockholder meeting – shall be effected in the

name of the respective property owner of the stock in a manner determined by the Government of the Russian Federation, agencies of state authority of constituent members of the Russian Federation, and agencies of local self-government respectively. Procedures for preparation and conduct of a general stockholder meeting provided for by the Federal law «On joint stock companies» shall not apply.

- an individual executive agency of an open joint stock company included in the list of strategic joint stock companies shall not have the right to effect transactions connected to alienation of stock entered in accordance with a decision of the Government of the Russian Federation into the charter capital of the company, and likewise transactions entailing the possibility of alienation or transfer of them to proxy management without the agreement of the Government of the Russian Federation or an authorized federal agency of the executive authority. A transaction effected without such agreement is worthless.

- when there is state or municipal property ownership of stock of an open joint stock company created in the process of privatization affording more than twenty-five percent of the votes at a general meeting of stockholders, an increase in the charter capital of the company indicated by means of additional issuance of stock shall be effected with retention of the share of the state or municipal formation and shall be secured by bringing into the charter capital of that company state or municipal property or resources from the corresponding budget in payment for the additionally issued stock.

With that, plans for the privatization of state and municipal enterprises which were approved before this law came into effect and the founding documents of open joint stock companies, one hundred percent of the stock of which by the date indicated are in state and municipal property ownership respectively, are subject to being brought into accordance with its norms (Article 43, P. 1).

Aside from this, the new law on privatization established that for purposes of securing the defense capability of the country and the security of the state, and protection of the morality, health, rights, and legitimate interests of citizens of the Russian Federation, the Government of the Russian Federation and agencies of state authority of constituent members of the Russian Federation can makes decisions on exercise of the special right to participation of the Russian Federation and constituent members of the Russian Federation respectively in management of open joint stock companies (further – the («golden stock») special right) (Article 38). A decision on exercise of the special right (the «golden stock») may be taken during privatization of property complexes of unitary enterprises or upon the taking of a decision on striking an open joint stock company from the list of strategic joint stock companies regardless of the amount of stock in state property ownership. The Russian Federation and constituent members of the Russian Federation cannot thereby simultaneously exercise the special right (the «golden stock») in relation to one and the same open joint stock company. Constituent members of the Russian Federation also may not exercise the special right (the «golden stock») in relation to an open joint stock company created by means of transformation of a federal state unitary enterprise during a period when the stock of that company is in federal property ownership.

The peculiarities of the legal position of open joint stock companies upon exercise of this special right consist of the following:

- the Government of the Russian Federation or agencies of state authority of constituent members of the Russian Federation, having taken a decision on exercise of the special right (the «golden stock»), appoint a representative of the Russian Federation or of a constituent member of the Russian Federation respectively to the council of directors (observer council) and a representative to the auditing commission of the open joint stock company;

- a state employee who effects his activities on the basis of a provision approved by the Government of the Russian Federation or agencies of state authority of constituent members of the Russian Federation may be appointed Representative of the Russian Federation or a constituent member of the Russian Federation, respectively;

- the Government of the Russian Federation or agencies of state authority of constituent members of the Russian Federation have the right at any time to effect replacement of the respective representative in the council of directors (observer council) or on the auditing commission of an open joint stock company;

- an open joint stock company with regard to which a decision has been reached on exercise of the special right («the golden stock») is obliged to inform of the dates of the conducting of a general meeting of stockholders and of the proposed agenda representatives of the Russian Federation and constituent members of the Russian Federation in a manner established by legislation of the Russian Federation;

- representatives of the Russian Federation and of constituent members of the Russian Federation have the right to enter proposals into the agenda of the annual general meeting of stockholders and to demand the calling of an extraordinary [unscheduled] general meeting of stockholders;

- representatives of the Russian Federation and of constituent members of the Russian Federation appointed to the council of directors (observer council) of an open joint stock company participate in general meetings of stockholders with the veto right during the taking of decisions by general meetings of stockholders:

- on introduction of changes and additions to the charter of an open joint stock company or on approval of the charter of an open joint stock company in a new wording;

- on reorganization of an open joint stock company;

- on liquidation of an open joint stock company, appointment of a liquidation managing commission, or on approval of intermediate and final liquidation related balance sheets;

- on changing the charter capital of an open joint stock company;

- on effecting by an open joint stock company of major transactions indicated in Chapters X and XI of the Federal law «On joint stock companies» and transaction, in the effecting of which there is a vested interest.

- representatives of the Russian Federation or of constituent members of the Russian Federation who are members of the council of directors (of the observer council) and of the auditing commission of an open joint stock company enter into the quantitative make-up of the council of directors (of the observer council) and the quantitative make-up of the auditing commission determined by the charter or by decision of a general meeting of stockholders of an open joint stock company. The seats of the representatives of the

Russian Federation or of constituent members of the Russian Federation on the council of directors (observer council) and the auditing commission are not taken into account during elections of members of the council of directors (observer council) and the auditing commission;

- the special right (the «golden stock») is exercised from the moment of alienation from state property ownership of seventy-five percent of the stock of the respective open joint stock company;

- a decision on cessation of operation of the special right (the «golden stock») is taken respectively by the Government of the Russian Federation or agencies of state authority of constituent members of the Russian Federation which took the decision on exercise of the special right (the "«olden stock"». The special right (the «golden stock») is in effect until a decision is taken on its cessation;

- the special right (the «golden stock») is not subject to replacement by the stock of an open joint stock company with regard to which a decision has been taken on exercise of the right indicated.

The issue of the legal possibilities of the state for management of joint stock companies with regard to which the special «golden stock» right is applied deserves special attention.

The special right affords an agency of authority which has taken a decision on its application a highly significant volume of managerial powers, [ones,] generally speaking, comparable to the possibilities which possession of a blocking stock block secures (more than twenty-five percent of voting stock) (*Table 11*).

Table 11

Comparative features of possibilities for managing a joint stock company afforded by «golden stock» and a blocking stock block

Control aspects	**«golden stock”**	**blocking block**
- delegation of representatives to the council of directors of the company	unconditional right	real possibility
- delegation of representatives to the auditing commission	unconditional right	by decision of the majority at a general meeting
- receipt of notification of times of conducting a general meeting of stockholders and on the proposed agenda	unconditional right	unconditional right
- introduction of proposals into the agency of a general meeting	unconditional right	unconditional right
- calling of an extraordinary [nonscheduled] general meeting	unconditional right	unconditional right
- receipt of a list of stockholders having right of participation at a general meeting	—	unconditional right
- participation at a general meeting	unconditional right	unconditional right
- introduction of changes and additions to the charter of a company or approval of the charter of a company in a new wording	veto right	possibility of blocking
- reorganization of the company	veto right	possibility of blocking

Control aspects	**«golden stock”**	**blocking block**
- liquidation of a company, appointment of a liquidation commission, and approval of intermediate and final liquidation balance sheets	veto right	possibility of blocking
- determination of maximum dimensions of announced stock	—	possibility of blocking
- change of charter capital	veto right	by decision of the majority at a general meeting
- effecting of major transactions	veto right for all transactions belonging to the category of major ones	possibility of blocking transactions, the subject of which is property, the value of which is more than 50% of the balance sheet value of the company’s assets
- effecting of transactions with vested interest	veto right	by decision of a majority of disinterested members of the council of directors or by decision of a majority of disinterested stockholders at a general meeting
- access to information about the company	right of access to all the company’s documents	right of access to all of the company’s documents subject to retention, with the exception of documents of bookkeeping registry and minutes of meetings of the company’s collegial executive organ
- access to information on the names (appellations) of persons registered in the registry of owners of securities, on the quantity, category (type), and nominal [face] value of securities belonging to them	unconditional right	unconditional right
- suing a member of the council of directors of the company, the individual executive organ of the company, a member of the collegial executive organ of the company, and also a managing organization or manager for compensation of losses caused the company by guilty actions (inactions) of the persons indicated	unconditional right	unconditional right
- to demand verification (auditing) of the financial-economic activities of the company	on grounds of a decision by a general meeting of stockholders, the auditing commission, or the council of directors of the company	unconditional right

As can be well seen from *Table 11*, exercise of the special right in relation to a joint stock company affords the state practically the same managemental possibilities as having a blocking stock block in state property ownership, and in several aspects (change of charter capital, concluding of major transactions) – even weightier ones.

It should be especially emphasized that with the abundance of control powers afforded by «golden stock,» the state need not be a stockholder in a company at all, [thus] minimizing risks connected to the possible loss of property. In this sense, «golden stock» should be recognized as an illiberal and non-market instrument of control. The special right goes against the principle of proportionality of volume of authority powers to the dimensions of property participation followed by all corporative legislation, and thereby substantially violates the rights of private stockholders: the latter, in distinction from the state, under no conditions can become the possessors of «golden stock» and have the possibility of utilizing only the traditional mechanisms for management of joint stock companies.

The very idea of a special right consists of the fact that it is supposed to be applied to privatized joint stock companies with a high degree of real privatization. This, in particular, is borne witness to by the instruction contained in Clause 5 of Article 38 of the law that «golden stock» is utilized from the moment of alienation from government property ownership of seventy-five percent of the stock of the respective open joint stock company in the absence of a norm on the unconditional prohibition of simultaneous application in relation to a joint stock company of the special right and assignment of its stock to state (municipal) property ownership.

From the state's point of view, "golden stock," on the contrary, is a very attractive instrument. In the event of its application with regard to a joint stock company, state agencies receive the "free" (that is, not based on participation in capital) possibility of taking active part in managing the company: blocking a number of the most important decisions in principle of a general meeting of stockholders, appointing its representative to the council of directors, and so on. One more positive (for the state) feature of "golden stock" may be noted – the rights of the state are retained in full volume no matter how much the charter stock is increased.

However, as has already been noted, application of the special right is extremely disadvantageous to private stockholders, because it leads to substantial limitation of their rights. Therefore, in order to avoid conflicts between the state and private stockholders, it seems sensible to limit application of the special right, exercising it only as an exceptional measure of interference by the state in the activities of privatized enterprises. It is important thereby that the grounds for application of the special right be defined maximally precisely. However, the new law on privatization, like the preceding one (1997), establishes non-concrete grounds for application of the special right: securing the defense of the country and the security of the state, and protection of the morality, health, rights, and legitimate interests of citizens of the Russian Federation. In the previous law on privatization (1997) they were not only just as non-concrete, but were absolutely identical to the grounds for assigning stock to state (municipal) property ownership, which in the new law are completely absent.

Therefore it seems necessary in the near future to define normatively the grounds both for application of the special right and for assigning stock to state property ownership, having in view thereby that the first should be weightier. A substantial drawback to the special right is its unifiedness. Not the entire broad range of rights afforded by «golden stock» may prove necessary to the state for effecting the necessary

control over concrete enterprises (categories of enterprises); only some part of it may be sufficient. To secure a rational compromise between the tasks of the state for securing its rights and the interests of private stockholders, it seems advisable to introduce differentiation of the aggregate of the rights of the state obtained by it upon application of the special right depending on the kind and nature of the enterprise's activities, its size, etc. An important step in this direction might be granting the state (municipal) agency of authority the right to relinquish a part of its powers granted by the «golden stock,» placing its relinquishment in the charter of the respective joint stock company.

Completing consideration of the specific possibilities of the state in managing joint stock companies in the capital of which it participates, it seems important to note that implementation by the state of its specific rights for management of joint stock companies should not be in compensation for insufficient utilization of generally available managerial possibilities. Even having a comparatively small block of stock, a stockholder possesses exceedingly broad possibilities for participation in management of a company. Whereas application by the state of specific rights (especially if they are provided for by the company's charter) can become cause for the arising of new and the exacerbation of existing conflicts, both with the private stockholders and with the managers of the joint stock company. Therefore, for the rendering of the necessary managerial influences on the company, the state should first resort to traditional means, and, only having exhausted them and not having achieved the required result, utilize special possibilities.

3.2. A general concept of institutional reform of the state sector

Determining the long-term[43] vectors important in principle for transforming the state sector in the Russian economy and changing the principles for managing state property from the point of view of developing a civilized market economy seems necessary for a number of reasons.

Current tasks of managing the state sector are in significant measure specific in view of the peculiarities of conducting market reforms in Russia. At the same time, problems in the short-term should not overshadow long-term prospects. A concept of strategic direction of changes should become a factor limiting the taking of decisions leading to mothballing of problems and subsequently hindering the resolution of long-term tasks.

At the present time highly widespread are views connected to the necessity of strengthening the role of the state in regulating the economy; however, the question of in what forms this strengthening might be secured remains sharply controversial. There is an opinion that strengthening the role of the state in regulating the economy consists first of all in maximum utilization of the entire range of the state's possibilities for managing enterprises in the state sector. The indefiniteness of state policy with regard to the state sector (if only of its basic principles) [and] oriented toward long-term prospects renders a negative influence on the overall investment climate in Russia.

[43] In speaking of long-term vectors, we have in view the period of institution [of them] up to 2010-2015.

Determination at a state level of strategic vectors for transformation of the state sector seems an inalienable element in a long-term program for developing the Russian economy. It is unlikely that the orientation toward an open economy model will change in principle. That makes it important to take into account changes in the way the state sector looks in European countries.[44]

In our opinion, the strategic vectors for transformation of the state sector in the Russian economy should take these tendencies into account, although with substantial correction for Russian specifics. The necessity for taking the given tendencies into account is connected not only to tasks of integration into the system of world economic ties. The thing is that despite the totally different level of development of the economy, the role and place of the state sector and the problems of managing enterprises in the state sector which are noted in foreign countries, for example, in France, are exceedingly close, in essence, to Russian problems of managing state-owned property, which bears witness to their invariability and fundamentality. These problems can be resolved tactically by improving mechanisms for managing state-owned property, but they cannot be resolved cardinally, because the task of gradual transformation of the state sector inevitably arises.

For an understanding of the essence of the necessary long-term changes in the state sector, we have to digress briefly. In the opinion of foreign experts, state regulation of the economy can be divided into three basic components:

- regulation of the activities of economic entities;

- purposefully-directed state support of economic entities in the form of state credits, investments, tax privileges, guarantees, etc.;

- direct management of the activities of enterprises in the state sector.

The significance of the latter two components in state regulation of the economy in Western European countries is gradually decreasing; the basic accent is shifting to establishing rules for the activities of economic entities and of mechanisms for securing observation of these rules, including in spheres where state sector enterprises have traditionally dominated.

At the same time as applied to Russia, the institutional imperfection of the economy is generally recognized, and which consists either in the inefficiency of the established rules, when their absolute observation is economically inadvisable (therefore they are applied selectively), or in the ineffectiveness of the mechanisms for securing fulfillment of the established rules, or both the one and the other. Certainly, the state, declaring the necessity of strengthening its role in the economy, should, first of all,

[44] In distinction from the U.S.A. and Japan (and recently in Great Britain, too), the role of the state sector in the countries of Western Europe has been and remains significant. Along with that, ever more urgent at the state level are tasks of privatization of enterprises in the state sector, bringing enteprises in the state sector into a competitive environment, modernization of enterprises in the state sector. That, according to the testimony of foreign experts, manifests itself in the following tendencies characteristic to one degree or another of all Western European countries: erosion of the specifics of enterprises in the state sector in comparison to private enterprises; autonomization of management of the state sector; opening up of enterprises in the state sector to competition; curtailment and rigid regulation of state aid to enterprises in the state sector.

consolidate its efforts on solving namely these problems; however, it is unlikely that it will be possible to do this in the mid-term. Therefore, at the present stage of economic reforms, in view of the insufficient effectiveness of indirect state regulation, it seems important to utilize all available possibilities for managing state sector enterprises for implementation of anti-crisis measures, conducting structural policy, and rendering regulatory influence on the conduct of private enterprises.

And so, we will attempt to define, at least in general features, strategic vectors of change in the state sector, and also the corresponding management principles.

The first strategic vector – is the substantial curtailment of the variety of tasks laid on the state sector in the economy.

In the short term one can expect expansion of the make-up of the tasks laid upon enterprises in the state sector, which, as we have already said above, is connected to the imperfection of the institutional environment in which Russian enterprises function. At the same time, that does not signify an increase in the scale of the state sector in the economy; what is meant, first of all, is the multiple aspects of the state's interests when managing each enterprise in the state sector.

At the same time, as mechanisms of indirect state regulation are improved in the mid- and long-term, those tasks, the assigning of which to the state sector was tied to problems of the transition period, must be eliminated. This should also lead to a lessening of the number of state tasks laid on the average on one state sector enterprise, which would limit the conflict of interests inside the system of state management per se (the conflict which manifests itself in the conflict of interests of ministries and agencies when managing state-owned property in the economy).

In the long term, providing for social needs and, possibly, tasks connected to the activities of the natural monopolies should remain as tasks placed upon the state sector.

The second strategic vector – is changing the role of state sector enterprises in the Russian economy, curtailing their share in the overall volume of production of goods, carrying out of works, and rendering of services in individual branches.

This vector is connected to curtailment of the goods boundaries of the natural monopolies, lowering the barriers for organization of business for the private sector (including foreign companies), development of indirect regulation in spheres involving satisfaction of social needs (the defense industry complex, energy supply, public utilities, the ecology, etc.), and stimulation of private initiative in those sectors where it is insufficient. All this will permit moving to gradual privatization of state sector enterprises which have begun functioning in a competitive environment.

In the Russian economy the role of the state sector will remain substantial in the long term in the following branches at least:[45]

[45] It would be naive right now to attempt to determine all the branches of the economy in which the state sector should be present and the scale of such a presence. The experience of foreign countries testifies to the individuality of such decisions, which are directly determined by the specifics of the country's economy. Western European countries provide examples when the role of the state sector is substantial in the following branches: energy, the aerospace industry, shipbuilding, motor vehicle manufacturing, metallurgy, and chemicals.

- the defense industrial complex;

- the atomic industry;

- the gas industry;

- electric power;

- basic kinds of transportation

- communications.

At the same time the boundaries per se of certain of the above-named branches will be curtailed, for example, within the framework of the defense industry complex the future privatization of a number of enterprises seems possible, and within the framework of the gas industry and electrical energy the organizational isolation and privatization of businesses not directly belonging to the sphere of natural monopolies is advisable.

As civil society develops in the country and the transition to long-term stable growth in the economy proceeds, the role of the state sector in industry will undergo substantial changes. From a mechanism for overcoming negative phenomena objectively accompanying radical economic reforms, the state sector should become an instrument for implementing state geopolitical interests. The share of state participation in the capital of enterprises operating basically in the domestic market will undergo curtailment. Simultaneously with this, the intellectual, productive, and financial resources of major corporations with state participation in their capital should be reoriented toward implementation of major international projects, an increase in the Russian share in domestic markets of high-tech products, and creation of transnational corporations behind the borders of the countries of the Commonwealth of Independent States (CIS).

The third strategic vector – is integration of enterprises in the state sector.

Amalgamation of enterprises in the state sector[46] by means of effecting mergers and acquisitions and formation of concerns and holdings seems necessary for a number of reasons:

- integration of enterprises in the state sector should become a basis for creation of corporations competitive in domestic markets by scale of business, in the capital of which [corporations] the state participates.

- unification of enterprises in the state sector, the sales markets of which are becoming competitive, will permit curtailment of unproductive competition among

[46] Integration of enterprises in the state sector ought not be perceived in an over-simplified way as the mechanical unification of the assets of enterprises. Optimal integration should be combined with processes of de-integration (detachment of individual capacities, businesses, and composition of enterprises being unified) and bankruptcy-prevention measures [sanatsiia] for and reformation of business. Least of all would one want (and there are already no few examples of this) for integration to facilitate mothballing [konservatsiia] of inefficient cooperative ties, creation of «interest clubs,» strengthening of lobbying possibilities for state sector enterprises, localization of economic ties within the framework of the regions or individual branches (we would note that creation of agencies for managing individual sub-branches of the defense industry complex led to erection of additional barriers in the path of inter-branch integration, while after all it was namely in the defense industry that historically exchange was extremely hampered of advanced solutions and technologies among the respective sub-branches).

enterprises in the state sector (this task may also be resolved by means of privatization of individual enterprises in the state sector);[47]

- integration of enterprises in the state sector which are positioned in highly concentrated markets, which opens up the possibility of creating the prerequisites for improving the competitive environment by means of subsequent privatization of the major corporations created [thereby];[48]

- curtailment of the number of independent economic entities in the state sector will permit concentrating management of state property in the economy on determining the strategy for the activities of a limited number of major economic entities, affording the latter possibilities for determining not only their own tactics, but also the strategy of the state sector enterprises subordinate to them.

The fourth strategic vector – is the gradual bringing of state sector enterprises closer to private enterprises as to conditions for conducting economic activities.

Within the framework of this vector, one which is important in principle, one may single out two basic components: the first is connected to the status of state sector enterprises and the peculiarities of regulating their activities, while the second is connected to the external environment in which state sector enterprises function.

The first component includes the following changes in the mid- and long term:

- change in the organizational-legal form of a state sector enterprise consisting of transformation of the majority of state unitary enterprises based on the right to conduct business [PKhV] into joint stock companies (in a limited number of rigidly regulated instances, state unitary enterprises should be transformed into state [kazennye] enterprises);[49]

- gradual elimination of the peculiarities of legal regulation as applied to joint stock companies created during the course of privatization;

- gradual privatization of the capital of joint stock companies, one hundred percent of the stock of which is in state property ownership; as a result the majority of state sector enterprises will belong to the mixed form of property ownership;

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[47] Competition among enterprises in the state sector in practice often amounts to competition among various representatives of the state, or, if the representative is one and the same, then to his move to a position at one of the competing enterprises. The problem is that the representative of the state strives to activate the potential of the system of state management in support of the enterprise he is looking after.

[48] Under conditions when a high concentration of certain markets is determined by the presence in them of a limited number of private companies, privatization of several enterprises in the state sector individually, if each of them is clearly lower than such companies by market power, most likely will not lead to improvement of the competitive environment, since they may be relatively easily swallowed or may not withstand the competition.

[49] In the short term, transformation of the overwhelming majority of state unitary enterprises into joint stock companies is technically difficult; it will lead to sharp intensification of the load on the system of managing state-owned property in the economy. At the same time we do not see any advantages in the organizational-legal form of a unitary enterprise with the right to conduct business [PKhV] in comparison with a joint stock company, 100% of the stock of which is in state property ownership, from the points of view of resolving tasks laid upon the state sector.

- expansion of the scale of delegating management of state sector enterprises to potentially efficient property owners on the basis of developing and utilizing mechanisms of proxy management and concession mechanisms;

- gradual elimination of restrictions on foreign investors on participation in the capital of state sector enterprises.

The second component includes the following changes in the external environment in which state sector enterprises function:

- the basic part of state sector enterprises should be led into competitive conditions as to conditions for conducting business; for this the barriers to the entry of private business into the markets of state sector enterprises should be substantially lowered and conditions formed for development of private initiative in those sectors of the economy where it is insufficient; with that the artificial pseudo-development of a competitive environment by means of dividing up major state sector enterprises should to be [endeavored to be] avoided.

- limitation in principle of the practice both of direct and indirect state subsidizing of those state sector enterprises which function in a competitive environment.

The fifth strategic vector is increasing the determinability and stability of the state sector and the predictability of changes in it.

The given vector seems important from points of view of decreasing the negative influence of state participation on the investment attractiveness of state sector enterprises, [from points of view] of improving conditions for the functioning of private business in view of the predictability of the behavior of market entities under state control, [and from points of view] of securing social control over the activities of the state as to management (disposal of) state property.

By increasing determinability of the state sector we understand the following:

- defining in the near term the tasks laid on the state sector and forming on that basis a well-grounded notion about the necessary make-up of the state sector for resolution of the tasks laid on it and about the list of enterprises which should be privatized;[50]

- precise demarcation of enterprises of the state sector of the Russian Federation and of constituent members of the Russian Federation combined with conduct of a unified

[50] In the short term it seems important to orient oneself toward a certain excess of the state sector in the make-up of the enterprises entering into it [the make-up].
.In the first place, the mass conduct of privatization in a limited period of time will lead to losses in possible revenue [coming] into the budget from privatization in connection with the existing resource limitations of the domestic capitals market and the insufficiently favorable investment climate for attracting foreign capital.
In the second place, it is namely in the short term that concepts of the optimal property of state sector enterprises should take final shape; therefore a certain reserve of enterprises is necessary, the property of which could be utilized for optimalization of the property complex of enterprises which are necessary for resolution of tasks laid on the state sector.

policy as to determining the tasks laid on the state sector and as to [determining] the principles for management of state sector enterprises,51

- in the short term there should be a substantial decrease in the amorphousness of individual tasks in the activities of state sector enterprises; this will create the prerequisites for the streamlining of their property complex, including [of] exclusion of property from their make-up, of isolated businesses (including small enterprises) for the purpose of subsequent privatization in the mid term.

Increasing the stability of the state sector and the predictibility of its changes consists of the following:

- substantial limitation of state interference in resolving tasks of internal reformation of state sector enterprises;[52]

- the bringing of principles of managing state sector enterprises closer to those accepted in civilized private business;

- securing public awareness and openness [glasnost'] of state policies as conducted in relation to enterprises in the state sector, of the corresponding plans for reorganization, privatization, or nationalization of concrete economic entities, and of the results of the activities of enterprises in the state sector;

- the state's plans for changing the make-up of the state sector and the purposes of state management of the respective enterprises should embrace a sufficiently long perspective, which would secure more favorable conditions for adaptation of private enterprises to the changes announced by the state;[53]

- the interests of the state and the frameworks of the possible mechanisms for their achievement by the state should be determined with regard to every enterprise in the state sector; this information should be open to stockholders, which should increase their investment attractiveness to private capital.

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51 This task seems highly difficult and bearing on tasks of improving the federal structure of the state. Certainly it will be required in some way to resolve problems connected to enterprises under joint jurisdiction, to agreements with constituent members of the Russian Federation on demarcation of powers, and to city-forming enterprises. The most difficult thing is to assure a unified policy on managing state-owned property at all levels (so far no normative documents at all have been offered for this); in this connection a certain restraint is necessary in transfer of federal enterprises to the regions and to municipal formations in view of the poor predictability of their further actions with regard to these enterprises. Taking into account the aspirations of the authorities in certain regions to direct regulation (interference in economic relations), to render support to enterprises under their control, transfer to them of additional objects of management should be done with great caution, placing certain conditions on transfer of enterprises beforehand (for example, on their privatization).

52 In the short term what seems necessary is active participation of the state in optimalization of the property complexes of enterprises, bankruptcy-prevention measures [sanatsiia] for them, and attraction of investments; however, in the long term, participation of the state in managing state sector enterprises should be limited to setting tasks and working out mutual rules without interference in concrete methods for the necessary internal transformations, which enterprises will choose for themselves for achievement of the goals which have been set.

53 Limiting access to information on forthcoming changes in the state sector leads in practice to their becoming known ahead of time just the same, but only to a narrow circle of economic enterprises, which leads to violation of equal conditions for competition.

The sixth strategic vector – is a change in the principles of managing state-owned property in industry connected to working out stable rules (frameworks) for management and [connected to] development of the state's trust in the actions of enterprises in the state sector.

The following aspects seem important in this vector:

- decreasing the scale of disposition [management] of state property in isolation from business of enterprises in the state sector through drawing this property into the property complexes of enterprises or through its privatization, which would allow concentration on managing enterprises in the state sector;[54] the priority of tasks of managing business in the state sector, whereby tasks of managing state property are subordinate to them;

- rendering of state influence on the activities of state sector enterprises exclusively on the basis of the norms of corporative law without usage of other instruments inaccessible to private property owners (for example, within the framework of state tax or foreign economic policy);

- participation of the state (including jointly with other property owners) only in determining the strategy of the activities of state sector enterprises and granting them independence in resolution of tactical issues, development of collegiality when the state makes decisions regarding enterprises in the state sector;[55]

- the state, participating in the capital of enterprises in the state sector, should demonstrate a practice of good corporate construction;[56]

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[54] Drawing state property into economic turnover seems to be one of the most important tasks for the short term. This cannot be considered in isolation from solving tasks of registering the rights of the state to all kinds of state property (for example, rights to the results of intellectual activities). Drawing property into economic turnover may be effected either by means of its privatization or its utilization for optimalization of the property complexes of state sector enterprises. However, drawing property into economic turnover should be based, first of all, on transfer of such property to economic entities, which themselves would utilize it in economic turnover, and not by means of direct participation of the state in utilizing such property. Let us clarify the essence of the differences with the following example: instead of utilizing state property as guarantees for attracting investments, priority should go to transfer of property to an enterprise for purposes of increasing its investment attractivenss in order that the enterprise itself attract investments without the efforts of the state as intermediary.

[55] In the short term, when tasks will inevitably dominate which are resolved by issuing direct state instructions to state sector enterprises, collegiality would lead to erosion of responsibility of representatives of the state management system for the consequences of decisions taken. However, in the long term, as the quality of management increases and the state's trust in state sector enterprises increases, concrete managerial decisions should become the prerogative of the state sector enterprises themselves, while state management will basically amount to determining the strategic tasks for their activities and certain framework rules of interaction and to monitoring the results achieved of the activities of state sector enterprises.

[56] What is meant is that even in the absence of legislatively established norms, the state should strive to take necessary decisions taking into account the interests of other stockholders (for example, a decision might be taken by the council of directors, but it is brought out for consideration by a general meeting of stockholders). In the short term what seems necessary is activization of the efforts of representatives of the state in defending its interests as a stockholder, especially in those situations when the state possesses a

- management of state sector enterprises should be built on a basis of agreements between the enterprise and the state and between other stockholders and the state establishing mutual obligations and mechanisms for carrying out such obligations for a sufficiently lengthy period of time (for example, for five to seven years);

- curtailment of the number of independent enterprises in the state sector will permit moving in full measure to individual management of every enterprise in the state sector; such individualization of management thereby should be based on the specifics of the enterprise's business and manifest itself in determining the strategy of the enterprise's activities and of the framework conditions for achievement of tasks set, but without interference in its current activities; this should be secured by introduction of the budgetary approach to managing the enterprise;[57]

- object-by-object [site-by-site] management of enterprises requires profound knowledge of the peculiarities of running a concrete business; therefore the role in the grounding and working-out of decisions on managing state sector enterprises of independent consultants who are not employees of the ministries and agencies should be strengthened.

In conclusion we would note that the above-enumerated strategic vectors ought not to be looked upon as some permanent vector for necessary changes over the course of the entire long-term period – this in certain measure is illustrated by our remarks concerning the tasks at the present stage of improving the system for management of state-owned property in the economy. Thus we have tried to locate and discuss the desirable differences in principle of the state sector in the long term from its look in the short term.

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minority block of stock. This could have a good effect on economic entities in the sense of demonstrating the possibilities for effecting stockholder rights.

[57] The essence of the budgetary approach to management amounts to the following. First, the enterprise's basic budget (for three to five years) is formed, this being the financial expression of marketing and production plans. The basic budget should contain three basic financial documents: a forecast of the report on profits and losses; a forecast of the report on movement of monetary resources; and a forecast of the balance sheet report.

After approval (coordination) of the basic budget, monitoring is effected of the execution of the articles laid down in it. For that, with a definite periodicity the managing organ should be presented with memoranda on the current execution of the budget with commentaries on the necessity of deviations made from the approved budget with well-founded proposals for its correction in the future and about threats which have arisen to its subsequent execution and about proposed measures for minimizing risks. For the purpose of securing the necessary flexibility, the approved budget may be corrected with a definite periodicity, the frameworks of deviations made in the reporting period may be determined thereby without approval of the managing organ.

For evaluation of the efficiency of management of financial resources, a planning schedule is necessary for the sequence of key events determining successfulness of the carrying out of this or that project. The main thing when drawing up of the above-mentioned schedule is to determine the events which may be monitored in reality, including by specialists of different specialties.

3.3.General vectors and prospects for transformation of a part of the SUEs into other organizational-legal forms and modification of the status of SUEs

Decree №1348 of the Government of the Russian Federation dated 6 December 1999 «On federal state unitary enterprises based on the right to conduct business (PKhV)» adopted for carrying out the Concept envisaged the directing by agencies of branch management to the Ministry of State Property of the Russian Federation of well-grounded proposals for the further future of federal state unitary enterprises in their jurisdiction. Altogether five Scenarios for transforming the organizational-legal structure of such enterprises were defined: 1) reorganization of enterprises, including their transformation into open joint stock companies; 2) creation of federal state [kazennye] enterprises [KP] on the basis of the property of the enterprises; 3) sale of the enterprises as property complexes; 4) liquidation of the enterprises; 5) retention of the enterprises in the form of unitary enterprises based on the right to conduct business (PKhV).

The program approved half a year later by the Government of Russia in the summer of 2000 («Basic vectors of the socio-economic policy of the Government of the Russian Federation for the long term») proceeded from the premise of the necessity of curtailing the state sector down to 1,500-2,000 federal enterprises by the year 2004.

At the basis of the given scenario forecast lies the thesis of the complete (with the exception of objects providing for national security) privatization in branches having potential for survival and growth with the attracting to them of domestic and foreign investments and with the turnover of the stock of the respective companies in the securities market. With regard to state unitary enterprises there was postulated the completion of the program for transforming state unitary enterprises into joint stock companies with one hundred percent of the stock in federal property ownership by the end of 2001.

From a purely formal point of view, implementation of such an approach should simplify their privatization. At the same time it has to be kept in view that hasty corporatization of state unitary enterprises inevitably narrows the field for restructuralizational privatization, when an enterprise is sold as a unified property complex – production equipment together with buildings, structures, premises, and the plot of land occupied (an extended version of the privatization in the former German Democratic Republic). Whereas transformation of it into a joint stock company is more likely to lead to the arising of problems of breaking stock capital down into blocks for sale and estimation of their value. Of course, one cannot exclude the Scenario of implementation of the restructuralizational scheme of privatization by means of liquidating a state enterprise and forming new businesses on the freed up spaces and equipment.

Another argument in favor of the transformation as soon as possible of state enterprises into joint stock companies with one hundred percent of the stock in the property ownership of the state is the weak implementation by the state of its functions as property owner. However, under the conditions of the Russian transitional economy, where many privatized enterprises do not demonstrate the expected efficiency and manageability even by the new property owners from the private sector, it is hard to

expect that a simple change of organizational-legal form within the framework of the state sector will render a rapid positive effect on the state of an enterprise. A vivid example of that are the problems characteristic of the largest joint stock companies with state participation.[58]

Also profoundly mistaken for resolving the issue of privatization of this or that enterprise is the unifying under one classificational sign of the presence of «a potential for survival and growth.» The economic practice of the 1990s showed convincingly that these are different criteria, not to mention such commonly known truths as the extremely insignificant volume of investments from the side even in the most attractive Russian companies, the stock of which is quoted only on the stock market. Such a prospect is more than doubtful as applied to enterprises in the full property ownership of the state at the present moment.

On hand also is an obvious contradiction between a radical orientation toward complete liquidation of SUEs with abolition of the right to conduct business (PKhV) as such and the specifics of their economic activities connected to production of goods and services and carrying out works, the basic consumer of which is the state and society on the whole, and also the low liquidity of their assets.

On the practical plane to the present time it can already be stated that the organizational possibilities of the state for reforming unitary enterprises has also come into serious contradiction with a quantitative limitation – the scale of the SUE sector. The forecast estimate contained in the mid-term program of the Russian government on completion of the program for transformation of state unitary enterprises (SUEs) into joint stock companies where one hundred percent of the stock is in federal property ownership proved to be exceedingly far from reality by the end of 2001, as also was the aim of the preceding government program for the period 1997-2000 to complete this process by the beginning of 1999. Recall that by the beginning of 2002 there were 9,394 federal state unitary enterprises and only ninety joint stock companies where the entire capital belonged to the Russian Federation.

All this makes more likely a scenario of the gradual bringing of the number of state unitary enterprises into accordance with the managerial possibilities of the state with parallel implementation of the set of measures to improve their management envisaged by the above-mentioned Concept.

In the mid term the Ministry of State Property of the Russian Federation retains a primary orientation toward corporatization of the majority of federal state unitary

[58] Achievement of significant effects from the planned transformation of federal rail transport within the framework of the Ministry of Railways (MPS) into the «Russian Railroads (RZhD) joint stock company with one hundred percent state capital is not obvious at the least. Electrical energy and the gas branch, which went through the stage of corporatization as long ago as 1992 and which were amalgamated into very large holding companies (RAO «YeES of Russia» and «Gazprom») with control blocks of stock belonging to the state, never have demonstrated substantially higher efficiency in comparison with the railroads, which, in turn, just like holding companies, effected internal changes within the framework of the program of reforms in the area of the natural monopolies. Over the course of the last decade all three branches have had similar problems: nontransparency of financial flows, intersecting subsidizing, aging of basic assets [osnovnye fondy] close to the critical.

enterprises (with the gradual sale of their stock), which will permit usage not of a special mechanism to manage state unitary enterprises, but the instrument which has become rather ordinary in recent years of delegating representatives of the state to the councils of directors of the joint stock companies created on the base of federal state unitary enterprises. Preparatory work on their corporatization was carried on over the course of 2001. With regard to two thirds of the federal state unitary enterprises, proposals for their restructuring were formulated, including reorganization of 1669 enterprises and liquidation of 531 enterprises.

Proceeding from the classification of the methods of transforming the organizational-legal form of federal state unitary enterprises contained in Decree №1348 of the Government of the Russian Federation dated 6 December 1999, it can be stated that out of about 6,200 enterprises with regard to which proposals have been formulated on their restructuring, about twenty-seven percent will be reorganized, which also includes formation of open joint stock companies on their base,[59] and 8.6 percent will be liquidated. Accordingly, with regard to about four thousand federal state unitary enterprises, the spectrum of options of transformation consists of sale of the enterprises as property complexes, creation of federal state [kazennye] enterprises [KP] on the base of their property, and retention of the enterprises in the form of unitary enterprises based on the right to conduct business (PKhV). The polar oppositeness of these Scenarios is sufficiently obvious; however, for the time being the Ministry of State Property of the Russian Federation is not reporting any more detailed studies.

The practice of reform of property relations in Russia in 1998-2000 permits estimating the prospects of various options of transforming federal state unitary enterprises in practice in the following way.

Corporatization

The Ministry of State Property contemplates transforming one hundred and fifty federal state unitary enterprises into joint stock companies in 2002. Using that speed of corporatization as a jumping-off point, one may say that the period for turning the federal state unitary enterprises set for that into joint stock companies may take no less than ten years. But in reality, apparently, it may take even longer, because the number of joint stock companies created on the base of enterprises in federal property ownership over the course of privatization in recent years has had an undeviating tendency to drop. Over the time which has passed since entry into force of the 1997 law on privatization, one hundred fifty-eight new joint stock companies have been created altogether (1998 – one hundred and one, 1999 – thirty-one, 2000 – thirty six).

When estimating the prospects for corporatization of federal state unitary enterprises, it should be taken into account that over the course of effecting the privatization program, the basic mass of enterprises unambiguously belonging to privatization had changed form of property ownership even before the end of the check [voucher] stage (1992-1994). Its remnants were chosen over the course of the monetary

[59] In Decree №1348 of the Government of the Russian Federation dated 6 December 1999 nothing is said about any other variants of reorganizing federal state unitary enterprises other than creation of open joint stock companies, ahtough the formulation «including» implies that there will be other variants.

privatization of 1995-1997. As a result, the basic mass of enterprises remaining in state property ownership which were drawn into the process of changing form of property ownership in the second half of the 1990s was represented by objects, the very possibility of privatization of which was made conditional upon certain limitations and was linked to the accomplishment of standardized monitoring procedures (assigning of control blocks of stock to the property ownership of the state when enterprises were transformed into joint stock companies and usage of the special «golden stock» right).

Therefore one may consider exceedingly natural the sharp increase in 1998-2000 of the proportion among newly created joint stock companies of enterprises of which the state retained direct (by means of assignment of a control block of stock) and indirect (by means of inclusion of «golden stock» in the charter capital) property control even after formal corporatization. It is absolutely obvious that corporatization of federal state unitary enterprises in the next few years will strengthen this tendency even more. In view of the specifics of their assets, the possibilities for sale of the blocks of stock intended for free sale are sufficiently transparent.

As a result of all this, the load will also grown on the agencies of state management which will now have to act within the framework of the norms of corporate law. For the Nth time it will have to be recognized that miracles do not occur – the mechanical transformation of state enterprises into joint stock companies (regardless of the magnitude of the block of stock belonging to the state), outside a combination with other measures to reform the state sector and improve the system of managing state-owned property, will not lead to positive changes.

It is not enough to grant the state rights to management of enterprises in the state sector; their practical usage has to be secured. However, substantial problems with that will arise. Up to the present time only as a consequence of the fact that the state achieved representation on the councils of directors of joint stock companies proportional to its share in the charter capital, the overall number of representatives of the Russian Federation in comparison with 1997 has grown by more than a time and a half and has reached more than 3,200 persons. When transforming state enterprises into joint stock companies in isolation from solving the task of curtailing the subjective dimensions of the state sector (which may be achieved not only by means of privatization, but also integration of the respective enterprises), there will naturally be required a further, and moreover radical, increase in the number of representatives of the state for their inclusion in the councils of directors and auditing commissions of enterprises being transformed into joint stock companies. However, even now, by admission of representatives of the Ministry of State Property of Russia, increasing the number of representatives of the state leads to a sharp increase in outlays to support the institute of state representatives and to a decrease in its qualitative make-up. Instances are becoming ever more widespread when ministry employees at the very lowest level of the service hierarchy are offered as government representatives. Although the Ministry of Finances of Russia did allocate additional resources to the estimate of the Ministry of State Property of Russia for 2001 specifically for managing stock belonging to the state, these resources seem clearly insufficient.

Thus in the absence of significant measures to develop a system of managing state-owned property (increasing the qualifications of state representatives, securing their material vested interest in positive results of management), the risk is exceedingly high of getting, instead of badly managed state enterprises, just as inefficiently managed joint stock companies. Excessive economizing on expenditures to support the institute of state representatives has already been leading to state representatives being forced to resort to direct violation of the operative laws and compensate expenditures for the performance of their duties on councils of directors (for example, paying for official travel) at the expense of the joint stock companies themselves. That intensifies the dependence of state representatives on the enterprises' management and creates the preconditions for corruption among state representatives.

Naturally, a quantitative decrease in the size of the state sector is possible not only through privatization, but also by means of compulsory integration of enterprises which have been transformed into joint stock companies into holding structures. However, this scheme is to a significant degree of a one-by-one nature, because it depends strongly on the specifics of the branch and the assets remaining in the property ownership of the state. The task of creating competitive holding structures with state participation is an exceedingly difficult one, because keeping track of the technical aspect of the issue (compatibility, interconnection and mutual supplementability of enterprises) is added to by requirements for concentration of state assets to a level permitting the accomplishment of effective monitoring along with minimalization of managerial outlays.

Resolution № 713 of the Government of the Russian Federation dated 11 October 2001 approved the federal special-purpose program «Reformation and development of the defense industry complex (2002-2006). Within the framework of the program named there is contemplated the creation of a number of integrated structures (Modelly thirty-six), which are one of the most efficient forms of managing state-owned property in the military industrial complex. From the name of the document it is already apparent that the time horizon encompasses five years. From the organizational-legal point of view what is important is that what is meant is creation of structures intended to consolidate both federal state unitary enterprises and the state's shares in joint stock companies. Accordingly, the question arises of the status of federal state unitary enterprises inside them: are they branches or subsidiary enterprises?

Transformation of federal state unitary enterprises with the right to conduct business (PKhV) into joint stock companies with one hundred percent state participation

This procedure, which, according to the 1997 law, is one of the variants of privatization, and factually is a variety of corporatization, has been applied extremely rarely in practice. Over the entire 1998-2000 period, thirty-four such joint stock companies appeared during the course of privatization, of which only one was on the base of a federal enterprise, which makes one doubt seriously the prospects for utilizing this method of transformation of federal state unitary enterprises in the future.

Transformation of federal state unitary enterprises into state enterprises [KP]

The first mention of state enterprises [KP] in contemporary Russia appeared in Ukase №1003 of the President of the Russian Federation dated 23 May 1994 «On reform

of state enterprises.» A little later they were institutionalized by the Civil Code of the Russian Federation, which in Article 115 defined a federal state enterprise [KP] as a unitary enterprise founded on the right of operational management in instances provided for by the law on state and municipal unitary enterprises, by decision of the Government of the Russian Federation on a base of property in federal property ownership. The Civil Code of the Russian Federation does not endow constituent members of the Russian Federation and municipal formation with the right to create state enterprises [KP].

As of 1 January 2002, out of 9,394 federal state unitary enterprises only thirty-three (or 0.35 percent) were state enterprises [KP]. Thus it can be assumed that if the rate of appearance of state enterprises [KP] which has actually been taking place is maintained, then creation of four or five such enterprises per year is realistic, that is, the period of transformation of federal unitary enterprises (SUEs) will stretch on to infinity.

Liquidation

Over the time which has passed since entry into force of the 1997 law on privatization, by means of selling the property of enterprises being liquidated [or already] liquidated, altogether fifty-seven objects in federal property ownership were privatized (1998 – forty eight, 1999 – seven, 2000 – two). Proceeding from this data, it is not hard to draw the conclusion that, even with retention of the rates of utilization of this method of privatization at the level of 1998, liquidation of federal state unitary enterprises designated for this by the Ministry of State Property will take not less than ten years (in reality, to all appearances, far longer).

Privatizing by means of sale of property complexes

With adoption of the new law «On privatization of state and municipal property» dated 21 December 2001 (№ 178-FZ), the problem of creating an instrument of privatization (aside from simple transformation into joint stock companies) received legislative resolution, which [instrument] would permit ridding the state of assets of low liquidity (it is namely they that the majority of state unitary enterprises (SUEs) have disposal of) with simultaneous stimulation of minimal demand on the part of private persons and small business.

Proceeding from the ten possible methods of privatization proposed in the document (depending on size of the enterprise, on liquidity, or on the results of initial sales), it may be assumed that a significant part of the state unitary enterprises (SUEs) are an object of application of ordinary (aside from corporatization) privatization related procedures:

- sales of state or municipal property by competitive bidding;

- sales of state or municipal property at auction.

Over the time which has passed since entry into force of the 1997 law on privatization, by means of sale at auction and commercial competitive bidding there have been privatized altogether 192 enterprises (objects) in federal property ownership (1998 – forty-seven, 1999 – twelve, 2000 – one hundred thirty-three[60]). Aside from these standard

[60] Data for 2000 include 112 objects of federal real estate and two enterprises liquidated and being liquidated. Data on sale of land parcels in the make-up of the property complex of privatized federal enterprises for 2000 is lacking.

procedures, sales specially singled out in 1998-1999 in statistical accounting of objects of federal real state (ninety-eight), land parcels in the make-up of the property complex of privatized federal enterprises (eight), and two federal debtor enterprises were effected.

With retention of the rates of utilization of all these methods of privatization in aggregate at the level of the year 2000, when they were most actively utilized, the sale of the entire mass of federal state unitary enterprises potentially remaining for that (aside from those marked for reorganization and liquidation) will take three or four decades.

However, it is possible that with the appearance of the new methods of privatization which received their juridical embodiment in the above-mentioned law of 2001, that time period may be cut substantially. What is meant in the given instance is:

- sale of state or municipal property by means of public offer (that is, Dutch auction with lowering of the price to a cut-off price equal to initial value in the absence of buyers at the auction);

- sale of state or municipal property without announcement of the price (when sale has failed through public offer for small and mid-sized enterprises).

Reorganization through apportionment or joining (merger)

Highly likely in the mid term is reorganization of federal state unitary enterprises by means of their amalgamation on the basis of merger (in a number of instances with preliminary separating out of specialty assets).

Creation on 22 May 2000 of the federal state unitary enterprise «Rosspirtprom» (Russian alcoholic industry) (for centralization of management of assets in the alcohol industry belonging to the state) was the first such example. As of fall 2000, eighteen state unitary enterprises (SUEs) enter into holding companies with rights as branches (basically regional state unitary enterprises (SUEs) intended to manage the activities of alcohol and liqueur and vodka distilleries on a regional scale) and blocks of stock of a significant number of enterprises in the alcohol producing industry. The process of consolidating state-owned property in the branch has continued, and by the beginning of 2002 the holding company already united one hundred and seven enterprises (counting also the blocks of stock (shares, contributions) of the state in the capital of joint stock companies).

Similar schemes of action have been approved by the Russian government with regard to the defense industry and postal communications. The first of them has been told about above. Implementation of the scheme for creating a number of integrated structures, which have been recognized as one of the most efficient forms of managing state-owned property in the military industrial complex, requires great caution and no little time, because any work on restructuring enterprises with separating out from them of any kind of production facilities is possible only after thorough taking into account of the entire set of circumstances connected to that, first of all evaluation of the very possibility of de-amalgamation of objects built as a unified technological complex, and working out the technical aspects of this issue.

The concept of restructuring federal postal communications approved in March 2002 contemplates unification of the ninety-two enterprises existing at the present time into one – the federal state unitary enterprise «Pochta Rossii» (Russia's mail) with the prospect of transformation into an open joint stock company. The calculation placed at the

basis of such a variant, in the opinion of experts, can be connected to increasing the level of profitability and to concentration of investments inside the branch. Possible reserves -- elimination of competition and duplicating structures, restructuring of the management system – estimated at one hundred fifty million dollars, do not seem to be lying on the surface.

One more such project is the attempt to create a new federal state unitary enterprise «Moskovskii aviauzel» (Moscow aviation center) on the basis of consolidating management of the property of the Moscow civilian airports (by analogy with the sea administrations of ports in water transport). This decision was made by the government as long ago as October 2001, but it has not yet been implemented.

Transfer in one or another form to constituent members of the Russian Federation

Recall that such a possibility was already envisaged by Resolution № 1366 of the Government of the Russian Federation dated 9 December 1999.

In the absence of a law on state and municipal unitary enterprises, the situation in the sphere of managing unitary enterprises in the property ownership of constituent members of the Russian Federation and of managing municipal unitary enterprises is a separate problem.

The thing is that federal state unitary enterprises are the object of application of practically all the new normative-legal base which appeared in 1999-2001. An exception is Resolution №23 of the Government of the Russian Federation dated 11 January 2000 «On the registry of indicators of the economic efficiency of the activities of federal state unitary enterprises and open joint stock companies, the stock of which is in federal property ownership,» which *recommends* to agencies of the executive authority of the constituent members of the Russian Federation that they organize work on creating and conducting registries of indicators of the economic efficiency of the activities of state unitary enterprises in the property ownership of constituent members of the Russian Federation (and likewise of the open joint stock companies, the stock of which is in the property ownership of constituent members of the Russian Federation).

It is obvious that extension to regional property ownership (by analogy with federal state unitary enterprises) of all the above-indicated schemes and mechanisms of management is a paramount task. At the least this should be true of those enterprises which the federal center plans to hand over to the localities. The launching of this process should be preceded by a thorough study of the real situation in the sphere of property relations in this or that region, including at enterprises which were handed over to its authorities earlier.

It is advisable to tie the very possibility of transfer of federal state unitary enterprises to the property ownership of constituent members of the Federation to the dimensions of the existing mass of regional property ownership (including blocks of stock), to the effectiveness of the preceding sales in the course of privatization related procedures, and to inclusion of all these issues in the official documents on inter-budgetary relations.

In the meantime, in Resolution №1366 of the Government of the Russian Federation dated 9 December 1999 which was adopted on this issue, transfer of federal state unitary enterprises to the property ownership of constituent members of the Russian Federation

was tied only to a decrease in the size of the resources transferred to the regions from the federal budget. For enterprises having arrears by more than three months for obligatory payments to the federal budget and to state extra-budgetary funds, and also for wages, a list was also required of the measures (a business plan) securing, among other things, liquidation over the course of a certain period of this indebtedness (with indication of the sources for financing the necessary measures). With all this, the corresponding forms of the Example agreement and transfer act adopted by Order №2-r of the Ministry of State Property dated 23 May 2000 were not registered by the Ministry of Justice of the Russian Federation, and the issue continues to hang in a state of suspension.

Information on the practical application of this mechanism is lacking. The object of transfer of federal property ownership in the mutual relations with Moscow for purposes of partial compensation to the city for expenditures for carrying out the functions of the country's capital (on the basis of Resolution № 974 of the Government of the Russian Federation dated 15 December 2000) became not federal state unitary enterprises, but the blocks of stock of certain enterprises.

There are no data, either, on the placing of the property of federal state unitary enterprises in the charter capitals of open joint stock companies in 1998-2000 as a contribution. In this connection, what seems important is the search for and development of other legal forms for representing the state's interests in managing enterprises (businesses) in state property ownership (rental, concessions, proxy management).

Retention of federal state unitary enterprises in the status of unitary enterprises with the right to conduct business (PKhV) (see also the preceding sections)

In this instance, just as for implementation of any other variants for transformation of unitary enterprises, wide-scale inventory is necessary, which in the broad sense presumes not only accounting for property, but also monitoring of the actions of the management. The necessity for creating a unified registry of state-owned property was obvious as early as the beginning of the 1990s. However, work on its creation dragged out a long time and was activated only after adoption of the Concept for managing state-owned property and for privatization in September 1999.

Another problem are attempts at effecting monitoring of the activities of directors and stimulating transfers by federal state unitary enterprises of a part of the profit to the federal budget. The first is unlikely to be possible even with the working out of economic and financial norms and standards by branch agencies. Abrogation of contract (just like a decision by a performance evaluation committee) may be disputed in court on these grounds. Great significance for the personnel aspect of managing unitary enterprises may be had by the practice which takes shape in connection with the adoption of the new Labor Code (the former Code of Labor Laws granted their management very great possibilities for protecting their position).

Transfer by state unitary enterprises (SUEs) of a part of the profit to the state is provided for by legislation (Article 295 of the Civil Code of the Russian Federation); however for the time being such instances are of an isolated nature. To increase the budget's income at the expense of the profit of state unitary enterprises (SUEs), a precise determination by the government of the principles for transferring profit from SUEs to the federal budget is necessary.

Real monitoring can be effected within the framework of regular and independent auditing checks; however, significant resources are necessary for this.

Retention in the near future of SUEs as economic entities in the Russian transitional economy makes it urgent to separate out minimalization of the drawbacks ensuing from the right to conduct business (PKhV) as an independent vector for regulatory activity by the state in the field of property relations.

On the practical plane, this means minimalization of commercial risks when conducting ***state entrepreneurship*** through unitary enterprises. In this sphere, one ought to place among the most obvious and widely spread ***commercial risks*** the following:

- the possibility of partial alienation of property transferred by the state to the conduct of business by SUEs;

- the low probability of the state's receiving income from the activities of SUEs, both due to branch specifics (low profitability and liquidity of assets, orientation toward orders placed by the state with the problem ensuing from that of the government's carrying out its obligations), and due to the possibilities of interception of financial flows by outside structures;

- the danger of the aging of production equipment as a result of usage of investment resources for purposes they were not designated for and of the «eating up» of profits;

- the risk of the bankruptcy of SUEs and the complete loss by the state of property owner rights to property transferred to them for economic jurisdiction.

The following should be considered the basic ways for the state to be active in *minimizing these risks*:

- *bringing the activities* of SUEs in accordance with the requirements envisaged by the normative-legal acts of the Government of the Russian Federation and the Ministry of State Property of the Russian Federation of 1999-2000, which presumes re-registration of the renewed charters of the enterprises at the Ministry of State property of the Russian Federation; appointment of managers on a contract basis; fixing in the charter of the state's right to a share of profit received; introduction of a new system of monitoring and accounting;

- *effective application of the powers of the property owner within the framework of operative legislation* and *the requirements indicated above* (defining the volume of legal capacity; monitoring usage of property and achievement of certain indicators of the economic efficiency of activities; receipt of non-tax revenues into the budgetary system through regular remittances by SUEs of the established share of profit from current activities, conducting personnel policies by means of the decisions of performance evaluation commissions and the abrogation of contracts);

- *detailing and organizational optimalization of the managerial influence of the state on SUEs* (creation of specialized SUEs for managing a large number of relatively small and dispersed assets, strengthening the monitoring functions of the state in major SUEs through creation of Supervisory councils [made up] of representatives from all state agencies looking after the given enterprise; direct subordination to the Government of the Russian Federation with regards to SUEs having strategic significance);

- *continuing and completion of work on inventorying state property* with regard to including state unitary enterprises in the Registry of property ownership of the Russian Federation on the basis of their precise demarcation between the federal, regional, and municipal levels (not allowing situations whereby federal state unitary enterprises exist locally, but are not tied to any agency).

Implementation of all the above-indicated measures together with correct personnel policy at branch and functional agencies of management, [while] not guaranteeing absolute protection of the state as principle against unconscientious actions by a manager-agent, in principle is capable of significantly lowering the integrated risk of the bankruptcy of state unitary enterprises and [the risk] of expenses in the sphere of state entrepreneurship. For the sake of fairness, it has to be noted that such negative consequences of the functioning of the institute of doing business [KhV] as low indicators of efficiency of current activities, removal of assets, fictitious bankruptcy, etc., are characteristic in principle of many entities of other organizational-legal forms, too. Many privatized enterprises in the Russian economy do not demonstrate the expected efficiency and manageability even by the new private owners, which shows the universal nature of the difficulties inherent to the inter-relations of managers and property owners under conditions of a transition to the market.

3.4.Reorganization of the legal status of State unitary enterprises (SUEs): the concept of the law

As Stated above, one of the most serious gaps in legal regulation of the State's rights of ownership in post-reform Russia is the absence of a law on state (municipal) enterprises. The following text based on a comprehensive consideration of the draft law approved by both Chambers of the Russian Parliament is aimed at clarifying the concept of the planned changes in the legal status of unitary enterprises. Both positive and negative aspects of the draft law are thoroughly analyzed against the background of the functioning of such enterprises, and certain suggestions are put forward as to how to improve this piece of legislation.

3.4.1. The importance of the adoption of the law

The organizational and legal form “a state unitary enterprise based on the right of economic jurisdiction” has been repeatedly criticized from the point of view of both theory and practice. At the same time, a significant proportion of critical remarks addressing this organizational and legal form deals with the fact that a number of basic issues regarding the creation and activity of State unitary enterprises (hereinafter to be referred to as GUPs) remain legally unregulated, and that it was only recently that the charter of state enterprises have started to undergo modifications in accordance with the Civil Code of the RF.

It is worth mentioning that the Civil Code of the RF contains a number of direct references to a special law on State and municipal unitary enterprises. Thus, Item 6 of Article 113 stipulates that the legal status of State and municipal unitary enterprises is determined, apart from the Civil Code, by the law on State and municipal unitary enterprises. At the end of 1994, the Federal Law "On the Enactment of Part One of the Civil Code of the Russian Federation" made the re-registration of State enterprises conditional on the adoption of a law on State and municipal unitary enterprises. But nearly eight years were to pass before there emerged a situation when such a law finally had any chances to be adopted[61].

The long history of struggle for the adoption of this law was full of numerous conflicts.

It should be noted that as early as 1995, the RF Government introduced a draft federal law "On State and Municipal Unitary Enterprises" (Direction of the RF Government of 24 July 1995 No 1043-r) for the consideration of the State Duma of the Federal Assembly (hereinafter to be referred to as the SD FA). In the same year, the State Duma took the decision to approve the draft in the first reading (Resolution of the SD FA of 5 December No l422-1 GD).

Nevertheless, in the year 1999, in accordance with the decisions of the State Duma, the draft introduced by the EF Government was returned to the procedure of the first reading (Resolution of the SD FA of the RF of 18 March 1999 No 3779-II GD) and subsequently rejected on the same day (Resolution of the SD FA of the RF of l8 March 1999 No 3780-II GD). A month later the State Duma adopted in the first reading a new draft of the Federal Law "On State and Municipal Unitary Enterprises", this time introduced by a group of deputies[62] (Resolution of the SD FA of the RF of 22 April 1999 No 3916-II GD).

In 2002, this draft law was approved by the State Duma first in the second reading (Resolution of the SD FA of the RF of 20 September 2002 No 3043-III GD), then in the third (Resolution of the SD FA of the RF of 11 October 2002 No 3115-III GD), and at last was adopted by the Council of the Federation (CF) (Resolution of the CF FA of the RF of 30 October 2002 No 418-GF). And finally, on the l4th of November 2002, the law to be enacted from the moment of its official publication was signed by the RF President.

Such a long delay in the adoption of the law on SUEs can be explained to a large extent by the over-optimistic expectations concerning the prospects and the speed of the transformation of SUEs into open joint-stock societies with a 100% participation of the State in their capital - it was widely believed that the law on SUEs was not necessary because, in fact, there would be no appropriate object of regulation. At the same time, these expectations turned to be not justified - at the present time the number of federal

[61] It should be noted that the Federal Laws "On Joint-Stock Societies" and "On Limited Responsibility Societies" referred to in the same chapter of the RF Civil Code were adopted in late 1995 and early 1998, respectively.

62 The bill was introduced by the State Duma deputies P.G.Bunich, N.V.Aref'ev, P.M.Veselkin, V.I.Golovlev, M.V.Emel'ianov, V.Iu.Kuznetsov, V.E.Laritskii, N.N.Savel'ev, V.I.Sergienko, A.G.Chershintsev and member of the Council of the Federation Iu.M.Luzhkov.

state unitary enterprises amounts to nearly 9.4 thousand units, and of approximately 4400 economic societies whose blocks of shares (or participatory shares, contributions) are owned by the Russian Federation, only in 90 societies (or 2%) the share of the State in the charter capital amounts to 100%, The proportions between unitary enterprises and the participation of regional and local authorities in the capital of economic societies require further refinement.

The actual history of privatization during the last 4 years when the 1997 law was already in force does not justify any assumptions that all these enterprises could be (or should be) privatized during the next 4-5 years.

What is more, there exists a number of objective and subjective reasons for preserving this organizational and legal form.

The objective reasons include the assumption that no other form would permit the State to organize the implementation of some of its economic functions more effectively. It should be admitted that there exists a range (though rather limited) of tasks of State importance (and public interests) the delegation of which to State unitary enterprises could be considered a sufficiently rational - and in some cases the only reasonable - option (providing the existing regulation is upgraded).

Among the subjective reasons one could mention the loyalty to traditions, the unwillingness of the State to use any other forms, or, on the contrary, its willingness to formally "preserve" the property in State or municipal ownership due to certain political motivations.

Thus, the soonest possible adoption of the law on State and municipal unitary enterprises represents an important task within the framework of perfecting the system of Russian legal regulation.

3.4.2. The basic problems of regulation in respect to State unitary enterprises

It should be mentioned that the major legal conflicts of concerning SUEs within the framework of economic turnover deal with the deficiencies of the right of economic jurisdiction.

1. A unitary enterprise independently disposes of its property, excepting immovable property, and shall be liable for its obligations with all of the property belonging to it in accordance with Item 5 of Article 115 of the RF Civil Code. Thus, an enterprise acts fully independently, and in the case of bankruptcy its debts shall be covered, in fact, by its owner, the State.

2. The right of economic jurisdiction makes it possible to vest the organizations by definition capable of possessing property only on the basis of operative management with the rights of an owner by means of volitional legal acts.

3. Enterprises as a legal category traditionally represent an object and not a subject of law; they must belong to somebody by the right of ownership. It is exactly this

confusion of concepts that creates misunderstanding and ambiguous interpretation of the normative acts.

The existing institute of the right of economic jurisdiction has a number of significant drawbacks. The directors of unitary enterprises enjoy wide powers to possess, use and dispose of the property belonging to the owner. In particular, the directors of unitary enterprises are free to manage the financial flows of these enterprises on their own, which includes independent decision-making concerning the general use of profits. The State, as the property owner, has only recently begun to take efforts in order to obtain a share of profits from the activity of State unitary enterprises (as stipulated in the RF Civil Code). The directors of unitary enterprises are not bound by the necessity to coordinate their decisions with the property owner (excepting the issues of management of immovable property). The charters of the majority of State unitary enterprises do not envisage any serious restrictions on the scope of authority enjoyed by the directors of these enterprises.

At the present time, the rights of the State as the property owner are extremely limited. The State can manage state unitary enterprises only by appointing and dismissing their directors, but it is rather difficult to exercise this right. Firstly, the charters of numerous State unitary enterprises contain a norm according to which the appointment and dismissal of the director is to be agreed upon with the work collective of the enterprise. Secondly, the exercise of the State's right to appoint and dismiss the director of a state unitary enterprise is significantly complicated by the discrepancy between the norms of labour legislation and those of civil law[63]. Thirdly, the conclusion of the agreements with the regions envisaging the joint management of issues regarding the appointment and dismissal of the directors of state unitary enterprises has had some extremely negative consequences - the director of a state enterprise can sabotage any government decisions and any decrees of the RF President, because he is immune from dismissal due to the agreement between the government and the region stipulating the necessity of a joint decision on this matter.

The absence of effective instruments of management on the part of the State results in the following negative consequences regarding the activity of SUEs:

- the use of State property for the purposes contradicting the basic objectives of the activities conducted by SUEs;

- the transfer of assets owned by such enterprises to other firms, the partial transfer of the finance flows of unitary enterprises to satellite firms;

- the conclusion of transactions reflecting the interests of the management of a unitary enterprise, which results in an artificial overestimation of the product cost and frequently leads to direct stealing of State property;

[63] The conflict of law consists in the fact that the director of an enterprise is subject both to the norms of labour legislation and the norms of civil law, because the director of a unitary enterprise represents the managerial body of the said enterprise. Thus, the rights of the director of a unitary enterprise are protected by labour legislation which results in considerable difficulties as regards the application of legal measures concerning the responsibility for the results of the enterprise's activities in accordance with the norms of civil law.

- the State bodies do not have any objective information either on the financial and economic activities of unitary enterprises or on their standing.

The above-listed problems have been rather dynamically addressed in the past few years by concluding new contracts with the directors of SUEs, conducting certification of the directors of SUEs, revising the charters of SUEs and auditing their activities, though it remains desirable to introduce the corresponding norms at the legislative level.

It should be noted that the adoption of a considerable number of normative documents concerning these problems has already made it possible to eliminate some of substantial deficiencies and gaps in this sphere. At the same time there are still quite a few problems to be solved: e.g., the organizational system of work with State unitary enterprises has not undergone any principle changes, the functions of ministries and agencies are not strictly specified and clarified, etc.

Moreover, the normative legal acts adopted later on in accordance with the Concept contain a number of discrepancies and gaps, while their terminology and formulations frequently lack uniformity. One could form the impression that when the Concept and the subsequent documents were elaborated, the development of a general strategy regulating the activities of the authorities so as to solve the outstanding problems and guarantee a systematic approach to decision-making did not attract proper attention.

Thus, the adoption of the Law "On State and Municipal Unitary Enterprises", the elimination of gaps and contradictions in the existing legislation regulating the status of such enterprises, the rights and responsibilities of the owners of their property and the procedure of creation, reorganization and liquidation of unitary enterprises represent an important task within the framework of the improvement of the system of Russian legal regulation.

3.4.3. The concept of the draft law

In its latest wording, the Federal Law "On State and Municipal Unitary Enterprises" envisages a number of major innovations in comparison with the existing regulation of SUEs in the framework of the RF Civil Code. Thus, the document makes it absolutely impossible for unitary enterprises to create subsidiary unitary enterprises with the status of a juridical person, and authorizes the creation of treasury enterprises not only at the federal level but also at the level of RF subjects and at the municipal level. Moreover, the document

- establishes a strict list of instances when unitary enterprises can be created on the basis of both the right of economic jurisdiction and the right of operative management;

- determines the procedure for forming, increasing or decreasing the charter fund of a unitary enterprise based on the right of economic jurisdiction;

- specifies the content of the charter of a unitary enterprise;

- refines the rights and responsibilities of the director of a unitary enterprise,

- establishes the necessity of an agreement to be reached with the owner of the property of a unitary enterprise as regards major transactions, transactions involving the

interests of the management, and some other transactions, and also establishes the possibility to determine in the charter of an enterprise the type and the extent of transactions the conclusion of which requires the property owner's consent;

- determines the procedure for State supervision over the activities of a unitary enterprise.

In general, the draft law under consideration significantly extends and specifies (and relatively modifies) the existing norms of the RF Civil Code which regulate the legal status of SUEs, and also endows a number of provisions presently fixed in bylaws with the power of statutory provisions.

On the whole, bearing in mind all that was said in the previous section, the earliest possible adoption of the Federal Law "On State and Municipal Unitary Enterprises" can be only welcomed. Nevertheless, it should be noted that the variant of the law approved by the Council of the Federation has a number of flaws, including:

- the irrationality of provisions specifying the instances of possible creation of unitary enterprises, and first of all, the surplus of reasons for the creation of treasury enterprises;

- the absence of necessary development of provisions of the Civil Code determining the special legal capacity of unitary enterprises;

- the discrepancy between certain provisions of the draft law and the JRF Civil Code and other existing laws (in particular the Federal Law "On Auditor's Activities"); the non-conformity of the terminology used in the draft law and the traditional terminology applied in the bylaws etc.

The comments to the Federal Law "On State and Municipal Unitary Enterprises" and the specific suggestions concerning the elimination of certain flaws are given in *Table 12.*

Table 12

The suggestions concerning the introduction of alterations of and amendments to the Federal Law "On State and Municipal Unitary Enterprises" approved by the Council of the Federation

№	The draft law	Comments	Proposals
1	A. 2 i.2. In the Russian Federation, the following types of unitary enterprises can be created and operate: unitary enterprises based on the right of economic jurisdiction – federal State enterprise and State enterprise of subject of the Russian Federation (*hereinafter also – a State enterprise*), a municipal enterprise…	It is not quite clear if the words in brackets refer to a federal State enterprise and a State enterprise of subject of the Russian Federation, or only to the latter	To word the Statement in brackets as follows: hereinafter *both* also are referred to as – State enterprise
2	A. 4 i.3 A unitary enterprise shall have a postal address at which all correspondence shall be kept with it, and shall be obliged to inform the agency effectuating State	With the enactment of Federal Law of August 8, 2001 No129-FZ "On State registration of juridical persons" this item lost its importance. By Federal Law of 21 March, 2002 No 31-FZ similar	Eliminate this item

№	The draft law	Comments	Proposals
	registration of juridical persons concerning the changes of its postal address.	provisions were excluded from several legislative acts (Federal Law "On joint-stock societies", "On limited responsibility societies")	
3	A. 6 i. 2 The decision concerning the participation of a unitary enterprise in a commercial or non-commercial organization may be made only with the consent of the owner of the property of the unitary enterprise. The disposal of the contribution (or share) in the charter (or contributed) capital of an economic society or partnership, as well of the shares belonging to a unitary enterprise shall be effected by the unitary enterprise only with the consent of the owner of its property.	It would be feasible to add to this item a provision stipulating a possibility of recognizing as void the transactions effected without an appropriate coordination.	Add the following paragraph to the item: A transaction concluded with violation of the requirements stipulated in this item may be deemed void upon a lawsuit of a unitary enterprise or the owner of the property of the unitary enterprise.
4	A. 8 i.4 A State or municipal enterprise may be created in the event of: - the need to use property the privatization of which is forbidden, including the property which is necessary for ensuring national security of the Russian Federation; - *the need to pursue an activity in order to solve social problems (including sale of certain goods and services at minimum prices), as well as to organize and conduct commodities interventions in order to ensure food security of the State;* - the need to pursue an activity envisaged by federal laws exclusively for State unitary enterprises; - the need to conduct scientific and scientific-and-technological activity in sectors pertaining to ensuring the security of the Russian Federation; - the need to develop and manufacture certain types of product pertaining to the sphere of the interests of the Russian Federation and ensuring the security of the Russian Federation; - the need to manufacture certain types of product that have been withdrawn from the turnover or have a limited turnover capacity. A treasury enterprise may be created in the event of: - *If a prevailing or a considerable part of goods manufactured, works*	The Civil Code of the RF and the present draft law establish a number of essential differences between the status of State (municipal) and treasury enterprises. In this connection it seems wrong to establish common or largely similar grounds for their creation. The goal of pursuing an activity in order to solve social problems (including sale of certain goods and services at minimum prices), as well as the organization and conduction of commodities interventions in order to ensure food security of the State, is essentially close to the goal of pursuing an activity of manufacturing goods, performing works, or rendering services at the prices determined by the State, and, in our opinion, is more appropriate for treasury enterprises. Generally speaking, if one takes into account the specificity of treasury enterprises, and in particular the rigid limitations imposed on their economic activity, the suggested list of the grounds for their creation seems excessive. Thus, in the cases of using the property the privatization of which is forbidden, including the property which is necessary for ensuring national security, for the development and manufacturing certain types of product that ensure national security, as well as manufacturing certain types of product that have been withdrawn from the turnover or have a limited turnover, it would be more	To replace Item 4 with the Items of the following content: 4. A State or municipal enterprise may be created in the event of: - the need to use property the privatization of which is forbidden, including the property which is necessary for ensuring national security of the Russian Federation, ensuring the functioning of air, railway and water transport, the realization of other strategic interests of the Russian Federation; - the need to conduct scientific and scientific-and-technological activity in sectors pertaining to ensuring the security of the Russian Federation; - the need to develop and manufacture certain types of product pertaining to the sphere of the interests of the Russian Federation and ensuring the security of the Russian Federation; - the need to manufacture certain types of product that have been withdrawn from the turnover or have a limited turnover capacity; - the need to pursue an activity envisaged by federal laws exclusively for State unitary enterprises. 5. A treasury enterprise may be created in the event of: - the need to pursue an activity in order to solve social problems (including sale of certain goods and services at minimum prices), as well as to organize and

№	The draft law	Comments	Proposals
	performed, or services rendered is intended to serve the federal State needs, the needs of subject of the Russian Federation or of a municipal formation; *- - the need to use property the privatization of which is forbidden, including the property which is necessary for ensuring national security of the Russian Federation, ensure the functioning of air, railway and water transport, the realization of other strategic interests of the Russian Federation;* *- the need to pursue an activity of manufacturing goods, performing works, or rendering services at the prices determined by the State with the purposes of solving social problems*; *- the need to develop and manufacture certain types of product ensuring the security of the Russian Federation;* *- the need to manufacture certain types of product that have been withdrawn from the turnover or have a limited turnover;* - the need to pursue certain subsidized types of activity and maintaining loss-making types of production; - the need to pursue the activity envisaged by federal laws exclusively for treasury enterprises.	rational, in our opinion, to create State and municipal enterprises. The creation of treasury enterprises seems unjustified in the instance when a prevailing or a considerable part of goods manufactured, works performed, or services rendered is intended to serve the federal State needs, the needs of subject of the Russian Federation or of a municipal formation. This task, in our opinion, may be quite appropriately served by the organizations other forms (e.g., joint-stock societies), on the condition that the participation of the State prevails in their capital. Besides, the wording "prevailing or considerable part" is rather vague and controversial. Finally, for the sake of convenience, is would be reasonable to subdivide the item in question, within the Article addressing a change of the type of a unitary enterprise, into two items.	conduct commodities interventions in order to ensure food security of the State; - the need to pursue an activity of manufacturing goods, performing works, or rendering services that are to be realized at prices set by the State; - the need to pursue certain subsidized types of activity and maintaining loss-making types of production; - the need to pursue the activity envisaged by federal laws exclusively for treasury enterprises
5	A. 9 I. 3 The charter of a unitary enterprise shall contain:..	In accordance with Item 5 of Article 5 of the draft law, the charter of a unitary enterprise must contain the information concerning its branches and representations. It would be feasible to reflect this requirement in the Item under consideration.	Include the paragraph: the information concerning the branches and representations of a unitary enterprise;…
6	A. 9 I. 4 The charter of a State or municipal enterprise, besides the information Stated in Item 3 of this Article, shall contain the information concerning the amount of its charter fund, the procedure and the sources of its formation, as well as concerning the areas of using profit.	See comments to Item 2 of Article 17	To word this paragraph as follows: The charter of a State or municipal enterprise, besides the information Stated in Item 3 of this Article, shall contain the information concerning the amount of the charter fund of the State or municipal enterprise, the procedure and the sources of its formation, the procedure, amount and time schedule for the transfer of a share of the profit the State or municipal enterprise to an appropriate budget, as well as concerning the areas of using the profit retained by the State or municipal enterprise.
7	A. 9 I.5	This Item is excessive, because in	Eliminate this Item

№	The draft law	Comments	Proposals
	The charter of a treasury enterprise, besides the information Stated in Item 3 of this Article, shall contain the information concerning the procedure of distributing and using the incomes of the treasury enterprise.	accordance with Item 3 of Article 17 of the draft law the procedure of distributing and using the incomes of the treasury enterprise is to be determined by the Government of the Russian Federation, the empowered State agencies of subjects of the Russian Federation or the local self-government agencies.	
8	A. 11 I. 1 The property of a unitary enterprise shall be formed at the expense of: the property consolidated to a unitary enterprise by right of economic jurisdiction or operative management by the owner of this property; *the revenues of a unitary enterprise resulting from its activity;* other sources that are not contrary to legislation.	In accordance with Item 2 of Article 299 of the Civil Code of the RF, the fruits, product and revenues received as a result of the use of the property in economic jurisdiction or operative management, as well as the property acquired by a unitary enterprise under a contract or on other grounds, shall enter the economic jurisdiction or the operative management of the enterprise. In this connection it seems feasible to determine as the sources of the formation of the property of a unitary enterprise, in addition to the revenues, also the product and the fruits resulting from its activity, as well as the acquisition by it of property under a contract or on other grounds.	Replace the third paragraph with the paragraphs containing the following: the fruits, product and revenues received as a result of the activity of a unitary enterprise; the property acquired by a unitary enterprise under a contract or on other grounds; …
9	A. 11 I. 3 In the event of the transfer of the ownership right to *a State or municipal enterprise* as a property complex to another owner of State or municipal property, this enterprise shall retain the right of economic jurisdiction or *the right of operative management* to the property belonging to it.	In accordance with the definitions used in the draft law, as State or municipal enterprises the unitary enterprises based on the right of *economic jurisdiction* are to be understood. It is obvious that such an enterprise cannot retain the right of operative management to the property belonging to it	Replace the words “State or municipal enterprise” with “unitary enterprise”.
10	A. 14 I. 2 An increase of the charter fund of a State or municipal enterprise may be done by means of an additional transfer of property by its owner, as well as by the revenues received as a result of the activity of such an enterprise.	See comments to Item 1 of Article 11	Replace the words “revenues received as a result of the activity of such an enterprise” by the words “fruits, product and revenues resulting from the activity of a unitary enterprise, and the property acquired by the unitary enterprise under a contract or on other grounds”.
11	A. 15 I. 1 … The charter fund of a State or municipal enterprise may not be decreased if as a result of such a decrease its amount becomes less than the minimum amount of a charter fund as determined in accordance with the present Federal Law.	No date is specified as of which the minimum amount of the charter fund is to be determined.	Replace the words “the minimum amount of a charter fund as determined in accordance with the present Federal Law” by the words “the minimum amount of a charter fund as determined in accordance with the present Federal Law as of the date of submitting the documents for State registration of these changes of the charter of a State or municipal enterprise, and in the instances

№	The draft law	Comments	Proposals
			when in accordance with this Article the owner of the property of a State or municipal enterprise is obliged to decrease its charter fund, - as of the date State registration of State or municipal enterprise".
12	A. 15 I. 4 *Within thirty days from the date of the decision as to decreasing its charter fund, a State or municipal enterprise* shall be obliged to notify in written form all the creditors known to it about the decrease of its charter fund and its new amount, as well as to publish the information on that decision in a press organ where the information on State registration of juridical persons is published.	In accordance with this Article of the draft law, the decision concerning a decrease of the charter fund of a State or municipal enterprise shall be made by the owner of the property of that enterprise.	Replace the words "within thirty days from the date of the decision as to decreasing its charter fund, a State or municipal enterprise" by the words "within thirty days from the date of the decision made by the owner of the property of a State or municipal enterprise as to decreasing the charter fund of a State or municipal enterprise, that enterprise".
13	A. 17 I. 2 A State or municipal enterprise shall every year transfer to an appropriate budget a part of its net profit retained after taxes and other mandatory payments, in the procedure, amount and the time schedule determined *by the Government of the Russian Federation, the empowered State agencies of the Russian Federation's subjects or agencies of local self-government.*	In order to make easier the strategic planning of the activity of State or municipal enterprises and improve their financial stability, it seems feasible to State that the practical issues pertaining to the transfer of part of the profit of a State or municipal enterprise to the owner of its property should be regulated by the charter of an enterprise".	Replace the words " by the Government of the Russian Federation, the empowered State agencies of the Russian Federation's subjects or agencies of local self-government" by the words "by the charter of a State or municipal enterprise".
14	A. 18 I.1 A State or municipal enterprise shall on its own dispose of the movable property belonging to it by right of economic jurisdiction, except in the instances determined by the present Federal Law, other federal laws and other normative legal acts.	It would be feasible to take into account the possibility of imposing additional limitations on the use of the movable property of a State or municipal enterprise as Stated in its charter.	Add to this Item the words "as well as by the charter of a State or municipal enterprise".
15	A. 18 i. 4 A State or municipal enterprise shall have no right without the owner's consent to complete transactions relating to granting loans, suretyship, obtaining bank guarantees, other encumbrances, cession of claims, or debt remittance, or to sign the contracts of simple partnership. The charter of State or municipal enterprise may envisage the types and (or) amount of other transactions which shall not be completed without the consent of the owner of the property of that enterprise.	It would be feasible to add to the Item under consideration a provision determining the possibility of recognizing as void the transactions effected without an appropriate coordination.	Add to this Item the following paragraph: A transaction completed with violation of the requirements envisaged by this Article may be deemed void upon a lawsuit of a State or municipal enterprise or of the owner of the property of a State or municipal enterprise.
16	A. 19 I. 1 A federal treasury enterprise shall have	It would be feasible to add to the Item under consideration a provision	Add to this Item the following paragraph: A transaction completed with violation of

№	The draft law	Comments	Proposals
	the right to alienate or otherwise dispose of the property belonging to it only with consent of the Government of the Russian Federation or the empowered federal executive agency. A treasury enterprise of the Russian Federation's subject shall have the right to alienate or otherwise dispose of the property belonging to it only with the consent of the empowered State agency of the Russian Federation's subject. A municipal treasury enterprise shall have the right to alienate or otherwise dispose of the property belonging to it only with the consent of the empowered local self-government agency. The charter of a treasury enterprise may envisage the types and (or) amount of other transactions which may not be completed without the consent of the owner of that enterprise. A treasury enterprise shall on its own realize its products (works, services), if not otherwise established by federal laws or other normative legal acts of the Russian Federation.	determining the possibility of recognizing as void the transactions effected without an appropriate coordination.	the requirements envisaged by this Article may be deemed void upon a lawsuit of a treasury enterprise or of the owner of the property of a treasury enterprise.
17	A. 19 i. 2 A treasury enterprise shall have the right to dispose of the property belonging to it, including with the consent of the owner of that property, only to the extent that does not preclude its ability to pursue an activity whose *subject and purposes* are determined by the charter of that enterprise…	In other Articles the wording "purposes, subject and types of activity" is used.	Replace the words "s*ubject and purposes"* by the words "purposes, subject and types".
18	A. 20 i.1 The owner of the property *of a unitary enterprise* shall, regarding this enterprise: 1) make the decision as to creating the unitary enterprise; 2) determine the purposes, subject, and types of activity of the unitary enterprise, as well as give consent to the participation of the unitary enterprise in associations and other unions of *commercial organizations*; 3) determine the procedure of developing, confirming and setting the targets of *the plans (a programme) of the financial and economic activity* of the unitary enterprise; 4) confirm the charter of the unitary enterprise, make changes to it, including	The provisions of the Item under considerations lack proper systematization. Subitem 2 addresses different powers of the owner of the property of a unitary enterprise. Besides, in accordance with Item 4 of Article 50 of the Civil Code of the RF, the associations *of commercial and noncommercial organizations* may be created in the form of associations. Decree of the Government of the RF of 04.10.2002 No228 establishes the form and the procedure of developing and confirming the *programmes of activity* of federal state unitary enterprises. In this connection it seems feasible to use in the draft law the term that already exists. The Item under consideration on the	Word this Item as follows: The owner of the property of a unitary enterprise shall, regarding this enterprise: 1) make the decision as to creating the unitary enterprise; 2) determine the purposes, subject, and types of activity of the unitary enterprise; 3) consolidate to the unitary enterprise property by right of economic jurisdiction or operative management; 4) confirm the charter of the unitary enterprise, introduce changes to it, including the confirmation of a new edition of the charter of the unitary enterprise; 5) appoint the director of the unitary enterprise, make, change and terminate the labour contract in accordance with

№	The draft law	Comments	Proposals
	the confirmation of a new version of the charter of the unitary enterprise; 5) make a decision as to reorganizing or liquidating the unitary enterprise in the procedure established by legislation, appoint a liquidation commission and confirm the liquidation balances of the unitary enterprise; 6) form the charter fund of *the State or municipal enterprise*; 7) appoint the director of the unitary enterprise, make, change and terminate the labour contract in accordance with labour legislation and other normative legal acts; 8) coordinate the appointment of the chief accountant of the unitary enterprise, as well as making, changing and terminating the labour contract; 9) confirm the accounting records and reports of the unitary enterprise; 10) give consent to the disposition of immovable property, and in cases determined by federal laws, other federal laws or normative legal acts, or by the charter of the unitary enterprise, to other types of transactions; 11) control the purpose-oriented use and safety of the property belonging to the unitary enterprise; 12) confirm the economic efficiency indices of the activity of the unitary enterprise and control that they be met; 13) give consent to creating branches and opening representations of the unitary enterprise; 14) give consent to the participation of the unitary enterprise in other juridical persons; 15) in the instances determined by the present Federal Law, give consent to effecting big transactions in the comleting of which there is an interest, and to other transactions; 16) make decisions concerning audits, appoint the auditor and determine the amount of the payment for his services; 17) enjoy other rights and bear other responsibilities as determined by the legislation of the Russian Federation.	whole addresses *unitary enterprises* (i.e. both State or municipal and treasury ones). At the same time Subitem 6 deals only with *State or municipal enterprises* (in accordance with Item 5 of Article 12 of the draft law, a treasury enterprise shall not create a charter fund). Also it should be noted that as far as such enterprises are concerned, the owner of their property may make a decision to increase or decrease the charter fund. In addition to the property specified in the Item under consideration, the owner of the property of a unitary enterprise consolidates to the enterprise certain property by right of economic jurisdiction or operative management, as well as may make the decision to change the type of the unitary enterprise and to transfer the property of the unitary enterprise to another owner.	labour legislation and other normative legal acts; 6) coordinate the appointment of the chief accountant of the unitary enterprise, as well as making, changing and terminating the labour contract; 7) confirm the accounting records and reports of the unitary enterprise; 8) make decisions concerning audits, appoint the auditor and determine the amount of the payment for his services; 9) determine the procedure of developing, confirming and setting the targets of a programme of the activity of the unitary enterprise, confirm the economic efficiency indices of the activity of the unitary enterprise and control that they be met; 10) control the purpose-oriented use and safety of the property belonging to the unitary enterprise; 11) give consent to the disposal of immovable property, and in cases determined by the present Federal Law, other federal laws or normative legal acts, or by the charter of the unitary enterprise, to other types of transactions; 12) give consent to completing big transactions, and in cases when there is an interest, in concluding a transaction; 13) give consent to creating branches and opening representations of the unitary enterprise; 14) give consent to the participation of the unitary enterprise in other juridical persons; 15) give consent to the participation of the unitary enterprise in associations and other unions of juridical persons; 16) make a decision as to reorganizing or liquidating the unitary enterprise in the procedure established by legislation, appoint a liquidation commission and confirm the liquidation balances of the unitary enterprise; 17) make a decision as to changing the type of the unitary enterprise; 18) make a decision as to transferring the property of the unitary enterprise to another owner of State or municipal property (the Russian Federation, subject of the Russian Federation, or a municipal formation);

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			19) enjoy other rights and bear other responsibilities as determined by the legislation of the Russian Federation. Insert, after Item 1, the Item with the following content: The owner of the property of a State or municipal enterprise, besides the capacities determined in Item 1 of this Article, shall form the charter fund of a State or municipal enterprise and make a decision as to increasing or decreasing the amount of the charter fund.
19	The legal capacity of the owner of the property of a federal treasury enterprise regarding the creation, reorganization and liquidation of a federal treasury enterprise, confirmation of the charter and changes of the charter of that enterprise shall be effectuated by the Government of the Russian Federation.	It would be feasible to specify in this Item also the powers for changing the type of an enterprise and transferring the property of an enterprise to another owner of State or municipal property.	Insert, after the words "liquidation of a federal treasury enterprise", the words "change of the type of a federal treasury enterprise, transfer of the property of a federal treasury enterprise to another owner of State or municipal property".
20	A. 21 i. 1 The director of a unitary enterprise (director, general director) shall be the sole executive organ of the unitary enterprise. The director of a unitary enterprise shall be appointed by the owner of the property of the unitary enterprise. The director of a unitary enterprise shall be accountable to the owner of the property of the unitary enterprise. The director of a unitary enterprise shall act in the name of the unitary enterprise without a power of attorney, including represent its interests, complete in the established procedure transactions in the name of the unitary enterprise, confirm the structure and the staff list of the unitary enterprise, hire the personnel of that enterprise, make, change and Terminable labour contracts with the personnel, issue orders, issue powers of attorney in the procedure established by legislation. The director of a unitary enterprise shall organize implementation of the decisions made by the owner of the property of the unitary enterprise.	On the whole, the Article under consideration lacks the reference to the documents that determine the rights and duties of the director of a unitary enterprise.	Add to the Item the following paragraph: The rights and duties of the director of a unitary enterprise shall be determined by the present Federal Law, other legal acts and the contract concluded between him and the owner of the property of the unitary enterprise.
21	A. 22 ...his spouse, parents, children, brothers, sisters…	It would be feasible to specify herein also adopted parents, adopted children and half-brothers (half-sisters).	In the second paragraph of Item 1 and in the second and third paragraphs of Item 2 of the Article under consideration, insert, after the words "parents, children", the words "adopted parents or adopted

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			children, half-brothers and half-sisters".
22	A. 23 i. 1 A big transaction shall be a transaction or several interrelated transactions dealing with purchase, alienation or a possibility of alienation by a unitary enterprise, directly or indirectly, of property whose value amounts to more than ten percent of the charter fund of a unitary enterprise or is more than 50,000 times greater than the minimum salary as established by a federal law.	The amount of the charter fund of a State or municipal enterprise may not correspond to the real scope of its business. As for a treasury enterprise, it does not form a charter fund as established by Item 5 of Article 12 of the draft law. Therefore, in order to determine the real significance of a transaction, it would be more reasonable to compare its amount with the balance-sheet value of the assets of the enterprise in question. It would also be feasible to add to the Article under consideration an item stipulating a possibility to recognize as void the big transactions effected by a unitary enterprise without coordinating them with the owner of the property.	The words "of the charter fund of a unitary enterprise" replace by the words "the balance-sheet value of the net assets of a unitary enterprise as determined by the data contained in its accounting reports as of the latest date of reporting". Add to the Article the following Item: A big transaction effected with violation of the requirements envisaged by this Article may be deemed void upon a lawsuit of a unitary enterprise or of the owner of the property of a unitary enterprise.
23	A. 25 i. 3 The owner of the property of a unitary enterprise shall have the right to bring a lawsuit in a court against the director of the unitary enterprise pleading redemption of the losses inflicted on the unitary enterprise.	There is no reference to Item 2 of the Article under consideration that stipulates that the director of a unitary enterprise shall be liable, in the procedure established by law, for the losses inflicted on the unitary enterprise as a result of his culpable actions (or lack of action).	Word this Item as follows: The owner of the property of a unitary enterprise shall have the right to bring a lawsuit in a court against the director of the unitary enterprise pleading redemption of the losses inflicted on the unitary enterprise, in the event envisaged in item 2 of this Article.
24	A. 26 i. 1 The accounting reports of a unitary enterprise in the instances determined by the owner of the property of the unitary enterprise shall be subject to annual autiding by an independent auditor.	In accordance with Item 1 of Article 1 of Federal Law of 08.07.2001 No 119-FZ "On Auditor's activity", the auditing activity (audit) is understood as an independent entrepreneurial activity consisting in independent revision of the accounting procedures and financial (accounting) reports of organizations and individual entrepreneurs. In accordance with Item 1 of Article 7 of that law, mandatory auditing – the annual mandatory audits of the accounting procedures and financial (accounting) reports of an organization or an individual entrepreneur – shall be performed also in the following instances: - the proceeds of sale of products (or of the works performed or services rendered) of an organization or an individual entrepreneur in one year exceed by 500,000 times the minimum salary as determined by the legislation of the Russian Federation, or the total balance-sheet assets of a State or municipal enterprise as of the end of the reporting year exceed by 200,000 times	Eliminate this Item Add to this Article the following items: 1. Annual audits of the accounting procedures and financial (accounting) reports of a State or municipal enterprise shall be mandatory in the following instances: - if the proceeds of sale of product (or of the works performed or services rendered) by a State or municipal enterprise in one year exceed by 500,000 times the minimum salary as determined by the legislation of the Russian Federation; - if the total balance-sheet assets of a State or municipal enterprise as of the end of the reporting year exceed by 200,000 times the minimum salary as determined by the legislation of the Russian Federation; - in other instances as determined by the owner of the property of a State or municipal enterprise. For municipal enterprises, by law of the Russian Federation's subject, the financial indices determined in the second and third paragraphs of this item

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		the minimum salary as determined by the legislation of the Russian Federation; - the organization in question is a State unitary enterprise or a municipal unitary enterprise based on the right of economic jurisdiction, in the event when the financial results of its activity correspond to those specified above. For municipal enterprises, by the law of the Russian Federation's subject, these financial indices may be lowered; - the mandatory auditing of these organizations or individual entrepreneurs is envisaged by a federal law. In accordance with Item 2 of the said Article, in the event of mandatory auditing of the organizations in whose charter (or contributed) funds the share represented by State property or the property of subject of the Russian Federation constitutes no less than 25 percent, the contracts concerning the auditing services must be concluded on the basis of the results of an open contest. The procedure of conducting such contests shall be established by the Government of the Russian Federation, if not otherwise established by a federal law. It seems necessary, when preparing the draft law, to give consideration to the said requirements stipulated in the Federal Law "On Auditor's activity". Besides, it would be feasible to envisage the possibility of conducting a mandatory audit of a unitary enterprise by decision of the owner of its property. Considering the peculiarities and possible areas of activity of treasury enterprises, it seems reasonable to establish for them an unconditional requirement concerning mandatory auditing. Finally, in would be feasible, by way of analogy with the Federal Law "On joint-stock societies", to establish the general requirements as to the content of an auditor's report.	may be lowered. 2. The accounting procedures and financial (accounting) reports of a treasury enterprise shall be subject to mandatory annual auditing. 3. The mandatory annual audits of the accounting procedures and financial (accounting) reports of unitary enterprises shall be conducted by auditors selected on the basis of a contest. The procedure of holding a contest in order to select auditors for the mandatory annual audits of the accounting procedures and financial (accounting) reports of unitary enterprises shall be determined by the Government of the Russian Federation, the empowered State agencies of subjects of the Russian Federation, or by local self-government agencies. 4. On the basis of the results of the audits of the accounting procedures and financial (accounting) reports of a unitary enterprise, the auditor shall write an audit report which shall contain: - a confirmation of the validity of the data contained in the accounting (financial) reports of the unitary enterprise; - the information on the instances of violating the accounting procedure and the procedures of financial (accounting) reporting by the unitary enterprise as established by legal acts of the Russian Federation.
25	Ст. 28 п.1 A unitary enterprise shall be obliged to keep the following *constitutive documents*: the charter of a unitary enterprise, as well as the changes and	In accordance with Item 1 of Article 9 of the draft law, the constitutive document of a unitary enterprise is its charter. It seems expedient to include in the list of documents to be kept by an enterprise on	In the second paragraph, replace the words "constitutive documents" by the word "charter". Add to the Item the following paragraph: "the bookkeeping documentation and

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	amendments made to the *constitutive documents* of a unitary enterprise and registered in the established procedure;…	a mandatory basis the documents pertaining to accounting procedures and accounting reports.	accounting reports".
26	Ст. 29 п. 3 Unitary enterprises may be reorganized in the form of merger or accession if their property belongs to one and the same owner.	Considering the profound differences between unitary enterprises of different types, it seems expedient to State that in the form of merger or accession, unitary enterprises of the same type may be reorganized.	Word this Item as follows: In the form of merger of accession, unitary enterprises of the same type whose property belongs to one and the same owner may be reorganized.
27	Ст. 29 п. 4,5 4. The change of the type of a unitary enterprise, a well as a change of the legal status of a unitary enterprise as a result of a transfer of the right of ownership to its property to another owner of State or municipal property (the Russian Federation, subject of the Russian Federation, or a municipal formation) shall not be considered its reorganization. In the event of a change of the type of a unitary enterprise, as well as a transfer of the property of a unitary enterprise to another owner of State or municipal property (the Russian Federation, subject of the Russian Federation, or a municipal formation), appropriate changes shall be made to the charter of the unitary enterprise. The transfer of property shall be considered to have been effected from the moment of State registration of the changes of the charter of the unitary enterprise. 5. In the event when not provided otherwise by a federal law, the property of unitary enterprises arisen as a result of division or separation, shall belong to the same owner as the property of the reorganized unitary enterprise. In the event of a transformation of a treasury enterprise in a State or municipal enterprise, the owner of the property of the treasury enterprise for six months shall bear subsidiary responsibility for the obligations that were passed to the State or municipal enterprise.	It would be advisable to arrange the provisions of Item 4 and the second paragraph of Item 5 as special articles addressing the change of the type of a unitary enterprise and the transfer of the right of ownership to its property to another owner.	Eliminate Item 4 and the second paragraph in Item 5. Add to Chapter V the articles of the following content: Change of the type of a unitary enterprise 1. The change of the type of a State or municipal enterprise shall be deemed its transformation into a treasury enterprise. The change of the type of a treasury enterprise shall be deemed its transformation into a State or municipal enterprise. The change of the type of a unitary enterprise shall not be its reorganization. In the event of the change of the type of a unitary enterprise, no passing of the right of ownership to its property to another owner shall occur. 2. The change of the type of a State or municipal enterprise may be effectuated in the instances envisaged in Item 5 of Article 8 of the present Federal Law. The change of the type of a treasury enterprise may be effectuated in the instances envisaged in Item 4 of Article 8 of the present Federal Law. 3. The decision concerning the change of the type of a federal State enterprise or a federal treasury enterprise shall be made by the Government of the Russian Federation. The decision concerning the change of the type of a State enterprise of subject of the Russian Federation or a treasury enterprise of subject of the Russian Federation shall be made by the State agency of subject of the Russian Federation which in accordance with the acts determining the status of that agency is empowered to make such a decision. The decision concerning the change of the type of a municipal enterprise or a municipal treasury enterprise shall be

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			made by the local self-government agency which in accordance with the acts determining the status of that agency is empowered to make such a decision. 4. In the event of the change of the type of a unitary enterprise the owner of its property shall make the decision concerning the introduction of the changes to that effect in the charter of the unitary enterprise, and if necessary concerning the appointment of its director. The change of the type of a unitary enterprise shall be deemed effectuated from the moment of State registration of the change of the charter of the unitary enterprise. 5. In the event of the change of the type of a treasury enterprise the owner of the property of that enterprise shall bear subsidiary responsibility for its obligations for six months from the moment of the change of the type of the treasury enterprise. The transfer of the property of a unitary enterprise to another owner of State or municipal property 1. The property of a unitary enterprise may be transferred by its owner to another owner of State or municipal property upon a joint decision made by the said owners in the procedure envisaged by the present Federal Law, other federal laws and other normative legal acts. The change of the legal status of a unitary enterprise as a result of passing of the ownership right to its property to another owner of State or municipal property shall not be reorganization of a unitary enterprise. 2. In the event of the transfer of the property of a unitary enterprise to another owner of State or municipal property, the owner of State or municipal property to whom the ownership right to the property of a unitary enterprise is passed shall make the decision concerning the introduction of appropriate changes in the charter of a unitary enterprise and the appointment of its director.

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			3. The transfer of the property of a unitary enterprise to another owner of State or municipal property shall be deemed effectuated from the moment of State registration of the changes of the charter of the unitary enterprise.
28	A. 34 A unitary enterprise may be transformed by decision of the owner of its property into a State or municipal institution. *The transformation of a unitary enterprise into an organization of another organizational legal form shall be effected in accordance with the legislation on privatization.*	Federal Law of 12.21.2001 No 178-FZ "On privatization of State and municipal property" envisages the possibility of transforming a unitary enterprise only into an open joint-stock society. By way of analogy with Articles 30-33 of the draft law, it would be feasible to add to the Article under consideration a special item concerning the transfer of the rights and duties of the unitary enterprise being reorganized.	Word this article as follows: 1. A unitary enterprise may be transformed into a State or municipal institution upon the decision made by the owner of the property of the unitary enterprise. A unitary enterprise may be transformed into an open joint-stock society in the procedure established by the legislation on privatization. 2. In the event of the transformation of a unitary enterprise, to the newly arisen juridical person all the rights and duties of the reorganized unitary enterprise shall be passed in accordance with the act of transfer.
29	A. 35 i. 2 A unitary enterprise may be also liquidated by decision of a court on the grounds and *in the procedure* established by the Civil Code of the Russian Federation *and other federal laws*.	Mentioning the procedure of the liquidation of a unitary enterprise in Item 2, with regard to the content of Item 6 of the Article under consideration seems superfluous. In Item 23 of joint decree of Plenum of the Supreme Court of the RF No 6 and Plenum of the SAC of the RF No 8 of 07.01.1996 it is Stated that a juridical person may be liquidated by decision of a court only in the instances determined by the Civil Code of the RF. In the second paragraph of Item 3 of Article 61 of the Civil Code of the RF it is stipulated that by decision of a court concerning a liquidation of a juridical person on its founders (participants), or the agency empowered to liquidate a juridical person by the latter's constitutive documents, may be imposed the responsibility to effect the liquidation the juridical person. In this connection it would be feasible to add to Item 2 of the Article under consideration a provision according to which the liquidation of a unitary enterprise by decision of a court shall be effected by the owner of its property. On the whole it seems expedient to include in the Article under consideration an item determining the moment of the liquidation of a unitary enterprise.	Eliminate in this Item the words "and in the procedure" and "and other federal laws". Add to the Item the following paragraph: In the event of the liquidation of a unitary enterprise by decision of a court, the duties relating to the effectuation of the liquidation of the unitary enterprise shall be imposed on the owner of its property. Add to the Article the following item: The liquidation of a unitary enterprise shall be considered to be completed, and the unitary enterprise to have terminated existence, from the moment of making an entry thereof in the unified State register of juridical persons by the agency effectuating State registration of juridical persons.

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30	A. 37 I. 3 The subsidiaries created by unitary enterprises before the enactment of the present Federal Law shall be subject to reorganization in the form of accession to the unitary enterprises that have created them within *six months* from the day of the enactment of the present Federal Law.	Considering the great number of the subsidiaries that have been created so far, as well as the difficulties that may be associated with their reorganization, it seems feasible to extend the period during which their accession to the unitary enterprises that have created them must be effected to one year.	Replace the words "within six months" by the words "within one year".
31	A. 38 I. 1 …in Item 1 of Article 300, after the words "the right of economic jurisdiction", add the words "or the right of economic management".	Item 1 of Article 300 of the Civil Code of the RF: In the event of the transfer of the right of ownership in *a State or municipal enterprise* as a property complex to another owner of State or municipal property, this enterprise shall retain the right of economic jurisdiction in the property belonging to it. For the sake of unification of the terminology applied here, it would be advisable to replace the words "a State or municipal enterprise" by the words "a unitary enterprise".	Word the paragraph as follows: … Item 1 of Article 300 shall have the following wording: 1. In the event of the transfer of the right of ownership in a unitary enterprise as a property complex to another owner of State or municipal property, this enterprise shall retain the right of economic jurisdiction or the right of operative management in the property belonging to it.

The wording of the Federal Law "On State and Municipal Unitary Enterprises" in which the suggested alterations and amendments are taken into account is given in Appendix 1.

Conclusions

The advisability of adoption of the said special law regulating the functioning of unitary enterprises is beyond doubt. Its major objective should consist in minimizing the flaws of the right of economic jurisdiction. The key issues reflected in this document are the issues concerning the creation of unitary enterprises, their legal capacity, reorganization, management, and disposal of property.

The quintessence of the new law should be a relative decrease in the degree of economic autonomy of unitary enterprises (a precise definition of the purposes of their creation, of the authorized types of activities and of the volume of their legal capacity), strengthening the management on the part of the State, strengthening the protection of the State's property rights (regulation of the conclusion of major transactions, transactions involving the interests of the directors, limitation of rights concerning the creation of subsidiary enterprises, admittance of a possibility to withdraw a part of property on behalf of the State).

At the same time, it is clear that the law adopted in the afore-said wording would not be free of certain flaws, so that a necessity of its correction could arise already in the nearest future.

3.5.Recommendations on the alteration of the existing normative base determining the functioning of the system of interaction between the State directorial bodies and State unitary enterprises

Below certain proposals are given regarding the improvement of the existing normative and legal base that regulates the functioning of state unitary enterprises and their interaction with the directorial bodies.

3.5.1. The refinement of the model contract with the directors of state unitary enterprises

As stated above, the model contract with the director of a federal unitary enterprise has been sanctioned by Direction of the Ministry of State Property of Russia of 16 February 2000 No 189-r, in accordance with the Concept of the management of state property and privatization in the RF.

The Resolution of the RF Government "On the procedure for the conclusion of contracts and the certification of the directors of state unitary enterprises" does not specify the legal nature of the contract concluded with the director of an enterprise. Nevertheless, this contract can be characterized only as a labour contract. The contract with the director is different from civil law contracts in that it is aimed at guaranteeing the performance of the labour function consistent with a corresponding office and not any specific job. The director shall report out his activities to the federal executive agency when annually delivering the business plan of the development of the enterprise for the approval by this agency.

The content of the contract represents the mutual obligations of the parties. The main obligation of the director of an enterprise is to organize its work in such a way that the enterprise can cope with the targets set for it, guarantee a timely and adequate fulfillment of all the contracts and obligations. The main obligation of the federal executive body consists in guaranteeing to the director appropriate labour conditions necessary for effective work, and paying him a salary based on the authorized rate, and his share of the enterprise's profit determined after the settlements with budgets of all levels.

In accordance with his major responsibility, the director acts without a power of attorney in the name of the enterprise; represents its interests in the territory of Russia and abroad; disposes of the property of the enterprise according to the procedure and within the limits established by the laws of the Russian Federation, concludes contracts, including those of employment, authorizes the enterprise's staff list, opens settlement accounts and other accounts with banks, applies disciplinary measures and incentives as regards the enterprise's personnel in accordance with the existing legislation. The labour function of the director of the enterprise includes issuing orders and instructions mandatory for all the personnel.

The model contract obliges the director of an enterprise not to disclose the information containing an employment or commercial secret which has become known to him in connection with the execution of his professional duties. The concept of the

"employment (commercial) secret" is specified in Article 159 of the RF Civil Code in accordance with which information shall constitute a commercial (employment) secret when the information has real or potential commercial value by virtue of its being unknown to third persons, there is no free access to it on legal grounds, and the possessor of the information takes measures to protect its confidentiality.

The inclusion in the contract of the obligation on the part of the director to preserve the confidentiality of the information constituting a commercial secret deals with the necessity to protect interests of the State in the situation of competition on the market of goods and services.

One of the most typical features of the legal regulations regarding labour relations with the director of a State enterprise are the grounds for terminating the contract concluded with him.

Apart from the grounds for termination the contract envisaged in the RF labour legislation, dismissal of the director is also possible on the grounds specified in the contract itself.

The list of such grounds is subdivided into two groups. In accordance with Resolution of the RF Government of l6 March 2000 No 234, the grounds from the first group are a mandatory component of the contract. They include:

- a failure to meet the targets for economic efficiency of the unitary enterprise set in the established procedure;
- a failure to ensure the conduct of auditing of the unitary enterprise in the established procedure;
- a failure to implement the decisions of the RF Government and federal executive authorities;
- effecting transactions with the property in the economic jurisdiction of the unitary enterprise involving a violation of legislation and the legal capacity of the unitary enterprise as specified by the charter of the unitary enterprise;
- - the arrears of wages for more than three months which appeared through the fault of the director of the unitary enterprise.

The second group consists of the grounds which can be included in the contract by mutual consent of the parties. The Direction of the Ministry of State Property of Russia of 9 June 2000 "On the Introduction of Changes and Amendments to the Model Contract with the Director of a State Unitary Enterprise" lists the examples of such grounds. These grounds can be as follows:

- violation, through the fault of the Director as found our in the procedure established by the legislation of the Russian Federation, of the requirements concerning occupational safety, which entailed a decision made by the director of the State labour inspectorate and a State labour inspector to the effect that the operation of the enterprise or its structural subdivision be suspended, or a court decision to the effect that the enterprise be liquidated, or the operation of its structural subdivision be terminated;

- failure to ensure the use of the property of the enterprise, immovable including, according to the purposes compatible with the activities of the enterprise as determined by the Charter of the enterprise, as well as failure to use according to the set purposes the budgetary and extrabudgetary funds allocated to the enterprise for more than three months;
- disclosure by the Director of the information considered to be employment or commercial secret that has become known to him as a result of his execution of his official duties.

All the grounds for the termination of the contract which are stipulated in it are to be applied not because of their fixation in the normative legal acts - Resolution of the RF Government of 16 March 2000 No 234 and Directions of the Ministry of Property of Russia of l6 February 2000 No 189-r and of 9 June 2000 No 50-r, but because they are included in the contract. Therefore, they pertain to the additional grounds for the discontinuation of labour relations.

A significant number of provisions of this document can cause no objections and would play a positive role when used in practice in the course of organization of an efficient system of management and control over the activities of State unitary enterprises. In this respect, one should note the inclusion in the model contract with the director of a State unitary enterprise, of a special obligation on the part of the director to guarantee that the targets of economic efficiency set for the enterprise be met, the obligations on the part of the director to guarantee the transfer to the federal budget of a share of profit from the activities of the enterprise, etc.

At the same time, a number of provisions of the model contract with the director of a State unitary enterprise require some strengthening and the introduction of certain provisions which would make it possible to more effectively protect State interests and to respond in a more flexible and at the same time more robust manner to the activities of the directors of State unitary enterprises.

Firstly, some serious elaboration is required as far as the list of obligations of the part of the director of a State unitary enterprise is concerned. Alongside the traditional obligations of the director - to achieve certain results of the enterprise's activities, adequate implementation of the contracts, the development of the material and technical base, etc - a contract with the director of a State unitary enterprise must also contain the obligations not to engage in business activities and not to combine his activities at the enterprise with other paid jobs at other organizations, not to have a private interest (apart from the remuneration specified in the contract) in the transactions concluded by the enterprise, and not to use for his personal purposes the funds of the enterprise, the profit obtained and the products manufactured.

Moreover, in order to tighten the control over the activities of the directors of state unitary enterprises, it would be expedient to include in the contract an item specifying as obligatory the necessity on the part of the director of an enterprise to inform the corresponding state bodies as to his income and property on a regular basis (e.g. once a year) during the term of the contract.

Secondly, it is necessary to change the system of the payment for the labour of the directors of state unitary enterprises. The existing system lacks any flexibility in solving

the problems of the incentives for the activities of the director. When the salary is relatively small, and its amount is determined at the conclusion of the labour agreement (contract) on the basis of certain criteria (e.g., an average salary at the enterprise, the number of employees, the specifics of the work, the specific features of the enterprise, etc.), it is expedient to introduce a broad system of bonuses answering the specific features of problems being solved at the enterprise. The amount of these bonuses shall depend on the results of the activities of the director. In the approved model contract, apart from the salary, only the payment of a certain share of the enterprise's profit is taken into account, which can be correct only in certain specific cases. For example, it must be taken into consideration that the implementation of certain promising investment projects frequency results in a temporary worsening of the enterprise's indices, and this must not be a reason for reducing the bonus paid to the director.

Moreover, the salary system applied to the director of a state unitary enterprise must be related to the system of disciplinary penalties which could be imposed on him by the owner's representative. It seems expedient that the use of a certain disciplinary penalty should simultaneously result in a reduction or total canceling of all types of bonus payments until the disciplinary penalty is lifted. Only in such a case the disciplinary penalties will become an effective control lever and cease to be formal.

Thirdly, it is expedient to expand the list of the grounds on which the contract with the director can be cancelled on the owner's initiative.

In accordance with the existing legislation, a contract with the director of an enterprise can be cancelled on the grounds envisaged by labour legislation and also on those included in the contract concluded with the director. In principle, it is possible to envisage a possibility for a dismissal of the director of a state unitary enterprise because of his failure to comply with any of his obligations listed in the labour agreement (contract).

As regards a more lenient variant, it is advisable that the list of the grounds on which a contract with the director of a state unitary enterprise can be cancelled on the owner's initiative include a number of new provisions (see *Table 13*).

Table 13

A comparative characteristic of the grounds for a possible termination of contract with the director of a state unitary enterprise

Those present in the Model Contract	**New ones**
-failure to meet the established economic efficiency indices of the unitary enterprise's activity; -failure to ensure that audits are conducted in the established procedure; -failure on the part of the Director to meet the employment requirements as found out by the results of his certification; -failure to implement the decisions of the Government of the RF or of federal executive agencies; -effecting transactions with the property in the economic jurisdiction of the enterprise, with violation of the requirements of legislation and the specific legal capacity of the enterprise as determined by the charter of the	- entrepreneurial activity of the director and/or combining his work at the enterprise with paid jods performed for other organizations, except in the instances determined by the representative of the owner of the enterprise; - effecting a transaction in the name of the enterprise in which the director and/or his affiliated persons have a personal interest (besides the reward as determined by the contract), without the permission of the representative of the owner of the enterprise; - effecting deliberately transactions that result in losses for the enterprise; - using for his own purposes the property of the enterprise, the profit received and the product

enterprise; - arrears of wages for more than 3 months that appeared through the Director's fault; -violation of the requirements concerning occupational safety; -failure to ensure the use of the property of the enterprise according to the purposes compatible with the activities of the enterprise, as well as failure to use according to the set purposes the budgetary and extrabudgetary funds allocated to the enterprise for more than three months; disclosure by the Director of the information considered to be an employment or commercial secret.	manufactured; - failure to submit to the representative of the owner in the instances determined by the contract the information on his incomes and property.

Apart from this, it is necessary to envisage a possibility for canceling a contract with the director of a state unitary enterprise on the owner's initiative even in the absence of any culpable actions (or lack of action) on the part of the director, simply when there is a loss of trust in him. Naturally, such a dismissal must entail a material compensation.

The Labour Code which had existed before the year 2002 did not envisage any additional compensation to be paid to the director in case of the termination of the contract due to circumstances not depending on him. This compensation is widely practiced around the globe. The special legal status of the director is duly reflected in the model contract which envisages that if the contract is cancelled on the initiative of the RF Government or an executive body due to circumstances not involving a failure on the part of the director to properly exercise his duties as stipulated by the contract and the existing legislation, a compensation should be paid to the director. The amount of the compensation and the terms of its payment are determined by the contract.

It should be noted that another important aspect of the labour agreement with the director of a state unitary enterprise is the issue concerning the types, terms and causes of material responsibility on the part of the director. In a most general case, material responsibility for the damage inflicted on an enterprise, institution or organization in the course of the execution of his duties should be imposed on the employee, provided that the damage has been inflicted through his fault.

At the same time, the character of the execution of the official duties on the part of the director is such that on no occasions can his responsibility be equated with that of rank-and-file employees. The director determines the lines of activity of his enterprise, concludes transactions including those within the limits of a normal production and economic risk, and he is relatively and sometimes absolutely free to dispose of the substantial means entrusted to him by the owner. Thus, there exists an objective demand for such provisions of labour legislations that would establish a higher material responsibility of the director as regards certain activities resulting in a damage inflicted on the enterprise, or would be able at least to reduce the possibility of abuse on the part of the directors.

It is evident that this problem cannot be practically solved by the mere fact that certain provisions to this effect are introduced in the contract with the director of a State unitary enterprise. In order to solve this problem in a legally correct manner, it would be necessary to actively apply the provisions of the new Labour Code and to pass some additional legal acts (in particular, the Law "On the Specific Features of Regulation of the

Director's Work") regulating the relations between the director of an enterprise and the owner. At the same time, it should be noted that many of the discussed above suggestions and elaborations regarding the model contract with the director of a State unitary enterprise could have been reflected in Articles 23, 24 and 26 of the draft law "On State and Municipal Unitary Enterprises".

A draft of the model contract with the director of a State unitary enterprise with amendments and comments is given in Appendix 2.

3.5.2. Elaboration of the model charter of state unitary enterprises

As in the case of the Model Contract, in accordance with the Concept for the management of state property and privatization in the RF, the Ministry of State Property of Russia issued Direction No 188-r of l6 February 2000 authorizing the Model Charter of a federal state unitary enterprise.

When applied in practice, a substantial number of the provisions contained in this document would play a positive role in organizing an efficient system of management and control over the activities of state unitary enterprises. At the same time, some of the provisions included in the model charter of state unitary enterprises require a certain strengthening, and a number of provisions may be additionally introduced so as to permit a more intensive protection of State interests and to guarantee safety of State property and its intended use.

1. From the standpoint of organizing an efficient system of management and control over the activities of state unitary enterprises, and limiting the excessive freedom of action granted to the directors of these enterprises, the charter of a State unitary enterprise must contain *provisions guaranteeing the safety of State property and preventing a non-purpose-oriented use of this property*.

To this end, the model charter must include a number of restrictions limiting the capacity of the directors of state unitary enterprises to conduct certain activities without a preliminary coordination with the owner's representative. This means that the authority of the director of a state unitary enterprise must become subject to restrictions which are similar to those imposed on the authority of the executive body of a joint-stock society in accordance with the Law "On Joint-Stock Societies", and to the restrictions imposed on the authority of the representative of the State in the directorial bodies of joint-stock societies and other economic organizations with State participation in accordance with Decree of the RF President of 10 June 1994 No 1200 "On certain issues dealing with ensuring state management of the economy"[64].

[64] In respect to State representatives in the boards of directors and auditing committees of joint-stock societies, the restrictions in the form of a compulsory recorded agreement with the managerial bodies as regards a number of items under the exclusive competence of the boards of directors (with a reference to the corresponding articles of the Law "On Joint-Stock Societies") specified in the Regulations on the procedure of appointment and the activities of representatives of the Russian Federation in the managerial bodies and auditing committees of the open joint-stock societies created in the process of privatization whose stocks are in federal ownership, and also of those on whom a decision has been made to exercise the special right permitting the participation of the Russian Federation in the management of the latter ("golden share"), authorized by Resolution of the RF Government of 7 March 2000 No 195.

The activities to be obligatory agreed upon with the owner's representative on a mandatory basis must include the issues regarding the disposal of immovable property, transactions with securities, the creation of juridical persons by the enterprise, attraction of credits in amounts in excess of a certain limit, conclusion of major transactions, etc.

2. Also very important are the issues concerning the procedure for the disposal of the profits obtained by a state unitary enterprise, and determination of its share to be transferred to the budget.

In accordance with Resolution of the RF Government of February 3, 2000 No 104 "On tightening control over the activity of a federal unitary enterprise and managing the shares of open joint-stock societies that are federal property", the charter of a state unitary enterprise must regulate the amount of the share of the enterprise's profit to be transferred to the budget and the procedure for this transfer.

The authority of the work collective should not go beyond the limits of the issues concerning the provision of social guarantees to the employees and into the sphere of authority of the owner and the director employed by him.

It is clear that the inclusion of such provisions in the charter documents of State unitary enterprises would encounter serious resistance on the part of the directors, but there is nothing to prevent the ministries and agencies from demanding the introduction of alterations in the charters of enterprises when the latter undergo reorganization, receive licenses for new kinds of activity, apply for the right to conduct autonomous export of special equipment, etc. - that is, in the situations which require a correction of the charter.

Obviously, the inclusion of such norms in the constitutive documents of state unitary enterprises will be met by a strong opposition on the part of the "directors' corps", however the ministries and departments are not prevented from demanding that changes be made to the charters of enterprises in the event of their reorganization, obtaining licenses for new types of activity, obtaining the rights to an independent import of specialized equipment or the rights to an independent export of specialized equipment, i.e. in those cases when adjustments of a charter are required.

Moreover, the introduction of alterations in the charters of State unitary enterprises can also be associated with the solution of the problem concerning the provision of all types of State support to State unitary enterprises.

Quite a lot of the above suggestions and improvements regarding the model charter could have been reflected in Articles 11, 19 and 20 of the draft law "On State and Municipal Unitary Enterprises".

A draft of the model charter of a federal state unitary enterprise with the corresponding amendments and comments is given in Appendix 3.

3.5.3. Reorganization of the system of control over the activities of the directors of State unitary enterprises[65]

In an effort to increase the efficiency of the disposal of state property and the responsibility of the directors of state unitary enterprises as well as to strengthen the control over their activities, the RF Government issued Resolution No 1116 of 4 October 1999 "On the adoption of the procedure for accountability of the directors of federal state unitary enterprises and the representatives of the Russian Federation in the managerial bodies of open joint-stock societies" which introduces mandatory accountability for the directors of state unitary enterprises to appropriate agencies of state administration, and authorizes this form of accountability.

It should be mentioned that the above document requires that the directors of enterprises quarterly deliver a report on the work of each enterprise to the Ministry of State Property of Russia and the corresponding sectoral agency of executive authority, and to file it in accordance with the authorized form[66].

Apart from the general data on the enterprise, the first section of the report shall contain the information on:

- the next higher sectoral managerial agency;
- the entry of the information concerning the enterprise's property in the Register of Federal Property;
- the amount of the charter fund;

and also contain the data on the contract with the director of this enterprise.

The report can make it possible to obtain information on the profits and losses, credit and debtor indebtedness, indices of profitability, liquidity, financial stability and the value of the fixed assets of the enterprise. The report must also contain the information on the immovable property sold and not used during the accounting period, and if there are any signs of impending bankruptcy, the director of the enterprise must likewise deliver the information important for the owner as regards the character of these signs and the measures taken by the director to financially rehabilitate the enterprise.

The Resolution envisages that if a unitary enterprise has subsidiaries, the report to the control agency must be supplemented with a consolidated accounting report and a Statement regarding the enterprise's participation in its subsidiaries and other economic organizations. Moreover, the director of an enterprise must submit to the same agencies quarterly reports on the organizational, financial and economic activities of the enterprise containing information, e.g., on the following issues:

- the implementations of measures aimed at improving the quality and competitiveness of the enterprise's products;
- the achievement of the basic economic objectives set for the enterprise;

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[65] This paragraph was written in co-authorship with A. N. Gazetov, G. V. Gontuar and M. I. Shilkin.

[66] The forms of accountability on the part of the directors of FSUEs are described in detail in Paragraph 1.2.3. This paragraph is focused on their essence.

- the use of the enterprise's immovable property with the aim to obtain income, and also the use of the profit left at the disposal of the enterprise.
- the programme of the enterprise's activities for the next year.

In order to guarantee the efficiency of the control over the activities of an enterprise, the reports submitted by its management shall be subject to analysis and generalization on the part of both the sectoral managerial agencies and the agencies in charge of the disposal of property.

Therefore, the RF Government has issued Resolution of 3 February 2000 No 104 (the new wording of 16 February 2001) which obliges the federal executive bodies in charge of the coordination and regulation of the activities conducted by the corresponding sectors (in the spheres of management) to annually analyze the efficiency of the activities of enterprises, to control the use of their property, to approve the indices of economic efficiency of their activities, to determine the amount (share) of the profit of federal state unitary enterprises to be transferred to the budget, and to do all this in the established procedure, while mobilizing, if necessary, the services of the Ministry of Finance of Russia, the Ministry for Taxes and Levies of Russia and the Ministry of Internal Affairs of Russia (e.g., when their proposals are concerned or within the scope of their competence).

Very helpful for the realization of analytical procedures must be the Register of economic efficiency indices of the activity introduced by Decree of the RF Government of 11 January 2000 No 23 for the purpose of creating an integral informational basis which will contain the data on the activities of enterprises and their financial and economic status, and it must be equally helpful for the implementation of the measures aimed at increasing the efficiency of FSUEs. For the purpose of forming the Register of indices reflecting the results of the activities of enterprises, it is advisable to register the data on the reported performance of enterprises including the results of audits as "the actually achieved values of indices characterizing the economic efficiency of the enterprise's activities", while the results of the analysis of these accounts including the report of the enterprise's director, with the objectives of the branch's development taken into consideration, shall form the basis for setting the targets concerning the indices of future economic efficiency.

The information on the results of control and analysis of the economic efficiency of each enterprise shall be submitted to the Ministry of State Property for generalization.

Direction of the Ministry of State Property of 10 July 2000 No 183-r introduced the Methodological recommendations on the organization and conduct of the operating analysis of FSUEs and open joint-stock societies whose shares are in federal ownership. The ministries and agencies have already started to work in accordance with the document.

In order to standardize this work, the RF Government issued Decree of 10 April 2002 No 228 "On the measures to improve the efficiency of use of the State property consolidated to federal state unitary enterprises by right of economic jurisdiction" stipulating that operating analysis of subordinate SUEs shall be conducted by the

commissions to be especially organized under the federal executive agencies (if necessary, several commissions under one agency)[67].

The commission includes one representative with a casting vote from the federal executive body, the RF Ministry of State Property, the RF Ministry for Economic Development and Trade, the RF Ministry of Taxes and Levies and also, if necessary, from the RF Ministry of Finance. The commission is chaired by the representative of a federal executive agency, while the representative of the Ministry of State Property is to be appointed his deputy.

The most important component of the work of these commissions must be the preparation of the decisions to be taken by the federal executive agencies as regards the approval of the programmes of the activity of state unitary enterprises and the determination of the share of profits which shall be transferred by them to the federal budget.

The introduction of this form of accountability must guarantee the protection of state property, rigid control over the activities of the directors of state unitary enterprises and the transparency of the information on the financial standing of these enterprises. The practical experience of work with this new form of accountability, accumulated by both the directors of state unitary enterprises and the employees of ministries and agencies, will reveal in due course the advantages and disadvantages of the authorized forms.

One of the issues still under discussion is the extension of the above procedures to the directors of subsidiary enterprises.

The existing normative acts do not give a direct answer to this question. Nevertheless, bearing in mind the character of the functions being implemented in the process of control over the financial and economic activities of a subsidiary enterprise, it could be said that these enterprises must submit similar accounts directly to the sectoral executive agencies and the RF Ministry of State Property. At the same time, the main enterprise when considering the charter of its subsidiary has the right to oblige the latter to submit to it the corresponding information in the form and the procedure set by Decree of the RF Government of 4 October 1999 No 1116, because the main enterprise is obliged to submit consolidated accounting reports. The results of the financial and economic activities of subsidiary enterprises are to become subject to the control and analysis on the part of the sectoral managerial agency because these enterprises constitute a component of a sector or a sphere of management of the activities of which are subject to coordination and regulation on the part of appropriate federal executive agencies. For the subsidiary enterprises at the sectoral level, the indices shall be similar to those set for ordinary SUEs.

The system of control over the activities of state (municipal) enterprises represents a broad and multi-stage process including a number of procedures.

[67] The Model Provision on the commission under a federal executive agency for analyzing the efficiency of the activities of State federal unitary enterprises was authorized by Direction of the Ministry of State Property of 7 June 2002 No l424-r.

The term “control” taken in this context should be understood as a system of inspections and checks aimed at verifying the compliance of the process of functioning of a state unitary enterprise with the directorial decisions taken, and as the definition of the impact of directorial actions on the object under control by revealing the deviations which occurred during the implementation of these decisions.

Thus, **the object of control** are the processess occurring at a state enterprise. The **subject of control** are the organizational structures exercising control over the activities of a unitary enterprise, which are authorized to do so by the owner or by an appropriate state managerial agency.

In the course of the implementation of this control, the following **control procedures** take place**:**

- *inventory* - checking the presence and the condition of material objects in situ, as well as of financial resources and credit settlement relations;
- *control measurements and sample observations* - checking of construction and installation operations and other processes relating to the economic activity of the enterprises;
- *expert examination* - verification of the normative-legal and contractual justification of the designing estimates, of the technical level and the methods of organizing the industrial and economic activities;
- *economic analysis* - a system of methods used for revealing the causes and effects of the phenomena and processes occurring at the enterprise.

Also the *methods of analyzing documents, laboratorial chacks and the methods of grouping the flaws* are used, as well as other methods of control and inspection procedures.

Industrial and technological control (the types of control in accordance with sectoral affiliation), sanitary control and other types of control not relating directly to any financial and economic aspects of the activities are not considered in the present research.

Control over the activities of a SUE is exercised through a number of specified procedures in accordance with the laws and legal normative acts concerning the activities of the enterprise. Thus, the specific features of the existing system of control over the activities of SUEs are determined by the specific features of their legal status.

The major directions of control are as follows:

- financial and fiscal accountability;
- accountability of the recipient of budgetary funds;
- accountability of the director of a SUE;
- property reporting.

It should be noted that in accordance with the existing legislation, the exercise of control over the practice of accounting, tax payment, the use of budgetary funds is regulated by the legal norms that are uniform for all the enterprises belonging to every form of ownership.

The control acquires specific features in the process of carrying out the regulated types of activities or when the enterprises receive budgetary funds.

In this respect, it is possible to speak in terms of certain specific features of control over the activities of state enterprises because the special types of activity are, *as a rule*, carried out by unitary enterprises, and / or government funds are allocated to unitary enterprises or to enterprises with State participation.

The principles of exercising control over the property of enterprises depend on who is the owner of this property and not on the form of property possessed by the person effectuating the rights of ownership, disposal, use, economic jurisdiction or operative management of this property.

The specific features of control over the activities of SUEs are characterized by the existence of special forms of accountability on the part of the director of a state unitary enterprise that were discussed earlier in this study.

The financial and economic activities of SUEs are also subject to mandatory auditing. **Auditing of the financial and economic activities** means independent inspection of accounting and financial (accounting) reporting on the part of organizations and individual entrepreneurs for the purpose of "…expressing the opinion on the reliability of the financial (accounting) reporting performed by the audited persons and on the correspondence of the auditing procedure with RF legislation"[68].

In order to strengthen the control over the activities of the directors of state unitary enterprises and to deepen the analysis of the financial and economic activities of the most important unitary enterprises (apart from the liability to submit reports), the RF Government issued Decree of 29 January 2000 No 81 "On audits of federal state unitary enterprises" which stipulates the obligatory nature of annual auditing. Federal state unitary enterprises shall be subject to this auditing if any of the following financial indices of their activities are present:

- the volume of profit from sale of their products (works, services) within one year is 500,000 times greater than the minimum salary as established by law;
- the total assets as of the end of the reporting year is 200,000 times greater than the minimum salary as established by law.

A copy of the audit report is to be submitted to the sectoral managerial agency and the RF Ministry of State Property for the control and analysis of the results of the activities carried out by the enterprise in question.

It is clear that the issuing of this document is aimed at positively influencing the process of reorganization of the system of control over the activities of the directors of State unitary enterprises on the part of state managerial bodies. At the same time, it should be noted that the Decree addresses only those state unitary enterprises which correspond to certain provisions, and the question of auditing all the other enterprises, and therefore the organization of effective control over the activities of their directors remains open.

Meanwhile, it should be noted that such audits are to be carried out not by any auditing organization but by only one selected on the competitive basis. The enterprise

[68] Source: Federal Law of 7 August 2001 № 119-FZ "On Auditor's Activities".

has a right to independently select the auditor from a number of authorized organizations the list of which is published in a press organ.

In accordance with Decree of the RF Government of 29 January 2000 No 81, the Procedure for the conduct of a competition for selection of authorized auditing organizations was approved upon an agreement with the RF Ministry of Finance by Resolution of the RF Ministry of State Property of 2 August 2000 No 551 (registered by the RF Ministry of Justice on l4 August 2000 under No 2550).

The above Decree invest the RF Ministry of State Property and the RF Ministry of Finance with the responsibility to carry out the contest, and therefore there is every reason to assert that the authorized auditing organizations will be those who have passed through this very competition, and the acts issued by other agencies so as to determine the range of organizations to be considered as authorized to work with federal state unitary enterprises will not be used. For example, this holds true for Order of the RF Ministry of Industry of 17 March, 1997 No 75 "On the procedure for the accreditation with the Ministry of Finance of the Russian Federation of the auditing organizations for the conduct of outside audits of enterprises (organizations, institutions) in the sphere of industrial production". Nevertheless, this conclusion does not hold true for the inspections carried out on orders from law-enforcement agencies.

The first contests were hold by the RF Ministry of State Property in the year 2000. As regards the conduct of contests, the Model technical assignment was composed and later approved by Direction of the RF Ministry of State Property of 26 May 2000 No 9-r for the purpose of achieving compatibility between the results of auditing[69]. Nevertheless, the RF Ministry of Justice refused to register this document which caused the RHF Ministry of State Property to annul it by Resolution of 2 April 2002 No 802-r.

Practical experience has revealed that the contest-based procedure for the selection of auditing organizations alone cannot guarantee a high quality of their work. Thus, the control examination of the contents of the reports concerning the audits of FSUEs in the year 2000, which focused on their compliance with the regulations (standards) of auditing as approved by the Commission on Auditing under the auspices of the President of the Russian Federation, has produced the following conclusions:

- many of the selected firms have not submitted even a single report on the conduct of auditing;

- the very fact of being authorized to conduct auditing was frequently used towards personal ends, while no actual work concerning the audit of state property was performed.

Of the 400 selected firms, only 149 (or 37.5%) auditors have submitted reports satisfactory by the form, thus demonstrating successful results of their work. The remaining 251 companies (62.5% of the total) either did not submit even a single report, or submitted them with substantial flaws, or submitted a single report which was absolutely insufficient for any conclusions to be made as regards the quality of their work.

[69] Letter of the RF Ministry of Justice of 30 October 2001 No 07/10578 IuD ("Ekonomika i zhizn'", No 51, 2001; "Biulleten'" Miniusta RF", No 1, 2002).

Thus, it becomes clear that regular control over the audit of state enterprises is extremely necessary.

Therefore, the activities of unitary enterprises come within the scope of action of state control and are subject to auditing in its legally established form.

Major typical features of mandatory audits and the state control over the activities of SUEs

The only aim of auditing is to make a judgment as to what extent the reports and accounts reflect the real facts of economic activities, while the control over financial and economic activities is aimed at exposing offences and punishing the culprits.

If the auditor decides that the accounts submitted by booking offices do no correspond to the actual state of affairs at enterprises, and that no necessary corrections are introduced, he can simply abstain from signing the audit certificate.

The enterprise, in its turn, is free to find a more pliable auditor and thus to cover up the existing negative facts.

At the present time, there are no mechanisms capable of fully eliminating the potential flaws and excessive compromises in the activities of auditing companies; they have not been created either in Russia or abroad.

Moreover, if the exercise of state control is financed by the State, i.e., by the owner of the SUE, auditing is ordered and paid for by the enterprise itself, and the auditor is selected from the list of auditing companies accredited by the owner.

In practice, in accordance with the existing legislation, the auditing companies render consulting services to their clients as regards the use of the opportunities promised by legislation for the purpose of submitting financial accounts in the best possible shape, and the use of opportunities for the optimization of taxation; they also eliminate errors in the conduct of accounting. Thus, while the methods of auditing are close to the methods of control, their objectives are different in principle.

The state control bodies are authorized to resort to administrative measures such as penal sanctions, orders to return the excessively spent budgetary funds, and other types of sanctions. Therefore, if any wrongdoings are revealed on the part of the bodies exercising state control over SUEs, the State, so to say, punishes itself.

Thus, the actual objective of compulsory audit of SUEs is to minimize the possible costs emerging in the course of the implementation of state control due to the low quality of accounting and financial management at state enterprises.

The procedures for control over the activities of unitary enterprises at a local level have certain specific features discussed in Appendix 4 (as illustrated by the example of Moscow).

3.5.4. Professional certification of the directors of state enterprises and the introduction of a contest-based system of their appointment

In accordance with the Concept of the management of state property and privatization in the RF, the RF Government issued Decree No 234 of 16 March 2000 "On the procedure for the conclusion of contracts and certification of the directors of federal state unitary enterprises". This document envisages **the introduction of mandatory professional certification of the directors of state unitary enterprises and the introduction of a contest-based system of their appointment**.

The **professional certification** of the directors is to be carried out in accordance with the Regulation for the conduct of the certification of the directors of federal state unitary enterprises which was authorized by the above Decree.

The professional certification of the directors of enterprises has the following goals:

a) an objective assessment of the activities carried out by the directors of enterprises, an assessment of their adequacy for the job;

b) assistance in strengthening the enterprise efficiency;

c) stimulation of professional advancement of the directors of enterprises.

The professional certification is conducted in the form of tests and interviews.

Certification tests shall be based on a general list of questions so as to guarantee the assessment of knowledge possessed by the director of an enterprise in respect to the following matters:

a) the specific character of the enterprise

b) the regulations and norms pertaining to occupational safety and ecological security;

c) the basic principles of civil, labour, tax and banking legislation:

d) the basic principles of enterprise management, financial auditing and planning;

e) the basic principles of marketing;

f) the basic principles of business assessment and the assessment of real estate.

A certification test shall contain at least 50 questions. As a result of the certification, the director of an enterprise receives one of the following estimates:

- adequate for the job;
- not adequate for the job.

A notification on the results of the certification shall be submitted to the director of an enterprise or sent to him by mail (as a registered letter) not later than 5 days since the date of certification. An excerpt from the minutes of the certifying commission is to be attached to the personal file of the director of an enterprise.

The procedure of appointment for a vacant post of the director of a federal state unitary enterprise is also authorized by Decree of the RF Government of 16 March 2000 No 234. The corresponding procedures are carried out in two stages. First, a **contest** among the applicant for the afore-said post is held, and then the federal executive body

responsible for the coordination and regulation of the activities in the corresponding branch or sphere of management appoints the winner to the post of director and concludes a **contract** with him.

The appointment to the post of the director of a federal state unitary enterprise is carried out in accordance with the Provisions for holding a contest for the appointment to the post of the director of a federal state unitary enterprise, which reflects the terms for participation and the procedure for nominating the winner of the contest.

Since the contract is preceded by a contest, much attention is given to a strict observation of the rules of holding the latter, which should guarantee that a specialist who is the most highly qualified for taking the vacant post of the director is selected. These rules are uniform as regards the appointment of directors of all federal state unitary enterprises irrespective of their sectoral affiliation. They are envisaged in the Provisions for holding a contest for the appointment to the post of director of a federal state unitary enterprise (hereinafter to be referred to as the Regulation for holding a contest) authorized by the Decree of the RF Government of 16 March 2000.

In accordance with the above Regulation, the responsibility for holding a particular contest shall be invested in the federal executive body which appoints the director of an enterprise and concludes a contract with him. The liabilities of such a body are as follows:

- to set a contest-organizing committee and to approve its composition;
- to organize the publication of an announcement prepared by the Committee concerning the holding of the contest;
- to receive the applications and to register these applications;
- to check the correctnessof the applications and the documents attached to them;
- to submit the applications received and the documents attached to them to the contest-organizing committee;
- to approve the list of questions for the tests to be answered by the applicants.

The contest-organizing committee shall assess the professional knowledge demonstrated by the applicants for the post of the director of the enterprise and shall determine who of them is most suitable for the job.

The preparation of all the materials necessary for reaching an objective and comprehensible decision on the part of the contest-organizing committee is carried out by the federal executive body. Therefore, it does not restrict itself to merely receiving the applications with the attached documents specified in the information on the contest, but also checks the regularity of the applications submitted and of all the corresponding documents.

All the information necessary for taking part in the contest should be contained in the announcement to be published no less than 50 days in advance of the announced date of the contest. This announcement should specify:

- the name of the enterprise, its basic characteristics and location;
- the requirements to be met by the applicant for the post of the director of the enterprise;

- the date and time (hour, minutes) of the beginning and the end of the reception of applications and the documents attached to them;
- the address where the reception of the applications and other documents will take place;
- the date, time and location of the contest with the time of the beginning of the work of the contest committee and the time of the announcement of the results of the contest being specified;
- the telephone numbers and address of the committee;
- the procedure for determining the winner;
- the method for notifying the contestants and the winner of the results of the contest.
- The contest is transparent.

Participation in the contest is to be reserved for physical persons with higher education, an experience of work in the sphere of activity of the given enterprise, an experience of work at a managerial job usually for no less than one year; these persons shall also meet the requirements placed upon the applicant for the post of director of an enterprise.

In order to take part in the contest, the applicants must in time submit to the Committee all the following documents:

a) the application, the questionnaire, a photograph;

b) the properly certified copies of the work-book and the standard documents of education;

c) suggestions on the programme of activities of the enterprise (in a sealed envelope);

c) the other documents specified in the announcement. It is quite possible that the applicants will not have an idea of the full scope of the obligations to be placed upon the director of a federal state enterprise. Therefore, they are to be informed on the provisions of the contract before the start of the contest. They must also know the basic performance indices of the enterprise. In many instances, the condition of the enterprise requires urgent measures to be taken in order to achieve a financial and economic recovery of production so as to ensure a possibility to operativeiy restore the normal mode of work of the enterprise. It is by no means that every applicant will be able to face such a challenge. That is why a preliminary familiarization with the state of affairs at the enterprise can become a reason for some of the applicants to abstain from partaking in the contest. The persons who have not submitted the documents confirming their right to take the post of the director of a federal state unitary enterprise are not allowed to take part in the contest.

A contest is to be announced only for the posts vacant. This rule is strictly specified in the Sectoral Provisions for holding a contest for the appointment to the post of the director of a federal state unitary enterprise. Nevertheless, there can be such instances when the post of director of a state unitary enterprise is vacant, while the contest for the appointment to this post has not been hold yet. In such cases, prior to the conclusion of the contest and to the signing of the contract, the duties of the director may be fulfilled by a specialist appointed by the federal executive body on the basis of a short-term work agreement.

All the work dealing with holding the contest and with summarizing its results is to be done by the contest committee. Its composition is strictly specified.

The Provisions for holding a contest for the appointment to the post of the director of a state unitary enterprise specifies that all the federal executive bodies directly interested in the successful activity of the enterprise in question and capable of influencing the results of this activity send their representatives to the contest committee. The committee includes one representative with the casting voice from each of the federal executive bodies which will conclude a contract with the winner of the contest. If the executive body of subject of the Russian Federation in whose territory the enterprise is situated wishes so, the Committee can incorporate one representative with the consultative voice from this body. All other persons, including the experts who participate in the work of the contest committee have consultative voices.

The actual tests of the knowledge possessed by the applicants to the post of the director of a federal state unitary enterprise are carried out in two stages.

The first stage consists of written answers to the questions formulated by the contest committee; the applicants must be familiarized with them in advance. The total number of these questions is to be no less than 50. When preparing the questions for the test, it should be kept in mind that they should ensure that the knowledge is to be tested of the following:

- the branch-related specific features of the enterprise;
- the basic principles of civil, labour, tax and banking legislation;
- the basic principles of enterprise management, financial auditing and planning;
- the marketing basics;
- the basic principles of business assessment and the assessment of real estate.

As regards the second stage which consists in considering the proposals on the programme for the improvement of the activities of the enterprise submitted to the contest committee by the applicants, it is open for the participation of only those contestants who have not exceeded the maximum permissible number of incorrect answers at the first stage. In accordance with the Provisions for holding a contest, this limit is no more than 25% of the total number of answers. But their specific number is to be determined by the contest committee.

The second stage is devoted to the discussion of the proposals on the activities of the enterprise. The committee members open the sealed envelopes and determine what programme of the improvement of the enterprise's activities is the best among those proposed by the contesters.

The winner will be the applicant who has successfully passed the tests and has offered what the committee considers to be the best programme of the enterprise's activities. Within a month after the announcement of the winner a contract is concluded with him.

As indicated above, the major role in holding certifications and contests for the appointment to the vacant posts of directors of state unitary enterprises is played by the interdepartmental commissions that include representatives of appropriate sectoral ministries and agencies, the Ministry of State Property, the Ministry of Finance, the

Ministry of Labour and Social Development, the Ministry of Taxes and Levies, and the executive body of the subject of the RF in whose territory the state unitary enterprise is situated. The decisions on the adequacy for the job or on the appointment for the vacant post of the director of a state unitary enterprise is taken by a simple majority of votes cast by those present at the sessions of the corresponding commissions.

Practice indicates that the efficiency and effectiveness of the work of such interdepartmental structures is far from satisfactory. The reasons are evident - a discrepancy between the interests of the representatives of various ministries and agencies and those of the federal center and the regions, negligence on the part of numerous officials and the members of such commissions, the length of the procedures for coordinating the decisions, etc.

In order to increase the efficiency and effectiveness of state managerial bodies in the directors of state unitary enterprises, a certain elaboration of the RF Government's Decree No 234 of 16 March 2000 "On the procedure for the conclusion of contracts and the certification of the directors of federal state unitary enterprises" is quite necessary.

Firstly, it is likely to be expedient to organize the work of the interdepartmental commissions being set up in such a way that the decisions on an adequacy for the job and on the appointment to a vacant post of the director of a state unitary enterprise will be unilaterally taken by the representative of the state body supervising the activities of the corresponding enterprise, provided, naturally, that the corresponding measures introducing personal responsibility for the decisions taken are put into effect70, while the representatives of the other executive bodies as well as the experts shall have consultative voices only.

Secondly, in order to increase the effectiveness of the work of interdepartmental commissions, it might be advisable to permit the sessions of the commission to be held by correspondence, when each of the members of the commission and each of the invited experts submits his or her opinion to the representative of the state body supervising the activities of the corresponding state unitary enterprise, which is to be done within the prescribed time limit.

Thirdly, in order to ensure objectivity and lack of bias as far as the results of certifications and contests are concerned, it is advisable to organize them on the basis of anonymity so that the experts assessing the results of the tests and contest procedures could not identify the participants in the contests for the appointment to the vacant posts of the directors of state unitary enterprises.

Fourthly, in the case of the certifications, consideration shall be given not only to the results of testing but also to the performance of the enterprise headed by the person undergoing certification. Therefore, in order to come to a conclusion, the experts and the members of a certifying commission must receive not only the results of the tests but also some other data - the values and the dynamics of the major performance indices of the

70 In the case of a decision that contradicts the recommendations of the experts and other members of the Commission and later found to be erroneous, all the necessary decisions concerning the personnel must be taken, and the official is to be brought to responsibility alongside with the director of the enterprise, if the actions of this director have been to the detriment of the enterprise.

enterprise, the data on the investment projects under implementation, the credit history, etc.

3.5.5. The use of the programmes of the development of enterprises as a mechanism for their management by state bodies

In the Concept of the management of state property and privatization in the RF (September 1999), the programmes (or plans, business plans) of the activity of state unitary enterprises are considered as the basis for the interaction between the State and the directors of these enterprises.

in principle, such an approach is correct. However, it was only 2.5 years later that it was finally materialized in Decree of the RF Government No 228 of 10 April 2002. It should be reminded that this document invests the federal executive bodies with a responsibility to annually authorize the programmes of activity of the federal state enterprises subordinate to them, and to do so in accordance with the prescribed special form. The Regulations for the development and authorization of the programmes of activity and for the determination of the share of profits of a FSUE to be transferred to the federal budget have also been approved.

Since the programmes of the activity of state unitary enterprises can become one of the most efficient mechanisms for managing these enterprises and for controlling the activities of their directors, practical realization of this approach must be further developed.

In this respect, a number of suggestions can be made.

1. It is advisable to include a provision on the responsibility of the director of a state unitary enterprise to draw up the programme of the activity of the enterprise, to get it approved by the corresponding state managerial body, and to strictly abide by it in his activities, in the Model Charter of a state unitary enterprise and in the labour agreement (contract) with the director of a state unitary enterprise.

2. The programme of the activity of an enterprise must include both a short-term (for one year) plan and a long-term strategic plan of the enterprise's development. Such an approach envisages a more rigid control over the implementation of the development programme and makes it possible to more flexibly and timely respond to any changes in the situation.

3. A failure on the part of the director of an enterprise to implement the short-term (for one year) plan of the enterprise's activity can serve as the grounds for bringing the director to disciplinary responsibility and even for dismissing him without the right to recourse to the court (these provisions must be included in the labour agreement (contract) with the director of a state unitary enterprise).

4. The output parameters characterizing the implementation of the short-term (for one year) plan must be the specific facts whose presence or absence can be easily verified by documents and other means. In this respect, it is expedient to develop a model methodology for controlling the implementation of the programmes of the activity of state unitary enterprises, and to have this programme approved at the government level.

5. The results of the implementation of the short-term (for one year) plan and the long-term strategic plan of the development of an enterprise must become one of the basic criteria determining the amount of fringe benefits to be received by the director of the enterprise. In this respect, it should be taken into consideration that the implementation of even very promising investment projects frequently results in a temporary worsening of the performance indices of the enterprise in question, which must not be the ground for any disciplinary measures to be taken against the director or for reducing the bonus to be paid to him. In this regard, it is suggested to revise the Provisions "On the terms of payment for labour of the directors of state enterprises as reflected in the labour agreements (contracts) concluded with them" authorized by Decree of the RF Government No 210 of 21 March 1994.

6. The distinctive features characterizing the implementation of the programme of activity of an enterprise at some stage, can require the replacement of its director with a person who has a qualification and qualities more appropriate in the given circumstances. Such a situation must be foreseen in advance, and the work with the CEOs of the enterprise must be organized accordingly (the conclusion of contracts for a certain term, an offer of another job, material compensation, etc.).

Conclusions

The fact that the adoption of the Law "On State and Municipal Unitary Enterprises" has been delayed for so long, did not prevent the State from strengthening its managerial influence on unitary enterprises by upgrading the existing normative base which came into being in 1999-2001, that is by refining the Model Charter of a FSUE and the Contract with its director as well as by improving the work of certification commissions - all for the general purpose of enhancing the safety of state property.

The major way to achieve all this is to augment the said documents by a number of provisions making it less possible for the directors of enterprises to carry out certain activities without getting: them preliminarily approved by the owner's representative; to extend the system of incentives so that the directors will become more inclined to abide by the contracts - by setting a range of grounds for canceling the latter and for resorting to sanctions, by activating the stimuli dealing with remuneration of labour, etc.

The progress in strengthening the managerial influence of the State will have the following indicators: the transfer of profits to the budget in compliance with the set targets, and the adoption and implementation of a programme of unitary enterprises' development agreed upon by the state managerial bodies and set for a relatively long term.

3.6.Conclusion

Legal regulation of the State property rights in the Russian economy in transition is still far from perfect. The reasons are as follows: the amorphous character of property rights, the diversity of opinions on the role to be played by the state sector in the process of economic development, and the insufficiently clear partition of power between different levels of authority. All this holds true of state unitary enterprises,

It is advisable to consider the reforming of these enterprises in the context of the prospects of development faced by the state sector as a whole. The major lines of the state sector's future evolution will lead to a gradual reduction in the variety of tasks placed on its enterprises, to their integration, to their stabilization on the basis of a revision of all the principles implied by the management of state property, and to strengthening competition by removing some of the obstacles on the road to deregulation and to organization of production by the private sector.

The specific features of both the activity of state unitary enterprises and their assets necessitate the use of the whole range of methods of transformation, if any significant results are to be expected.

When the focus is on the accelerated corporatization of unitary enterprises, a serious problem will be posed by the growth of the burden carried by the state managerial bodies that will have to work within the norms of corporative law. Another problem will consist in the necessity to master the new instruments of privatization which have emerged due to the enforcement of the new law on privatization. The integration of FSUSs into holding structures will require an individual approach,

The inevitable conclusion is that a large number of entities with the right of economic jurisdiction will retain the organizational and legal form of a unitary enterprise for a rather long time, and therefore it is necessary to modify the status of SUEs by adopting an appropriate law (enacted in late 2002) and to substantially renovate all the other aspects of the normative and legal base.

The advisability of adopting a special law regulating the functioning of unitary enterprises is absolutely clear. Its main priorities must be as follows: to minimize the flaws existing in the right of economic jurisdiction by restricting the economic autonomy enjoyed by unitary enterprises (strict definition of the company's objects and the types of activity permitted to it, as well as the volume of its legal capacity), to strengthen the regulations regarding the management of them by the State, to increase the protection of their property rights (regulation of the implementation of major transactions and transactions involving the interests of the director, limitation of the right to create subsidiary enterprises, a creation of the possibility to expropriate some part of the enterprise's property on behalf of the State).

At the same time, it should be emphasized that even before the adoption of the afore-mentioned law, the State had the right to increase its managerial influence on unitary enterprises by improving the existing normative base which emerged in 1999-2002, that is by refining the Model Charter of a FSUE and the Model Contract with its director, by improving the work of certifying commissions with the general aim of improving the safety of state property, by intensifying the process of transferring a part of SUEs' profits to the budget, by making SUEs subscribe to long-term programmes of development, and by gradually extending the emerging practice to unitary enterprises in regional and municipal ownership.

4. The problems of managing unitary enterprises in Russia's regions (as exemplified by Krasnodar Krai)

One should remember that the basic norms concerning unitary enterprises as determined in Part 1 of the CC of the RF enacted as of 1 January 1995 were to be applied to economic subjects of this organizational and legal form that are in federal ownership or in the ownership of subjects of the RF's or municipal formations.

Somewhat later, Federal Law "On general principles of organizing local self-government in the Russian Federation" of 28 August 1995, No 154-FZ was enacted, wherein the issues dealing with the creation of municipal unitary enterprises, their management and the management of municipal property were placed within the exclusive authority of local self-government. It was stipulated therein that local self-government agencies establish the procedure for managing and disposing of municipal property, including the creation of municipal enterprises (Article 15). They also define the goals of, the conditions for and the procedure governing the operation of enterprises, institutions and organizations which are in municipal ownership, regulate the prices and tariffs on their products (services), confirm their charters, hire and dismiss the directors of those enterprises, institutions and organizations, as well as hear reports on their activity (Article 31).

As for the legislative innovations that appeared after adopting the Concept of the management of state property and privatization in the RF in 1999, these have dealt mostly with federal state unitary enterprises.

In this connection, of great interest is the practice of managing regional and municipal unitary enterprises being developed in different subjects of the RF.

Krasnodar Krai is one of those regions where a certain experience of managing unitary enterprises on a local level has been accumulated. Below we present an overview and analysis of the practice, as developed in Krasnodar Krai, of managing unitary enterprises in the ownership of this subject of the RF, as well as that of managing municipal unitary enterprises of Krai's capital and of the largest Russian resort area – the city of Sochi.

4.1.State unitary enterprises of Krasnodar Krai

According to the data as of 1 May, 2002, in Krasnodar Krai there were 205 State unitary enterprises which is comparable to the number of Krai institutions (217).

As on the federal level, the main instruments for the Krai executive bodies to exert administrative influence on unitary enterprises are the Charter of a SUE of Krasnodar Krai (Appendix 5), to be confirmed by its founder – the Administration for interaction with structures of financial market under the Krai Administration as a body of executive authority and to be agreed upon with the Krai body for managing State property – the Department for property relations (which is also the founder of enterprises), and a Labour Contract with its director (Appendix 6), to be signed by the Administration for interaction

with structures of financial market under Krasnodar Krai Administration, as represented by its director, to be agreed upon with the Department for property relations.

The Charter of a SUE of Krasnodar Krai basically duplicates the provisions in the Model Charter of a FUE approved by decree of the Ministry of State Property of the RF of 16 February 2000, No 188-r.

As in the new version of the Model Charter of a FSUE (confirmed by decree of the Ministry of State Property of the RF of 6 March, 2001, No 548-r), a Krai state enterprise has the right to purchase and alienate participatory shares (or contributions, shares) in the charter (or contributed) capital of economic societies, partnerships or other organizational-legal forms operating on the financial services market, including banks and non-banking credit institutions, as agreed upon with the krai agency responsible for managing state property, as well as with the executive body supervising the said Enterprise.

The Charter of a SUE of Krasnodar Krai (i. 3.12) determines the exact size of a charter fund: no less than 15% of the charter fund is formed by annual allocation of 5% of net profit left at the enterprise's disposal. At the same time, in contrast to the Model Charter of a FSUE, no other funds that can be formed by the enterprise are directly mentioned.

However, as in the Model Charter of a FSUE, the Charter of a SUE of Krasnodar Krai contains only an indirect referral to the duty to transfer a share of profit to the krai budget (i. 3.10 in the section "The property of the Enterprise"); in Section 4 ("The rights and duties of the Enterprise") there is no direct stipulation to this effect. The share of profit to be transferred by a unitary enterprise to the krai budget is not determined by the Charter of a SUE of Krasnodar Krai. Later it was determined as 25%.

The duty of a unitary enterprise of Krasnodar Krai to do auditing every year is mentioned with reference to the RF legislation. In this connection it should be remembered that in case of a FSUE the effect of this norm depends on the magnitude of the financial and economic indices achieved by the latter[71]. Therefore it would be logical to assume that this norm in the Charter of a SUE of Krasnodar Krai may become void because regional enterprises will simply not be able to satisfy the criteria selected for a FSUE.

A certain innovation, as compared to the content of the Model Charter of a FSUE, has become a more exact description of civil defense and mobilization measures. Under i.4.6, there is a detailed list of the director's responsibilities to organize military records, fulfill a State order, carry out civil defense and mobilization measures.

The Labour Contract with the director of a SUE of Krasnodar Krai generally reproduces the provisions of a Model Contract with the director of a FSUE confirmed by

[71] According to Decree of the RF Government of 29 January, 2000 No 81 "On auditing of federal state unitary enterprises", annual audits are mandatory if one of the following financial indices of their activity is present: 1) the proceeds of sale of products (performing works, rendering services) in one year must exceed by 500,000 times the minimum salary as determined by law; 2) the total balance-sheet assets of as of the end of the reporting year must exceed by 200,000 times the minimum salary as determined by the legislation of the Russian Federation.

decree of the MSP of the RF of 16 February No 189-r (in the wording of decree of the Ministry of State Property of June 9, 2000 No 50-r).

As supplementary conditions regulating the activity of the director of a SUE of Krasnodar Krai, only the following two can be mentioned: its accountability to the Executive Agency (i. 2.1) and the duty to ensure timely and in full payment by an enterprise of all, determined by the RF legislation, taxes, fees and other mandatory payments to the RF budget and other budgets of Krasnodar Krai and municipal formations, as well as to extrabudgetary funds (including timely and in appropriate amount transfers to the krai budget of a share of profit from exploiting the property of an enterprise) (i. 3.1.8.).

In this document, more exact terms for the rewards and social guarantees to the director are determined (i. 4.5.-4.7. and 4.9):

– annual 28-calendar-day leave;

– pecuniaryl aid on going on an annual leave in the amount of two regular salaries;

– lumpsum compensation to the family in the amount of 12 regular salaries;

–a compensation for pre-term termination of the labour contract in the event of absence of culpable actions (or lack of action) in the amount of 3 regular salaries.

Besides, in the labour contract there is only a mention (without any determined amount) of a compensation in case of disability (i. 4.8). No compensation for moving to another location is envisaged.

A considerable limitation of the document is that the share of the enterprise's net profit retained all settlements with the budget, to be allocated as part of the director's salary (i. 4.1) as mentioned without determining its size, or any criteria whatsoever for applying this norm.

The list of sanctions against the director of a SUE of Krasnodar Krai, in contrast to the Model contract with the director of a FSUE, does not contain a severe reprimand (i. 5.2). Far more important is that, like those applicable to directors of a FSUE, there are no material sanctions.

As for the list of reasons for the termination of a labour contract, there is also little difference from those listed in the Model Contract with the director of a FSUE (i. 6.2. и 6.4.).

The great majority of the reasons for discontinuing labour relations with directors of enterprises are similar for the directors of FSUEs and for the directors of SUEs of Krasnodar Krai:

– failure to meet the economic efficiency targets set for the unitary enterprise according to an established procedure;

– failure to carry out audits of a unitary enterprise according to an established procedure;

– failure to comply with the decisions of the RF Government, Head of Administration of Krasnodar Krai, or krai executive authorities;

– carrying out transactions with the property belonging to a unitary enterprise by right of economic jurisdiction with violations of the requirements set by legistalion and the special legal capacity of the enterprise determined by its charter;

– wage arrears at the unitary enterprise due more than 3 months accumulated through the director's fault;

- violation, through the fault of the Director as found out in the procedure established by the legislation of the Russian Federation, of the requirements concerning occupational safety, which entailed a decision made by the director of the State labour inspectorate and a State labour inspector to the effect that the operation of the enterprise or its structural subdivision be suspended, or a court decision to the effect that the enterprise be liquidated, or the operation of its structural subdivision be Terminabled;

- failure to ensure the use of the property of the enterprise, immovable including, according to the purposes corresponding to the activities of the enterprise as determined by the Charter of the enterprise, as well as failure to use according to the established purposes the budgetary and extrabudgetary funds allocated to the enterprise for more than three months;

Among other additional reasons for annulment of a labour contract in accordance with i. 3 of Article 278 of the Labour Code of the RF (i. 6.4.), the instance of inflicting losses on the enterprise is mentioned (without any detailed elaboration of this notion). The text of the Model Contract with the director of a FSUE contains no provision to this effect.

At the same time, in the Labour Contract with the director of a SUE of Krasnodar Krai there are no reasons for terminating the labour relations such as "failure, on the part of the Director of a unitary enterprise, to meet the employment requirements, as found out by the results of his certification", "disclosure by the Director of the information considered to be employment or commercial secret that has become known to him as a result of his execution of his official duties".

The Labour Contract with the director of a SUE in Krasnodar Krai is concluded for the period of 5 years.

4.2.Municipal unitary enterprises of the city of Krasnodar

4.2.1. Composition, departmental subordination and sectoral make-up

In the Krai capital, Krasnodar, as well as in other municipal formations within the region, the local authorities own certain property, part of which are municipal unitary enterprises (MUE). In 2001-2002 there were 117 MUE in the city, subordinated to 16 Administrations, Committees or Departments within the City Administration (see *Table 14).*

Table 14

Municipal unitary enterprises of the city of Krasnodar and their departmental subordination

Departments within Krasnodar City Administration	Number of subordinated MUEs
Department for municipal services	51
Administration for organizing purchase and sale of agricultural goods	17

Department for the commodities market and services	13
Administration for culture	9
Department for construction, architecture and urban lands	7
Administration for agriculture	5
Administration for public health care	3
Administration for public relations	3
Administration for industry, transport and business in the sphere of industry	2
Administration for municipal orders and tenders	1
Department for Administrative Affairs	1
Administration for municipal property	1
Administration for employment	1
Committee for physical culture and sports	1
Committee for housing inventory and distribution	1
Committee for issues dealing with the young	1
Total	117

As follows from these data, the majority of MUEs (almost 70%) are subordinated to three subdivisions within the City Administration: the Department for municipal services (43.5%), the Administration for organizing purchase and sale of agricultural goods (14.5%), or the Administration for the commodities market and services (11.1%). Each of the other 13 departments within the City Administration supervises less than 10% of MUEs, and 7 of these are responsible only for one enterprise each.

The sectoral make-up of the MUEs in question exactly corresponds to the names of the departments within the City Administration.

In this connection it is necessary to note that the Department for municipal services supervises MUEs that produce not only municipal services but also housing-and-communal or burial services. The enterprises subordinated to the Administration for organizing purchase and sale of agricultural goods include 3 bread-baking plants; those subordinated to the Administration for agriculture – 2 State farms, one poultry factory, one repair-and-maintenance enterprise and one machinery-and-tractor station; those subordinated to the Administration for culture include city parks; those subordinated to the Administration for construction, architecture and urban lands – raion construction directorates, "Gorkadastrproekt" and the bureau for price-setting in construction; those subordinated to the Administration for public relations – a weekly publication, the House for Journalists, the city information center; those subordinated to the Administration for industry, transport and business in the sphere of industry – one brick-making plant and one municipal marketing centre.

The specialization of the MUEs subordinated to the Department for Administrative Affairs, the Administration for employment and the Committees for physical culture and sports, for housing inventory and distribution, and for the issues dealing with the young is not quite clear.

4.2.2. Basic normative and legal acts and basic regulating procedures (creation of MUEs, relations with the city budget, activity planning, reporting)

The basic document regulating the activity of municipal unitary enterprises in Krasnodar city is the Provision on the procedures of the ownership, use and disposal of the city of Krasnodar's municipal property. It was developed in accordance with federal and regional legislative acts and enacted by Decision of Krasnodar City Duma as of 28 June 2001, No 12.

Enterprises are created according to the procedure envisaged by Articles 113 and 114 of the Civil Code of the RF with the purpose of satisfying the needs of the city's population in various kinds of goods and services, improving the citizens' welfare, and generating additional revenues for the city budget.

The City Administration of Krasnodar, by agreement with the City Duma in the procedure established by the City Charter, makes decisions concerning the issues of creating municipal unitary enterprises.

MUEs are created on an application of the department within the City Administration responsible for the sector in question; the application form consists of a feasibility study concerning the enterprise to be created and explanatory comments approved by the Financial-Treasury Administration of the City Administration.

In its name, the Administration for municipal property of Krasnodar acts as the founder of the MUE.

The charters of municipal unitary enterprises (MUE) are agreed upon with an appropriate sectoral subdivision within the Krasnodar City Administration and are confirmed by the Administration for municipal property.

On an application by a sectoral subdivision, the Administration for municipal property introduces amendments to the MUEs' charters or confirms their revised versions. The decisions on reorganization and liquidation of enterprises are made by the Krasnodar City Administration on applications submitted by the City Administration's sectoral subdivisions in the established procedure.

The control over an enterprise's activity, as far as its compliance with the charter's requirements and economic operation is concerned, is carried out by an appropriate sectoral department within the City Administration.

The Krasnodar City Administration has the right to receive a share of a municipal unitary enterprises' net profit after taxes and other mandatory payments, in an amount determined by the Krasnodar City Duma (presently – 25%) (see *Table 15*).

Table 15

Data on transfers of net profits to founders by MUEs of Krasnodar in 1999-2002 (thousand roubles, deduction rate norm = 25%)

1999	2000	2001	2002 (planned)	2002 (actual, (as of 15 Nov. 2002)
279.3	586.9	2341.5	2042.0	2341.5

As of 15 November, 2002, the Krasnodar MUEs exceeded their planned targets for transferring a share of their profit to the city budget by 14.6%. However, for the sake of correctness, it would be appropriate to take into account the extent to which the dynamics of the prices on their products (works, services) corresponded to that initially planned.

In order to improve the efficiency of the operation of municipal enterprises, as well the control over their activity, on the basis of Krasnodar Krai Law of 10 July 2001 "On forecasting, indicative planning and programmes of socio-economic development of Krasnodar Krai", the Krasnodar City Administration by decree of 9 October 2001 confirmed a comprehensive plan for developing the municipal enterprises of Krasnodar in the year 2002.

The departments within the City Administration, upon an agreement with the Administration for municipal property, informed their subordinated municipal enterprises of the planned financial and economic targets for the year 2002.

The Administration for municipal property under the City Administration, within 40 days after the end of a reporting period is over, submits to the Administration for socio-economic planning under the Krasnodar City Administration quarterly reports of municipal enterprises on their fulfillment of the summary plan for the reporting period.

The Administration for socio-economic planning under the Krasnodar City Administration has been granted the right to adjust the plans of municipal enterprises within the limits of the total proceeds of sale of products, works, services, as well as profits, provided there are appropriate economic grounds for that.

The Administration for analytical support of municipal activity has also been allowed, in case when there are sufficient grounds, to introduce adjustments to the confirmed annual plans of municipal enterprises. There must be an application to this effect made by the Department for municipal resources, which, in collaboration with the sectoral services of the Mayor's Office responsible for the activity of municipal enterprises, has implemented at each of these enterprises a system for planning their operation by indicative indices (see *Table 16*).

The draft current annual plans of municipal enterprises' economic activity, subdivided by quarters, after being developed by the department for municipal resources, are submitted to the Administration for analytical support of municipal activity which then prepares an economic study to justify their intensity and within 10 days submits it for approval.

Table 16

Indices of prospective development of a municipal enterprise during one year

Indices	**Actual of 1999**	**Plan for 2000**	**including by quarters**				**Growth rate of 2000 to that of 1999 (in %)**
			Q 1	**Q 2**	**Q 3**	**Q 4**	
Proceeds of sale of goods, products, works, services (thousand roubles)							

Balance-sheet profit (thousand roubles)							
Current liquidity coefficient<*>							
Coefficient of availability of internal funds <**>							
Internal growth rate<***>							

<***> internal growth rate (IGR) is calculated by formula:

IGR = PCC x (1 - DN), where

DN–distribution norm;

PCC (profitability of internal funds) = (1 - PTR) x EP + FLEЭФР.

The following values are used to calculate this index:

PTR – the profits tax rate - (shown as fraction of one);

EP – economic profitability of assets, %;

FLE (financial level effect) = (1- PTR) x (EP - ACIR) x (loan funds to be divided by enterprise's internal funds);

ACIR–average calculated interest rate.

The responsibility to control the fulfillment of plans by municipal enterprises is placed with Heads of Administration of Krasnodar's administrative districts (or Okrugs), as well as with Heads of Administrations and Departments within the City Administration.

4.2.3. The rights and duties of MUEs, regulation of the activity of their directors (the procedure of hiring and dismissing, range of responsibility, basic control procedures)

As on the krai level, the instruments applied for regulating municipal enterprises are the Charter of a municipal unitary enterprise (MUE) (Appendix 7) confirmed by its Founder – the Administration for municipal property under the Krasnodar City Administration – and agreed upon with an appropriate sectoral department (administration), and the Terminable Labour Contract with its director (Appendix 8) signed by the Krasnodar City Administration in the person of Head of Administration, N.V. Priz (or as the latter's proxy – by Head of the city's Administration for municipal property), after achieving an agreement thereupon with a sectoral department (administration) within the Krasnodar City Administration.

The Charter of a MUE of Krasnodar largely duplicates the provisions of the CC of the RF and the Model Charter of a FSUE confirmed by decree of the MSP of the RF of 16 February, 2000, No 188-r (as a new version of Decree of the Ministry of State Property of the RF of 6 March, 2001 No 548-r) and the Charter of a SUE of Krasnodar Krai.

This document contains several articles where quite obvious facts are stipulated. For example, i.3.4. determines an enterprise's right to keep correspondence, or make use of international telephone, telegraph, teletype, telefax or other means of communication, connect to computer databases, create its own databases and archives, use photocopiers, computers and other office appliances, as well as publishing equipment.

At the same time the Charter of a MUE of Krasnodar has a number of important distinctive features.

Thus, i. 3.1. stipulates that the founder's consent is necessary in order to create subsidiaries[72], branches and affiliations, to make investments in joint ventures or to join joint-stock societies. It should be remembered that the Model Charter of a FSUE (as well as the Charter of a SUE of Krasnodar Krai) extends this norm only to transfers of immovable property in economic jurisdiction when creating subsidiaries, or acquisition or alienation of participatory shares (or shares) in the charter (or contributed) capitals of economic societies, partnerships and organizations of other organizational-legal forms operating on the financial services market, including banks and non-banking credit institutions.

I. 3.9. requires that MUEs when raising prices (tariffs) on their products (works, services) coordinate them with the Financial-Treasury Administration and the Administration for prices under the Krasnodar City Administration. In the Model Charter of a FSUE, as well as in the Charter of a SUE of Krasnodar Krai, as far as this issue is concerned, there are only general references to the RF normative and legal acts. Nor there are any stipulations as to the duty to declare bankruptcy in a timely fashion in case of inability to fulfill obligations to creditors.

Under the same item, the amount of the share of profit to be transferred to the city budget is exactly determined (25%).

As in the Charter of a SUE of Krasnodar Krai, in the Charter of a MUE of the city of Krasnodar (i. 6.5.) the exact amount of an enterprise's reserve fund is determined as 15% of the charter fund, while no other funds that an enterprise is allowed to create are mentioned (in i. 6.7, only the ways for their implementation are outlined).

By way of analogy with the Charter of a SUE in Krasnodar Krai, in the Charter of a MUE of the city of Krasnodar the civil defense and mobilization measures to be carried out at an enterprise are specified in detail (i. 4.4.).

Being different in principle from the Model Charter of a FSUE and the Charter of a SUE of Krasnodar Krai, the Charter of a MUE of the city of Krasnodar contains special sections, as follows: Section 5 – "Accounting, Planning, Reporting"; Section 7 – "Foreign Economic Activity"; Section 9 – "Archiving. Safety of Documents".

The most important one among these is Section 5 which contains a direct stipulation (i. 5.1.) to the effect that an Enterprise operates on the basis of its own independently developed plans. Prospective plans are to be approved by an appropriate sectoral department within the Krasnodar City Administration upon an agreement with the Founder. Annual and current plans are approved by an enterprise's director through coordination with an appropriate sectoral department within the Krasnodar City Administration. The plans are based on contracts with suppliers and consumers.

[72] New Federal Law "On State and municipal enterprises" No 161–FZ of 14 November, 2002 (Article 2) forbids them to create, in the form of juridical persons, other unitary enterprises by means of transferring to them a part of their property (subsidiaries).

In contradiction to all said above, as well as to the requirement that prices are to be coordinated, there is also a stipulation that an Enterprise is free to select a subject for its contracts, the responsibilities or any other terms for economic relationships that comply with the RF legislation.

According to i.5.3, the control over the production and financial activity of an Enterprise is effected by an appropriate sectoral department within the Krasnodar City Administration, the Founder, and the director of the Enterprise appointed in the established procedure. The Enterprise reports to its supervising sectoral department within the Krasnodar City Administration and to the Founder on a quarterly basis, within 35 days after the end of every quarter.

The Model Charter of a FSUE and the Charter of a SUE of Krasnodar Krai contain no such direct stipulations, however one must take into consideration the available requirements for reports to be submitted by FSUEs, confirmed by Decree of the Government of the RF of 4 October, 1999, No 1116, and the procedure for approving the programmes of their activity confirmed by Decree of the Government of the RF of 10 April, 1999, No 228.

In Section 7 addressing the foreign economic activity of a MUE, i. 7.3 is the most important one wherein the object of an Enterprise's export operations is limited to its activities listed under i. 2 of the Charter.

The policy as regards the personnel employed at municipal enterprises is determined by the Charter of Krasnodar City (approved by Decision of the City Duma of 6 July, 1996 No 37, P.9 (in the version of 11 July, 2002) and the Provision on the procedures of the ownership, use and disposal of the city of Krasnodar's municipal property (approved by Decision of the City Duma of 28 July, 2001 No 12, P. 1).

According to Article 47 of the Charter (in the version of Decision of the City Duma of Krasnodar of 4 January 2001, No 3, P.1), Head of the City Administration of Krasnodar directly or through the bodies of the City Administration appoints and dismisses directors of municipal enterprises and institutions (as well as First Deputy Director of the City Administration and the directors of departments within the City Administration), notifying the City Duma of all changes as regards personnel.

Decrees of Head of the City Administration serve as a basis for signing Terminable Labour Contracts with directors of enterprises who, after being notified of the terms of this document, sign it, with subsequent notification of the City Duma as to the changes in personnel.

The Model Terminable Labour Contract was confirmed by Decree of Head of the City Administration of Krasnodar of 17 June 2002, No 888.

The mandatory provisions of a contract with the director of an enterprise are as follows:

- the rights and responsibilities of the director associated with managing an enterprise, including hiring and dismissing personnel, delegating authority and disposing of the property of a MUE;
- the procedure of reporting by the director of an enterprise;

- the size of the compensation to be paid to the director of a MUE in case of an early cancellation of the contract on the initiative of the Krasnodar City Administration (in those case when the contract was cancelled for reasons other than the director's culpable actions);
- the duty to ensure that current legislation, the Charter of the Enterprise, and the normative decisions of the local authorities made within their sphere of competence are abided by.

In contrast to the Model Contract with a director of a FSUE and the Labour Contract with a director of a GUE of Krasnodar Krai, the Terminable Labour Contract with a director of a MUE of Krasnodar city contains important limitations (i. 2.5.).

The director of an enterprise is not allowed to act as founder (participant) of a juridical person wherein the unitary enterprise in question is one of the participants (founders).

The director of a MUE is not allowed to hold positions of authority or be otherwise employed to do a paid job at State bodies, local self-government bodies, commercial and non-commercial enterprises (except research, academic or any other creative activity), to engage in entrepreneurial activity, to act as a sole executive or member of a collegial executive body of a commercial organization, except in cases when participation in executive bodies of a commercial organization is part of his official duties as determined by the legislation of the Russian Federation.

Besides, it is necessary to note that this document contains direct provisions as to the director's duty to ensure quarterly transfers of a share of net profit from the use of the property in economic jurisdiction of the Enterprise (i. 2.3.3.), to participate, on a contractual basis, in fulfilling municipal orders for supplies of products (goods, works, services) placed with the Enterprise in question in accordance with the authority of the Krasnodar City Administration (i. 2.3.4.).

The director of an enterprise operating on the basis of a contract, at the end of a financial year submits to the Administration for municipal property of Krasnodar, an appropriate sectoral department and an appropriate sectoral Committee under the Krasnodar City Duma, a report on the financial and economic activity of the enterprise, with proposals as to improving its operation (i. 2.3.13.), wherein the following issues must be covered:

- conducting appropriate measures to ensure that the enterprise makes profit, in particular measures to improve profitability of (products) services, or measures against bankruptcy;
- applying inventions and advanced technologies in the production of goods and services;
- implementing investment programmes.

The director of a MUE submits accounting reports on a quarterly basis, within one month after a quarter's end, to the sectoral department and the Administration for municipal property under the Krasnodar City Administration.

At the request of the Administration for municipal property and the sectoral department within the Krasnodar City Administration the director of a MUE must submit

the required information on the enterprise's activity during the periods between accounting reports, as well as report the results of economic activity on a quarterly basis within 35 days after a quarter's end (i. 2.3.14.).

He also must submit to the Founder proposals as to how to achieve the goals of the enterprise's activity, as well as the information on current and prospective planning of financial and economic, economic or other results of the Enterprise's activity, information on the need for budget allocations to implement programmes of prospective industrial development, reconstruction and modernization (annually before November 15) (i. 2.3.15.); in case of raising those prices (tariffs) that are not regulated by the State, the issue must be coordinated with the Financial-Treasury Administration and the Administration for prices under the Krasnodar City Administration (i. 2.3.17.).

There are very few exact details regarding the terms of the payment for labour and social guarantees to the director in this document (i. 4.4. and 4.5)[73]:

– compensation for early termination of this labour contract in the amount of one monthly salary, in accordance with Article 279 of the Labour Code of the RF (i.e. in absence of culpable actions (or lack of action) on the part of the director);

– annual paid leave of 28 calendar days and an additional paid leave in accordance with the collective contract.

The pecuniary aid when going on an annual leave, as well as the compensation for moving to another location, in case of disability of the director of a MUE, and compensation to his family in case of his death are not envisaged in this document.

The terms for paying bonuses to directors are outlines in a most general way, with a reference to the Provisions on the payment of bonuses to the workers of the Enterprise[74]. No mention is made in this document of any disciplinary sanctions to the director (although under i. 3.1.4. the possibility of imposing disciplinary and material sanctions in the procedure established by current legislation is mentioned) which are stipulated in the Model Contract with the director of a FSUE and in the Labour Contract with the director of a SUE of Krasnodar Krai.

However at the same time the document contains an impressive list of the grounds for denying the director the right for a bonus. If in the federal-level and krai-level documents the grounds for denying the right to an additional reward are only as follows: 1) suspension of productive activity of an enterprise or its structural division by an authorized State body in connection with a violation of the standard requirements for occupation safety or ecologic and sanitary-epidemiological norms; 2) failure to ensure timely payment of bonuses, allowances, additional payments or compensations due to the

[73] In reality, the duration of the Terminable Labour Contract with the director of an enterprise is no less than one year, the amount of his guaranteed monthly reward – no less that the 10-fold amount of the minimum salary.

[74] To the director of a municipal unitary repair-and-exploitation enterprise a bonus is paid in the procedure and in the amount determined by the Provisions on the payment of bonuses to the workers of an enterprise confirmed by a sectoral subdivision within the City Administration of Krasnodar, with regard to the proposals made by the Okrug Administration of the city of Krasnodar (i. 4.3.).

employees under legislation and/or a collective contract, the following additional grounds are also stipulated as regards the directors of the Krasnodar city MUEs:

– non-execution or inadequate execution of official duties;

– violations of labour discipline;

– non-compliance with the City Administration's decisions concerning the Enterprise's activities determined in the Enterprise's Charter;

– failure to ensure that the results of the Enterprise's activity meet the basic economic indices set in the established procedure;

– decisions that have resulted in the Enterprise's insolvency (bankruptcy);

– failure to ensure that the planned targets confirmed by an appropriate sectoral department within the Krasnodar City Administration are met by the Enterprise.

The Terminable Labour Contract with the director of a MUE of the city of may be cancelled for the reasons envisaged in current labour legislation (i. 5.3.). The grounds for canceling the contract on the Employer's initiative (i. 5.4.) in accordance with i. 13 of Article 81 of the RF Labour Code are non-fulfillment, on the part of the Employee, of the obligations envisaged in i. 2.3. of the present contract (a list of 20 items[75]). However this list does not include the following instances: "failure, on the part of the Director of a unitary enterprise, to meet the employment requirements, as found out by the results of his certification", "disclosure by the Director of the information considered to be employment or commercial secret that has become known to him as a result of his execution of his official duties", although elsewhere in the document the duty to comply with the procedure of working with professional information is mentioned (i. 2.3.19.), as well as the responsibility not to disclose the information that constitutes commercial secret (i. 2.4.10.). The Employer has the right to alter the terms of the contract with the directors of MUEs in the procedure and on the conditions determined by the existing legislation (i. 3.1.1.).

The director of a MUE bears responsibility for the consequences of his activity (including misrepresentation of reports) in the procedure and on the conditions determined by the existing legislation of the Russian Federation.

Additional responsibilities of the director of a MUE - for violating the terms of a contract, for the economic results of the activity (for Enterprises), for the safety and purpose-oriented use of property, including material liability for the damages inflicted on the enterprise as a result of certain activity of lack of activity, as well as the duty to compensate for damages on the demand of the owner of the enterprise's property, are not specifically stipulated (as in the Model Contract with the director of a FSUE and in the Labour Contract with the director of a SUE of Krasnodar Krai).

[75] The directors of municipal unitary repair-and-exploitation enterprises have an additional duty to coordinate the appointment of the Chief Accountant and the Chief Engineer of the Enterprise with the City Administration of Krasnodar and the Okrug Administration of the city of Krasnodar (i. 2.3.21.).

4.2.4. *Financial and economic results of the activity of municipal unitary enterprises in 2001-2002*

The analysis of the activity of the city of Krasnodar's MUEs is based on the available reports on the enterprises' financial indices for 9 months of the year 2002, as compared to 9 months of the year 2001. It has allowed to make an estimate of the financial and economic status of MUEs judging by the dynamics of the most important indices (proceeds of sales and balance-sheet profit) and the degree to which the planned targets are met.

Table 17

Dynamics of proceeds of sales of Krasnodar MUEs in 9 months of 2002 as compared to 9 months of 2001

Sectoral departments within Krasnodar City Administration	**Number of subordinated MUEs**				
	Total number/those with planned targets other than zero	**not meeting the targets of 9 months of 2002**		**those with decreased proceeds of sale**	
		#	**%**	**#**	**%**
Department for municipal services	51/48	9	17.6	13	25.5
Administration for organizing purchase and sale of agricultural goods	17/16	6	35.3	-	-
Department for the commodities market and services	13/12	4	30.8	2	15.4
Administration for culture	9/6	2	22.2	-	-
Department for construction, architecture and urban lands	7/6	3	42.9	3	50.0
Administration for agriculture	5/4	3	60.0	3	60.0
Administration for public health care	3/2	-	-	1	33.3
Administration for public relations	3/3	2	66.7	2	66.7
Administration for industry, transport and business in the sphere of industry	2/2	1	50.0	1	50.0
Administration for municipal orders and tenders	1/0	-	-	1	100.0
Department for Administrative Affairs	1/1	-	-	-	-
Administration for municipal property	1/1	-	-	-	-
Administration for employment	1/1	1	100.0	-	-
Committee for physical culture and sports	1/1	-	-	-	-
Committee for housing inventory and distribution	1/1	1	100.0	1	100.0
Committee for issues dealing with the young	1/1	-	-	-	-
Total	117/105	32	27.35	27	23.1

An analysis of the data presented in *Table 17* has shown that according to the three-quarter results in 2002, the least favourable situation as regards meeting the planned targets of proceeds of sale occurred at the Committee for housing inventory and distribution, the Administrations for employment, public relations, agriculture, industry, transport and business in the sphere of industry, where a half or more of all subordinated MUEs did not fulfil the plan for proceeds of sales. Against this background, a

comparatively good situation was seen at the MUEs within the municipal services sector where only less than 1/5 did not meet the target figures for this index. All the MUEs subordinated to the Administrations for public health care and municipal property, the Department for Administrative Affairs, the Committee for physical culture and sports and the Committee for issues dealing with the young met their planned targets.

If the aggregate results of the economic activity of MUEs on the level of the departments within the City Administration are considered (see *Table 18*), it can be stated that the planned targets for proceeds of sale were not met by the enterprises subordinated to the Department of the consumer market and services, the Administrations for agriculture, for public relations, for transport and business in the sphere of industry, for employment, the Committee for housing inventory and distribution. At the same time, the city's MUEs on the whole achieved their planned targets.

Table 18

Dynamics of financial indices of Krasnodar MUEs on aggregate level, by departments within the City Administration, during the 9 months of the year 2002, as compared to 9 months of the year 2001

Sectoral departments within Krasnodar City Administration	**Proceeds of sale**		**Balance-sheet profit**	
	plan fulfillment	**growth (+) or decrease (-)**	**plan fulfillment**	**growth (+) or decrease (-)***
Department for municipal services	+	+	+	+
Administration for organizing purchase and sale of agricultural goods	+	+	-	-
Department for the commodities market and services	-	-	-	+
Administration for culture	+	+	+	+
Department for construction, architecture and urban lands	+	+	-	-
Administration for agriculture	-	+	-	-
Administration for public health care	+	+	-	-
Administration for public relations	-	-	-	-
Administration for industry, transport and business in the sphere of industry	-	-	-	-
Administration for municipal orders and tenders	+	-	+	-
Department for Administrative Affairs	+	+	-	+
Administration for municipal property	+	+	+	+
Administration for employment	-	+	+	+
Committee for physical culture and sports	+	+	-	+
Committee for housing inventory and distribution	-	-	+	+
Committee for issues dealing with the young	+	+	+	+
Total	+	+	+	+

* - May also mean: (+) –decrease in losses or growth of losses (-).

The share of the MUEs where, according to the results of three quarters of the year 2002, as compared to three quarters of the year 2001, the proceeds of sales in absolute values (23.1%) is somewhat smaller than the share of those MUEs that did not meet their planned targets for this index (30.5%). The least favourable situation as regards the proceeds of sales index in absolute values was seen within the Committee for housing inventory and distribution, the Administrations for public relations, for agriculture, for industry, for transport and business in the sphere of industry, the Departments for issues dealing with construction, architecture, and urban lands, where the resulting values fell at a half and at more than a half of all subordinated MUEs. It can be presumed that after adjusting the absolute values of proceeds of sales by the inflation index the picture will become even worse.

Nevertheless, the total absolute proceeds of sales of all the MUEs of the city of Krasnodar increased. On the aggregate level by different departments within the City Administration, the absolute proceeds of sales wend down only at the MUEs of the Department for the commodities market and services, the Administrations for municipal orders and tenders, for public relations, for industry, transport and business in the sphere of industry, and the Committee for housing inventory and distribution.

The leaders in total proceeds of sales during 9 months of 2001 were the following MUEs: "Vodokanal", "KMUTTP", "Krasnodarskii khlebozavod No 6". Each of these demonstrated total proceeds of sales over 100,000 thousand roubles, while their share in the total proceeds of sales of all the MUEs of the city of Krasnodar constituted about 48%. According to the results of 9 months of 2002, they were joined by "Krasnodarskaia opytno-pokazatel'naia ptitsefabrika" (Krasnodar experimental-model poultry factory), after which the share of the leader group of enterprises (proceeds of no less than 100,000 thousand roubles) in the total proceeds grew to 53.2%.

The situation as regards the dynamics of the balance-sheet profit in the MUE sector of the city of Krasnodar in the years 2001-2002 (by the results of three quarters) was as follows (see *Table 19*).

Table 19

Dynamics of balance-sheet profit of Krasnodar MUEs during 9 months of the year 2002, as compared to 9 months of the year 2001

Sectoral departments within Krasnodar City Administration	Number of subordinated MUEs								
	Total number/those with planned targets other than zero	not meeting the targets of 9 months of 2002		with decreased balance-sheet profit/growing losses		loss-making enterprises, by results of 9 months			
						2001		2002	
		Number	%	Number	%	number	%	number	%

Department for municipal services	51/9	32	62.7	31	60.8	26	51.0	26	51.0
Administrations for organizing purchase and sale of agricultural goods	17/16	12	70.6	11	64.7	3	17.6	2	11.8
Department for the commodities market and services	13/12	8	61.5	7	53.8	4	30.8	2	15.4
Administration for culture	9/5	3	33.3	4	44.4	3	33.3	2	22.2
Department for construction, architecture and urban lands	7/6	6	85.7	6	85.7	-	-	3	42.9
Administration for agriculture	5/4	5	100.0	5	100.0	3	60.0	4	80.0
Administration for public health care	3/2	3	100.0	3	100.0	1	33.3	1	33.3
Administration for public relations	3/3	3	100.0	3	100.0	-	-	3	100.0
Administration for industry, transport and business in the sphere of industry	2/2	2	100.0	2	100.0	-	-	1	50.0
Administrations for municipal orders and tenders	1/0	-	-	1	100.0	-	-	-	-
Department for Administrative Affairs	1/1	1	100.0	-	-	1	100.0	-	-
Administration for municipal property	1/1	-	-	-	-	1	100.0	-	-
Administration for employment	1/0	-	-	-	-	-	-	-	-
Committee for physical culture and sports	1/1	1	100.0	-	-	1	100.0	-	-
Committee for housing inventory and distribution	1/1	-	-	-	-	-	-	-	-
Committee for issues dealing with the young	1/1	-	-	-	-	-	-	-	-
Total	117/64	76	65.0	73	62.4	43	36.8	44	37.6

As follows from *Table 19*, about 2/3 of the MUEs did not meet their planned profit targets. In most of the sectoral departments of the City Administration the share of subordinated MUEs that did not meet their planned targets was 60-100%. Some exceptions were represented by the following MUEs: “Krasnodarotdykh” (Administration for municipal property), “Munitsipal’noe kadrovoe agentstvo goroda Krasnodara” (Administration for employment), “Gorodskoe Zhiliyo” (Committee for housing inventory and distribution), “Molodiozhnyi tsentr g. Krasnodara” (Comittee for issues dealing with the young), which were the only unitary enterprises subordinated to the respective departments of the City Administration. Relatively good results were achieved by the MUEs under the Administration for culture (the profit targets were not met by 1/3 of enterprises). The abovesaid departments of the City Administration, along with the Department for municipal services, achieved targets higher than planned, if the aggregate results of the economic activity of MUEs at the department level are considered. As a result, on the whole in the MUE sector of the city of Krasnodar, the planned targets for balance-sheet profit in 9 months of 2002 were indeed achieved.

The overall dynamics of balance-sheet profit in absolute values was approximately the same as that of achieved planned targets of this index. Although more than 62% of all MUEs showed decreased profits or growing losses, the total of all municipal enterprises demonstrated an increase of this index during 9 months of 2002. If the dynamics of absolute balance-sheet profit on the aggregate level of the departments within the City Administration is considered, a growth was observed in the MUEs under the Departments for the consumer market and services, for municipal services, under the Administrations for employment and culture, the Committees for housing inventory and distribution, and for issued dealing with the young.

If we consider the contribution of each of the MUEs to the overall profits, the results of 9 months showed that the greatest share was represented by the following ones (in the order of decreasing): "Krasnodarskii Khlebzavod No 6", "Khlebozavod No 3", "Obshchezhitie", "Krasnodarskoe gorodskoe aptechnoe upravlenie", "BTI", "Krasnodarskii Khlebokombinat No 1", "Gorodskoe khoziaistvo", the MUE for city cleaning, the MUE for burial services, "Gorkadastrproekt". For each of these, balance-sheet profit was at least 1,000 thousand roubles, and their total share in total profits was over 77% (including that of "Krasnodarskii Khlebzavod No 6" – 22.7%).

By the results of the 9-month period, the abovesaid creterion was met by the following MUEs (in the order of decreasing): "Vodokanal", "Krasnodarskii Khlebzavod No 6", "BTI", "Khlebozavod No 3", "Krasnodarskii Khlebokombinat No 1", "Gorodskoe khoziaistvo", the MUE for burial services, "Park Kul'tury i otdykha im. 40-lietiia Oktiabria". Their share in the total profits of the MUEs of the city of Krasnodar was about 87% (including that of "Vodokanal" – 64.5%).

At the same time, in most departments of the City Administration total losses in absolute values at their subordinated MUEs by the results of three quarters of 2002 exceeded the same figures for the year 2001. Exceptions were represented by the Department for consumer market and services, the Department for Administrative Affairs, the Administration for municipal property, the Committee for physical culture and sports; moreover, the MUEs under the Department for Administrative Affairs and the Administration for municipal property became profitable, whereas their results of three quarters of 2001 had shown losses.

The absolute numbers of loss-making MUEs (43 by the results of the 9-month period of 2001 and 44 by 9-month period of 2002) and their share in the total number of enterprises remained almost the same (about 37-38%). However on the inside there were marked changes. The number of loss-making MUEs decreased (as well as their share in the total) under the Administrations for organizing purchase and sale of agricultural goods, for the consumer market and services, for culture. At the same time the situation became markedly worse under the Department for construction, architecture and urban lands (almost 43% of the MUEs by the end of 9-month period of 2002 became loss-making, while no losses occurred in 9 months of 2001), the Administration for public relations (by the results of the 9 months of 2002, all the MUEs were loss-making, while during the same period of 2001 they had showed profit), the Administrations for agriculture, industry, transport and business in the sphere of industry. Under the

Department for municipal services, the share of loss-making MUEs remained about the same (51%).

At the level of individual MUEs, in the 9-month period of 2001 the greatest losses (in the order of decreasing) were demonstrated by "Vodokanal", "Krasnodarskaia opytno-pokazatel'naia ptitsefabrika" (Krasnodar experimental-model poultry factory), MREP No 32, and "Krasnodar-Marka". For each of those, losses were no less than 1,000 thousand roubles, while their total share in total losses – about 80%. The results of 9-month period of 2002 were somewhat different. The greatest losses (in the order of decreasing) were shown by "Krasnodarskaia opytno-pokazatel'naia ptitsefabrika", "KMUTTP", "Obshchezhitie", "Zhilishchnik", the MUE for city cleaning, and MREPs No 10 and 11. The losses of each of these were also no less than 1,000 thousand roubles, while their total share in total losses was 83.0%.

Nevertheless, the aggregate balance-sheet financial results (profits minus losses) for all the MUEs of the city of Krasnodar in the 9-month period of 2002 increased as compared to the same period of 2001. If this index is considered at the level of each of the departments within the City Administration, a positive overall trend can be noted under the Departments of the consumer market and services, the Department for Administrative Affairs, the administrations for municipal property, employment, culture, the Committees for physical culture and sports, for housing inventory and distribution, for issues dealing with the young, i.e. under about a half of all the departments. As for the MUEs under the Administrations for agriculture, for public relations, for industry, for transport and business in the sphere of industry, the Department for construction, architecture and urban lands, their aggregate balance-sheet financial results of the 9-month period of 2002 was negative (i.e. losses were greater than profits).

Our analysis gave rise to certain questions concerning the organization of the planning process and its quality.

Firstly, a number of enterprises have their targets set at a zero level, which may mean either realistic values (e.g. for the enterprises that used to be loss-making) or a deliberate refusal on the part of the administration to set any targets for some of the enterprises. For the proceeds from sale index, 12 MUEs had such targets (Table 4), for balance-sheet profit – 53 MUEs (of these, 42 were the MUEs delivering housing-and-communal services under the Department for municipal services) (Table 6).

Secondly, one cannot overlook the fact that quite a few MUEs, by the results of the three-quarter period of 2002, demonstrated proceeds of sale and balance-sheet profit that were more than twice as high as their planned targets. Thus, under the Administration for organizing purchase and sale of agricultural goods there were 3 and 2 (out of 17) such enterprises, respectively, under the Department for the consumer market and services – 1 and 3 (out of 13); similar examples were represented by other MUEs under other sectoral departments within the City Administration.

Biased approach to planning and the lack of proper development of planned targets is evidenced by the financial results of the activity of the following MUEs in the 9 months of 2002: "Gorod" under the Department for Administrative Affairs (its actual proceeds of sale are more than 9 times as high as planned targets, while profit is 3% higher than planned), "Krasnodarotdykh" under the Administration for municipal

property (its actual proceeds of sale are more than 7 times as high as planned targets, while the profit is more than 31 times as high as the planned value), "Molodiozhnyi tsentr g. Krasnodara" under the Committee for issues dealing with the young (its actual proceeds of sale are almost twice as high as the planned targets, while the profit is almost 4.4 times as high as the planned value).

At the same time it must be noted that our analysis dealt with the financial results of the 9-month periods of 2001 and 2002, while there is a strong probability that these results could be further adjusted by the annual results. The reason might be the peculiarity of the Russian economy where budgetary assets are vigorously spent at all levels during the 4th quarter, nearer the end of a year. Therefore it would be logical to assume the financial indices of municipal enterprises which are very dependent on the budgetary system would demonstrate noticeable changes.

Besides, we should mention the dubious nature of some of the figures contained in the reports submitted for our analysis which could either be an outcome of low quality of reporting, or a reflection of an unstable economic situation at public sector enterprises under the conditions existing in Russia's economy in transition (regulation of the tariffs on products and services, delayed transfer of subsidies from the budget, etc.).

4.3.Municipal unitary enterprises of the city of Sochi

4.3.1. Composition, departmental subordination and sectoral make-up

The list of the city of Sochi's municipal enterprises has been drawn up and approved with regard to their sectoral make-up by Decree of Head of the City of Sochi of 26 March 2002 No 185 "On the procedure for establishing and appointment of the directors of municipal unitary enterprises and institutions" (Appendix 1 to the abovesaid Decree) (Table 7). By this decree, municipal unitary enterprises were assigned, according to their sectoral orientation, as well as their tasks and goals, to certain administrations, committees, departments, the latter being delegated with the authority to coordinate and regulate the production activity in appropriate sectors.

By early 2002, in the city there were 87 MUEs subordinated to 13 departments and committees within the City Administration (see *Table 20*).

Table 20

Municipal unitary enterprises of the city of Sochi and their departmental subordination

Departments within Sochi City Administration	**Nimber of subordinated MUEs**	
	total	**incl. subsidiaries***
Administration for housing and communal services	32	1
Pharmacy Administration	19	
Administration for culture	6	
Committee for architecture and urban development	5	3
Administration for capital construction	5	3
Committee for the economy and forecasting	4	
Administration for trade and services	4	
Administration for public health care	3	
Committee for property management	3	1
Administration for transport	2	

Committee for spas and tourism	2	
Department for finances, budget and control of Krasnodar Krai located in Sochi	1	
Administration for urban development programmes	1	
Total	87	8

* - new Federal Law "On state and municipal unitary enterprises" No 161–FZ of 14 November, 2002 forbids creation of subsidiary SUEs.

As follows from *Table 20*, the majority of Sochi's MUEs (about 59% of their total number) are subordinated to the Administration for housing and communal services and the Pharmacy Administration. To the other 11 departments of the City Administration, less than 10% of the MUEs belong, and 2 of them supervise only one enterprise each.

Only 8 enterprises (less than 10% of all MUEs) are subsidiaries. Most of them (6 enterprises) are subordinated to the Committee for architecture and urban development and the Administration for capital construction. The "Munitsipal'nui institut genplana" (Municipal Institute for general planning) subordinated to the Committee for architecture and urban development has subsidiaries of a similar sectoral orientation in Adler, Lazarevskoe and Khosta raions, MUE "Sochikapstroi" subordinated to the Administration for capital construction has the following subsidiaries: "Nauchno-proizvodstvennyi tsentr "Sochikapstroi", "Khozraschiotnyi uchastok "Sochikapstroi" and "Komplekt-Sochikapstroi".

The sectoral make-up of MUEs generally corresponds to the names of the departments within the City Administrations.

At the same time, the Administration for housing and communal services also supervises enterprises engaged in washing and drycleaning or burial services, as well as "Biuro tekhnicheskoi inventarizatsii" (Bureau for technical inventiry) and "Ekspertno-pravovaia sluzhba" (Expertise and legal service). To the Committee for property management, "Tsents po okazaniiu pravovykh uslug" (Center for legal services) and "Kvartirno-pravovaia sluzhba goroda" (The city's legal service addressing housing issues), with its subsidiary of a similar orientation located in Khosta raion, are subordinated.

The Committee for the economy and forecasting supervises two industrial enterprises (the combine for plastic products and commercial advertizing, and the oxygen station), as well as hotel "Moskva-Chaika", while the Committee for spas and tourism supervises an advertizing-and-marketing company and a pension, and to the Administration for public health care the Black Sea Regional Centre for medical insurance, a laundry and a cosmetics clinic are subordinated. The financial administration under the Department for finances, budget and control of Krasnodar Krai located in Sochi supervises the city debt-managing centre, while the Administration for urban development programmes supervises "Korporatsiia razvitiia Sochi" (Corporation for Sochi's development).

4.3.2. Basic issues of functioning (the procedure for nominating senior officials, reporting, and relationship with the city budget)

As it was already mentioned earlier, the procedure of appointing the directors of municipal unitary enterprises in Sochi to their posts is determined by Decree of Head of

the City of Sochi of 26 March 2002 No 185 "On the procedure for establishing and appointing the directors of municipal unitary enterprises and institutions".

In accordance with Articles 113, 114, 120 of the RF Civil Code, and Articles 6 and 30 of Federal Law of 28 August 1995 No 154-FZ "On the general principles of organizing local self-government in the Russian Federation", Articles 24, 26, 60 of the Charter of the City of Sochi, the Head of the City approves the Charters of enterprises and institutions which are municipal property, and hires (dismisses) directors of municipal enterprises and institutions.

On an application submitted by Deputy Head of the City supervising the sector in question, a sectoral administration, committee or department within the City Administration prepares and fills in the documents, files of personal records and draft orders to be signed by the Head of the City of Sochi regarding hiring (dismissing) a director of a municipal enterprise or institution, as well as the contract thereof, agreed upon in accordance with an existing procedure with the Committee for property management of the city of Sochi and Director of the Raion Administration.

The reporting by Sochi's MUEs is determined by the provisions established by Order of the Ministry of Finance of the Russian Federation of 29 July 1998 No 34N "On approving the provision for accounting and accounting reporting in the Russian Federation" (as drafted by Orders of the Ministry of Finance of the RF of 30 December 1999 No 107N and of 24 March 2000 No 31N). Judging by the content of these documents, an accounting report is submitted to the property's owner, in case of municipal unitary enterprises – to a body nominated by the owner.

The procedure, the deadlines and the indices to be reported on are established by the normative acts issued by the local authorities. Thus, municipal unitary enterprises must submit reports to the municipal bodies responsible for the control over municipal property.

In this instance, several important conditions must be taken into account (in accordance with the letter of the Department for property relations of Krasnodar Krai):

In the charters of municipal unitary enterprises, there should be provisions as to submitting reports (to whom, the deadlines, the scope of reporting indices).

The necessity to submit reports must be stipulated in the contract to be made with the director of a municipal unitary enterprise.

Moreover, non-compliance with the terms of a contract, including lack of reporting, may result in early dismissal of the director of a municipal unitary enterprise on the initiative of the body responsible for property management, or of the City Administration.

Reports submitted by enterprises are needed by the founder (a certain body within the local self-government) for administrative decision-making in case of a loss-making and inefficient operation of municipal unitary enterprises. That is, regarding the issues of liquidation or reorganization of the existing municipal unitary enterprises, or creation of new ones.

Decree of Director of the City of Sochi of 18 December 2000 No 623-r "On transferring a share of profits by municipal enterprises", municipal unitary enterprises are obliged to do the following:

1. Submit accounting reports to the Committee for property management of Sochi before the deadlines set by the existing legislation of the Russian Federation for submitting quarterly and annual accounting reports.

2. Submit the information on opened settlement accounts and other accounts with credit institutions to the Committee for property management of the city of Sochi by the deadlines set by the existing legislation of the Russian Federation for submitting quarterly and annual accounting reports. These data must on a mandatory basis include the requisites of those credit institutions and the numbers of the accounts opened.

3. The directors of municipal unitary enterprises must submit to the city's Committee for property management and the Administration for finances, budget and control the reports on profits and losses, as well as the information on the opened settlement accounts and other accounts of municipal unitary enterprises within five business days after the deadline set by the existing legislation of the Russian Federation for submitting quarterly and annual accounting reports.

Besides, considering the fact that the enterprises in the sector of housing and communal services are subsidized from the city budget in order to compensate for the losses occurring as a result of rendering services to the population on the basis of tariffs set by the local authorities at a level below cost, the municipal central-heating enterprises are periodically asked to submit an additional statistical report (form 6-t) by the financial administration under the department for finances, budget and control of Krasnodar Krai located in Sochi.

The deductions from the profit of municipal enterprises were for the first time included in Sochi's city budget in accordance with Decision of Sochi City Assembly of 26 May, 1999 No 68, in the amount of 8,700 thousand roubles, which is equal to 10.27% of the total revenues coming from the Administration for municipal property (see *Table 21*).

Table 21

The structure of revenues of the city of Sochi's Administration for municipal property in 1999

#	Revenue item	Subtotal, thousand roubles	Share, %
1	Revenues from sale of property owned by the municipality	55000	64.94
2	Revenues from leases of land	14000	16.53
3	Deductions from the profit of municipal enterprises	8700	10.27
4	Rent from leasing out municipal property	7000	8.26
	Total:	**84700**	**100.00**

Thus, profit deductions of MUEs were to play a supplementary role within the revenues from municipal property management, occupying the last but one position on the list of revenue items, approximately corresponding to the amount of revenues from

the rent for leasing municipal property. The main bulk of revenues however was to come from sale of municipal property which in fact rendered the wording "Revenues from municipal property management" not quite correct.

In 2000-2001 the profit deductions of municipal enterprises were not included in the city budget.

In accordance with Decree of Director of the City of Sochi of 18 December 2000 No 623-r "On transferring a share of profits by municipal enterprises", in connection with the enactment of the Budgetary Code of the Russian Federation, in order to increase the flow of revenues to the budget and providing the funding needed to cover the city budget's expenditures, all municipal unitary enterprises were obliged to transfer a 50%-share of their net earnings after taxes and other mandatory payments to the city of Sochi's budget.

The transfers should be made directly to the budget account of the city of Sochi before the deadlines set by the existing legislation of the RF for submitting quarterly and annual accounting reports.

4.3.3. Disposal of the profits of municipal unitary enterprises, the issues of financing the public sector enterprises and their programmes of development in the city in the years 2001-2002

According to the abovesaid decree, the Administration for finances, budget and control under the Sochi City Administration was to include in the city budget from the year 2001 onward the expenditures covered by the city budget's revenues in the form of a share of profit transferred by municipal unitary enterprises, to meet the following goals:

- in the amount of six percent of city budget revenues, as a share of profits of municipal unitary enterprises – to the Committee for property management of the city of Sochi, for the latter to execute its delegated authority to manage municipal property;

- in the amount of 94 percent of city budget revenues, as a share of profits of municipal unitary enterprises – to cover the subsidies to implement purpose-oriented programmes approved by a representative local self-government agency, to upgrade capital assets and develop municipal unitary enterprises, as well as to grant credits to municipal unitary enterprises to augment their working assets.

Besides, the directors of municipal unitary enterprises were made personally responsible for the complete and timely transfer of the share of net profit of municipal enterprises. In case of the absence of or untimely transfers of a share of profits to the Sochi city budget, the said funds, in the amount calculated by the Administration for finances, budget and control on the basis if available reports, are to be indisputably written off from the enterprises' accounts to the city budget.

Decree of Head of the City of Sochi of 26 December 2001 No 737 "On the programme of development of municipal enterprises of the city of Sochi for the year 2001" established a purpose-oriented programme for the development (updates, purchases and reconstruction of the capital assets) of municipal enterprises for the year 2001.

In this document it was envisaged that the costs of updating, purchasing and reconstructing capital assets are to be funded within the following sectors: 1) pharmacy

(16 enterprises); housing and communal services (12 enterprises); 3) culture (6 enterprises); 4) trade (5 enterprises); 5) industry (1 enterprise); 6) other sectors (2 enterprises). Naturally, the proportional distribution of funds among the sectors did not correspond exactly to the sectoral make-up of the enterprises participating in the programme.

As the largest profit-makers among the MUEs, the following ones were designated: "Vodokanal", "Upravlenie zhilishchno-kommunal'nogo khoziaistva" (Administration for housing and communal serices), "Spetzavtokhoziaistvo po uborke goroda" (Specialized automobile service for city cleaning), "hotel 'Moskva-Chaika'". It was planned that these are going to make 65.3%, 6.9%, 6.2% and 4.8% of profit, respectively. The greatest shares in total expenditures on capital asset reconstruction belonged to the following enterprises: "Vodokanal" (27.5%), "Teplovye seti Adlerskogo raiona" (Heating networks of Adler raion) (14.0%) and "Upravlenie zhilishchno-kommunal'nogo khoziaistva" (Administration for housing and communal services) (12.7%), and "hotel 'Moskva-Chaika'" (7.3%).

In accordance with i.3 of the abovesaid decree, the financial administration under the Department for finances, budget and control of Krasnodar Krai in Sochi was to provide funding for the programmes of developing municipal enterprises within the amount of the profits transferred to the budget, as shown by the enterprises' statements concerning the purpose-oriented actual use of the funds.

Actually, in 2001 the abovesaid municipal unitary enterprises transferred less than a half of the planned amount. However in 2001 the funds allocated to the program of developing municipal enterprises were not spent. These were entered in the 2002 budget revenues as a carry-over.

By decision of the Sochi City Assembly of 23 July, 2002 No 158, the programmes for developing municipal enterprises of the city of Sochi for the year 2002 were approved (including the programme for the year 2002 in the amount of 43,041.85 thousand roubles and non-spent funds carried over from the year 2001 in the amount of 13,792 thousand roubles). As objects for investments involving upgrading, purchasing and renovating capital assets, 13 MUEs within the housing and communal services sector, 5 within the cultural sphere, 4 within trade, 2 within industry, 1 within transport, and 7 among other sectors were named. The objects for investing the funds carried over from 2001 were 6 MUEs within the housing and communal services sector, and 1 each within the sphere of culture and within one of 'other sectors".

Besides, this decision Stated that in case of non-execution or untimely execution of the responsibility to transfer profits to the city of Sochi's budget, the said profits in an amount calculated by the financial administration under the Department for finances, budget and control of Krasnodar Krai in Sochi on the basis of available reports are to be indisputably written off from the enterprises' accounts.

Below the sectoral make-up of the expenditures on upgrading, purchasing and reconstructing capital assets funded by the profits of Sochi's MUEs in 2001-2002 is shown (see *Table 22*).

Table 22

Sectoral make-up of profits of municipal unitary enterprises of the city of Sochi and the costs of funding their development programmes in 2001-2002

Sector	2001			2002			
	expected net profit, after taxes and other mandatory payments	50% of profit to reconstruction of capital assets and development of municipal enterprises	costs of upgrading, purchasing and reconstructing capital assets	expected net profit, after taxes and other mandatory payments	50% of profit to reconstruction of capital assets and development of municipal enterprises	costs of upgrading, purchasing and reconstructing capital assets	costs of upgrading, purchasing and reconstructing capital assets, with regard to funds carried-over from 2001
HCS	87.9	87.9	81.3	89.8	89.8	89.8	91.1
pharmacies	0.7	0.7	1.1	-	-	-	-
trade	5.2	5.2	8.1	3.3	3.3	3.3	2.5
culture	2.3	2.3	3.5	1.8	1.8	1.8	1.5
industry	0.6	0.6	0.8	0.9	0.9	0.9	0.7
transport	-	-	-	0.1	0.1	0.1	0.1
other sectors	3.3	3.3	5.2	4.1	4.1	4.1	4.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

From the data presented in *Table 22* it follows that the leading role in the sphere of municipal services of the city of Sochi is played by housing and communal services providers which were expected to transfer 80-90% of total profits (net profits after taxes and other mandatory payments) and the expenditures on reconstruction of capital assets of all the MUEs included in development programmes during the past two years. In this connection it should be noted that according to the MUE development programmes, the housing and communal services sector included enterprises providing burial services (which both in 2001 and in 2002 were subordinated to the Administration for housing and communal services), hotel "Moskva-Chaika" (both in 2001 and 2002 it was subordinated to the Committee for the economy and forecasting), a laundry (as of 2002, it was subordinated to the Administration for public health care system), though all those should rather belong to the sectors of personal services and tourism. The second/third places were shared by trade and the so-called "other" sectors. To these belonged "Munitsipal'nyi institut genplana" (Municipal Institute for general planning) and its regional subsidiaries (subordinated to the Committee for architecture and urban development), as well as "Tsentr po okazaniiu pravovykh uslug" (Center for legal services) and "Kvartirno-pravovaia sluzhba goroda" (The city's legal service addressing housing issues) (are subordinated to the Committee for property management).

The largest profit recipients among MUEs were, as before, "Vodokanal" (47.4% of total profits (expected in 2002) of all the enterprises included in the development programme), "Spetsavtokhoziaistvo po uborke goroda" (Specialized automobile service for city cleaning) and "Teplovye seti Adlerskogo raiona" (Heating networks of Adler

raion) (8.4% each), and hotel "Moskva-Chaika" (8.1%). Thus their shares in the total expenditures on reconstruction of capital assets, including the unspent funds carried over from the year 2001, were 54.3%, 8.9%, 6.3%, and 6.2%, respectively.

As of 1 November 2002, the funding for the 2002 programme of developing Sochi's municipal unitary enterprises was spent in the amount of 21,972.33 thousand roubles, i.e. a little more than a half of all allocated funding.

The total make-up of the sources of funding for Sochi's municipal unitary enterprises is shown in *Table 23*.

Table 23

Sectoral make-up of financing sources of the city of Sochi's municipal unitary enterprises

№	Enterprise	Sources of financing
1	MUE "Upravlenie zhilishchno-kommunal'nogo khoziaistva" (Administration for housing and communal services)	Funds of Sochi's city budget, allocated to fulfillment of the municipal order for administering the municipal housing fund; Funds of enterprises providing housing and municipal services, from organizing collection of payments from the population for housing and municipal services; Funds raised by rendering other services.
2	MUE "Vodokanal"	1. Funds raised by payments made by population, commercial and other consumers for housing-and-municipal and other services rendered; 2. Funds from Sochi's city budget allocated to compensating losses resulting from granting privileges to certain population categories; Funds raised by rendering other services;
3	MUE "Spetzavtokhoziaistvo po uborke goroda" (Specialized automobile service for city cleaning)	1. Funds of the population, commercial and other consumers for housing-and-municipal and other services rendered; 2. Funds from Sochi's city budget allocated to compensating losses resulting from rendering services to the populations on tariffs set below cost by the local authorities; 3. Funds from Sochi's city budget allocated to compensating losses resulting from granting privileges to certain population categories; 4. Funds raised by rendering other services; 5. Preferential credits from municipal budget.
	MUE "lazarevskpe SRSU"	
	MUE "Galareia Sochi" (Sochi Gallery)	
	MUE "Uchebno-kursovoi kombinat"	
	MUE "Buro tekhnicheskoi inventarizatsii" (Bureau for technical inventory)	
	MUE "Ekspertno-pravovaiia sluzhba" (Expertise-and-legal service)	
	MUE "Avatiino-remontnaia organizatsiia" (Emergency repair organization	
	Municipal heating network	
	MUE"Zelenstroi"	
	Municipal repair-and-exploitation enterprises	
	MUE "Platan"	
	MUE "Raduga" (laundry and drycleaning)	
	MUE "Bodrost'"	
	Sochi MUE "Ritual'nye uslugi naseleniu" (Buriag services to the population)	
4	Municipal pharmacies	1. Funds raised by realization of products, works,

5	Municipal enterprises in the sphere of culture	services; 2. Lumpsum subsidies from the city budget.
6	MUE"Munitsipal'nyi institut genplana" (Municipal Institute for General Planning), raion institute for general planning	
7	Municipal unitary enterprises in the spheres of trade in industry	
8	Municipal unitary enterprises in the medical sphere	
9	MUE "Direktsiia TSRDD"	Funds from Sochi's city budget allocated to fulfilling the municipal order for exploiting technical means for regulating road traffic.
10	MUE"Sochiavtotrans"	1. Funds under municipal order for executing the functions of customer's service in municipal transport; 2. Funds raised by rendering other services.

From this table it follows that the greatest share of the municipal budget in the sources of funding for municipal unitary enterprises was seen in the sector of housing and communal services. This is due to the fact that the tariffs in this sector are regulated by the local authorities; besides, there is an extensive practice of granting privileges to certain categories of citizens. In addition to this, it is necessary to stress that this sector is a priority for the investments made in accordance with the municipal programme of investing in upgrading, purchasing and reconstructing capital assets. Because of everything that was said above, it is necessary to discuss in more detail the issues of financing the sector of housing and communal services.

4.3.4. The financial status of municipal enterprises providing housing and communal services, and the problems of financing the city's housing and communal services

Below there is a diagram of the cash flows in Sochi's sector of housing and communal services. The participants in the sector's cash flows are the city budget, the municipal customer service (MUE "UzhKKh"), the population, commercial and other consumers, as well as the enterprises providing housing and communal services (see Fig. 1).

Table 24 demonstrates some indices of the operation of Sochi's enterprises providing housing and communal services as reported in the first half-year of 2002 (thousand roubles).

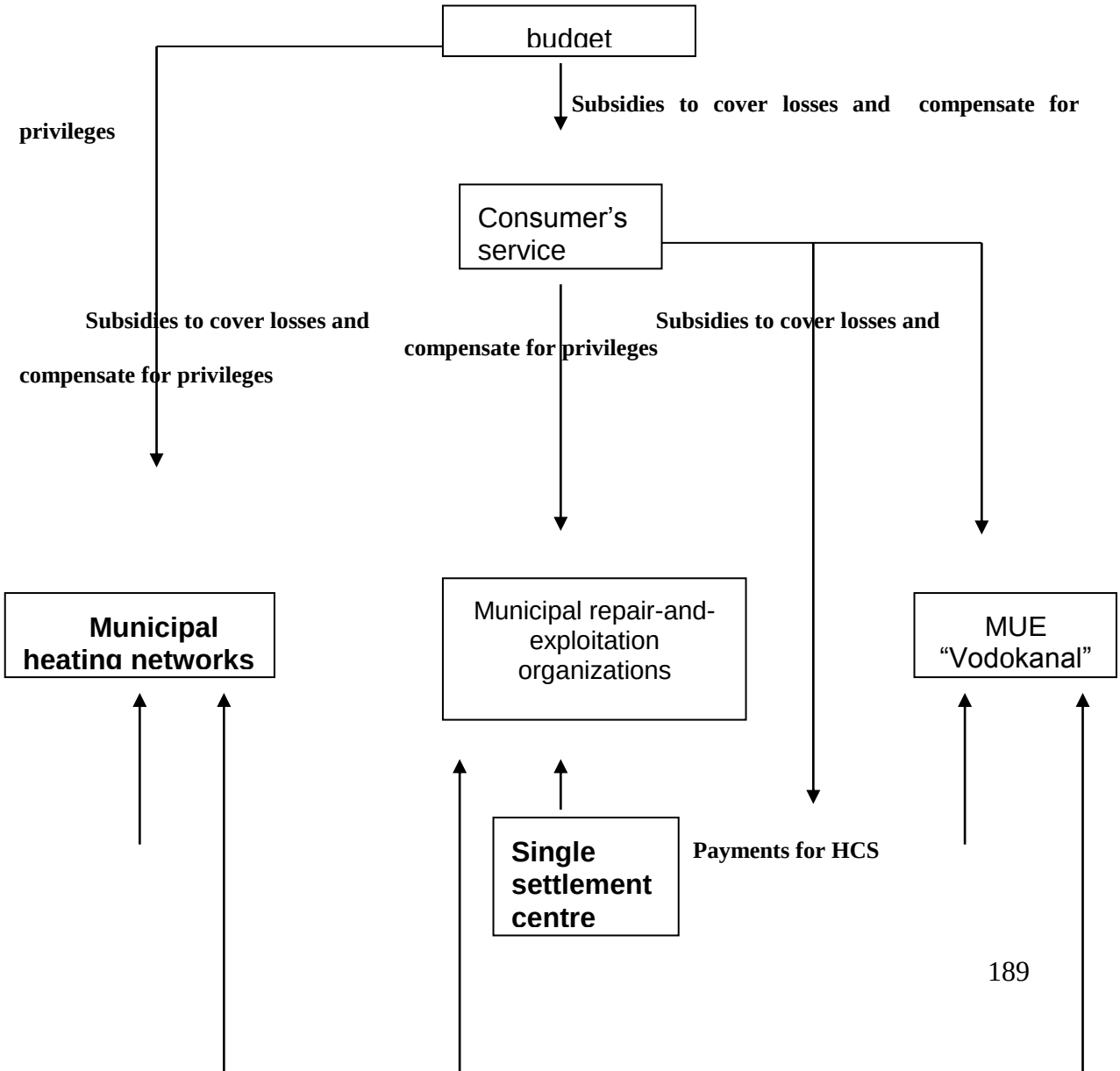
Table 24

Indices of the activity of Sochi's municipal unitary housing-and-communal enterprises during the first half-year 2002 (thousand roubles)

Index	**Heating networks, total**	**MREOs, total**	**Others, total**	**TOTAL**
1. Incomes and expenditures on routine activities				
Proceeds	177464	36411.8	274123.4	487999.2
Cost	257924	65495.2	248166.2	571585.4
Gross profit	**-80460**	**-29083.4**	**25957.2**	**-83586.2**
Commercial expenses	0	0	0,9	0.9
Administrative expenses	0	0	823	823
Profit (loss) of sales	**-80460**	**-29083.4**	**25133.3**	**-84410.1**

2. Operating incomes and expenses				
Interest receivable	415	3	6	424
Outstanding interest	4	15	384.9	403.9
Revenues from participation in other organizations	0	0	53	53
Other operating incomes	21098	3998	47966.9	73062.9
Other operating expenditures	22113	352	46452.6	68917.6
3. Non-realization incomes and expenditures				
Non-realization incomes	90487	15065,8	2957.6	108510.4
Subsidies and compensations from budgets of all levels				
Non-realization expenditures	16742	632.2	17821.6	35195.8
Profit (loss) before tax	**-7319**	**-11015.8**	**11457.7**	**-6877.1**
Profits tax and other similar mandatory payments	300	32	7097.3	7429.3
Profit (loss) of routine activity	**-7619**	**-11047.8**	**4360.4**	**-14306.4**
4. Extraordinary incomes and expenditures				
Extraordinary incomes				
Extraordinary expenditures				
Net profit (retained profit of reporting period)	**-7619**	**-11047.8**	**4360.4**	**-14306.4**

services



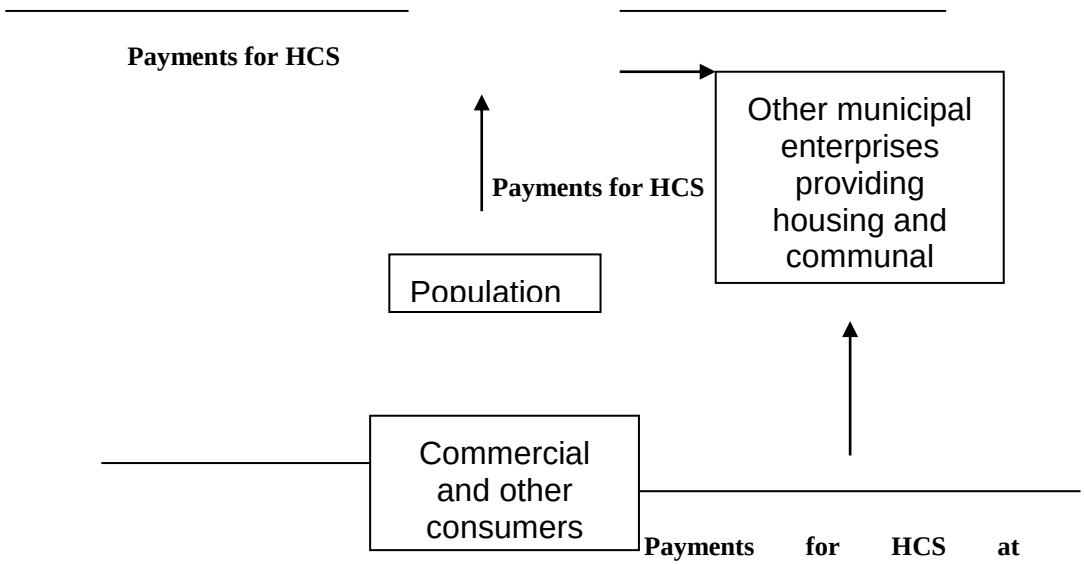


Figure 1. **Diagram of interaction of cash flows in the sector of housing and communal**

As seen from *Table 24*, the enterprises in the sector of housing and communal services of Sochi are generally loss-making. Total losses are made up by those of municipal central-heating enterprises and municipal repair-and-exploitation organizations (MREO). Other organizations in the sphere of housing and communal services mostly make profit (total profits were 4,360.4 thousand roubles), which, however, cannot cover the losses of central heating networks and repair-and-exploitation organizations.

In this connection it should be noted that central heating networks demonstrate a positive balance of outstanding interest and interest receivable, whereas as far as MREO and other organizations are concerned this balance is negative. The amount of the negative balance of interest as reported by other organizations is not set off even by their revenues from participation in other organizations (while central heating networks and MREO have no such source of operating income). The balance of other operating incomes and expenditures as Stated by central heating networks is negative, that of MREO – positive, of other organizations – also positive but by 2.4 times lower in absolute values. The balance of non-realization incomes and expenditures as Stated by central heating networks and MREO is positive, as Stated by other organization – is negative.

Thus it can be concluded that the enterprises providing housing and communal services in Sochi possess certain internal reserves for improving their financial situation. They are associated with a possibility to decrease the negative balances of outstanding interest and interest receivable and of non-realization incomes and expenditures of other enterprises. There are also some questions regarding the scope of incomes of other enterprises from participation in other organizations. In the final analysis, this is the issue dealing with the quality of managing cash flows and assets which should be addresses by the owner of these MUEs, that is, the City Administration.

Another fundamental problem facing the municipal enterprises providing housing and communal services in Sochi is their constantly growing debtor and credit indebtedness.

Table 25

Ratios of debtor and credit indebtedness and proceeds of municipal unitary enterprises providing housing and communal services

Index	Heating networks	MREO	Others	TOTAL
Ratio of debtor indebtedness and proceeds (%)	116.79	193.40	69.18	95.76
Ratio of credit indebtedness and proceeds (%)	45.06	273.63	30.45	53.91

Judging by the data presented in *Table 25*, it can be concluded that the amount of enterprises' debtor indebtedness is approximating, while that of credit indebtedness is equal to one half of total half-year proceeds of municipal enterprises providing housing and communal services. The worst figures are shown by MREOs. This is an evidence of a profound crisis in this sector which is predominantly an upshot of the problem of collecting appropriate payments for housing and communal services from the population.

This problem has two aspects. Firstly, it is lack of or inability to find appropriate levers for managing the payers. Secondly, the municipal enterprises in this sector which are funded from the budget lack any strong stimuli for increasing the level of payment collection. However after a single settlement centre was created, the level of collecting payments from the population of Sochi markedly increased and exceeded 90% (for the users of this settlement centre).

4.4. Conclusion

In 1999-2002, a certain distinctive practice of managing unitary enterprises developed in Krasnodar Krai on both the regional and local levels.

As on the federal level, the main instruments for regulating their activity on the part of the owner – the Krai or local authorities – are the Charter of an enterprise and the Contract with its director. Generally these documents approved in the region replicate the provisions of the Model Charter of a FSUE and the Model Contract with its owner, with their inherent limitations.

Of course, the normative and legal acts that are currently in effect in Kuban' region contain certain innovations whose purpose has been to improve these documents as compared to those that are in effect on the federal level.

In this respect, the Charter of a MUE in the city of Krasnodar (the requirement that an owner's approval be necessary in order to create subsidiaries, branches and affiliations, as well as to make investments in joint ventures or participate in joint-stock societies, a distinct stipulation that a share of net profit be transferred to the city budget, a reference to the fact that the plans to develop an enterprise are to be approved by the sectoral department within the City Administration) and the Terminable Contract with its director (the stipulation that the latter is not allowed to act as founder (participant) of a juridical person one of whose founders (participants) is the unitary enterprise in question,

to hold office or perform paid functions in central government agencies, local government bodies, commercial or non-commercial organizations (with the exception of research, academic or other creative activity), to engage in entrepreneurial activity; the stipulation requiring that the director is responsible for quarterly transfers of a part of net profit, for participation, on a contractual basis, in fulfilling municipal orders, as well as a formidable list of instances when the director may be deprived of a part of his bonus, or the contract be terminated altogether) can be characterized as an improvement of the federal model.

However on the whole such innovations are limited and fragmentary which, undoubtedly, can serve as a stimulus for further development of these documents along the lines that were discussed earlier in connection with the unitary enterprises in federal ownership, with due regard to the requirements stipulated in the new federal law on State and municipal unitary enterprises enacted in 2002. That is, to introduce new norms limiting the opportunities for the enterprises' directors to act in a certain way without prior agreement with the owner's representative, to expand the range of the stimuli for directors to fulfill their contracts, including the list of cases when the contract can be terminated, possible penalties, as well as rewards.

There is almost no information about the use, in Krasnodar Krai, of such instruments for managing unitary enterprises as establishing and keeping a local register of economic efficiency indices for estimating the operation of SUEs and MUEs, certifying their directors (this is mentioned only in s. 3.2.7. of the Contract with the director of a SUE of Krasnodar Krai) and appointing them on the basis of a contest.

Proceeding from a regional law on indicative planning, at the Krai centre a master plan for developing the city's municipal enterprises in the year 2002 was approved, and the subordinated municipal enterprises were informed of the financial and economic targets planned for this period. The application of the planning procedures will give rise to many questions concerning their justification and quality, as it has been shown by an analysis of the financial situation of the MUEs of Krasnodar (as a result of the 9 months of 2002). This situation had various implications.

On the one hand, this sector on the whole demonstrated both a faster growth of share-of-profit transfers to the city budget and a growth of proceeds of sale and balance-sheet profit, as well as overfulfillment of the planned targets for these indices. On the one hand, there were losses demonstrated by many of the enterprises, decreased volumes of balance-sheet profit and failure to meet the planned targets for this index by more than 60% of all the city's MUEs. There are quite a few examples of how certain MUEs demonstrated a growth of their economic indices and overfulfilled their planned targets by hundreds of percents, thus instead of leaders in loss-making becoming leaders in profits (i.e., "Vodokanal") – and vice versa (i.e., "Obshchezhitie" (Hostel).

Therefor there is sufficient ground for believing that by the results of a completed financial year, if the financial indices in absolute values are adjusted by inflation index, the general overview of the economic situation characterizing the Krai centre's municipal enterprises will become far less optimistic.

If one is to speak of the significance of some MUEs for a city's economy as judged by the scope of their profits, in the cases of Krasnodar and Sochi a major role is played by the enterprises in the sectors of housing and communal services and of

municipal services (primarily by “Vodokanal”). It was this sector that the largest number of MUEs belonged to. Besides, a large share in Krasnodar’s MUE sector as demonstrated by profits index was represented by bread-making plants, and in Sochi’s MUE sector – by hotel “Moskva-Chaika”.

A sector-by-sector analysis of losses in the MUE sector (such quantitative data were available only for Krasnodar city) has revealed a critical role played by enterprises providing housing-and-communal and municipal services. Also another fact should be noted – that municipal enterprises engaged in other types of activity also make losses (the most vivid example is that of “Krasnodarskaia opytno-pokazatel’naia ptitsefabrika” (Krasnodar experimental-model poultry factory). This may serve as an illustration of the inefficiency of local authorities attempting to manage property involved in producing commodities and services on a competitive basis.

The greatest participation of the municipal budget in financing municipal unitary enterprises particularly in housing and communal services can also be noted in Sochi. Krasnodar Krai is no exception as compared to a vast majority of this country’s regions where local budgets are burdened with subsidizing housing and communal services due to the expense-based price formation in this sector, regulation of the tariffs on housing and communal services by local self-government, and granting privileges to many categories of citizens.

An analysis of the municipal programme for upgrading, purchasing and reconstructing capital assets of Sochi’s MUEs in 2001-2002 has also demonstrated that is was the sector of housing and communal services that was the main object for investing the profits of MUEs. At the same time it should be noted that a number of municipal enterprises (for example, those involved in trade and industry, as well as the hotel) could very well serve as objects for investments attracted from the private sector or on the terms of shared funding, if the organizational-legal form of a unitary enterprise could be changed.

5. Principal conclusions and practical recommendations

1. Throughout the whole period of market reforms, state and municipal unitary enterprises remained a component part of the Russian economy, and its public sector.

Any reliable quantitative estimates are difficult to make because of the differences existing in the statistical databases of various departments. A comparison between the data of property management bodies and those of EGRPO has led to a conclusion that state and municipal unitary enterprises in the 1990s constituted 20-30% of all enterprises and organizations with corresponding forms of ownership, or 2-6% of all the registered within the country enterprises and organizations; i.e. in the Russian economy on the whole, the sector of unitary enterprises is of a negligible scope and produces only an indirect influence on the macroeconomic situation and investment climate.

Within the structure of enterprises with autonomous balances, in the period between 1993 and 1998 the following changes occurred:

- a 1.5-fold reduction of the share of federal State enterprises in the total number of State enterprises with autonomous balances (from 54% in early 1993 to 33-37% in 1995-1998);

- an almost uninterrupted growth of the share of municipal enterprises (from 1/3 at the beginning of 1993 to almost ½ at the beginning of 1998);

- the share of State enterprises owned by subjects of the RF grew at a smaller rate (from 12.6% at the beginning of 1993 to about 17-18% in later years);

- from early 1996 onward, republican enterprises began to prevail among the state enterprises owned by subjects of the RF's.

According to the data pertaining to the years 2000-2002, the sectoral make-up of federal-level unitary enterprises has differed in a substantial way from that of regional and municipal unitary enterprises where more than a half of the total is represented by housing-and-communal facilities (HCF), trade and public catering; on the contrary, among federal unitary enterprises these sectors comprise only 11.4%. At the same time, the make-up of federal unitary enterprises is characterized by a larger share of agricultural and forestry enterprises (14.6%, as compared to 5.4% among regional and municipal unitary enterprises), transport and communications (11% against 4.9%), but mainly by that of other sectors (almost 33% against 12.2%). The share of industry and construction in the make-up of federal enterprises (a total of about 30%) does not differ in a marked way from their share in that of regional and municipal unitary enterprises (a total of 24%).

After a more detailed scrutiny of the sectoral make-up of unitary enterprises in federal ownership it becomes evident that as of the beginning of the year 2002 the largest shares therein belonged to industry (19.6%), science and science services (15.2%), agriculture and forestry (14.6%), transport and communications (11%). In all those sectors, absolute numbers of enterprises are higher than 1,000. In industry, about a half of all enterprises is represented by machine-building and metal-working.

During the period after the Concept of the management of state property and privatization was introduced, the number of federal state unitary enterprises (FSUE) in the Russian Federation decreased by approximately 1/3.

A separate problem dealing with the analysis of the scope of the sector of unitary enterprises in the Russian economy is represented by the registered data on their affiliations, representative offices, subsidiaries, as well as the lack of a precise distinction between the ownership of enterprises and organizations at State and municipal levels.

2. By the time of the onset of market-oriented transformation in 1992, State enterprises that were dominant in the Russian economy were functioning within the framework of the institution of full economic jurisdiction which appeared in 1988. This institution granted to the subject of such jurisdiction (in reality – to the director of an enterprise) a wide range of authority as regards the owner's property (including independent management of cash flows and disposal of profits). In a situation of a growing crisis within the centralized economy and the spontaneous privatization of late 1980s-early 190s, granting this kind of authority to directors of State enterprises resulted in transferring a part of the cash flows of these economic subjects to satellite companies (before 1991 – to cooperatives), in a practice of transactions in the interests of directors, to losses in the revenues of the budgetary system. Against this background, the issues of developing appropriate mechanisms for the State to manage its property became especially acute.

The Civil Code (CC) of the RF enacted in late 1994 became the basic document containing a detailed classification of all juridical persons in a market economy. It was there that the definition of a unitary enterprise was given as "a commercial organization not endowed with the right of ownership to property consolidated to it by the owner". The property of a unitary enterprise was declared to be indivisible, i.e. it could not be distributed among contributions (or participatory shares, shares), including among the workers of the enterprise. Only state and municipal enterprises could be created in the form of unitary enterprises.

With the enactment, as of January 1, 1995, of Part I of the CC of the RF, the central problem of sate property management in an economy in transition – regulating the right of economic jurisdiction – from a formal legal point of view was closed. It ceased to be full. However the only 6 articles it contained dealing with the right of economic jurisdiction obviously could not become instrumental in realizing the State's ownership rights.

It was stipulated that the constitutive documents of unitary enterprises were to be brought in conformity with the norms contained in Part I of the Code in the procedure and within the time schedule to be defined with the enactment of the law on state and municipal unitary enterprises. However no such law, nor a more general law dealing with the management of state property as a whole, was enacted during a long time. In its absence, the Government and the Ministry of State Property issued single normative acts devoted to certain aspects of the functioning of State unitary enterprises.

Due to the weakness of the State (lack of interest (or desire) on the part of the apparatus) in the 1990s, the latter, as an owner, never came to enjoy the rights granted by the Civil Code of the RF (e.g., for a share of profit). Until 1999, it never

concerned itself with developing appropriate mechanisms for implementing its rights through a Charter, etc. An additional complicating factor was represented by the preservation of the previously adopted norms of labour legislation effectively protecting the rights of the directors of unitary enterprises and making their dismissal rather improbable.

An onset of a new stage in reforming the ownership relationships in Russia was heralded by Decree of the Government of the RF No 1024 of 9 September, 1999 which approved the Concept of the management of state property and privatization in the Russian Federation (hereinafter referred to as "the Concept").

The Concept (in the new wording as of November 29, 2000) proceeds from the necessity for a gradual reduction in the number of State and municipal unitary enterprises and a simultaneous implementation of a set of measures aimed at improving their management. It includes:

Definition:

- of the range and the number of unitary enterprises needed for performing public functions;

- of the goals of the State as applied to every particular enterprise and organization.

Stipulation:

- of the procedure for reporting by the directors of unitary enterprises and institutions on the implementation of an approved programme (plan);

- of the procedure for administrative decision-making in case of not meeting the goals of the State and non-implementation of the programme (plan);

- of the criteria of and the procedure for transferring a part of the profit of an enterprise to the budget.

Tightening of the control over the activity of enterprises and institutions, and over that of their directors.

Proceeding from the fact that in the nearest future state unitary enterprises are to remain part of Russia's economy, the Concept has envisaged a development of a whole set of measures enabling the State to regulate the realization of this right by economic subjects through building a system of relationships with their directors which would promote their efficient activity in the interests of the owner and the direct management by the state agencies of the property in question.

The principal ways for executing such regulation are the Charter of a SUE and the contract signed with its director. This set of instruments in itself is not something new, however the documents enacted within the framework of implementing the Concept of the management of state property and privatization require that the Charters of SUE are to be brought in conformity with the new demands (the "Model Charter" of FSUE and the "Contract with the director" approved in 2000) and be registered at the Ministry of State Property of the RF.

In addition to registration of new charters and the conclusion of the contracts with directors, the State obtains special levers for monitoring the activity of such enterprises and implementing control procedures: *quarterly and annual reporting* by directors

according to the standard forms specifically adopted in 1999, *economic efficiency indices of the activity* of an enterprise, with keeping a corresponding *Register*, as well as *the programme of the activity* of an enterprise.

The financial mechanism of a SUE's activity theoretically involves the use of both internal (depreciation, profit, revenues from participation in other enterprises and economic entities) and external (capital investments and subsidies from the budget, special-purpose budgetary funding, loans including bank credits and loans from other credit institutions) sources of funding. An important feature distinguishing these from joint-stock societies is represented by the absence, among external sources of funding, of shares and bonds, because the organizational-and-legal form of a unitary enterprise as such makes no provisions for distributing property according to contributions (or participatory shares, shares) and, consequently, for issuing securities.

In fact the main reproduction scheme for SUE in the 1990s was self-financing from internal sources. The reasons for this were limited to the high risks of commercial loans granted by commercial banks and to the scarce opportunities for budgetary financing. In this aspect, the functioning of unitary enterprises did not differ from the development of economic subjects with other organizational-and-legal forms who were unable to use external sources of financing, including the securities market.

The model charter of a SUE grants to enterprises the right to make an independent use of the results of their economic activity, their product (except in the cases envisaged by legislative acts), and their net profit to be left at the enterprise's disposal after paying the taxes set by the legislation as well as other mandatory payments, and after the transfer by unitary enterprises of a share of their profit to the budget. At the same time, until now there have been few precedents of the actual transfers of a share of profit to the budget by unitary enterprises. Some hope of the situation being improved appeared only in 2001-2002, when this type of revenue was included in the classification of non-tax budget revenues.

3. As ***the most significant problems of legal regulation in the sphere of State property management***, presently the following can be classified:

- unspecified requirements to the composition of the public sector, unspecified procedure for consolidating the shares of joint-stock societies as state property, unspecified procedure for utilizing the special right of "golden share", unspecified grounds for using the organizational-and-legal form of a unitary enterprise;

- the problem of distinguishing the public sector enterprises between those belonging to the Russian Federation and those belonging to her subjects, as well as the corresponding authority to manage those enterprises;

- the problem of sale of shares of unitary enterprises and the related issues of the specific rights of the State to manage joint-stock societies (shareholding interest and "gold share").

4. The current tasks associated with managing the public sector are to a large degree specific due to the peculiarities of implementing market-oriented reforms in Russia. At the present time, the lack of institutional perfection characteristic of the Russian economy has become a common notion. Therefore, at this stage of economic reforms, due to insufficient efficiency of indirect State regulation, it seems important to

employ every possibility available in the sphere of managing the public sector enterprises for implementing anticrisis measures, pursuing structural policy and ensuring a regulatory influence on the behavior of private enterprises.

As the principal strategic directions for changes in this country's public sector, the following can be specified:

- a considerable reduction in the variety of goals set for the public sector in the sphere of economy;

- a change in the role of the public sector enterprises in the Russian economy, reduction of their share in the overall production of goods, works and services in certain sectors;

- integration of the public sector enterprises;

- approximation of the public sector enterprises, as far as the conditions for their economic activity are concerned, to those of private enterprises;

- increasing the role of predetermined conditions, stability of the public sector, as well as predictability of any changes therein;

- altering the principles of managing State property in the economy on the basis of developing stable management rules (framework) and consolidating the trust on the part of the State in the activity of the public sector enterprises.

5. The principal ways for transforming unitary enterprises were determined by the Russian government at the end of the year 1999. In addition to preserving enterprises in the form of unitary ones based on the right of economic jurisdiction, four variants for transforming the organizational-and-legal structure of such enterprises were established:

- reorganization of enterprises, including their transformation into open joint-stock societies;

- creation, on the basis of enterprises' property, of federal treasury enterprises;

- sale of enterprises as property complexes;

- liquidation of enterprises.

The actual course of privatization during the past four years, i.e. since the 1997 law on privatization was enacted, provides sufficient grounds for a suggestion that for all the variants of transformation, the period of existence for federal state unitary enterprises has never been shorter than 10 years, and in reality is much longer. Perhaps this predicted estimate is going to be corrected with regard to the practical implementation of the new law on privatization enacted as of April 26, 2002.

In a medium-term perspective, the Ministry of State Property is going to maintain the orientation toward corporatization of most FSUE (with gradual sale of their shares) which will make it possible to apply, instead of the special mechanism for managing state unitary enterprises, an instrument that has become quite ordinary during recent years – that of delegating the State's representatives to the boards of directors of the joint-stock societies that were created on the basis of FSUE. At the same time it has become obvious that just transforming state enterprises into joint-stock societies (irrespective of the size of the block of shares owned by the State), without any additional measures aimed at

reforming the public sector and improving the system of managing state property will not produce any positive changes.

6. Due to the intended preservation of SUE for a certain period of time as economic subjects acting in Russia's economy in transition, it becomes significant to specify, as an independent area for the State's regulatory activity in the sphere of property relations, the minimization of the drawbacks associated with the right of economic jurisdiction.

In practical sense, this means bringing to a minimum the commercial risks associated with the State's entrepreneurial activity exercised through unitary enterprises. The most obvious and common commercial risks in this sphere are as follows:

- the possibility of partial alienation of property consolidated to a SUE by the State by right of economic jurisdiction;

- low probability of generating revenues for the State from a SUE's activity, due both to sectoral specificity (low profitability and low liquidity of assets, orientation toward government orders with an associated problem of the State fulfilling its obligations) and to possible seizure of cash flows by side agencies;

- the danger of the production apparatus aging as a result of non-purpose-oriented use of the invested resources and "eating-up" of profits;

- the risk of a SUE going bankrupt and the complete loss by the State of its right of ownership as regards the property consolidated to it by right of economic jurisdiction;.

The main ways for the State to minimize these risks can be as follows:

- *bringing the activity* of a SUE in conformity with the requirements envisaged in the normative and legal acts of the RF Government and the MSP of 1999-2001, which would mean re-registration of the revised enterprises' charters at the Ministry of State Property of the RF; appointing the directors on a contractual basis; stipulating in the charter the right of the State to a share of the profits; introducing a new system of control and reporting;

- *effective execution of the owner's legal rights within the framework of the existing legislation* and the *abovesaid requirements* (defining the scope of legal rights; a control over the use of property and achieving certain economic efficiency indices of activity; generating non-tax revenues of the budgetary system through regular transfers by a SUE of a fixed share of profit from its day-to-day operation, managing policy as regards personnel by means of decisions taken by certifying boards, and dismissals);

- detailed development and organizational optimization of the State's administrative activity as regards SUE (creation of specialized SUE for managing a large quantity of comparatively small and dispersed assets, strengthening the State's controlling functions in large SUE by means of establishing supervisory councils consisting of representatives of all State bodies supervising the enterprise in question; in cases of strategically important SUEs – direct subordination to the Government of the RF);

- continuation and completion of the inventory of State property in the part of entering state unitary enterprises in the Register of Property of the RF on the basis of their distinct division between federal, regional and municipal levels (elimination of

situations when federal unitary enterprises which are not assigned to any department exist locally).

7. A very slow process of transformation of state unitary enterprises necessitated the enactment of the Law "On State unitary and municipal enterprises" which is intended to eliminate the main flaws of the right of economic jurisdiction as regards large-scale transactions and transactions with somebody's personal interest, as well as limiting the possibilities for creating subsidiary unitary enterprises.

8. However even in its absence the State was able to increase its administrative influence over unitary enterprises by means of improving the existing normative base which emerged in 1999-2001, i.e. through final elaboration of the Model Charter of a SUE and the Model Contract with the director, and improving the performance of the certification boards.

It is quite obvious that the charters of unitary enterprises and contracts with their directors must be supplemented by the legal norms which would guarantee safety of state property and protect it from non-purpose-oriented use. This means expanding the responsibilities the directors of enterprises and the grounds for a dismissal, changing the system of rewards toward increasing the dependence of the amount of reward on the results of economic performance and observing the terms of a contract, limiting the directors' opportunities for acting without a previous agreements with the owner's representative.

Another issue to be resolved is that of setting the standards for transferring by unitary enterprises a share of their profit to the budget, as well as that of regulating the general issues of its disposal.

Gradual harmonization of the State's relations with unitary enterprises must be implemented in the form of the programmes of activity of state unitary enterprises which in case of including appropriate responsibilities in an enterprise's charter and the contract with its director can become a most efficient mechanism of managing these enterprises and controlling their activity.

9. The local problems of managing unitary enterprises largely resemble those characteristic of federal unitary enterprises.

An analysis of the normative and legal acts dealing with this issue which are in effect in the regions (as exemplified by Krasnodar Krai) has shown that these generally reproduce the provisions contained in the documents on FSUEs, with the same drawbacks as in the latter. Certain attempts at improving these document lack a comprehensive approach. Besides, there is no information concerning the use of many of the instruments of administering unitary enterprises that are envisaged on the federal level.

Many questions arise in connection with the practice of planning and estimating the activity of regional and municipal unitary enterprises, as is shown by the analysis of their financial situation. The example of the MUE sector of the city of Krasnodar has shown that on the whole it demonstrates growing volumes of revenues from sales and balance-sheet profits, meeting planned targets as regards these indices, and a faster growth of transfers to the city budget. A more detailed analysis has shown that such a result is achieved at the expense of a relatively small number of enterprises, without any regard to inflation rates. At the same time over 60% of the city's municipal enterprises

did not meet their planned targets of balance-sheet profit, while 37-38% were loss-making.

As regards the financial situation in the MUE sector, a critical role is played by the enterprises providing housing-and-communal and municipal services. At the same time this sector is the main recipient of funding from the municipal budgets and the main object for investing the profit of those same enterprises. This is a good example of the interrelationship between the economic situation at public-sector enterprises and the development of institutional reforms (that of natural monopolies, the housing-and-communal sector and some others), as well as the factors limiting this development.

Annex 1. Federal Law "On State and municipal enterprises with proposed amendments"

CHAPTER I. GENERAL PROVISIONS

Article 1. Relations regulated by the present Federal Law.

The present Federal Law shall determine, in accordance with the Civil Code of the Russian Federation, the legal status of a State unitary enterprise and a municipal unitary enterprise (hereinafter also – unitary enterprise), the rights and duties of the owners of their property, the procedures of creation, reorganization and liquidation of a unitary enterprise.

Article 2. Unitary enterprise

1. A commercial organization not endowed with the right of ownership to the property consolidated to it by the owner shall be deemed to be a unitary enterprise. Only State and municipal enterprises may be created in the form of unitary enterprises. The property of a unitary enterprise belongs by right of ownership to the Russian Federation, to subject of the Russian Federation, or to a municipal formation.

In the name of the Russian Federation or subject of the Russian Federation, the rights of the owner of the property of a unitary enterprise are effectuated by the State agencies of the Russian Federation or the State agencies of subject of the Russian Federation within their competence, as established by acts determining the status of the said agencies.

In the name of a municipal formation, the rights of the owner of the property of a unitary enterprise are exercised by local self-government bodies within their competence as established by acts determining the status of the said bodies.

The property of a unitary enterprise shall belongs to it by right of economic jurisdiction or operative management, shall be indivisible and may not be distributed according to contributions (or participatory shares, shares), including among the workers of a unitary enterprise.

A unitary enterprise may not create as a juridical person another unitary enterprise by means of transferring to it part of its property (subsidiary enterprise).

A unitary enterprise may in its own name acquire and effectuate property and personal non-property rights, bear responsibilities, be a plaintiff or defendant in a court.

A unitary enterprise shall have an autonomous balance.

2. In the Russian Federation, the following types of unitary enterprises shall be created and may operate:

unitary enterprises based on the right of economic jurisdiction, - a federal State enterprise and a state enterprise of a subject of the Russian Federation (hereinafter both **76** also are referred to as: state enterprise), a municipal enterprise;

76 In **bold print** the included provisions are shown.

unitary enterprises based on the right of operative management, - a federal treasury enterprise, a federal treasury enterprise of subject of the Russian Federation, a municipal treasury enterprise (hereinafter also - treasury enterprise).

3. A unitary enterprise shall possess a round stamp containing its full firm name in the Russian language, with statement of the location of the unitary enterprise. The stamp of a unitary enterprise may contain also its firm name in the languages of the peoples of the Russian Federation and(or) in a foreign language.

A unitary enterprise may have stamps and letterforms directored with its firm name, its own emblem, as well as a registered in an established procedure trademark and other means of individualization.

4. The creation of unitary enterprises on the basis of integrating property owned by the Russian Federation, subjects of the Russian Federation or municipal formations shall not be allowed.

Article 3. Legal capacity of unitary enterprise

1. A unitary enterprise may have civil rights pertaining to the subject and purposes of its activity as envisaged in the charter of this unitary enterprise, and bear responsibilities associated with this activity.

2. A unitary enterprise shall be considered to be created as a juridical person from the day of an entry thereof in the uniform State Register of juridical persons, with the peculiarities as established in Article 10 of the present Federal Law.

A unitary enterprise shall be created for an unlimited period, if not stated otherwise in its charter.

A unitary enterprise may, in an established procedure, open accounts with banks on the territory of the Russian Federation and beyond its territory.

A State or municipal enterprise, until the owner of its property completes the formation of its charter fund, may not engage in transactions not related to the creation of the state or municipal enterprise.

3. A unitary enterprise may engage in certain activities included in a register determined by a federal law only on the basis of a license.

Article 4. Firm name of unitary enterprise and its location

1. A unitary enterprise shall have a full firm name and the right to an abbreviated firm name in the Russian language. A unitary enterprise has also the right to a full and (or) abbreviated firm name in the languages of the peoples of the Russian Federation and (or) in a foreign language.

The full firm name of a State or municipal enterprise in the Russian language shall contain the words “federal State enterprise”, “State enterprise” or “municipal enterprise” and an indication of the owner of its property – the Russian Federation, subject of the Russian Federation or a municipal formation.

The full firm name of a treasury enterprise in the Russian language shall contain the words “federal treasury enterprise”, “treasury enterprise” or “municipal treasury enterprise” and an indication of the owner of its property – the Russian Federation, subject of the Russian Federation or a municipal formation.

The firm name of a unitary enterprise in the Russian language may not contain other terms reflecting its organizational-legal form, including borrowings from foreign languages, if not provided otherwise by federal laws or other legal acts of the Russian Federation.

2. The location of a unitary enterprise shall be determined by the location of its State registration.77

Article 5. Branches and representations of unitary enterprise

1. A unitary enterprise, upon agreement with the owner of its property, may create branches and open representations.

The creation of branches and opening of representations by a unitary enterprise on the territory of the Russian Federation may be done through compliance with the requirements of the present Federal Law and other federal laws, and beyond the territory of the Russian Federation – also by complying with the legislation of the foreign state on whose territory the branches of the unitary enterprise are created or representations are opened, if not provided otherwise by international agreements of the Russian Federation.

2. A branch of a unitary enterprise shall be its autonomous division located in a place other than that of the location of the unitary enterprise and performing all its functions or part of its functions, including representative functions.

3. A representation of a unitary enterprise shall be its autonomous subdivision located in a place other than that of the location of the unitary enterprise, representing its interests and protecting them.

4. A branch and a representation of a unitary enterprise shall not be juridical persons and shall act on the basis of provisions determined by the unitary enterprise. A branch and a representation shall be endowed with property by the unitary enterprise that created them.

The director of a branch or representation of a unitary enterprise shall be appointed by the unitary enterprise and act by the power of attorney issued by it. Upon a termination of the labour contract with the director of a branch or representation, the power of attorney shall be Terminabled by the unitary enterprise which issued it.

A branch and a representation of a unitary enterprise shall act in the name of the unitary enterprise which created them. The responsibility for the activity of a branch or representation of a unitary enterprise shall be borne by the unitary enterprise that created it.

5. The charter of a unitary enterprise shall contain information concerning its branches and representations. The information concerning any changes of the charter of the unitary enterprise concerning its branches and representations shall be submitted to the agency effectuating State registration of juridical persons. The said changes of the charter of the unitary enterprise shall be in effect as far as third parties are concerned from the moment of informing the agency effectuating State registration of juridical persons about these changes.

77 Crossed over are the excluded provisions.

Article 6. Participation of unitary enterprises in commercial and non-commercial organizations

1. Unitary enterprises may be participants (members) of commercial organizations, as well as of non-commercial organizations where participation of juridical persons is allowed in accordance with federal legislation.

Unitary enterprises may not act as founders (participants) of credit institutions.

2. The decision concerning the participation of a unitary enterprise in a commercial or non-commercial organization may be made only with the consent of the owner of the property of the unitary enterprise.

A unitary enterprise shall dispose of its share (or contribution) in the charter (or contributed) capital of an economic society or partnership, as well as of the shares owned by that unitary enterprise only with the consent of the owner of its property.

A transaction concluded with violation of the requirements stipulated in this item may be deemed void upon a lawsuit of a unitary enterprise or of the owner of the property of the unitary enterprise.

Article 7. Liability of unitary enterprise

1. A unitary enterprise shall be liable for its obligations with all the property belonging to it.

A unitary enterprise shall not bear responsibility for the obligations of the owner of its property (the Russian Federation, subject of the Russian Federation, a municipal formation).

2. The Russian Federation, subject of the Russian Federation, or a municipal formation shall not bear responsibility for the obligations of a State or municipal enterprise, except in cases when the insolvency (bankruptcy) of such an enterprise is caused by the owner of its property. In such cases the owner, if the property of a State or municipal enterprise is not sufficient, may bear subsidiary responsibility for its obligations.

3. The Russian Federation, subjects of the Russian Federation, or municipal formations shall bear subsidiary responsibility for the obligations of their treasury enterprises, if their property is not sufficient.

CHAPTER II. FOUNDATION OF UNITARY ENTERPRISE

Article 8. Foundation of unitary enterprise

1. The founder of a unitary enterprise may be the Russian Federation, subject of the Russian Federation, or a municipal formation.

2. The decision concerning the foundation of a federal state enterprise shall be made by the Government of the Russian Federation or by federal executive agencies in accordance with the acts determining the competence of such agencies.

The decision concerning the foundation of a state enterprise of subject of the Russian Federation or of a municipal formation shall be made by an empowered State agency of subject of the Russian Federation or by a local self-government agency in accordance with acts determining the competence of such agencies.

3. A federal treasury enterprise shall be founded by decision of the Government of the Russian Federation.

A treasury enterprise of subject of the Russian Federation shall be founded by decision of the agency of subject of the Russian Federation which in accordance with the acts determining the status of this agency is empowered to make such a decision.

A municipal treasury enterprise shall be founded by decision of a local self-government agency which in accordance with the acts determining the status of this agency is empowered to make such a decision.

4. A State or municipal enterprise may be founded in the event of:

the need to use property the privatization of which is forbidden, including the property which is necessary for ensuring the national security of the Russian Federation, **ensuring the functioning of air, railway, and water transport, or the realization of other strategic interests of the Russian Federation;**

the need to conduct scientific and scientific-and-technological activity in the sectors pertaining to ensuring the security of the Russian Federation;

the need to develop and manufacture certain types of product that have been pertaining to the sphere of the interests of the Russian Federation and ensuring the security of the Russian Federation;

the need to manufacture certain kinds of products withdrawn from the turnover or have a limited turnover capacity;

the need to pursue an activity envisaged by federal laws exclusively for State unitary enterprises78

5. A treasury enterprise may be created in the event of:

the need to pursue an activity in order to solve social problems (including sale of certain goods and services at minimum prices), as well as to organize and conduct commodities interventions in order to ensure the food security of the State;

the need to pursue an activity of manufacturing goods, performing works, or rendering services that are to be realized at prices set by the State;

the need to pursue certain subsidized types of activity and maintain loss-making types of production;

the need to pursue the activity envisaged by federal laws exclusively for treasury enterprises.

6. The decision as to the foundation of a unitary enterprise shall involve a definition of the purposes and the subject of the activity of a unitary enterprise.

The procedure of determining the composition of the property to be consolidated to a unitary enterprise by right of economic jurisdiction or operative management, as well as the procedure of confirming the charter of a unitary enterprise and making a contract with its director shall be established by the Government of the Russian Federation, the empowered State agencies of the Russian Federation's subjects or agencies of local self-government.

78 *In italics* the provisions are shown whose order has been changed.

The value of the property consolidated to a unitary enterprise by right of economic jurisdiction or operative management, when the enterprise is founded, shall be determined in accordance with legislation on appraisal activity.

Article 9. The charter of a unitary enterprise

1. The constitutive document of a unitary enterprise shall be its charter.

2. The charter of a unitary enterprise shall be confirmed by the empowered State agencies the Russian Federation, the State agencies of the Russian Federation's subject, or agencies of local self-government.

3. The charter of a unitary enterprise shall contain:

the full and abbreviated firm name of the unitary enterprise;

an indication of the location of a unitary enterprise;

the purposes, the subject, and the activities of a unitary enterprise;

the information concerning the agency or agencies with the capacity of the owner of the property of a unitary enterprise;

the name of the organ of a unitary enterprise (director, director, general director);

the procedure of appointing the director of a unitary enterprise, as well as the procedure of the conclusion, change and termination of the labour contract with him shall be regulated in accordance with labour legislation and other normative and legal acts containing the norms of labour law;

the information concerning the branches and representations of a unitary enterprise**;**

a list of funds created by a unitary enterprise, the amount, the procedure of formation and use of these funds;

other information envisaged by the present Federal Law.

4. The charter of a State or municipal enterprise, besides the information listed in item 3 of this Article, shall contain the information concerning the amount of the charter fund of **the State or municipal enterprise**, the procedure and the sources of its formation, **the procedure, amount and time schedule for the transfer of a share of the profit of the State or municipal enterprise to an appropriate budget**, as well as concerning the areas of using the profit **retained by the State or municipal enterprise**.

5. The charter of a unitary enterprise may also contain other provisions that must not contradict the present Federal Law and other federal laws.

6. Changes of the charter of a unitary enterprise shall be introduced by decision of a State agency the Russian Federation, a State agency of the Russian Federation's subject, or agencies of local self-government with the power to confirm the charter of a unitary enterprise.

Changes of the charter of a unitary enterprise, or the charter of a unitary enterprise in a new edition shall be subject to State registration in the procedure determined by Article 10 of the present Federal Law on State registration of a unitary enterprise.

Changes of the charter of a unitary enterprise, or the charter of a unitary enterprise in a new edition shall acquire force for third parties from the moment of their State

registration, and in the instances established by present Federal Law, from the moment of notifying the agency effectuating State registration of juridical persons.

Article 10. State registration of unitary enterprise

1. A unitary enterprise shall be subject to State registration in a State agency effectuating State registration of juridical persons in the procedure determined by the Federal Law "On State registration of juridical persons".

2. For State registration of juridical persons, a decision of the empowered State agency of the Russian Federation, the empowered State agencies of the Russian Federation's subject or an agency of local self-government as to the creation of a unitary enterprise, the charter a unitary enterprise, and the information on the composition and value of the property consolidated to it by right of economic jurisdiction or operative management are submitted.

CHAPTER III. PROPERTY AND CHARTER FUND OF UNITARY ENTERPRISE

Article 11. Property of unitary enterprise

1. The property of a unitary enterprise shall be formed by:

the property consolidated to it by right of economic jurisdiction or operative management by the owner of this property;

the fruits, products and revenues resulting from the activity of a unitary enterprise;

the property purchased by a unitary enterprise under a contract or on other grounds;

other sources not contradicting legislation..

2. The right to the property consolidated to a unitary enterprise by right of economic jurisdiction or operative management by the owner of this property is effectuated from the moment of transferring such property to the unitary enterprise, if not otherwise provided for by a federal law or determined by the decision of the owner concerning the transfer of the property to a unitary enterprise..

The peculiarities of the right of economic jurisdiction or operative management as regards the immovable located outside the borders of the Russian Federation that constitute federal property, as well as securities, shares or participatory shares in juridical persons located outside the borders of the Russian Federation shall be determined by the Government of the Russian Federation.

3. In the event of the transfer of the ownership right to a **unitary** enterprise as a property complex to another owner of state or municipal property, this enterprise shall retain the right of economic jurisdiction or operative management to the property belonging to it.

Article 12. Charter fund of unitary enterprise

1. The charter fund of a state or municipal enterprise shall determine the minimum amount of its property guaranteeing the interests of the creditors of this enterprise.

2. The charter fund of a state or municipal enterprise may be formed by money, as well as by securities, other valuables, property rights and other rights of money value.

The amount of the charter fund of a state or municipal enterprise shall be determined in roubles.

3. The charter fund of a state enterprise shall be equal to not less than five thousand minimum salaries as determined by a federal law as of the date of State registration of a state enterprise.

The charter fund of a municipal enterprise shall be equal to not less than one thousand minimum salaries as determined by a federal law as of the date of State registration of a municipal enterprise.

4. Federal laws or other normative and legal acts may determine the types of property that shall not form the charter fund of a state or municipal enterprise.

5. No charter fund shall be formed by a treasury enterprise.

Article 13. Procedure of formation of charter fund

1. The charter fund of a State enterprise shall be formed in full by the owner of its property within three months from the moment of State registration of such an enterprise.

2. The charter fund shall be regarded as formed from the moment of the transfer of appropriate amounts of money to a bank account to be opened with this purpose, and (or) the transfer in an established procedure to a state or municipal enterprise of other property in full, to be consolidated to it by right of economic jurisdiction or operative management.

Article 14. Increases of a charter fund

1. An increase of the charter fund of a state or municipal enterprise shall be allowed only after it has been formed in full, including after a transfer to a state or municipal enterprise of immovable or other property, to be consolidated to it by right of economic jurisdiction or operative management.

2. An increase of the charter fund of a state or municipal enterprise shall be effected by means of additional transfers of property by the owner, as well as **by fruits, products and revenues resulting from the activity of a unitary enterprise, and by property purchased by a unitary enterprise under a contract or on other grounds.**

3. The decision as to increasing the charter fund of a state or municipal enterprise may be made by the owner of its property only on the basis of the data contained in confirmed annual accounting reports of this enterprise on completed financial year.

The amount of the charter fund of a state or municipal enterprise, with regard to the amount of its reserve fund, may not exceed the value of net assets of this enterprise.

4. Simultaneously with making the decision as to increasing the charter fund of a state or municipal enterprise, the owner of its property shall make the decision as to entering appropriate changes in the charter of this enterprise.

The documents for State registration of the changes of the charter of a State or municipal enterprise in connection with an increase of its charter fund, as well as the

documents confirming the increase of the charter of a state or municipal enterprise, shall be submitted to the agency effectuating State registration of juridical persons.

Failure to submit the documents specified in this item shall be the grounds for refusal of State registration of the changes of the charter of a state or municipal enterprise.

Article 15. Decreases of a charter fund

1. The owner of the property of a state or municipal enterprise shall have the right, and in the cases envisaged in this Article, the duty to decrease the charter fund of that enterprise. The charter fund of a state or municipal enterprise may not be decreased if as a result of such a decrease its amount becomes less than *the minimum amount of a charter fund as determined in accordance with the present Federal Law* **as of the date of submitting the documents for State registration of these changes of the charter of a state or municipal enterprise, and in the cases when in accordance with this Article the owner of the property of a state or municipal enterprise is obliged to decrease its charter fund, - as of the date of State registration of the State or municipal enterprise.**

2. In case when as of the end of a financial year the value of net assets of a state or municipal enterprise becomes less than the amount of its charter fund, the owner of the property of such an enterprise is obliged to make a decision as to decreasing the amount of the charter fund of a state or municipal enterprise to an amount not exceeding the value of its net assets, and to register these changes in the procedure established by the present Federal Law.

In case when as of the end of a financial year the value of net assets of a state or municipal enterprise becomes less than the minimum amount of the charter fund as determined by the present Federal Law as of the date of State registration of that enterprise, and within three months the value of net assets is not restored to the minimum amount of the charter fund, the owner of the property of a state or municipal enterprise shall be obliged to make a decision as to liquidating or reorganizing that enterprise. .

The value of net assets of a state or municipal enterprise shall be determined on the basis of the information contained in accounting reports in the procedure determined by normative legal acts of the Russian Federation.

3. If in the cases envisaged by this Article the owner of the property of a state or municipal enterprise within six months after the end of a financial year does not make a decision as to decreasing the amount of the charter fund, restoring the amount of net assets to the minimum amount of the charter fund, or liquidating or reorganizing the state or municipal enterprise, the creditors shall have the right to demand from the state or municipal enterprise termination or early fulfillment of its obligations and compensation of the losses inflicted on them.

4. Within thirty days from the date of the decision made **by the owner of the property of a State or municipal enterprise** as to decreasing the charter fund of **a state or municipal enterprise**, **that** enterprise shall be obliged to notify in written form all known to it creditors about the decrease of its charter fund and its new amount, as well as to publish the information on that decision in a press organ where the information on State registration of juridical persons is published. The creditors of a state or municipal enterprise shall have the right within thirty days from the date of notification being sent to

them about that decision, or within thirty days from the date of the publication of the said information, to demand that the obligations of the state or municipal enterprise be terminated or fulfilled ahead of time, and the losses compensated.

State registration of a decrease of the charter fund of a State or municipal enterprise shall be effectuated only in case of that enterprise a proof of the notification of the creditors to this effect in the procedure established under this item.

Article 16. The reserve fund and other funds of a unitary enterprise

1. A unitary enterprise from its retained net profit shall create a reserve fund in the procedure and in the amount envisaged in the charter of the unitary enterprise.

The reserve fund shall be used exclusively to cover the losses of a unitary enterprise.

2. A unitary enterprise from its retained net profit shall also create other funds in accordance with their list and in the procedure envisaged in the charter of a unitary enterprise.

The means transferred to such funds may be used by a unitary enterprise only for the purposes determined by federal laws, or other normative legal acts and by the charter of the unitary enterprise.

Article 17. The procedure of the effectuation by the owner of right to profit from using property belonging to unitary enterprise

1. The owner of the property of a state or municipal enterprise shall have the right to part of the profit from using the property under that enterprise's economic jurisdiction.

2. The State or municipal enterprise shall every year transfer to an appropriate budget a part of its net profit retained after taxes and other mandatory payments, in the procedure, amount and the time schedule determined **by the charter of a state or municipal enterprise.**

3. The procedure of distributing the incomes of a treasury enterprise shall be determined by the Government of the Russian Federation, the empowered State agencies of the Russian Federation's subjects or agencies of local self-government.

Article 18. Disposal of the property of a state or municipal enterprise

1. A state or municipal enterprise shall on its own dispose of its movable property belonging to it by right of economic jurisdiction, except the instances determined by the present federal Law, other federal laws and other normative legal acts, **as well as by the charter of a State or municipal enterprise.**

2. A state or municipal enterprise shall not have the right to sell the immovable property belonging to it, lease or mortgage it, contribute as a share in the charter (or contributed) capital of an economic society, or otherwise dispose of that property without consent of the owner of the property of a state or municipal enterprise.

3. A state or municipal enterprise shall dispose of movable and immovable property only to the extent that does not preclude its ability to pursue an activity whose purposes, subject and types are determined by the charter of that enterprise. Transactions completed by a State or municipal enterprise with violation of this requirement shall be void.

4. A state or municipal enterprise shall have no right without the owner's consent to complete transactions relating to granting loans, suretyship, obtaining bank guarantees, other encumbrances, cession of claims, or debt remittance, or to sign contracts of simple partnership.

The charter of state or municipal enterprise may envisage the types and (or) amount of other transactions which shall not be completed without the consent of the owner of the property of that enterprise.

A transaction completed with violation of the requirements envisaged by this Article may be deemed void upon a lawsuit of a state or municipal enterprise or of the owner of the property of a state or municipal enterprise.

Article 19. Disposal of the property of a treasury enterprise

1. A federal treasury enterprise shall have the right to alienate or otherwise dispose of the property belonging to it only with the consent of the Government of the Russian Federation or the empowered federal executive agency.

A treasury enterprise of the Russian Federation's subject shall have the right to alienate or otherwise dispose of the property belonging to it only with the consent of the empowered State agency of the Russian Federation's subject.

A municipal treasury enterprise shall have the right to alienate or otherwise dispose of the property belonging to it only with the consent of the empowered local self-government agency.

The charter of a treasury enterprise may envisage the types and (or) amount of other transactions which may not be completed without consent of the owner of that enterprise.

A treasury enterprise shall on its own realize its products (works, services), if not otherwise established by federal laws or other normative legal acts of the Russian Federation.

A transaction completed with violation of the requirements envisaged under this item may be recognized as void upon a lawsuit of a treasury enterprise or of the owner of the property of a treasury enterprise.

2. A treasury enterprise shall have the right to dispose of the property belonging to it, including with the consent of the owner of that property, only to the extent that does not preclude its ability to pursue an activity whose *purposes, subject and* types are determined by the charter. The activity of a treasury enterprise shall correspond to the budget of incomes and expenses confirmed by the owner of the property of a treasury enterprise.

CHAPTER IV. MANAGEMENT OF UNITARY ENTERPRISE

Article 20. The rights of the owner of a unitary enterprise

1. The owner of a unitary enterprise shall, regarding this enterprise:

1) make the decision as to creating the unitary enterprise;

2) determine the purposes, subject, and types of activity of the unitary enterprise;

3) consolidate to the unitary enterprise property by right of economic jurisdiction or operative management;

4) confirm the charter of the unitary enterprise, introduce changes to it, including the confirmation of a new edition of the charter of the unitary enterprise;

5) *appoint the director of the unitary enterprise, make, change and terminate the labour contract in accordance with labour legislation and other normative legal acts;*

6) coordinate the appointment of the chief accountant of the unitary enterprise, as well as making, changing and terminating the labour contract;

7) confirm accounting reports of the unitary enterprise;

8) make decisions concerning audits, appoint the auditor and determine the amount of the pat for his services;

9) determine the procedure of developing, confirming and setting the targets of a programme of the activity of the unitary enterprise, confirm the economic efficiency indices of the activity of the unitary enterprise and control that they be met;

10) control the purpose-appropriate use and safety of the property belonging to the unitary enterprise;

11) give consent to the disposal of immovable property, and in cases determined by the present Federal Law, other federal laws or normative legal acts, or by the charter of the unitary enterprise, to other types of transactions;

12) give consent to completing big transactions, and in cases when there is an interest, in concluding a transaction;

13) give consent to creating branches and opening representations of the unitary enterprise;

14) give consent to the participation of the unitary enterprise in other juridical persons;

15) *give consent to the participation of unitary enterprise in associations and other unions of juridical persons;*

16) *make a decision as to reorganizing or liquidating the unitary enterprise in the procedure established by legislation, appoints a liquidation board and confirms liquidation balances of the unitary enterprise;*

17) make a decision as to changing the type of the unitary enterprise;

18) make a decision as to transferring the property of the unitary enterprise to another owner of State or municipal property (the Russian Federation, subject of the Russian Federation, or a municipal formation);

19) enjoy other rights and bears other responsibilities as determined by legislation of the Russian Federation.

2. The owner of the property of a State or municipal enterprise, besides the capacities determined in Item 1 of this Article, shall form the charter fund of a State or municipal enterprise and make a decision as to increasing or decreasing the amount of the charter fund.

3. The owner of the property of a treasury enterprise, beside the capacities determined under item 1 of this Article, shall have the right to:

withdraw from the treasury enterprise surplus property or property that is out of use or the use of which is not purpose-oriented;

inform the treasury enterprise of mandatory orders for supplies of goods, carrying out works, rendering services for State or municipal needs;

approve the budget of incomes and expenses of the treasury enterprise.

4. The owner of the property of a unitary enterprise shall have the right to bring action for the annulment of a disputable transaction involving the property of a unitary enterprise, as well as that with the demand to apply the consequences of a recognized annulment of a void transaction in the cases determined by the Civil Code of the Russian Federation and the present Federal Law.

5. The owner of the property of a unitary enterprise shall have the right to demand a withdrawal of the property of the unitary enterprise from another person's unlawful ownership.

6. The legal capacity of the owner of the property of a federal treasury enterprise regarding the creation, reorganization and liquidation of a federal treasury enterprise, **change of the type of a federal treasury enterprise, transfer of the property of a federal treasury enterprise to another owner of state or municipal property**, confirmation of the charter and changes of the charter of that enterprise shall be effectuated by the Government of the Russian Federation.

Other legal capacities of the owner of the property of a federal treasury enterprise shall be effectuated by the Government of the Russian Federation or the empowered federal executive agencies.

The legal capacity of the owner of the property of a unitary enterprise whose property is owned by the Russian Federation shall not be transferred by the Russian Federation to subject of the Russian Federation or to a municipal formation.

The legal capacity of the owner of the property of a unitary enterprise whose property is owned by subject of the Russian Federation shall not be transferred by subject of the Russian Federation to the Russian Federation, other subject of the Russian Federation, or to a municipal formation.

The legal capacity of the owner of the property of a unitary enterprise whose property is owned by a municipal formation shall not be transferred by the municipal formation to the Russian Federation, to subject of the Russian Federation, or to another municipal formation.

Article 21. Director of unitary enterprise

1. The director of a unitary enterprise (director, general director) shall be the sole executive organ of the unitary enterprise. The director of a unitary enterprise shall be appointed by the owner of the property of the unitary enterprise. The director of a unitary enterprise shall be accountable to the owner of the property of the unitary enterprise.

The director of a unitary enterprise shall act in the name of the unitary enterprise without a power of attorney, including represent its interests, complete in the established procedure transactions in the name of the unitary enterprise, confirm the structure and the staff list of the unitary enterprise, hire the personnel of that enterprise, make, change and

Terminable labour contracts with the personnel, issue orders, issue powers of attorney in the procedure established by legislation.

The director of a unitary enterprise shall organize implementation of the decisions made by the owner of the property of the unitary enterprise.

The rights and duties of the director of a unitary enterprise shall be determined by the present Federal Law, other legal acts and the contract between him and the owner of the property of the unitary enterprise.

2. The director of a unitary enterprise may not be a founder (or participant) of a juridical person, to hold a post or engage in other paid activities in State agencies, local self-government agencies, commercial or non-commercial organizations, except in academic, research or other creative activity, be a sole executive organ or member of a collegial executive organ of a commercial organization, except in those cases when the participation in the organs of a commercial organization is part of the official duties of the said director, or to participate in strikes.

The director of a unitary enterprise shall undergo certification in the procedure established by the owner of the property of the unitary enterprise.

3. The director of a unitary enterprise shall account of the activity of the enterprise in the procedure and according to the time schedule determined by the owner of the property of the unitary enterprise.

4. In the instances envisaged by federal laws and the legal acts based thereupon, within a unitary enterprise consultative bodies (academic, pedagogic, scientific, scientific-and-technical councils, etc.) may be created. The charter of a unitary enterprise shall determine the structure of such bodies, their composition and competence.

Article 22. The interest in a transaction to be completed by a unitary enterprise

1. A transaction in which the director of a unitary enterprise has an interest may not be completed by the unitary enterprise without the consent of the owner of the property of the unitary enterprise.

The director of a unitary enterprise shall be considered to have an interest in the completion of a transaction by the unitary enterprise in the event when he himself, his spouse, parents, children, **adopted parents or adopted children, brothers (half-brothers) and sisters (half-sisters)** and (or) their affiliated persons deemed as such in accordance with the legislation of the Russian Federation:

represent a party in a transaction or act in the interests of third parties in their relations with the unitary enterprise, own (separately or jointly) twenty of more percent of shares (or participatory shares, shares) of a juridical person that constitutes a party in the transaction or acts in the interests of third parties in their relations with the unitary enterprise;

hold positions in the executive bodies of a juridical person that constitutes a party in the transaction or acts in the interests of third parties in their relations with the unitary enterprise;

in other instances as determined by the charter of the unitary enterprise.

2. The director of a unitary enterprise shall inform the owner of the property of a unitary enterprise of the following:

the juridical persons wherein he himself, his spouse, parents, children, **adopted parents or adopted children, brothers (half-brothers) and sisters (half-sisters)** and (or) their affiliated persons deemed as such in accordance with the legislation of the Russian Federation own a total of twenty or more percent of shares (or participatory shares, shares);

the juridical persons wherein he himself, his spouse, parents, children, **adopted parents or adopted children, brothers (half-brothers) and sisters (half-sisters)** and (or) their affiliated persons deemed as such in accordance with the legislation of the Russian Federation hold official posts in administrative bodies;

known to him actual or intended transactions in the completion of which he may be considered to have an interest.

3. A transaction in the completion of which the director of a unitary enterprise may have had an interest and which has been made with violation of the requirements envisaged in this article may be deemed void upon a lawsuit of the unitary enterprise or of the owner of the property of the unitary enterprise.

Article 23. Big transaction

1. A big transaction shall be a transaction or several interrelated transactions dealing with purchase, alienation or a possibility of alienation by a unitary enterprise, directly or indirectly of property whose value amounts to more than ten percent of **the balance-sheet value of the net assets of a unitary enterprise as determined by the data contained in its accounting reports as of the latest date of reporting**, or is more than 50,000 times greater than the minimum salary as established by a federal law.

2. For the purposes of this Article, the value of the property alienated by a unitary enterprise as a result of a big transaction shall be determined on the basis of the data contained in its accounting reports, and the value of the property purchased by a unitary enterprise – on the basis of the price of the offer of such property.

3. The decision concerning effecting a big transaction shall be made with consent of the owner of the property of a unitary enterprise.

4. A big transaction effected with violation of the requirements envisaged by this Article may be deemed void upon a lawsuit of a unitary enterprise or of the owner of the property of a unitary enterprise.

Article 24. Borrowings of unitary enterprise

1. Borrowings of a unitary enterprise may have the following form:

credits granted under contracts with crediting institutions;

budgetary credits granted on the terms and within the limits determined by the budgetary legislation of the Russian Federation.

State or municipal enterprises also shall have the right to make borrowings by means of placing bonds or issuing bills.

2. A unitary enterprise shall have the right to make borrowings only under an agreement with the owner of the property of the unitary enterprise concerning the

volumes and the areas of using the borrowed funds. The procedure of borrowings by unitary enterprises shall be determined by the Government of the Russian Federation, State agencies of subjects of the Russian Federation, and local self-government agencies, respectively.

Article 25. Liability of director of unitary enterprise

1. The director of a unitary enterprise when effectuating his rights and fulfilling obligations shall act in good faith and reasonably in the interests of the unitary enterprise.

2. The director of a unitary enterprise, in the procedure established by law, is liable for losses inflicted on the unitary enterprise by his culpable actions (or lack of action), including in case of a loss of the property of the unitary enterprise.

3. The owner of the property of a unitary enterprise shall have the right to **bring a lawsuit in a court against** *the director of the unitary enterprise pleading redemption of the losses inflicted on the unitary enterprise*, **in the event envisaged in item 2 of this Article.**

Article 26. Control over activity of a unitary enterprise

1. Annual audits of the accounting procedures and financial (accounting) reports of a state or municipal enterprise shall be mandatory in the following instances:

if the proceeds of sale of product (or of the works performed or services rendered) by a State or municipal enterprise in one year exceed by 500,000 times the minimum salary as determined by the legislation of the Russian Federation;

if the total balance-sheet assets of a state or municipal enterprise as of the end of the reporting year exceed by 200,000 times the minimum salary as determined by legislation of the Russian Federation;

in other instances as determined by the owner of the property of a state or municipal enterprise.

For municipal enterprises, by law of subject of the Russian Federation, the financial indices determined in the second and third paragraphs of this item may be lowered.

2. The accounting procedures and financial (accounting) reports of a treasury enterprise shall be subject to mandatory annual auditing.

3. The mandatory annual audits of the accounting procedures and financial (accounting) reports of unitary enterprises shall be conducted by auditors selected on the basis of a contest. The procedure holding a contest in order to select auditors for the mandatory annual audits of the accounting procedures and financial (accounting) reports of unitary enterprises shall be determined by the Government of the Russian Federation, the empowered State agencies of subjects of the Russian Federation, or by local self-government agencies.

4. On the basis of the results of the audits of the accounting procedures and financial (accounting) reports of a unitary enterprise, the auditor shall write an audit report which shall contain:

a confirmation of the validity of the data contained in the accounting (financial) reports of the unitary enterprise;

information on the instances of violating the accounting procedure and the procedures of financial (accounting) reporting by the unitary enterprise as established by the legal acts of the Russian Federation.

~~2.~~**5.** The control over the activity of a unitary enterprise shall be effectuated by the agency exercising the powers of an owner, and by other empowered agencies.

~~3.~~**6.** A unitary enterprise, after the end of a reporting period, shall submit to the empowered State agencies of the Russian Federation, to the State agencies of subject of the Russian Federation, or to local self-government agencies accounting reports and other documents the list of which shall be determined by the Government of the Russian Federation, by the executive agencies of subjects of the Russian Federation, or by local self-government agencies.

Article 27. Public reporting by unitary enterprise

A unitary enterprise shall be obliged to publish reports on its activity in instances envisaged by federal laws or other normative legal acts of the Russian Federation.

Article 28. Record keeping by unitary enterprise

1. A unitary enterprise shall be obliged to keep the following documents:

the charter of the unitary enterprise, as well as changes and amendments to **the charter** of the unitary enterprise and registered in the established procedure;

decisions of the owner of the property of the unitary enterprise concerning the creation of the unitary enterprise and the confirmation of the list of the property to be transferred to the unitary enterprise in economic jurisdiction or operative management, concerning the money value of the charter fund of the state or municipal enterprise, as well as other decisions relating to the creation of the unitary enterprise;

the document confirming State registration of the unitary enterprise;

the documents confirming the rights of the unitary enterprise to its balance-sheet property;

the internal documents of the unitary enterprise;

the provisions concerning the branches and representations of the unitary enterprise;

the decisions of the owner of the property of the unitary enterprise concerning the enterprise's activity;

the lists of the affiliated persons of the unitary enterprise;

the bookkeeping documentation and the accounting reports of the unitary enterprise;

audit reports, reports of state or municipal agencies for financial control;

other documents as envisaged by federal laws and other normative legal acts, the charter of the unitary enterprise, the internal documents of the unitary enterprise, the decisions of the owner of the property of the unitary enterprise and of the director of the unitary enterprise.

2. A unitary enterprise shall keep documents envisaged by item 1 of this Article at the location of its director or at another location as determined by the charter of the unitary enterprise.

3. On liquidation of the unitary enterprise the documents envisaged in item 1 of this Article shall be transferred for keeping to a State archive in the procedure established by the legislation of the Russian Federation.

CHAPTER V. REORGANIZATION AND LIQUIDATION OF UNITARY ENTERPRISES

Article 29. Reorganization of unitary enterprise

1. A unitary enterprise may be reorganized by decision of the owner of the property of the unitary enterprise in the procedure determined by the Civil Code of the Russian Federation, the present Federal Law and other federal laws.

In the instances determined by a federal law, reorganization of a unitary enterprise in the form of its division or separation from its composition of one or several unitary enterprises shall be carried out on the basis of a decision of the empowered State agency or by a court decision.

2. Reorganization of a unitary enterprise may be carried out on the form of:

merger of two or several unitary enterprises;

accession in a unitary enterprise of one or several unitary enterprises;

division of a unitary enterprise into two or several unitary enterprises;

separation from a unitary enterprise of one or several unitary enterprises;

transformation of a unitary enterprise into a juridical person of another organizational-legal form in the instances envisaged by the present Federal Law or other federal laws.

3. *In the form of merger or accession, unitary enterprises* **of the same type whose** *property belongs to one and the same owner may be reorganized.*

~~.~~**4.** In the event when not provided for otherwise by a federal law, the property of unitary enterprises that arose as a result of reorganization in the form of division or separation, shall belong to the same owner as the property of the reorganized unitary enterprise.

~~6.~~**5.** A unitary enterprise shall be deemed reorganized, except the cases of reorganization in the form of merger, from the moment of State registration of the newly arisen juridical persons.

In the event of a reorganization of a unitary enterprise in the form of a merger with another unitary enterprise, the former one shall be deemed reorganized from the moment of an entry in the unified State register concerning the termination of the unitary enterprise which has acceded.

~~7.~~**6.** A unitary enterprise, not later than within thirty days from the date of the decision to reorganize, shall be obliged to notify of it in written form all the creditors of the unitary enterprise known to it, as well as to publish information concerning that decision in the press organ where the information on State registration of juridical persons is published. The creditors of the unitary enterprise within thirty days from the

date when the notification was sent, or within thirty days from the date of publishing information concerning that decision, shall have the right in written form to demand termination or early fulfillment of the corresponding obligations of the unitary enterprise and compensation of their losses.

~~8.~~**7.** State registration of the newly arisen as a result of reorganization unitary enterprises, the entries concerning the termination of unitary enterprises, as well as State registration of the changes and amendments of the charter, shall be effectuated in the procedure established by the Federal Law "On State registration of juridical persons", only after the proof has been submitted of the notification of the creditors in the procedure determined by item 6 of this Article.

If the division balance sheet does not make it possible to determine the legal successor of the reorganized unitary enterprise, the unitary enterprises that newly arose shall bear joint and several responsibility for the obligations of the reorganized unitary enterprise to its creditors, in proportions to the shares in the property or the rights passed to them from the reorganized unitary enterprise, determined in monetary value.

Article 30. Merger of unitary enterprises

1. A merger of unitary enterprises shall be deemed the creation of a new unitary enterprise to which the rights and duties of two or several unitary enterprises have passed, with termination of the latter.

2. The owner of the property of the unitary enterprise shall make the decision concerning the confirmation of the act of transfer, the charter of the newly arisen unitary enterprise, and the appointment of its director.

3. In case of a merger of unitary enterprises the rights and responsibilities of each of them pass to the newly arisen unitary enterprise in accordance with the act of transfer.

Article 31. Accession to a unitary enterprise

1. An accession to a unitary enterprise shall be deemed the termination of one or several unitary enterprises, with passing of their rights and duties to the unitary enterprise which they are acceded to.

2. The owner of the property of a unitary enterprise shall make the decision concerning the confirmation of the act of transfer, the changes and amendments to the charter of the unitary enterprise to which the accession is effectuated, and when necessary - concerning the appointment of the director of that unitary enterprise.

3. In the event of the accession of one or several unitary enterprises to another unitary enterprise, to the latter the rights and duties of the acceded unitary enterprises shall pass in accordance with the act of transfer.

Article 32. Division of unitary enterprise

1. The division of a unitary enterprise shall be deemed the termination of a unitary enterprise, with passing of its rights and duties to newly created unitary enterprises.

2. The owner of the property of a unitary enterprise shall make the decision concerning the confirmation of the division balance, the charters of the newly created unitary enterprises, and the appointment of their directors.

3. In the event of the division of a unitary enterprise, its rights and duties shall pass to the newly created unitary enterprises in accordance with the division balance.

Article 33. Separation from unitary enterprise

1. A separation from a unitary enterprise shall be deemed the creation of one or several unitary enterprises, with passing to each of them part of the rights and duties of the reorganized unitary enterprise, without termination of the latter.

2. The owner of the property of a unitary enterprise shall make the decision concerning the confirmation of the division balance, the charters of the newly created unitary enterprises and the appointment of their directors, as well as concerning the changes and amendments to the charter of the reorganized unitary enterprise, and when necessary – the appointment of its director.

3. In the event of a separation from a unitary enterprise of one or several unitary enterprises, to each of them part of the rights and duties of the reorganized unitary enterprise shall pass in accordance with the division balance.

Article 34. Transformation of unitary enterprise

1. A unitary enterprise may be transformed *into a State or municipal institution upon the decision made by the owner of the property of* **the unitary enterprise.**

A unitary enterprise may be transformed into an open joint-stock society in the procedure established by the legislation on privatization.

2. In the event of the transformation of a unitary enterprise, to the newly arisen juridical person all the rights and duties of the reorganized unitary enterprise shall be passed in accordance with the act of transfer.

Article 35. Change of the type of unitary enterprise

1. The change of the type of a state or municipal enterprise shall be deemed its transformation into a treasury enterprise. The change of the type of a treasury enterprise shall be deemed its transformation into a state or municipal enterprise.

The change of the type of a unitary enterprise shall not be its reorganization.

In the event of the change of the type of a unitary enterprise, no passing of the right of ownership to its property to another owner shall occur.

2. The change of the type of a state or municipal enterprise may be effectuated in the instances envisaged in Item 5 of Article 8 of the present Federal Law. The change of the type of a treasury enterprise may be effectuated in the instances envisaged in Item 4 of Article 8 of the present Federal Law.

3. The decision concerning the change of the type of a federal state enterprise or a federal treasury enterprise shall be made by the Government of the Russian Federation.

The decision concerning the change of the type of a state enterprise of subject of the Russian Federation or a treasury enterprise of subject of the Russian Federation shall be made by the State agency of subject of the Russian Federation which in accordance with the acts determining the status of that agency is empowered to make such a decision.

The decision concerning the change of the type of a municipal enterprise or a municipal treasury enterprise shall be made by the local self-government agency which in accordance with the acts determining the status of that agency is empowered to make such a decision.

4. In the event of the change of the type of a unitary enterprise the owner of its property shall make the decision concerning the introduction of the changes to that effect in the charter of the unitary enterprise, and if necessary concerning the appointment of its director.

The change of the type of a unitary enterprise shall be deemed effectuated from the moment of State registration of the change of the charter of the unitary enterprise.

5. In the event of the change of the type of a treasury enterprise the owner of the property of that enterprise shall bear subsidiary responsibility for its obligations for six months from the moment of the change of the type of the treasury enterprise.

Article 36. Transfer of property of unitary enterprise to another owner of state or municipal property

1. The property of a unitary enterprise may be transferred by its owner to another owner of state or municipal property upon a joint decision made by the said owners in the procedure envisaged by the present Federal Law, other federal laws and other normative legal acts.

The change of the legal status of a unitary enterprise as a result of passing of the ownership right to its property to another owner of state or municipal property shall not be reorganization of a unitary enterprise.

2. In the event of the transfer of the property of a unitary enterprise to another owner of state or municipal property, the owner of state or municipal property to whom the ownership right to the property of a unitary enterprise is passed shall make the decision concerning the introduction of appropriate changes in the charter of a unitary enterprise and the appointment of its director.

3. The transfer of the property of a unitary enterprise to another owner of state or municipal property shall be deemed effectuated from the moment of State registration of the changes of the charter of the unitary enterprise.

Article 37. Liquidation of unitary enterprise

1. A unitary enterprise may be liquidated by decision of the owner of its property. .

2. A unitary enterprise may also be liquidated by decision of a court on the grounds specified in the Civil Code of the Russian Federation.

In the event of the liquidation of a unitary enterprise by decision of a court, the duties relating to the effectuation of the liquidation of the unitary enterprise shall be imposed on the owner of its property.

3. The liquidation of a unitary enterprise shall entail its termination, without passing of the rights and duties in the procedure of legal succession to other persons.

4. In the event of making the decision concerning the liquidation of a unitary enterprise, the owner of its property shall appoint a liquidation commission .

From the moment of the appointment of a liquidation commission the powers relating to the management of the affairs of the unitary enterprise shall pass to it. The liquidation commission shall act in court in the name of the unitary enterprise which is being liquidated.

5. In the event when during the liquidation of a state or municipal enterprise it is stated that it is unable to satisfy in full the demands of the creditors, the director of that enterprise or the liquidation commission shall appeal to a court of arbitration with a petition to the effect that the state or municipal enterprise be deemed bankrupt.

6. The procedure of the liquidation of a unitary enterprise shall be determined by the Civil Code of the Russian Federation, by the present Federal Law, and by other normative legal acts.

7. The liquidation of a unitary enterprise shall be considered to be completed, and the unitary enterprise to have terminated existence, from the moment of making an entry thereof in the unified State register of juridical persons by the agency effectuating State registration of juridical persons.

CHAPTER VI. CONCLUSIVE AND TRANSITORY PROVISIONS

Article ~~36~~**38**. Enactment of the present Federal Law

The present Federal Law shall be enacted from the day of its official publication.

Article ~~37~~**39**. Transitory provisions

1. Until the laws and other normative legal acts that are in effect on the territory of the Russian Federation are brought in conformity with the present Federal Law, the laws and other legal acts shall be applied to the extent that they are not contradictory to the present Federal Law.

The charters of unitary enterprises, from the day of the enactment of the present Federal Law, shall be applied to the extent that they are not contradictory to the present Federal Law.

2. The charters of unitary enterprises shall be brought into conformity with the norms of the present Federal Law before July 1, 2003.

3. The subsidiaries of unitary enterprises created before the enactment of the present Federal Law shall be subject to reorganization in the form of accession to the unitary enterprises that have created them within one year from the day of the enactment of the present Federal Law.

Article ~~38~~**40**. On bringing normative legal acts in conformity with present Federal Law

1. To introduce in Part I of the Civil Code of the Russian Federation (A Collection of Legislative Acts of the Russian Federation, 1994, No 32, P. 3301; 2002, No 12, P. 1093) the following changes and amendments:

in paragraph 3 of Item 2 of Article 48 the words “including subsidiaries” shall be eliminated;

sentence 2 of Item 1 of Article 54 shall have the following wording: “The names of non-commercial organizations, and the cases envisaged by law the names of commercial

organizations shall contain a reference to the character of the activity of the juridical person";

paragraph 2 of Item 1 of Article 113 shall be supplemented by the following words: "with the exception of treasury enterprises";

in Article 114:

Item 4 shall be worded as follows:

«4. The procedure of the formation of the charter fund of an enterprise based on the right of economic jurisdiction shall be determined by the law on State and municipal unitary enterprises";

Item 7 shall be eliminated;

Item 8 shall be considered to be Item 7;

Article 115 shall be worded as follows:

«Article 115. Unitary enterprise based on right of operative management

1. In the instances and in the procedure that are envisaged in the law on State and municipal unitary enterprises, on the basis of State or municipal property a unitary enterprise with the right of operative management may be created (treasury enterprise).

2. The constitutive document of a treasury enterprise shall be its charter confirmed by the empowered State agency or a local self-government agency.

3. The firm name of a unitary enterprise based on the right of operative management shall contain an indication that the enterprise is a treasury one.

4. The rights of a treasury enterprise to the property consolidated to it shall be determined in accordance with Articles 296 and 297 of the present Code and the law on state and municipal enterprises.

5. The owner of the property of a treasury enterprise shall bear subsidiary responsibility for the obligations of that enterprise in case of insufficiency of its property.

6. A treasury enterprise may be reorganized or liquidated in accordance with the law on State and municipal enterprises;

Item 1 of Article **300 shall be worded as follows:**

"1. In the event of transfer of the right of ownership in a unitary enterprise as a property complex to another owner of state or municipal property, this enterprise shall retain the right of economic jurisdiction or the right of operative management in the property belonging to it."

2. The President of the Russian Federation and the Government of the Russian Federation shall bring their normative legal acts in conformity with the present Federal Law.

Annex 2. Amendments to the Model Contract With the Director of a Federal state unitary enterprise

Draft[79]

MODEL

CONTRACT

with the director of a federal state unitary enterprise

Contract

with the director of a federal State **(treasury)** enterprise[80]

_____
_____

(the federal executive agency responsible

_____
_____

for coordination and regulation of the activity

_____
_____

in sector (sphere of management))

_____
_____

hereinafter referred to as "Executive Agency",
in the person of _____,

(surname, name, patronymic of the representative of the Executive Agency)

acting on the basis of _____ on the one hand,

[79] The differences between the text of the present draft contract with the director of a federal state unitary enterprise and the contract confirmed by decree of the Ministry of State Property of 16 February 2000 No 189-r and of 9 June, 2000 No 50-r, are shown in bold print. Comments and explanations are shown in italics.

[80] In accordance with Item 1 of Article 4 of the Law "On state and municipal enterprises", the full firm name of a state unitary shall contain the words "federal state enterprise" or "state treasury enterprise", therefore here and hereinafter the word "unitary" is excluded from the name of an enterprise, and the word "treasury" is inserted.

and

_____
_,

(surname, name, patronymic of the director)

hereinafter referred to as "Director" who shall appointed to the position of

_____
_____

(position – general director, director)

of the federal State executive enterprise

_____
_____,

(the name of the federal State **(treasury)** enterprise)

hereinafter referred to as "Enterprise", on the other hand, have concluded this Contract concerning the following.

1. Subject of Contract

This contract shall regulate the relations between the Executive Agency and the Director dealing with the execution by the latter of the duties of the General Director (Director) of the federal State **(treasury)** enterprise.

2. The Competence and the right of the Director

2.1. The Director shall be the sole executive organ of the enterprise and shall act on the basis of one-man management.

2.2. The Director shall on his own resolve all the issues dealing with the enterprise's activity, except those issues that by legislation of the Russian Federation are placed within the competence of other organs.

2.3. The Director shall:

2.3.1. Organize the operation of the enterprise.

2.3.2. Act without a power of attorney in the name of the enterprise, represent its interests on the territory of the Russian Federation and beyond its borders.

2.3.3. Dispose of the property of the enterprise in the procedure and within the limits established by the legislation of the Russian Federation, t**he Charter of the enterprise and the present Contract** ***(Ed.)***.

2.3.4. Conclude contracts, including labour contracts. **The hiring of the Chief Accountant, making, changing and terminating the contract with him shall be coordinated by the Director with the Executive Agency.**

This Item has been changed in accordance with Item 8 of Article 20 of the Law "On State and municipal unitary enterprises".

2.3.5. Issue powers of attorney, effectuate other legal actions.

2.3.6. Open settlement accounts and other accounts with banks.

2.3.7. Confirm the staff list of the enterprise.

2.3.8. Apply to the personnel of the enterprise disciplinary penalty measures and incentives according to the existing legislation of the Russian Federation.

2.3.9. Delegate his rights to his deputies, distributes among them the duties.

2.3.10. Within his competence, issue orders and decrees, and give instructions that shall be mandatory to all the personnel of the enterprise, confirm the provisions concerning representations and branches[81].

2.3.11. Determine in accordance with the legislation of the Russian Federation the content and volume of the information to be considered as commercial secrets of the enterprise, as well as determine the procedure for its protection.

2.3.12. Prepare motivated proposals as to the changes of the charter fund of the enterprise.

2.3.13. In the event of terminating his contract, shall submit all documentation to the newly appointed director of the enterprise.

2.3.14. Resolve other issues placed by the legislation of the Russian Federation, the Charter of the enterprise and the present Contract within the competence of the Director.

3. The obligations of the parties.

3.1. The Director shall be obliged to:

The expansion and more detailed development of the list of obligations and the introduction of serious limitations on the powers of the director of a State unitary enterprise will make it possible for the State agencies to more efficiently stand for the interests of the State and control the activity of the director of a State unitary enterprise. It should be noted that a considerable part of the newly introduced limitations duplicate the corresponding provisions of the draft model charter of a federal state unitary enterprise, however in a situation when the charters of a considerable number of federal state unitary enterprises do not contain such limitations, such an approach (until the enactment of the Law "On State and municipal unitary enterprises" and making appropriate changes in the charters of State unitary enterprises) seems to be the only correct one.

3.1.1. Manage the enterprise in good faith and reasonably, ensure that the ***economic efficiency indices of the activity (Ed.)*** set for the enterprise be met, and exercise other powers placed by legislation, the Charter of the enterprise and the present Contract within his competence.

The wording of Item 3.1.1. was changed in accordance with Decree of the Government of the RF of 3 February, 2000 No 104 "On tightening control over the activity of a federal unitary enterprise and managing the shares of open joint-stock societies that are federal property" and the provisions of the Law "On State and municipal unitary enterprises". The term "main economic indices" was replaced by "economic efficiency indices" .

3.1.2. When executing his official duties, be guided by the legislation of the Russian Federation, the Charter of the enterprise and the present Contract.

[81] In accordance with the Law "On state and municipal enterprises", unitary enterprises may not have subsidiaries, therefore any mentions of subsidiaries here and hereinafter were excluded.

3.1.3. Ensure timely and high-quality fulfillment of all the contracts and obligations of the enterprise.

3.1.4. Ensure the development of the material and technical base and increase the volume of paid works and services.

3.1.5. Ensure that the results of the enterprise's activity meet the **economic efficiency indices of the activity (Ed.)** set in the established procedure. Avoid making decisions that may result in the enterprise's insolvency (bankruptcy).

The wording of Item 3.1.5. was changed according to Decree of the Government of the RF of 3 February, 2000 No 104 "On tightening control over the activity of a federal unitary enterpris and managing the shares of open joint-stock societies that are federal property" and the provisions of the Law "On State and municipal unitary enterprises". The term "main economic indices" was replaced by "economic efficiency indices".

3.1.5a. Ensure profitable operation of the enterprise and timely transfers to the federal budget of a share of the profit from the use of the enterprise's property in economic jurisdiction, in the amount and according to the time schedule that shall be every year determined by the Executive Agency in accordance with the existing legislation of the Russian Federation and the Charter of the enterprise[82].

Item 3.1.5a. was introduced in accordance with Decrees of the Government of the RF of 9 September 1999 No 1024 "On the concept of the management of State property and privatization in the RF" and of 3 February, 2000 No 104 "On tightening control over the activity of a federal unitary enterprise and managing the shares of open joint-stock societies that are federal property", and the provisions of the Law "On State and municipal unitary enterprises".

3.1.5b. Ensure that the enterprise operate in accordance with the budget of incomes and expenses approved by the Executive Agency[83];

3.1.6. Ensure that the movable and immovable property consolidated to the enterprise be kept in an appropriate condition, carry out timely capital and current repairs of the immovable property.

3.1.7. Ensure that all the workplaces are adequately equipped with technical appliances and create therein working conditions that are in conformity with the uniform intersectoral and sectoral rules of occupational safety, and the sanitary norms and rules that are to be developed and approved in the procedure established by legislation.

3.1.8. Ensure timely and in full payment of all the taxes, fees and mandatory payments to the budget of the Russian Federation, the appropriate budgets of subjects of the Russian Federation and municipal formations, and to extrabudgetary funds, as established by the legislation of the Russian Federation.

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[82] In accordance with Item 2 of Article 19 of the Law "On state and municipal enterprises", Item 3.1.5б. is included only in the contract with the director of federal treasury enterprises.

[83] In accordance with Item 2 of Article 19 of the Law "On state and municipal enterprises", Item 3.1.5б. is included only in the contract with the director of federal treasury enterprises.

3.1.9. Ensure timely payment of salaries, bonuses, allowances and other payments in the monetary form to the workers of the enterprise.

3.1.10. Not disclose information considered to be professional or commercial secret that has become known to him as a result of the execution of his official duties.

3.1.11. Ensure that civil defense requirements be met.

3.1.12. Complete all transactions with the enterprise's immovable property, including lease, sale, barter, gift, pledge or transfer for temporary use, contributions to the charter capital of other juridical persons, or otherwise dispose of the immovable property **(reconstruction of premises, changes of profile, demolition, etc.)** exclusively in the event of the consent on the part of the federal agency for managing State property (or its territorial agency), **coordinated with the Executive agency[84].**

3.1.12a. Complete all transactions with shares (or participatory shares, shares), including lease, sale, barter, gift, pledge or transfer for temporary use, that were transferred to the enterprise by its owner, purchased at the expense of the enterprise's profit, received by the enterprise in other ways, exclusively in the event of consent on the part of the federal agency for managing State property (or its territorial agency), coordinated with the Executive Agency[85].

3.1.12b. Complete big transactions (a transaction or several interrelated transactions dealing with acquisition, alienation or a possibility of alienation by the enterprise, directly or indirectly, of property whose value constitutes more than ten percent of the charter fund of the unitary enterprise and by more than 50,000 times exceeds the minimum salary as determined by a federal law[86]) with consent of the federal agency for managing state property coordinated with the Executive Agency[87].

3.1.12c. Make borrowings by placing bonds or issuing bills, with consent of the Executive Agency[88].

3.1.12d. Complete all transactions with the property of the enterprise, including lease, sale, barter, gift, pledge or transfer for temporary use, contributions to the charter capital of other juridical persons, or otherwise dispose of the property of the enterprise exclusively in the event of the consent on the part of the federal

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[84] In accordance with Article 18 of the Law "On state and municipal enterprises", Item 3.1.12. shall be included only in the contract with the director of a federal state enterprise.

[85] In accordance with Article 18 of the Law "On state and municipal enterprises" Item 3.1.12a. shall be included only in the contract with the director of a federal state enterprise.

[86] These values can be regarded as baseline – they are cited in Article 23 of the Law "On state and municipal enterprises"; at the same time in accordance with Article 18 these values may be magnified depending on the enterprise's specificity (scope of business, sector, etc.).

[87] In accordance with Article 24 of the Law "On state and municipal enterprises" Item 3.1.12c. shall be included only in the contract with the director of a federal state enterprise.

[88] In accordance with Item 1 of Article 24 of the Law "On state and municipal enterprises" this Item shall be included only in the charter of a federal state enterprise.

agency for managing state property (or its territorial agency), coordinated with the Executive Agency[89].

The principal idea underlying the changes of the wording of Item 3.1.12. and the introduction of Items 3.1.12a.-3.1.12г. consists in extending to the powers of the director of a State unitary enterprise the limitations similar to the limitations imposed on the executive body of a joint-stock society in accordance with the Law «On joint-stock societies", and limiting the powers of the State's representative in joint-stock societies with the participation of the State, in accordance with Decree of the President of the RF of 10 June 1994 No 1200 "On some issues dealing with ensuring state management of the economy", with documents, as well as coordination of the draft contract with the provisions of Articles 6, 18, 23, 24 of the Law "On state and municipal unitary enterprises" and the draft charter of a State unitary enterprise.

3.1.13. Ensure that the property of the enterprise, immovable including, be used according to the purposes corresponding to the activities of the enterprise as determined by the charter of the enterprise, as well as ensure that the budgetary and extrabudgetary funds allocated to the enterprise be used according to its purposes.

3.1.14. Submit reports on the activity of the enterprise in the procedure and according to the time schedule established by the legislation of the Russian Federation.

Annually submit for the approval of the Executive Agency a business plan for the development of the enterprise.

3.1.15. Submit to the Executive Agency proposals concerning the ways to achieve the purposes of the enterprise's activity, as well as the information on current and prospective planning of the financial and economic, economic and other results of the enterprise's activity.

It would be more appropriate to unite the last paragraph of Item 3.1.14. and Item 3.1.15. as a separate Item and word as follows.

3.1.15a. Submit to the Executive Agency proposals concerning the ways to achieve the purposes of the enterprise's activity. Develop and submit for the approval of the Executive agency a programme (plan) of current (annually) and prospective (according to the time schedule established by the Executive Agency) activity of the enterprise. Submit to the Executive Agency the information concerning the implementation of the current and prospective activity of the enterprise in the procedure and according to the time schedule established by the Executive Agency.

This item was included in accordance with Decrees of the Government of the RF of 9 September 1999 No 1024 "On the concept of the management of state property and privatization in the RF" which stipulated that the programmes of current and prospective activity shall become one of the principal mechanisms of managing state unitary enterprises by State agencies, and No 228 of 10 April, 2002 "On measures aimed at improving the efficiency of the use of federal property consolidated to federal

[89] In accordance with Article 19 of the Law "On state and municipal enterprises" Item 3.1.12d. shall be included only in the contract with the director of a federal treasury enterprise.

state unitary enterprises in economic jurisdiction" which established the procedure of the development and confirmation of such programmes, as well as with the provisions of Article 20 of the Law "On state and municipal unitary enterprises».

It should be noted that Decree No 228 addressed only annual programmes of activity, whereas no mention was made of the issues of the development and implementation of prospective programmes of development which are no less important.

Also it is necessary to note that the terms used must be brought in conformity: in Decree No 228 the term "programme of activity" is used, whereas in Article 20 of the Law – "plan (programme) of financial and economic activity".

3.1.15б. Develop and submit budgets of incomes and expenses for the approval of the Executive Agency[90];

The inclusion of Items 3.1.16.-3.1.18. in the list of duties will to a certain extent protect the State from unfair actions of the director of a state unitary enterprise.

3.1.16. During the period of operation of this contract the Director of the enterprise shall not have the right to[91]:

- **be the founder (participant) of a juridical person,**
- **hold office and perform other paid activity in State agencies, agencies of local self-government, commercial and non-commercial organizations, except academic, research and other creative activity, engage in entrepreneurial activity, act as a sole executive organ or a member of a collegial executive organ of a commercial organization, except the cases when participation in the organs of a commercial organization is part of the official duties of this director and is determined by the Executive Agency.**
- **take part in strikes;**
- **use for his own purposes the property of the enterprise, the incomes from the use of the property of the enterprise, the product manufactured and the profit obtained.**

3.1.17. To have no personal interest (except for the reward determined by the present Contract) in the transactions concluded by the enterprise, acting only in the role of a representative of the latter. In the event of a situation when the conclusion of a certain transaction involves the Director's personal interests or the interests of his spouse, parents, children, brothers, sisters and (or) their affiliated persons recognized as such in accordance with the legislation of the Russian Federation, the Director shall, in the procedure and according to a time schedule established by the

[90] In accordance with Item 2 of Article 2 19 of the Law "On state and municipal enterprises" Item 3.1.15б. shall be included only in the contract with the director of a federal treasury enterprise.

[91] This Item was included in the draft contract in accordance with Article 21 of the Law "On state and municipal enterprises".

Executive Agency, inform the Executive agency thereof and suspend the transaction until the latter makes a decision[92].

The norms contained in Item 3.1.17. allow the Executive Agency under certain conditions, for example in the event of an obvious benefit for the enterprise, to give permission for such a transaction to be effectuated. In this connection it should be noted that this approach creates the conditions for corruption and personal enrichment of officials. Therefore simultaneously with introducing such norms it is necessary to more carefully develop the mechanisms of decision-making and control over such transactions.

3.1.18. The Director, during the period of operation of this contract, in the procedure and according to a time schedute established by the Executive Agency, shall submit the following information to the latter[93]:

- **his incomes and property;**
- **the juridical persons wherein he, his spouse, parents, children, brothers, sisters and (or) their affiliated persons recognized as such in accordance with legislation of the Russian Federation own a total of twenty or more percent of shares (or participatory shares, shares);**
- **the juridical persons wherein he, his spouse, parents, children, brothers, sisters and (or) their affiliated persons recognized as such in accordance with legislation of the Russian Federation hold office in administrative bodies;**
- **known to him planned or being effected transactions in which he may be considered to have an interest.**

The Inclusion of Item 3.1.18. in the list of responsibilities of the director of a State unitary enterprise must, of course, be accompanied by guarantees of non-disclosure of obtained information by the Executive Agency. With this purpose Item 3.2.10. was added to the draft contract. Besides, it is necessary to adopt legal acts which could impose appropriate limitation on the access to that information and personal responsibility of the officials for disclosure of the obtained information.

3.2. The Executive Agency shall be obliged to:

3.2.1. Not interfere with the operative and administrative activity of the Director, except in the cases envisaged by the legislation of the Russian Federation, **the Charter of the enterprise and the present Contract *(Ed.)*.**

3.2.2. Within one month provide answers to the appeals on the part of the Director concerning issues that need to be agreed upon (resolved) with the Executive Agency.

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[92] This Item was included in the draft contract in accordance with Item 1 Article 22 of the Law "On state and municipal enterprises".

[93] This Item was included in the draft contract in accordance with Item 2 of Article 22 of the Law "On state and municipal enterprises".

3.2.3. Take appropriate measures in the event of the Director appealing on issues dealing with a potential insolvency of the enterprise.

3.2.4. Take all the measures necessary for a timely transfer to the enterprise's account of the budgetary funds allocated to pay for **a State order**[94] ***(Ed.)*** fulfilled by the enterprise[95].

3.2.5. To determine, in the established procedure, the amount of the profit of the enterprise which is due to be paid to the federal budget.

3.2.6. To provide the Director with appropriate work conditions needed for efficient work.

3.2.7. To establish, upon an agreement with the federal agency for managing State property, the requirements as to the form, the content and the periodic frequency of submitting the proposals concerning the ways to achieve the purposes of the activity of the enterprise which would be mandatory for the Director, and the rules and the procedure for their evaluation.

3.2.8. To certify the Director in accordance with the requirements determined by the legislation of the Russian Federation.

3.2.9. To make, in the established procedure, the decisions concerning calling the Director to account for improper performance of his duties.

3.2.10. Not to disclose the information given by the Director **in accordance with Item 3.1.18. of the present Contract.**

See comments to Item 3.1.18.

4. Payment for labour and social guarantee to the Director

The currently existing system of payment for the labour of the director lacks flexibility as far as the incentives for the director's activity are concerned, and needs to be improved (the system of payment for the labour of the director which is being applied by the Ministry of State Property of Russia has only two components – salary and a share of the enterprise's profit). It is necessary to implement an extensive system of bonuses with regard to the specificity of the tasks being set for an enterprise. The amount of these bonuses must depend on the results of the director's operation – the dynamics of the enterprise's profit, the relative success of the implementation of investment projects, economy of resources, the dynamics of an average salary, etc.).

It is assumed that one of the main criteria for paying an additional reward to the director should be the results of the implementation of the programmes (plans) of current and prospective activity of the enterprise. In this connection it must be taken into account that the implementation of prospective investment projects often results in temporary worsening of the enterprise's indices, and this must not be regarded as the grounds for decreasing the amounts of bonuses paid to the director.

4.1. The payment for the labour of the Director consists of his regular salary, a share of the profit of the enterprise determined after all the settlements with the budgets of all

[94] The term "State defense order" was replaced by "State order".

[95] To be included if necessary.

levels have been made, **a bonus for successful implementation of programmes (plans) of current and prospective activity of the enterprise, other kinds of bonuses.**

a) the amount of the salary of the Director shall be[96] _____;

b) the share of the profit of the enterprise shall be _____;

c) the amount of the bonus for successful implementation of the programme (plan) of current activity of the enterprise shall be_____;

d) the amount of the bonus for successful implementation of the programme (plan) of prospective activity of the enterprise shall be_____;

e)

_____

_

(other kinds of bonuses)

4.2. The salary and bonuses to the Director shall be paid simultaneously with the payment of salary to all the workers of the enterprise.

4.3. In the event when the production operation of the enterprise or of its structural subdivision is suspended by the empowered State agency in connection with a violation of the normative requirements for occupational safety and the ecologic or sanitary-epidemiological standards, the Director of the enterprise shall not have the right to receive rewards **envisaged by subitems "b"-"e" of Item 4.1. of the present Contract *(Ed.)*** (from the moment of the suspension of the operation of the enterprise until the moment of liquidation of the violations).

In Item 4.3. the words "for the results of the financial and economic activity" were replaced by "envisaged by subitems "b"-"e" of Item 4.1. of the present Contract". This replacement was due not only to the changed wording of Item 4.1., but also to the fact that the wording "for the results of the financial and economic activity" was not in conformity even with the wording of Item 4.1. of the Model Contract confirmed by the Ministry of o State Property.

4.4. In the event when the Director fails to ensure a timely payment to the workers of the enterprise of all the bonuses, allowances, additional payments and compensations envisaged by legislation and/or the collective contract, the incentives shall not be applied to him until the moment when the arrears on those kinds of payments to the workers of the enterprise are liquidated in full.

4.5. The duration of the annual leave of the Director shall be _____ [97] workdays and may be granted to him either in full or in parts. The exact timing of the annual leave shall be determined by the Director upon an agreement with the Executive Agency.

4.6. When going on the annual leave, to the Director a pecuniary aid shall be paid in the amount of _____.

[96] But not less than the 10-fold amount of the minimum salary.

[97] The duration of the leave shall be at least 30 workdays.

4.7. The Director and his family shall be paid a compensation for moving to another area, as determined by the Contract, in the amount of _____[98].

4.8. In case of the death of the Director his family shall receive a lumpsum payment in the amount of _____.

4.9. In the event of disability the Director shall receive a compensation in the amount of _____.

4.10. In the event of termination of the Contract on the initiative of the Executive Agency on grounds not associated with improper execution by the Director of his duties as envisaged by the present Contract and the legislation of the Russian Federation, a compensation shall be paid to the Director in the amount of _____.

5. The liability of the Director

5.1. The Director of the enterprise shall bear responsibility in the procedure and on the conditions established by the legislation of the Russian Federation and the present Contract.

5.2. For improper execution by the Director of his duties, **the Executive Agency *(Ed.)*** may apply to him the following measures:

a) reproof;

b) reprimand;

c) severe reprimand;

d) dismissal, including on the grounds envisaged by the present Contract;

e) dismissal, including on the grounds envisaged by the present Contract, with a simultaneous submission of an appeal concerning the disqualification of the Director in the procedure established by the Law of the Russian Federation "On disqualification".

The application of a disciplinary penalty envisaged in subitem "e" of Item 5.2. of the draft contract will make it possible for the State administrative agencies, after the enactment of the Law "On disqualification", to respond more adequately to the actions of inconscientious directors of state unitary enterprises.

The disciplinary penalty shall be effective for one year and may be lifted before the expiry of this term on the initiative if the Executive Agency.

From the last paragraph of Item 5.2., the possibility of lifting the disciplinary penalty on the appeal of the staff of the enterprise. We believe that the staff has no right to interfere in the relations between the owner and the director.

The system of disciplinary penalties must be interconnected with the system of rewarding the director of a state unitary enterprise; the penalties may be imposed on him by the owner's representative which will make it possible to apply more efficiently such measures of influencing the directors of state unitary enterprises as reduction or elimination of bonuses.

[98] To be included in the cases when such a move is possible.

It is necessary that the imposition of a certain disciplinary penalty would also result in reduction or elimination of all kinds of incentives until the disciplinary penalty is lifted. Only in that case disciplinary penalties will become a really efficient lever of management and cease to be a formality.

5.2a. The imposition on the Director of a disciplinary penalty envisaged in subitem "a" of Item 5.2. of the present Contract will simultaneously reduce all kinds of rewards and bonuses envisaged in subitems "b"-"e" of Item 4.1. of the present Contract by 25%, those in subitem "b" of Item 5.2. of the present Contract – by 50%, those in subitem "c" of Item 5.2. of the present Contract - by 75%. In the event of imposing on the Director of a disciplinary penalty envisaged in subitems "d" and "e" of Item 5.2. of the present Contract, the rewards and bonuses envisaged in subitems "b"-"e" of Item 4.1. of the present Contract shall not be paid.

5.3. The Director may be brought to material, administrative and criminal responsibility in the cases envisaged by the existing legislation of the Russian Federation.

6. Changes and termination of the Contract

6.1. Each of the parties under the present Contract shall have the right to bring up a question to the other party concerning making changes (corrections) or additions to it, which shall be documented by an additional agreement supplementing the Contract.

6.2. The Contract may be terminated on the grounds envisaged by the labour legislation of the Russian Federation. **The Contract (Ed.)** may be Terminabled by decision of the Executive Agency in the event of:

The list of the grounds for terminating the labour contract (or contract) with the director of a state unitary enterprise should be considerably expanded which will make it possible to more efficiently protect the interests of the State and to respond more severely to the failure by the directors of State unitary enterprises to properly execute their duties

In principle, the possibility to dismiss the director of a state unitary enterprise on the grounds of his nonexecution of any of his duties as determined by the labour contract, or any culpable actions (or lack of action) on the part of the director may be envisaged – certainly with the exception of the instances when this failure to execute the duties occurred due to force majeure circumstances.

a) failure to meet the established economic efficiency indices of the unitary enterprise's activity;

b) failure to ensure that audits are conducted in the established procedure;

c) failure on the part of the Director to meet the employment requirements as found out by the results of his certification;

d) failure to implement the decisions of the Government of the RF or federal executive agencies;

e) effecting transactions with the property in the economic jurisdiction **(operative management) (Ed.)** of the enterprise, with violation of the requirements of legislation and the specific legal capacity of the enterprise as determined by the charter of the enterprise;

f) arrears of wages for more than 3 months accumulated through the Director's fault.

6.3. The Contract with the Director may not be Terminabled if his failure to execute his duties occurred for objective reasons nor depending on the will of the Director.

6.4. The Contract with the Director may be Terminabled in accordance with **Article 81 of the Labour Code of the RF**[99] on other additional grounds for dismissal.

For example:

violation, through the fault of the Director as found our in the procedure established by the legislation of the Russian Federation, of the requirements concerning occupational safety, which entailed a decision made by the director of the State labour inspectorate and a State labour inspector to the effect that the operation of the enterprise or its structural subdivision be suspended, or a court decision to the effect that the enterprise be liquidated, or the operation of its structural subdivision be Terminabled;

failure to ensure the use of the property of the enterprise, immovable including, according to the purposes compatible with the activities of the enterprise as determined by the Charter of the enterprise, as well as failure to use according to the set purposes the budgetary and extrabudgetary funds allocated to the enterprise for more than three months;

disclosure by the Director of the information considered to be employment or commercial secret that has become known to him as a result of his execution of his official duties.

In order to increase the responsibility of the directors of State unitary enterprises, the items cited by way of example must be included in the general list of the grounds for terminating the Contract. Besides, it would be feasible to supplement the list of the grounds for dismissal with the following items.

failure to fulfill, during more than three months, Item 3.1.8. of the present Contract through the fault of the Director determined in the procedure established by the legislation of the Russian Federation;

violation of the responsibilities envisaged in Items 3.1.5a, 3.1.11.-3.1.18. of the present Contract.

Also, it is necessary to discuss the issue of the feasibility of including in the labour contract (or contract) with the director of a federal state unitary enterprise a norm in accordance with which the dismissal of the director shall be a measure without any alternative in the event of certain culpable actions committed by the director, e.g., violation of Items 3.1.10-3.1.11d., 3.1.15.-3.1.18. The lack of any alternatives to the dismissal of the director on these grounds will to a certain extent serve as an insurance against a possible conspiracy between the director of an enterprise and the decision-making State officials, diminish the possibility of pressure being exerted on the latter by interested persons, reduce the opportunities for officials to exert pressure, in their turn, on the culprit director of a State unitary enterprise in order to obtain certain benefits.

[99] The wording was changed due to the enactment of the Labour Code of the RF.

6.5. The present Contract with the Director may be terminated unilaterally by the Executive Agency in the event of the absence of the grounds envisaged in Item 6.2. of the present Contract, but not earlier that one year after the coming into force of the present Contract and not later than six months before its expiry. In this case compensation shall be paid to the Director in accordance with Item 4.10. of the present Contract.

The possibility of terminating the labour contract (or contract) with the director of a State unitary enterprise on the owner's initiative, even in the absence of culpable actions (or lack of action) on the part on the director, is of great importance. The necessity of such a decision can be due to the loss of trust in the currently operating director by the owner, and also to the fact that at a certain stage of the enterprise's development of the implementation of a certain investment project the management of the enterprise might need a person with business qualities and/or knowledge different from that of the currently operating director. Certainly, such a dismissal may be done only with appropriate material compensation.

The limits to the period wherein such a dismissal may be possible were introduced with the purpose of eliminating the possibility of conspiracy between the officials and the directors of enterprises and misuse of this right by state officials.

Besides, it is necessary to develop measures ensuring personal responsibility of the officials in the instances when they make wrong decisions, for example in the event of worsening indices of the enterprise after a replacement of the director.

7. Other provisions of the Contract

7.1. The present Contract signed by both parties shall come into force from the date of the coordination with the federal agency for property management.

7.2. The period of the Contract shall be _____[100].

7.3. As to the part not envisaged by the present Contract the parties shall abide by the legislation of the Russian Federation and the Charter of the enterprise.

8. The parties' addresses and other information

Executive Agency:

_____

_____

(name and address)

Enterprise:

_____

_____

(name and address)

Director:

_____

[100] Not less than 3 years.

General Director (or Director) of the federal state unitary enterprise _____

(name)

_____

(surname, name, patronymic)

Passport: series ____ # _____, issued by _____

Home address: _____

Telephone(s): _____

The Contract signed:

In the name of the Executive Agency:

_____

(position)

_____

(surname, name, patronymic)

STAMP

_____

(signature)

_____

date (day, month, year)

Director:

_____

(surname, name, patronymic)

_____

(signature)

_____

date (day, month, year)

The Contract COORDINATED with the federal agency for property management

_____

(S.N.P., position)

STAMP

_____

(signature)

_____

____

date (day, month, year)

Annex 3. Amendments to the Model Charter of a federal state unitary enterprise

Draft[101]

MODEL
CHARTER
of a federal state unitary enterprise

REGISTERED

_____
(Registering agency)
"____" _____ 20__

Registration № _____

APPROVED
Decree_____
(name of sectoral
_____
federal executive agency
_____
responsible for coordination
_____
and regulation of activity in
_____
sector
_____
(sphere of management))
of "___" _____ 20__ №__

COORDINATED
Decree_____
(name of federal agency
_____
for State property
_____
management)
of "___" _____ 20__ №__

C H A R T E R

of a federal state unitary enterprise

[101] The differences between the text of the present draft model charter of a federal state unitary enterprise and the model charter confirmed by decrees of the Ministry of State Property of Russia of 16 February 2000 No 188-r and of 6 March, 2001 No 548-r, are shown in bold print. Comments and explanations are shown in italics.

_____

—

(full name of the enterprise)

_____

(city)

1. **General provisions**

1.1. **Federal state unitary enterprise**

_____

–,

(full name of the enterprise)

hereinafter referred to as "Enterprise", created (reorganized) in accordance with

_____

—

_____

—

_____

—

(date, number and title of the directive document concerning the creation of the Enterprise)

and shall be the legal successor[102]

_____

—

(name of the previously existing enterprise)

in accordance with _____.

(act of transfer, division balance)

1.2. The firm name of the Enterprise[103]:

in the Russian language:

full name – federal State **(treasury)** enterprise[104]_____

_____

_____

[102] To be included in case of a reorganization.

[103] In case of a necessity, to be stated in another foreign language or one of the languages of the peoples of the Russian Federation.

[104] In accordance with Item 1 of Article 4 of the Law "On state and municipal enterprises", the full firm name of a state unitary enterprise must contain the words "federal state enterpris" or "federal treasury enterpris", therefore the word "unitary" was excluded from this Item, and the word "treasury" was introduced.

(must contain an indication as to the character of the activity and the owner of the property)

abbreviated name - _____

in the English language:

full name - Federal state unitary enterprise _____

abbreviated name - _____*(Ed.)*.

1.3. The Enterprise shall be a commercial organization.

1.4. The Enterprise shall be subordinated to

_____

_»

(name of the federal executive agency responsible for coordination and regulation of the activity in the sector (sphere of management))[105].

The founder of the Enterprise shall be the Russian Federation[106]. The functions of the founder of the Enterprise **and the management of the Enterprise *(Ed.)*** shall be executed by the federal agency for state property management and the Executive Agency in accordance with the existing legislation of the Russian Federation.

1.5. The Enterprise shall be a juridical person, have an autonomous balance sheet, a settlement account and other accounts with banks, a round stamp with its name, a letterdirector stamp, letterforms, a firm name, a *trademark (service mark)*[107].

1.6. The Enterprise shall be liable for its obligations with all of its property. The Enterprise shall not be liable for the obligations **of its owner (the Russian Federation) *(Ed.)*** and its organs, and **its owner (the Russian Federation) *(Ed.)*** and its organs shall not be liable for the obligations of the Enterprise, except in the cases envisaged by the legislation of the Russian Federation ***(Ed.)*[108]****.**

1.7. The Enterprise in its own name shall acquire property and personal non-property rights and bear responsibilities, shall be a plaintiff or defendant in a court or an arbitrage court in accordance with the existing legislation of the Russian Federation.

1.8. Location of the Enterprise: _____

(location of State registration)

Postal address: _____.

1.9. The Enterprise shall acquire the rights of a juridical person from the moment of its State registration.

---

[105] Hereinafter – Executive Agency.

[106] In accordance with Item 1 of Article 8 of the Law "On state and municipal enterprises", the full firm name of a state unitary enterprise must contain the words "federal state enterpris" or "federal treasury enterpris", therefore the word "unitary" was excluded from this Item, and the word "treasury" was introduced.

[107] To be included if necessary.

[108] In accordance with Item 1 of Article 2 of the Law "On state and municipal enterprises", unitary enterprises may not have subsidiaries, therefore any mention of subsidiaries was excluded from this Item.

1.10. The Enterprise shall have (or not have)[109]:

а) branches (separate subdivisions)

_____

(full name, postal code and postal address)

б) representations

_____

(full name, postal code and postal address)

2. The purposes and the subject of the activity of the Enterprise

2.1. The Enterprise has been created with the purposes of satisfying social needs as a result of its activity, and of generating profit.

2.2. To achieve the purposes specified in Item 2.1 of the present Charter, the Enterprise shall perform, in the procedure established by the legislation of the Russian Federation, the following types of activity (the subject of the Enterprise's activity):

_____

_____

_____

(specify exactly the types of activity)

The Enterprise shall not have the right to perform any types of activity which are not envisaged by the present Charter.

The wording of the last paragraph of Item 2.2. was changed. In the version of the Ministry of State Property it was as follows: "the Enterprise shall not have the right to perform the types of activity not envisaged by the present Charter, except activities aimed at creating objects of socio-cultural purposes and housing construction in order to satisfy the needs of the workers of the Enterprise". If these types of activity are needed by a certain enterprise they may be included in the list along with the others. However as far as the majority of enterprises are concerned there is no need to allow such types of activity. Besides, excessive freedom of action might give rise to various misdeeds on the part of the directors of State unitary enterprises.

It should also be noted that in order to limit the excessive freedom of action for the directors of State unitary enterprises, when making the list of the principal types of activity of the enterprise, the words "other types of activity not forbidden by the the legislation of the Russian Federation must not be included in that list .

[109] In accordance with Item 1 of Article 2 of the Law "On state and municipal enterprises", unitary enterprises may not have subsidiaries, therefore Subitem "c" – "Subsidiaries" - was excluded from this Item.

2.3. The right of the Enterprise to engage in an activity for which in accordance with the legislation of the Russian Federation a special permission is required (a license) shall arise from the moment the Enterprise obtains it, or within the time period specified by the license, and shall Terminable after its expiry, if not otherwise Stated by the legislation of the Russian Federation.

3. Property of the Enterprise

3.1. The property of the Enterprise shall be in federal ownership, shall be indivisible and may not be distributed according to contributions (or participatory shares, shares), including among the workers of the Enterprise, **shall be consolidated to the Enterprise *(Ed.)*** by right of economic jurisdiction (**operative management**) ***(Ed.)*** and reflected in its separate balance sheet[110].

The composition of the property of the Enterprise may not include the property of another form of ownership.

The plot of land wherein the Enterprise is located shall be granted to it for

_____

(permanent or fixed-term use, including on lease)

in accordance with _____.

(decision of a State or municipal agency)

3.2. **The right in the property consolidated to the Enterprise by right of economic jurisdiction (or operative management) shall arise from the moment of the transfer of the property, if not envisaged otherwise by a federal law or determined by decision of the owner *(Ed.)*[111]**.

The fruits, product and revenues received as a result of the use of property in economic jurisdiction (**operative management**) ***(Ed.)*** of the Enterprise, as well as the property acquired by it at the expense of its profit, shall be federal property and in the economic jurisdiction **(or operative management)** ***(Ed.)*** of the Enterprise.

3.3. As of the moment of confirmation of the present Charter, the amount of the net assets of the Enterprise shall be _____

(specify the sum in roubles in words)

including the immovable property object by object, according to Annex № 1 of the present Charter.

[110] In accordance with Item 1 of Article 2 of the Law "On state and municipal enterprises", unitary enterprises may not have subsidiaries, therefore Subitem "c" – "Subsidiaries" - was excluded from this Item.

[111] The wording was changed in accordance with Item 2 of Article 11 of the Law "On state and municipal enterprises".

The amount of the charter fund of the Enterprise shall be _____[112].

3.4. If after the end of a financial year the value of the net assets of the Enterprise shall become less than the amount of the charter fund, the agency that has made the decision concerning the creation of the Enterprise shall, in the established procedure, decrease the amount of the charter fund[113].

3.5. **An increase of the charter fund of the Enterprise shall be possible only after its formation in full, including after the transfer to the Enterprise of immovable and other property to be consolidated to it by right of economic jurisdiction.**

An increase of the charter fund of the Enterprise may be done by means of an additional transfer of property by the owner, as well as the revenues received as a result of the Enterprise's activity *(Ed.)*[114].

3.6. In the event of making a decision as to decreasing the amount of the charter fund the Enterprise shall be obliged to inform its creditors of it in writing[115].

3.7. The property of the unitary enterprise shall be formed by:

- **the property consolidated to the unitary enterprise by right of economic jurisdiction (operative management);**
- **the incomes of the Enterprise resulting from its activity;**
- **other sources that do not contradict the legislation of the Russian Federation *(Ed.)*[116].**

3.8. The Enterprise shall have the right to sell, lease, pledge or transfer for temporary use, contribute, as a contribution, to the charter (or contributed) capital of economic societies, partnerships and non-commercial organizations, or otherwise dispose of its immovable property (barter, gift, reconstruction, change of profile, demolition, etc.), as well as write it off its balance sheet only with the permission of the federal agency for State property management coordinated with the Executive Agency.

The Enterprise shall have the right to effect all kinds of transactions (acquisition, alienation, pledge, etc.) with shares (or participatory shares, shares) or

[112] In accordance with Item 5 of Article 12 of the Law "On state and municipal enterprises", this paragraph shall be included only in the Charter of federal state enterprises.

[113] 113 In accordance with Item 5 of Article 12 of the Law "On state and municipal enterprises", Item 3.4. shall be included only in the Charter of federal state enterprises.

[114] In accordance with Item 5 of Article 12 of the Law "On state and municipal enterprises", Item 3.5. shall be included only in the Charter of federal state enterprises. The wording was changed in conformity with Items 1 and 2 of Article 14.

[115] In accordance with Item 5 of Article 12 of the Law "On state and municipal enterprises", Item 3.6. shall be included only in the Charter of federal state enterprises.

[116] The wording of Item 3.7. was changed in conformity with Item 1 of Article 11 of the Law "On state and municipal enterprises".

other securities only with the permission of the federal agency for State property management coordinated with the Executive Agency.

The Enterprise shall have the right to dispose on its own of all the other property consolidated to it, as well as write it off from its balance sheet, if not otherwise provided for by the legislation of the Russian Federation and the present Charter. In this connection, the writing-off of quickly deteriorating and low-value objects shall be done by the Enterprise on its own, while that of equipment and means of transportation – with the permission of the Executive Agency.

The Enterprise shall have the right to effect big transactions (a transaction or several interrelated transactions involving acquisition, alienation or the possibility of alienation by the Enterprise of the property whose value constitutes more than ten percent of the charter fund of the unitary enterprise or by more than 50,000 times exceeds the minimum salary as determined by a federal law[117]) with the permission of the federal agency for State property management coordinated with the Executive Agency[118].

3.8a. The Enterprise shall have the right to alienate or otherwise dispose of its property only with the permission of the federal agency for State property management coordinated with the Executive Agency[119].

In order to organize an efficient system of management and control over the activity of state unitary enterprises and to limit excessive freedom of action for the directors of these enterprises, the charter of a state unitary enterprise must contain norms that would guarantee safety of state property and protect this property from "non-purpose-oriented" use. The most critical, from the point of view of potentially negative consequences for an enterprise, are various operations involving immovable property and securities. Therefore the transactions with these types of property must be effected not only with the permission of the federal agency for State property management but also in coordination with the Executive Agency whose representatives directly control the activity of the enterprise, have better knowledge of the situation and are able to estimate the feasibility of certain actions. The imposition of more severe limitations on transactions with securities is associated with the need for a greater control over the enterprise's operation in the rather risky and specific business sphere.

It should be noted that Articles 6, 18 and 23 of the Law "On State and municipal unitary enterprises" do impose such limitations on the activity of unitary enterprises,

[117] These can be regarded as baseline values – they are cited in Article 23 of the Law "On state and municipal enterprises", at the same time in accordance with Article 18 these values may be increased depending on the specificity of an enterprise (scope of business, sector, etc.).

[118] In accordance with Article 18 of the Law "On state and municipal enterprises", Item 3.8. shall be included only in the Charter of federal state enterprises.

[119] In accordance with Article 19 of the Law "On State and municipal enterprises", Item 3.8a. shall be included only in the Charter of federal state enterprises. It should be noted that in accordance with Article 19 of the Law in the Charter of a treasury enterprise limitations on transction may be included similar to the limitations stipulated in Item 3.8.

whereas the limitations proposed here are more strict, which however is allowed by Article 18 of that Law.

3.9. The rights of the Enterprise to the objects of intellectual property created in the process of its economic activity shall be regulated by the legislation of the Russian Federation.

3.10. The Enterprise shall on its own dispose of the results of its production activity, its product (except in the cases determined by the legal acts of the Russian Federation), its earned net profit retained by the Enterprise after paying the taxes established by the legislation of the Russian Federation and making other mandatory payments, and the transfer to the federal budget of a share of profit from the use of the property of the Enterprise **in the amount and according to the time schedule determined by the legislation of the Russian Federation *(Ed.)***.

By decision of the federal agency for State property management *(Ed.)* the share of net profit left at the disposal of the Enterprise may be allocated to increase the charter fund of the Enterprise[120].

3.10a. **The procedure of distributing the incomes of the Enterprise shall be determined by the federal agency for State property management in coordination with the Executive Agency[121].**

3.11. The share of net profit left at the disposal of the Enterprise shall be used by the Enterprise in the established procedure, including[122]:

- implementation and mastering of new equipment and technologies, occupational safety and environment protection measures;
- creation of the funds of the Enterprise, including those that are used to cover losses;
- development and expansion of the financial and economic activity of the Enterprise, augmentation of its circulating assets;
- construction, reconstruction, renovation of capital assets;
- research and research-and-development activity[123], studies of the market situation, consumer demand, marketing
- purchases of foreign currency, other currency and material valuables, securities;
- promotion of the products and services of the Enterprise;

[120] In accordance with Items 1and 2 of Article 17 of the Law "On state and municipal enterprises", Item 3.10. shall be included only in the Charter of federal state enterprises.

[121] In accordance with Item 3 of Article 17 of the Law "On state and municipal enterprises", Item 3.10a. shall be included only in the Charter of federal treasury enterprises.

[122] In accordance with the Law "On state and municipal enterprises", Item 3.11. shall be included only in the Charter of federal state enterprises.

[123] To be included if necessary.

- purchases and construction of housing (or sharing) for those workers of the Enterprise who need to improve their housing conditions in accordance with the legislation of the Russian Federation;
- material incentives, training and professional improvement of the staff of the Enterprise;

_____.

(specify other areas for the use net profit, including with regard to the provisions of the collective contract)

3.12. The Enterprise shall create a reserve fund.

The amount of the reserve fund shall be no less than ___ percent of the charter fund of the Enterprise, if not Stated otherwise by the legislation of the Russian Federation.

The reserve fund of the Enterprise shall be formed by means of annual deductions in the amount of ___ percent of the share of net profit retained by the Enterprise until the amount determined in this Item of the Charter is achieved, if not Stated otherwise by the legislation of the Russian Federation.

The reserve fund of the Enterprise shall be used to cover its losses, in the event of absence of other funds, and may not be used for other purposes.

3.13. The Enterprise shall have the right to create other funds from the profit retained by the Enterprise in the amounts allowed by the existing legislation of the Russian Federation, including:

- the social welfare fund in the amount of _____[124] which shall be used to resolve the issues dealing with improving the health of the workers of the Enterprise, including prevention of occupational diseases;
- the housing fund in the amount of _____[125], which shall be used to purchase dwellings for those workers of the Enterprise who need to improve their housing conditions**;**
- the fund of material incentives for the workers of the Enterprise in the amount of _____[126] which shall be used to provide material incentives for the workers of the Enterprise.

4. The rights and the duties of the Enterprise

4.1. The Enterprise shall build its relations with other organization and citizens in all spheres of economic activity on the basis of agreements and contracts.

[124] The exact amounts of the said funds, the procedures of their formation and use shall be established by a collective contract on the basis of the existing legislation of the Russian Federation.

[125] The amount and the procedures of the formation and use of this fund shall be established by a collective contract on the basis of the existing legislation of the Russian Federation.

[126] The amount and the procedures of the formation and use of this fund shall be established by a collective contract on the basis of the existing legislation of the Russian Federation.

The Enterprise shall be free to choose the subject and the content of contracts and obligations or any forms of economic relationships which do not contradict the legislation of the Russian Federation and the present Charter.

4.2. The Enterprise shall set the prices and tariffs on all the kinds of produced works, services, manufactured and realized product in accordance with the normative legal acts of the Russian Federation.

4.3. To achieve the purposes determined by the Charter, the Enterprise shall have the right in the procedure established by the existing legislation of the Russian Federation to do the following[127]:

- create branches and **open *(Ed.)*** representations **in coordination with the federal agency for State property management and the Executive Agency[128]**;
- confirm provisions on branches and representations, appoint their directors, **in coordination with the federal agency for State property management and the Executive Agency** to make decisions concerning reorganization and liquidation of **its branches and representations**;
- conclude all kinds of contracts with juridical and physical persons that do not contradict the legislation of the Russian Federation or the purposes and the subject of the activity of the Enterprise, **as well as the requirements stipulated in Item 3.8. of the present Charter;**
- **effect transactions that involve granting loans, giving suretyship and guarantees, other types of encumbrance, assignment of the right of demand, transfer of debt with the consent of the Executive Agency;**
- **conclude contracts of simple partnership with the consent of the Executive Agency;**
- **act as a founder (or a participant) of economic societies or other juridical persons with the consent of the Executive Agency;**
- **make borrowings by placing bonds and issuing bills with the consent of the Executive Agency[129];**
- acquire or lease capital and circulating assets with available financial resources, credits, loans and other sources of financing;
- **sell, lease, pledge, contribute to the charter (or contributed) capital of economic societies, partnerships and non-commercial organizations, or**

[127] In accordance with Item 1 of Article 2 of the Law "On state and municipal enterprises", unitary enterprises may not have subsidiaries, therefore the subitems concerning subsidiaries were excluded from this Item.

[128] In accordance with Item 1 of Article 5 of the Law "On state and municipal enterprises", a unitary enterprise may create branches and open representations only in coordination with the owner.

[129] In accordance with Item 1 of Article 24 of the Law "On state and municipal enterprises", this item shall be included only in the Charter of federal state enterprises.

otherwise dispose of its property, as well as write it off from the balance sheet in the procedure and within the limits established by the legislation of the Russian Federation and the present Charter. The transfer of the property shall be done by making an act of transfer-acceptance with regard to the requirements stipulated in Item 3.8. of the present Charter;

- engage in foreign economic activity **in accordance with the existing legislation of the Russian Federation *(Ed.)***;
- ensure material and technical provision of production and develop the objects of the social sphere;
- plan its activity and determine the prospects of development on the basis **of the economic efficiency indices of activity established for it**[130] ***(Ed.)***, the existing demand for the works performed, services rendered and product manufactured;
- determine and implement the forms and systems of payment for labour, the number of the staff, the structure of the staff and the staff list;
- establish for its workers additional annual leaves, shorter working hours and other social privileges in accordance with the existing legislation of the Russian Federation;
- determine the amount of the funds allocated to pay for the labour of the workers of the Enterprise, to social and technological development;
- _____
  ___

_____

_____;

(specify other rights of the Enterprise to perform certain kinds of activity)

The principal idea behind these changes of the wording of and adding new subitems to Item 4.3. is to strengthen the norms that guarantee safety of State property and protect that property from "non-purpose-oriented" use, to extend to the powers of the director of a State unitary enterprise limitations similar to the limitations imposed on the executive body of a joint-stock society in accordance with the Law "On joint-stock societies" and to the limitations imposed on the representative of the State in joint-stock societies with the participation of the State in accordance with Decree of the President of the RF of 10 June, 1994 No 1200 "On some issues dealing with the provision of State management of the economy", as well as bringing this Item in conformity with the provisions of Articles 5, 6 and 18 of the Law "On State and municipal unitary enterprises"

[130] The words "basic economic indices" were replaced by "economic efficiency indices of the activity" in accordance with Decree of the Government of the RF of February 3, 2000 No104 "On tightening control over the activity of federal unitary enterprises and managing the shares of open joint-stock societies that are federal property" and the Law "On state and municipal enterprises".

4.4. The Enterprise shall have the right to attract citizens for performing certain tasks on the basis of labour contracts and other contracts determined by civil legislation.

4.5. The Enterprise shall effect other rights that are not contrary to the legislation of the Russian Federation, the purposes and the subject of the activity of the Enterprise, and bear responsibilities, and may be brought to responsibility on the grounds and in the procedure established by the legislation of the Russian Federation.

4.6. The Enterprise shall effect measures dealing with civil defense and mobilization in accordance with the legislation of the Russian Federation.

4.7. The Enterprise shall be obliged to:

- **develop and submit for the confirmation by the Executive Agency a programme (plan) of current and prospective activity of the Enterprise. Submit to the Executive Agency the information on the implementation of the programme (plan) of current and prospective activity of the Enterprise in the procedure established by the Executive Agency;**

This item was included in order to achieve conformity with enacted Decrees of the Government of the RF No 1024 of 9 September, 1999 "On the concept of the management of State property and privatization in the RF" in accordance with which the programmes of current and prospective activity must become one of the principal mechanisms for the management of State unitary enterprises, and No 228 of 10 April, 2002 "On measures aimed at improving the efficiency of the use of the federal property consolidated in the economic jurisdiction of federal state unitary enterprises" which has established the procedure of the development and confirmation of such programmes, as well as with the provisions of Article 20 of the Law "On State and municipal unitary enterprises".

It should be noted that Decree No 228 addresses only annual programmes of activity, whereas no mention is made of other, no less important, issues of the development and implementation of prospective programmes.

Also it should be noted that the wording must be brought in conformity: in Decree 228 the words "programme of activity" are used, whereas in Article 20 of the Law – "plan (programme) of financial and economic activity".

- **develop and submit for the confirmation by the Executive Agency a budget of incomes and expenses[131]**;
- **implement the programme of activity of the Enterprise and the economic efficiency indices of the activity of the Enterprise confirmed in the established procedure[132]** *(Ed.)*;

[131] In accordance with Item 2 of Article 19 of the Law "On state and municipal enterprises", this item shall be included only in the Charter of federal treasury enterprises.

[132] The words "basic economic indices" were replaced by "economic efficiency indices of the activity", and the words "programme of activity" were added in accordance with Decrees of the Government of the RF of February 3, 2000 No104 "On tightening control over the activity of federal unitary enterprises and managing the shares of open joint-stock societies that are federal property" and of April 10, 2002 No 228 "On measures aimed at improving the efficiency of the use of the federal property consolidated in the

- **on an annual basis transfer to the federal budget a share of the profit from the use of the property of the Enterprise in the amount and according to the time schedule established by the legislation of the Russian Federation[133];**

This Item was included in connection with the enactment of Decree of the Government of the RF of February 3, 2000 No 104 "On tightening control over the activity of federal unitary enterprises and managing the shares of open joint-stock societies that are federal property" in accordance with which the charter of a State unitary enterprise must guarantee that a share of the profit from the use of the property of the enterprise be transferred to the budget, and in conformity with Article 17 of the Law "On State and municipal unitary enterprises".

In this connection it should be noted that it is important not only to guarantee that a share of the profit from the activity of State unitary enterprises is transferred to the federal budget but also to regulate the general issues dealing with the use of profit. The procedure of distributing the net profit of an enterprise can be as follows. On the basis of the results of a financial year an enterprise submits to the Executive Agency a financial report and proposals concerning the use of net profit along the following lines: transfers to the owner (e.g. no less than 10%), augmentation of circulating assets, other areas. The Executive Agency discusses and approves the proposals submitted to it or adjusted by it concerning the use of the enterprise's net profit. One must note that when implementing such an approach it would be feasible to adopt a standard according to which the Executive Agency has no right either to decrease the share of net profit to be transferred by an enterprise to the budget or to increase it above a certain amount (e.g. above 20%). Besides, the use of profit according to established purposes must be periodically controlled by the Executive Agency.

- compensate losses inflicted as a result of non-rational use of land or other natural resources, pollution of environment, violation of production safety rules, of sanitation-and-hygiene standards and the requirements concerning protection of the health of the workers, the population and the consumers of the product, etc.;
- ensure timely and in full payment of salaries to the workers and perform indexation of their salaries in accordance with the existing legislation of the Russian Federation;
- ensure to its workers occupational safety;
- ensure guaranteed labour conditions and social protection measures to its employees;
- perform operative accounting and draw accounting reports on the results of financial-economic and other activity, keep statistical records, report on the results of its activity and the use of property, and submit reports in the

economic jurisdiction of federal state unitary enterprises" , and the Law "On state and municipal enterprises".

[133] This item shall be included only in the Charter of federal state enterprises.

procedure and according to the time schedule established by the legislation of the Russian Federation;

- **annually, in the established procedure, conduct audits and submit the results of these audits to the federal agency for state property management and the Executive Agency**;

This Item was changed in order to bring in conformity with Decrees of the Government of the RF of January 29, 2000 No 81 "On audits of federal state unitary enterprises" and of February 3, 2000 No 104 "On tightening control over the activity of federal unitary enterprises and managing the shares of open joint-stock societies that are federal property".

It should be noted that Decree of the Government No 81 regulates the conduction of mandatory audits of those enterprises that satisfy certain conditions – their annual proceeds of sale of product must exceed by 500,000 times the minimum salary as determined by law, or the total balance-sheet assets as of the end of the reporting year must exceed by 200,000 times the minimum salary as determined by law.

As far as other enterprises are concerned, it would be feasible to regulate the procedure and time schedule for submitting auditing results by the internal orders of appropriate executive agencies.

- submit to State agencies information in the instances and in the procedure envisaged by the legislation of the Russian Federation.
- _____
___
(specify other responsibilities of the Enterprise)

5. Administration of the Enterprise

5.1. The Enterprise shall be directored by the Director (director, general director)[134] appointed by the Executive Agency.

The rights and duties of the Director, as well as the grounds for terminating the labour-contract relations with him, shall be regulated by a contract made between the Director and the Executive Agency in coordination with the federal agency for State property management.

5.2. The Director shall act in the name of the Enterprise without a power of attorney, in good faith and reasonably shall represent its interests on the territory of the Russian Federation and beyond its borders.

The Director shall act by the principle of one-man management and bear responsibility for the consequences of his actions in accordance with federal laws, other normative legal acts of the Russian Federation, the present Charter and the Contract concluded with him.

5.3. The powers of deputy directors of the Enterprise shall be determined by the Director of the Enterprise.

[134] In the event when the enterprise has branches and representations, its director may be referred to as "the General Director", and in the absence of the said circumstances – "the Director".

Deputy directors shall act in the name of the Enterprise, represent it in State agencies, in organizations of the Russian Federation and foreign States, effect transactions and other legal acts within the powers determined by the powers of attorney issues by the Director of the Enterprise.

5.3a. The hiring of the Chief Accountant of the Enterprise, concluding, changing and terminating the contract with him shall be coordinated by the Director with the Executive Agency.

This Item has been changed in accordance with Item 8 of Article 20 of the Law "On State and municipal unitary enterprises".

5.4. The relations between the workers and the Director of the Enterprise arising on the basis of the labour contract (or contract) shall be regulated by the labour legislation of the Russian Federation and the collective contract.

5.5. Collective labour disputes (conflicts) between the administration of the Enterprise and the collective of the workers shall be treated in accordance with the legislation of the Russian Federation concerning the procedure of resolving collective labour disputes (conflicts).

5.6. The content and volume of the information to be regarded as employment or commercial secret, as well as the procedure for its protection, shall be determined by the Director of the Enterprise in accordance with the existing legislation of the Russian Federation.

6. Branches and representations[135]

6.1. The Enterprise may create branches and open representations on the territory of the Russian Federation and beyond its borders in conformity with the requirements of the legislation of the Russian Federation, the legislation of the foreign States wherein the branches and representations are located, and the foreign agreements of the Russian Federation.

The branches and representations shall act in the name of the Enterprise which shall bear responsibility for their activity.

6.2. Branches and representations shall not be juridical persons, shall be endowed with property by the Enterprise and act in accordance with the provisions concerning them. The Provisions concerning branches and representations, as well the changes and amendments to the said provisions, shall be confirmed by the Enterprise in the procedure established by the legislation of the Russian Federation and the present Charter.

6.3. The property of branches and representations shall be accounted for in their separate balance sheet which shall be part of the balance sheet of the Enterprise.

6.4. The directors of branches and representations shall be appointed and dismissed by the Director of the Enterprise, shall be endowed with powers and act on the basis of a power of attorney issued to them by the Director of the Enterprise.

7. Reorganization and liquidation of the Enterprise[136]

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[135] In accordance with the Law "On state and municipal enterprises", unitary enterprises may not have subsidiaries, therefore Subitems 6.5.-6.7. were excluded from this Item.

7.1. Reorganization of the Enterprise without changing the form of ownership regarding the property transferred to it shall be done in the procedure established by the legislation of the Russian Federation.

7.2. In the instances determined by law, reorganization of the Enterprise in the form of its division or a separation from it of another juridical person (or persons) shall be effectuated by decision of the empowered State agencies or by decision of a court.

7.3. In the event of reorganization of the Enterprise, the necessary changes shall be made in the Charter and the unified State register of juridical persons. Reorganization shall entail passing the rights and duties of the Enterprise to its legal successor in accordance with the existing legislation of the Russian Federation.

The Enterprise shall be considered reorganized, except in the cases of reorganization in the form of accession, from the moment of State registration of the newly arisen juridical persons.

In the event of reorganizing the Enterprise in the form of an accession to it of another **unitary enterprise *(Ed.),*** the Enterprise shall be considered reorganized from the moment of an entry in the unified State register of juridical persons concerning the termination of the acceded **unitary enterprise *(Ed.)***.

7.4. The Enterprise may be liquidated in the procedure established by the legislation of the Russian Federation.

7.5. The liquidation of the Enterprise shall entail its termination without passing of its rights and duties in the procedure of legal succession to other persons.

The federal agency for State property management and the Executive Agency shall appoint, in coordination with the agency effectuating State registration of juridical persons, a liquidation commission.

From the moment of the appointment of the liquidation commission, the powers to manage the affairs of the Enterprise shall pass to it. The liquidation commission shall act in court in the name of the Enterprise which is being liquidated.

7.6a. The procedure of liquidating the Enterprise shall be determined by the existing legislation of the Russian Federation.

7.7a. The procedure of disposing of the property that remains after the demands of the creditors of the Enterprise which is being liquidated have been satisfied shall be effected in accordance with the effective legislation of the Russian Federation.

[136] This item was changed in accordance with Chapter V of the Law "On state and municipal enterprises" – Items 7.3. and 7.5. were changed, Items 7.6.-7.9. were excluded, new Items 7.6a. and 7.7a.were introduced.

Annex 4. Basic directions of control and audit of the activity of the SUEs of the city of Moscow and their peculiarities[137]

1. The peculiarities of the control over the financial and economic activity of SUEs

In accordance with the model provision on the balance-sheet commission under the administrative body in whose jurisdiction the state unitary enterprises are consolidated[138], the Commission is **an agency that controls** the results of the financial and economic activity of the state and municipal unitary enterprises which are in departmental subordination to the administrative body, as well as the Commission on efficiency and appropriate purpose-oriented use of the city property transferred to them.

In this connection, one peculiarity of the regulation of the commission's operation is the possibility to establish such commissions under each of the city's administrative bodies (Department, administration or committee), that are part of the City Government.

Thus, the Committee for foreign economic activity under the Moscow Government has confirmed its own provision on a **Balance Commission[139]**, having underlined therein certain peculiarities of the control over the activity of enterprises dealing with the organizational issues of these commissions' activity.

The main tasks of a Balance Commission are as follows:

- control over the efficiency and purpose-oriented use of the State property transferred to enterprises by right of economic jurisdiction or lease;

- consideration of the reports on the financial and economic activity of enterprises, evaluation of the results of the financial activity of enterprises, development of recommendations for the management of enterprises concerning elimination of revealed shortcomings and violations, and control of their implementation;

- development of well-grounded proposals concerning privatization, sale of shares, reorganization and liquidation of enterprises on the basis of the results of their activity, and submission, in the established procedure, of proposals to the Interdepartmental Commission (under the Moscow Government) for regulation of the activity of State and municipal enterprises of the city of Moscow.

At the same time it should be noted that the methodological recommendations for the analysis of the reports of SUEs and the appropriate decisions to be made thereon at

[137] This Appendix was prepared by A.N. Gazetov, G.V. Gontuar, M.I.Shilkin.

[138] Note: approved by decree of the Premiere of the Moscow Government of August 17, 2001 No 757-RP.

[139] Note: approved by decree of Deputy Mayor in the Moscow Government of October 1, 2001 г. No 79-RZM.

the Moscow level have not been developed, however similar ones are available at the federal level.[140]

Their absence represents an obvious flaw of the system of control and administration of the city's State enterprises. However the very existence of **the Provisions** is an evidence of a higher level of the organizational functioning, as an institution, of the Balance Commissions than of that existing at the federal level.

Among the most important decisions made by these commissions there have been the proposals on the issues of *reorganization, privatization or liquidation of enterprises* submitted to the Interdepartmental Commission (under the Moscow Government)for regulation of the activity of State and municipal enterprises of the city of Moscow.

In accordance with the provision on the Interdepartmental Commission[141], the final decision concerning the further destiny of enterprises is to be made by the City Government on the basis of the Commission's proposals on issues dealing with the activity of SUEs. Thus, with the participation of the Interdepartmental Commission, proposals were prepared for the Moscow Government concerning the 44% reduction of the number of the organizations existing in the organizational-legal form of a unitary enterprise: from 1720 (as of September 1999) to 969 (as of March 2002 г.)[142]. The latter value is a forecasted target parameter[143].

Thus, in Moscow a three-tier system for the control and making decisions on the further destiny of the city's State enterprises has been created.

2. The organization of auditing of the financial and economic activity of SUEs in Moscow

Annual audits of the accounting (financial) reports of the city's State and municipal enterprises have become mandatory, beginning with the 2000 reporting.[144]

A provision on a contest procedure of selecting auditing organizations has been enacted, according to which Departments and functional associations under the Moscow Government (Complexes) independently appoint the commissions for selecting auditing organizations and, accordingly, the list of the empowered auditors by the enterprises subordinated to the City Government.

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[140] Note: important methodological provisions on the analysis and decision-making concerning the activity of unitary enterprises were set by the Methodological Recommendations for the organization and conduction of an analysis of the efficiency of the activity of federal state unitary enterprises and open joint-stock societies whose shares are federal property, approved by Decree of the Ministry of State Property of the RF of June 10, 2000 No 183-r.

[141] Note: Decree of the Mayor of Moscow of August 14, 2000 No 876-RM "On the Interdepartmental Commission under the Moscow Government for regulation of the activity of state and municipal enterprises of the city of Moscow"

[142] Source: Resolution of the Moscow City Government of May 21, 2002 No 383-PP.

[143] The reports on the results of the year 2001 were submitted by 1292 state unitary enterprises.

[144] Note: approved by Decree of the Premiere of the Moscow Government of November 3, 2000 No 1096-RP

Thus, for example, there exist separate lists of auditing companies for the following groups of enterprises:

- mass media, telecommunications, outdoor advertising, information and urban decoration;

- the Complex for property-land relations (science, industry, services);

- the Complex for economic policy and development (science);

- hotel enterprises;

- the Complex for municipal services (housing-and-communal services, construction, etc.);

- the Complex for the social sphere (welfare services, etc.);

- the enterprises under the Committee for public health care (pharmacies, etc..).

Such a division has made it difficult to analyze the efficiency and quality of audits. Besides, as far as auditing in Moscow is concerned, there is no standard technical specification for the audits of State enterprises similar to that which exists on the federal level.

It should also be reminded that as far as the control over the conformity of the content of the auditing reports on federal state unitary enterprises of the year 2000 with the requirements stipulated in the Model Technical Specification[145] and the rules (standards) of the auditing activity is concerned, it was mandated that a regular control over the auditing of State enterprises is necessary because only less than 40% of auditing organizations were demonstrating successful results of their activity.

In this connection, the control over the activity of these companies must be carried out not only on the federal level, but also on a regular basis in the city of Moscow.

3. Conclusions and practical recommendations concerning further improvement of the control over the activity of the State (municipal) enterprises of subjects of the RF

The peculiarities of the legal status of SUEs are responsible for the specific features of the existing system of control over their activity, one of which is the institution of Balance Commissions whose purpose is to protect the interests of the owner of the property (the State).

The owner's interest consist in ensuring that the use of the property in the economic jurisdiction (operative management) of State unitary enterprises is economically efficient.

In this connection it is necessary to strengthen the methodological backing of the commissions' activity dealing with making decisions concerning the enterprises' activity and the analysis of their reports.

[145] Note: approved by decree of the Ministry of State Property of the RF of May 26,.2000 No 9-r, but in April, 2002 it was annulled in connection with the refusal of registration by the Ministry of Justice of the RF (Letter of the Ministry of Justice of the RF of October 30, 2001 No 07/10578-YuD).

It is necessary to elaborate and confirm the methodology for the control over the activity of SUEs and for appropriate decision-making on the basis of the information contained in the reports of SUEs.

The actual purpose of the mandatory audits of SUEs is to bring to a minimum the potential costs associated with implementing State control, as well as with low-quality accounting and financial management at State enterprises.

In this connection it is necessary to control regularly the activity of auditing organizations.

The procedure of accreditation and attracting auditing organizations currently existing in Moscow obviously makes this control more difficult.

The information obtained as a result of revisions of the quality of the actual auditing on the federal level has shown that only one-third of auditing companies efficiently perform the functions assigned to them.

The improvement of the system of control over the activity of auditing companies must be done by means of regular monitoring of their Statements and the estimation by an authoritative commission of experts with an appropriate legal status.

Annex 5. Charter of a State unitary enterprise of Krasnodar Krai

REGISTERED
Registration Chamber of Krasnodar City

CONFIRMED
Order of Administration for Department for interaction with structures of financial market of Krasnodar Krai

COORDINATED
Decree of the property relations of Krasnodar Krai

Charter of a State unitary enterprise of Krasnodar Krai
"_____"
Krasnodar

1. General provisions

1.1. State unitary enterprise of Krasnodar Krai "_____", hereinafter referred to as "the Enterprise", shall be created in accordance with Decree of Director of Administration of Krasnodar Krai of "__"_____ 200 No № __ "On the creation of State unitary enterprise '_____"".

1.2. The firm name of the Enterprise shall be:

full name: State unitary enterprise of Krasnodar Krai "_____"; abbreviated name: SUE of KK "_____".

1.3. The Enterprise shall be a commercial organization.

1.4. The Enterprise shall be subordinated to the Administration for the interaction with the structures of the financial market of Krasnodar Krai. The functions of the founder of the Enterprise shall be performed by the Department for Property Relations of Krasnodar Krai (hereinafter – the Krai Agency for Managing State Property) and the Administration for the interaction with the structures of the financial market of Krasnodar Krai (hereinafter – the Executive Agency) in accordance with the existing legislation of Krasnodar Krai.

1.5. The Enterprise shall be a juridical person, have an autinimous balance sheet, a settlement account and other accounts with banks, a round stamp with its name, a letterdirector stamp, letterforms, a firm name.

1.6. The Enterprise shall be liable for its obligations with all of its property. The Enterprise shall not be liable for the obligations of its subsidiaries, the State and its organs, and its subsidiaries, the State and its organs shall not be liable for the obligations of the Enterprise, except in cases envisaged by the legislation of the Russian Federation.

l.7. The Enterprise shall in its own mane acquire property and personal non-property rights and bear responsibilities, be a plaintiff or defendant in a court or arbitrage court in accordance with the existing legislation of the Russian Federation.

1.8. The location of the Enterprise shall be:

1.9. The Enterprise shall acquire the rights of a juridical person from the moment of its State registration.

1.10. The Enterprise shall not have branches (separate subdivisions), represenrations, subsidiaries[146].

2. The purposes and the subject of the activity of the Enterprise

2.1. The Enterprise shall be created with the purposes of satisfying social needs as a result of its activity, and of generating profit.

2.2. To achieve the purposes specified in Item 2.1 of the present Charter, the Enterprise shall perform, in the procedure established by the legislation of the Russian Federation, the following types of activity (the subject of the Enterprise's activity):

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The Enterprise shall not have the right to perform any types of activity which are not envisaged by the present Charter, except activities aimed at creating objects of socio-cultural purposes and housing construction in order to satisfy the needs of the workers of the Enterprise.

2.3. The right of the Enterprise to engage in an activity, for which in accordance with the legislation of the Russian Federation a special permission is required (a license), shall arise from the moment the Enterprise obtains it, or within the time period specified by the license, and shall Terminable after its expiry, if not otherwise stated by the legislation of the Russian Federation.

3. The property of the Enterprise

3.1. The property of the Enterprise shall be in the State ownership of Krasnodar Krai (hereinafter – Krai property), shall be indivisible and may not be distributed according to contributions (or participatory shares, shares), including among the workers of the Enterprise, shall belong to the Enterprise by right of economic jurisdiction and be reflected in its autonomous balance sheet. The composition of the property of the Enterprise may not include the property of another form of ownership.

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[146] At the same time, in Items 4.3., 6.5., 6.6., 6.7. of the Charter of a SUE of Krasnodar Krai the possibility of creating subsidiaries is envisaged. New Federal Law "On state and municipal unitary enterprises" No 161–FZ of 14 November, 2002 (Article 2) forbids to them the creation, in the form of juridical persons, of other unitary enterprises by means of a transfer to them part of their property (of subsidiaries).

3.2. The right of economic jurisdiction in the property belonging to the Enterprise shall arise from the moment of the transfer of the property, if not envisaged otherwise by law and other legal acts or by decisions of the owner.

The fruits, product and revenues received as a result of the use of the property in economic jurisdiction of the Enterprise, as well as the property acquired by it at the expense of its profit, shall be Krai property and arrive in the economic jurisdiction of the Enterprise.

3.3. The amount of the charter fund of the Enterprise shall be _____ (___) roubles and shall be formed from the funds of the Krai budget.

3.4. If after the end of a financial year the value of the net assets of the Enterprise become less than the amount of the charter fund, the agency that has made the decision concerning the creation of the Enterprise shall, in the established procedure, decrease the amount of the charter fund.

3.5. An increase of the charter fund of the Enterprise may be done both by means of an additional transfer of property by the owner, and from the available assets.

3.6. In the event of making a decision as to decreasing the amount of the charter fund the Enterprise shall be obliged to inform its creditors of it in writing.

3.7. The sources for the formation of the property of the Enterprise shall be as follows:

- the property transferred to the Enterprise by decision of the Krai Agency for Managing State Property;

- the profit obtained as a result of economic activity;

-borrowed funds, including bank credits and credits granted by other credit institutions;

- amortization charges;

- capital investments and subsidies from the budget;

- target budgetary financing;

- dividends (incomes) coming from the economic societies and partnerships in whose charter capitals the Enterprise participates;

- other sources that do not contradict the legislation of the Russian Federation.

3.8. The Enterprise shall have the right to sell the immovable property belonging to it, lease, pledge, place it as a contribution in the charter (or contributed) capital of economic societies and partnerships, or otherwise dispose of this property only with the permission of the Krai Agency for Managing State Property.

The Enterprise shall have the right to acquire and alienate the shares (or participatory shares, shares) in the charter (or contributed) capital of economic societies, partnerships and organizations of other organizational-legal forms acting on the financial services market, including banks and non-banking credit institutions, with the consent of the Krai Agency for Managing State Property and the Executive Agency in whose jurisdiction the Enterprise shall be.

All the other property belonging to the Enterprise the latter shall dispose of on its own, if not envisaged otherwise by the legislation of the Russian Federation.

3.9. The rights of the Enterprise to the objects of intellectual property created in the process of its economic activity shall be regulated by the legislation of the Russian Federation.

3.10. The Enterprise shall on its own dispose of the results of its production activity, of its product (except in the cases determined by the legal acts of the Russian Federation), of its earned net profit retained by the Enterprise after paying the taxes established by the legislation of the Russian Federation and making other mandatory payments, and after transferring to the Krai budget a share of the profit from the use of the property of the Enterprise.

The share of net profit left at the disposal of the Enterprise may be allocated to increase the charter fund of the Enterprise

3.11. The share of net profit left at the disposal of the Enterprise shall be used by the Enterprise in the established procedure, including:

- implementation and mastering of new equipment and technologies, occupational safety and environment protection measures;

- creation of the funds of the Enterprise, including those that are to be used to cover losses;

- development and expansion of the financial and economic activity of the Enterprise, augmentation of its circulating assets;

- construction, reconstruction, renovation of capital assets;

- studies of the market situation, consumer demand, marketing;

- purchases of foreign currency, other currency and material valuables, securities;

- promotion of the products and services of the Enterprise;

- acquisition and construction of housing (or sharing) for those workers of the Enterprise who need to improve their housing conditions in accordance with the legislation of the Russian Federation;

- material incentives, training and professional improvement of the staff of the Enterprise.

3.12. The Enterprise shall create a reserve fund.

The amount of the reserve fund shall be no less than 15 (fifteen) percent of the charter fund of the Enterprise, if not Stated otherwise by the legislation of the Russian Federation.

The reserve fund of the Enterprise shall be formed by means of annual deductions in the amount of 5 (five) percent, if not Stated otherwise by the legislation of the Russian Federation, of the share of net profit retained by the Enterprise, until the amount determined in this Item of the Charter is achieved.

The reserve fund of the Enterprise shall be used to cover its losses, in the event of absence of other funds, and may not be used for other purposes.

3.13. The Enterprise shall have the right to create other funds in the amounts allowed by the legislation of the Russian Federation from the profit retained by the Enterprise.

4. The rights and duties of the Enterprise.

4.1. The Enterprise shall build its relations with other organization and citizens in all spheres of economic activity on the basis of agreements and contracts.

The Enterprise shall be free to choose the subject and the content of contracts and obligations or any forms of economic relationships which do not contradict the legislation of the Russian Federation and the present Charter.

4.2. The Enterprise shall set the prices and tariffs on all the kinds of the works performed, services rendered, product manufactured and realized in accordance with the normative legal acts of the Russian Federation.

4.3. To achieve the purposes determined by the Charter, the Enterprise shall have the right in the procedure established by the existing legislation of the Russian Federation to do the following:

create branches, representations, subsidiaries;

confirm the provisions on branches and representations, the charters of subsidiaries, appoint their directors, make decisions concerning their reorganization and liquidation;

make all kinds of contracts with juridical and physical persons that are not contrary to the legislation of the Russian Federation, or to the purposes and the subject of the activity of the Enterprise;

acquire or lease capital and circulating assets with available financial resources, credits, loans and other sources of financing;

pledge, lease or contribute property as a contribution to the charter (or contributed) capital of economic societies and partnerships, as well as of non-commercial organizations, in the procedure and within the limits established by the legislation of the Russian Federation and the present Charter. The transfer of the property shall be done by making an act of transfer-acceptance, with regard to the requirements stipulated in Item 3.3. of the present Charter;

engage in foreign economic activity;

ensure material and technical provision of its production and develop the objects of the social sphere;

plan its activity and determine the prospects of development on the basis of the basic economic indices of the demand for the works performed, services rendered, product manufactured;

determine and implement the forms and systems of payment for labour, the number of the staff, the structure of the staff and the staff list;

establish for its workers additional annual leaves, shorter working hours and other social privileges in accordance with the legislation of the Russian Federation;

determine the amount of the funds allocated to pay for the labour of the workers of the Enterprise, to social and technological development

4.4. The Enterprise shall have the right to attract citizens for performing certain tasks on the basis of labour contracts and other contracts determined by civil legislation.

4.5. The Enterprise shall effect other rights that are not contrary to the legislation of the Russian Federation, the purposes and the subject of the activity of the Enterprise, and

bear responsibilities, and may be brought to responsibility on the grounds and in the procedure established by the legislation of the Russian Federation.

4.6. The Enterprise shall effect measures dealing with civil defense and mobilization in accordance with the legislation of the Russian Federation.

The Director shall:

- organize military registration of the citizens being on reserve and the citizens to be drafted for military service;

- create appropriate conditions for the exercise by the employees of their military duties;

- submit reporting documentation and other information to local self-government agencies and military commissariats;

- fulfill contractual obligations, and at the time of war also the assignments established by State orders;

- organize release from military service of the citizens who are to be drafted for military service, in the event of receiving the mobilization assignments set by the empowered State agencies;

- ensure timely notification and the arrival at assembly points or military units of the citizens to be drafted for military service at the time of mobilization;

- ensure supplies of machinery and equipment to assembly points or military units according to a mobilization plan;

- act as director of civil defense staff of the Enterprise.

4.7. The Enterprise shall be obliged to:

- meet the basic economic indices of the Enterprise's activity which have been confirmed in the established procedure;

- compensate the losses inflicted as a result of non-rational use of land or other natural resources, pollution of environment, violation of production safety rules, of sanitation-and-hygiene standards and the requirements concerning the protection of the health of the workers, the population and the consumers of the product, etc.;

- ensure timely and in full payment of salaries and other kinds of payment to the workers and perform indexation of their salaries in accordance with the existing legislation of the Russian Federation;

- ensure occupational safety to its workers;

- ensure guaranteed labour conditions and social protection measures to its employees;

- perform operative accounting and draw accounting reports on the results of the financial-economic and other activity, keep statistical records, report on the results of its activity and the use of property, and submit reports in the procedure and according to the time schedule established by the legislation of the Russian Federation;

- conduct annual audits in the instances envisaged by the legislation of the Russian Federation;

- submit information to State agencies in the instances and in the procedure determined by the legislation of the Russian Federation.

5. Administration of the Enterprise

5.1. The Enterprise shall be directored by the Director – the director appointed by the Executive Agency.

The rights and duties of the Director, as well as the grounds for terminating the labour contract relations with him shall be regulated by a contract made between the Director and the Executive Agency in coordination with the Krai Agency for Managing State Property.

5.2. The Director shall act in the name of the Enterprise without the power of attorney, in good faith and reasonably represent its interests on the territory of the Russian Federation and beyond its borders. The Director shall act by the principle of one-man management and bear responsibility for the consequences of his actions in accordance with federal laws, other normative legal acts of the Russian Federation, the present Charter and the Contract concluded with him.

5.3. The powers of the deputy directors of the Enterprise shall be determined by the Director of the Enterprise.

Deputy directors shall act in the name of the Enterprise, represent it in the State agencies and the organizations of the Russian Federation and foreign States, effect transactions and other legal acts within the powers determined by the powers of attorney issues by the Director of the Enterprise.

5.4. The relations between the workers and the Director of the Enterprise arising on the basis of the labour contract (or contract) shall be regulated by the labour legislation of the Russian Federation and the collective contract.

5.5. Collective labour disputes (conflicts) between the administration of the Enterprise and the collective of the workers shall be treated in accordance with the legislation of the Russian Federation concerning the procedure of resolving collective labour disputes (conflicts).

5.6. The content and volume of the information to be regarded as employment or commercial secret, as well as the procedure for its protection shall be determined by the Director of the Enterprise in accordance with the existing legislation of the Russian Federation.

6. Branches, representations and subsidiaries

6.1. The Enterprise may create branches and open representations on the territory of the Russian Federation and beyond its borders in conformity with the requirements of the legislation of the Russian Federation, the legislation of the foreign States wherein the branches and representations are located, and the foreign agreements of the Russian Federation.

Branches and representations shall act in the name of the Enterprise which shall bear responsibility for their activity.

6.2. Branches and representations shall not be juridical persons, shall be endowed with property by the Enterprise and act in accordance with the provisions concerning them. The provisions concerning branches and representations, as well as the changes and

amendments to the said provisions shall be confirmed by the Enterprise in the procedure established by the legislation of the Russian Federation and the present Charter.

6.3. The property of branches and representations shall be accounted for in their autonomous balance sheets which shall be part of the balance sheet of the Enterprise.

6.4. The directors of branches and representations shall be appointed and dismissed by the Director of the Enterprise, shall be endowed with powers and act on the basis of the powers of attorney issued to them by the Director of the Enterprise.

6.5. Subsidiaries shall be created by decision of the Director of the Enterprise. The Director of the Enterprise shall have the right on its own to transfer the property consolidated to the Enterprise by right of economic jurisdiction to the subsidiary, except for immovable property for the transfer of which the decision of the Krai Agency for Managing State Property shall be necessary.

The Director of the Enterprise shall confirm the charter of the subsidiary and appoint its director.

6.6. The Krai Agency for Managing State Property shall effect the consolidation of the property in the subsidiary's economic jurisdiction.

6.7. The reorganization and liquidation of a subsidiary shall be effected by decision of the Director of the Enterprise. The immovable property of the subsidiary which is being liquidated that is left after the creditor's demands have been satisfied shall be used in the procedure established by the legislation of the Russian Federation.

7. Reorganization and liquidation of the Enterprise

7.1. Reorganization of the Enterprise without changing the form of ownership regarding the property transferred to it shall be done in the procedure established by the legislation of the Russian Federation.

7.2. In the instances determined by law, reorganization of the Enterprise in the form of division or separation from it of another juridical person (or persons) shall be effected by decision of the empowered State agencies or by decision of a court.

7.3. In the event of a reorganization of the Enterprise, the necessary changes shall be made in the Charter and in the unified State register of juridical persons. Reorganization entails passing of the rights and duties of the Enterprise to its legal successor in accordance with the existing legislation of the Russian Federation. The Enterprise shall be considered reorganized, except in the cases of reorganization in the form of accession, from the moment of State registration of the newly arisen juridical persons.

In the event of reorganizing the Enterprise in the form of an accession to it of another juridical person, the Enterprise shall be considered reorganized from the moment of an entry in the unified State register of juridical persons concerning the termination of the activity of the acceded juridical person.

7.4. The Enterprise may be liquidated in the procedure established by the legislation of the Russian Federation.

7.5. The liquidation of the Enterprise shall entail its termination without passing of its rights and duties in the procedure of legal succession to other persons. The procedure for forming the liquidation commission shall be determined at the time of making the

decision concerning the liquidation of the Enterprise. From the moment of the appointment of the liquidation commission, the powers to manage the affairs of the Enterprise shall pass to it. The liquidation commission shall act in a court in the name of the Enterprise which is being liquidated.

The liquidation commission shall publish in press organs a publication concerning the liquidation of the Enterprise, stating therein the procedure and periods for declaring demands by its creditors, elicit creditors and settle accounts with them, take measures to receive debtor indebtedness, as well as inform creditors in writing concerning the liquidation of the Enterprise.

The liquidation commission shall draw liquidation balances and submits them for the confirmation of the Krai Agency for Managing State Property and the Executive Agency.

The disposal of the property that remains after the demands of the creditors of the Enterprise which is being liquidated have been satisfied shall be effected by the Krai Agency for Managing State Property.

7.6. The exclusive rights (intellectual property) belonging to the Enterprise as of the moment of liquidation shall pass to be further disposed of in accordance with the legislation of the Russian Federation.

7.6a. The procedure of liquidating the Enterprise shall be determined by the existing legislation of the Russian Federation.

7.7a. The procedure of disposing of the property that remains after the demands of the creditors of the Enterprise which is being liquidated have been satisfied shall be effected in accordance with the effective legislation of the Russian Federation.

7.7. The liquidation of the Enterprise shall be considered completed, and the Enterprise to have terminated its activity after the making of entries thereof in the unified State register of juridical persons.

7.8. In the event of liquidation and reorganization of the Enterprise the protection of the rights and interests of the dismissed employees shall be guaranteed to them, in accordance with the legislation of the Russian Federation.

7.9. In the event of liquidation and reorganization of the Enterprise all the documentation (administrative, financial and economic, concerning the staff, etc.) shall be handed over in the procedure established by the existing legislation of the Russian Federation.

Appendix №1 to the Charter

List of the objects of immovable property transferred in the economic jurisdiction of State unitary enterprise of Krasnodar Krai "_____"

№ п/п	Name of the object of immovable property (industrial complex, a facility for socio-cultural or everyday purposes, uncompleted construction, other)	Address, categorization as a historical or cultural memorial	Inventory number of the immovable object / date and # of the BTI's passport	Balance-sheet value (thou. roubles) /residual balance-sheet value (thou. roubles)

Annex 6. Labour Contract with the director of a State unitary enterprise of Krasnodar Krai

The Administration for the interaction with the structures of the financial market of Krasnodar Krai, hereinafter referred to as "the Executive Agency", in the person of Director of the Administration _____ acting on the basis of the Provision on the Administration, on the one hand, and _____, hereinafter referred to as "the Director", who shall be appointed to the post of the director of State unitary enterprise of Krasnodar Krai (hereinafter - Krai State enterprise "_____"),hereinafter referred to as "the Enterprise", on the other, shall conclude the present Contract concerning the following:

1. Subject of Contract .

This contract shall regulate the relations between the Executive Agency and the Director dealing with the execution by the latter of the duties of the Director of the Krai State enterprise.

2. The powers and rights of the Director

2.1. The Director shall be the sole executive organ of the enterprise, act on the basis of one-man management and be accountable to the Executive Agency within the limits established by laws, other normative legal acts, the Charter of the enterprise and the present Contract.

2.2. The Director shall on his own resolve all the issues dealing with the enterprise's activity, except those issues that by the legislations of the Russian Federation and of Krasnodar Krai are placed within the competence of other organs.

2.3. The Director shall:

2.3.1. Organize the operation of the enterprise.

2.3.2. Act without the power of attorney in the name of the enterprise, represent its interests on the territory of the Russian Federation and beyond its borders.

2.3.3. Dispose of the property of the enterprise in the procedure and within the limits established by the legislations of the Russian Federation and of Krasnodar Krai, and the Charter of the enterprise.

2.3.4. Conclude contracts, including labour contracts.

2.3.5. Issue powers of attorney, effect other legal actions.

2.3.6. Open settlement accounts and other accounts with banks.

2.3.7. Confirm the staff list of the enterprise.

2.3.8. Apply to the personnel of the enterprise disciplinary penalty measures and incentives according to the existing legislation of the Russian Federation.

2.3.9. Delegate his rights to his deputies, distribute among them the duties.

2.3.10. Within his competence, issue orders and decrees, and give instructions that shall be mandatory to all the personnel of the enterprise, confirm the provisions concerning representations and branches, and the charters of subsidiaries.

2.3.11. Determine, in accordance with the legislation of the Russian Federation, the content and volume of the information to be considered as commercial secret of the enterprise, as well as determine the procedure for its protection.

2.3.12. Prepare motivated proposals as to the changes of the charter fund of the enterprise.

2.3.13. In the event of terminating his contract, shall hand over all the documentation to the newly appointed director of the enterprise.

2.3.14. Resolve other issues placed by the legislation of the Russian Federation and of Krasnodar Krai, the Charter of the enterprise, and the present Contract, within the competence of the Director.

3. The obligations of the parties.

3.1. The Director shall be obliged to:

3.1.1. Manage the enterprise in good faith and reasonably, ensure that the economic efficiency indices of the activity set for the enterprise be met, and exercise other powers placed by legislation, the Charter of the enterprise and the present Contract within his competence.

3.1.2. When executing his official duties, be guided by the legislations of the Russian Federation and of Krasnodar Krai, the Charter of the enterprise and the present Contract.

3.1.3. Ensure timely and high-quality fulfillment of all the contracts and obligations of the enterprise.

3.1.4. Ensure development of the material and technical base and increase the volume of paid works and services.

3.1.5. Ensure that the results of the enterprise's activity meet the **economic efficiency indices of the activity** set in the established procedure. Avoid making decisions that may result in the enterprise's insolvency (bankruptcy).

3.1.6. Ensure that the movable and immovable property consolidated to the enterprise be kept in an appropriate condition, carry out timely capital and current repairs of the immovable property.

3.1.7. Ensure that all the workplaces be adequately equipped with technical appliances and create therein working conditions that are in conformity with the uniform intersectoral and sectoral rules of occupational safety, and with the sanitary norms and rules that are to be developed and approved in the procedure established by legislation.

3.1.8. Ensure timely and in full payment by the Enterprise of all the taxes, fees and mandatory payments established by the legislation of the Russian Federation to the budgets of the Russian Federation, of Krasnodar Krai and municipal formations, and to extrabudgetary funds (including timely and in the appropriate amount transfers to the Krai budget of a share of the profit from the use of the property of the Enterprise).

3.1.9. Ensure timely payment of salaries, bonuses, allowances and other payments in the monetary form to the workers of the enterprise.

3.1.10. Not disclose information considered to be employment or commercial secret that has become known to him as a result of the execution of his official duties.

3.1.11. Ensure that civil defense requirements be met.

3.1.12. Complete all transactions with the enterprise's immovable property, including lease, sale, barter, gift, pledge or transfer for temporary use, contributions to the charter capital of other juridical persons, or otherwise dispose of the immovable property exclusively with the consent of the Krai Agency for Managing State Property.

3.1.13. Ensure that the property of the enterprise, immovable including, be used according to the purposes corresponding to the activities of the enterprise as determined by the Charter of the enterprise, as well as ensure that the budgetary and extrabudgetary funds allocated to the enterprise are used according to their purposes.

3.1.14. Submit reports on the activity of the enterprise in the procedure and according to the time schedule established by the legislations of the Russian Federation and of Krasnodar Krai.

Annually submit for the approval of the Executive Agency a business plan for the development of the enterprise.

3.1.15. Submit to the Executive Agency proposals concerning the ways to achieve the purposes of the enterprise's activity, as well as the information on current and prospective planning of the financial and economic, economic and other results of the enterprise's activity.

3.2. The Executive Agency shall be obliged to:

3.2.1. Not interfere with the operative and administrative activity of the Director, except in the cases envisaged by the legislation of the Russian Federation.

3.2.2. Within one month provide answers to the appeals on the part of the Director concerning issues that need to be agreed upon (resolved) with the Executive Agency.

3.2.3. Take appropriate measures in the event of the Director appealing on issues dealing with a potential insolvency of the enterprise.

3.2.4. Determine, in the established procedure, the amount of the profit of the enterprise which is due to be paid to the federal budget.

3.2.6. Provide the Director with appropriate working conditions needed for efficient work.

3.2.7. Establish, upon an agreement with the Krai Agency for Managing State Property, the requirements as to the form, the content and the periodic frequency of submitting the proposals concerning the ways to achieve the purposes of the activity of the enterprise which would be mandatory for the Director, and the rules and the procedure for their evaluation.

3.2.8. To certify the Director in accordance with the requirements determined by the legislations of the Russian Federation and of Krasnodar Krai.

3.2.8. To make, in the established procedure, the decisions concerning calling the Director to account for improper execution of his duties.

4. Payment for the labour and social guarantees to the Director

4.1. Payment for the labour of the Director shall consist of his regular salary and a share of the profit of the enterprise determined after settling all accounts with the budgets of all levels.

The amount of the salary of the Director shall be _____ roubles.

4.2. The salary and other rewards to the Director shall be paid simultaneously with the payment of salaries to all the workers of the enterprise.

4.3. In the event when the industrial operation of the enterprise or of its structural subdivision is suspended by the empowered State agency in connection with a violation of the normative requirements for occupational safety and the ecologic or sanitary-epidemiological standards, the Director of the enterprise shall not have the right to receive the rewards for the results of the financial and economic activity (from the moment of the suspension of the operation of the Enterprise until the moment of liquidation of the revealed violations).

4.4. In the event when the Director fails to ensure a timely payment to the workers of the enterprise of all the bonuses, allowances, additional payments and compensations envisaged by legislation and/or the collective contract, the incentives shall not be applied to him until the moment when the arrears on those kinds of payments to the workers of the enterprise are liquidated in full.

4.5. The duration of the annual leave of the Director shall be 28 workdays and may be granted to him either in full or in parts. The exact timing of the annual leave shall be determined by the Director upon an agreement with the Executive Agency.

4.6. When going on the annual leave, to the Director a pecuniary aid shall be paid in the amount of two regular salaries.

4.7. In case of the death of the Director his family shall receive a lumpsum payment in the amount of twelve regular salaries.

4.8. In the event of disability the Director shall receive a compensation.

4.9. In the event of termination of the Labour Contract with the Director of the Enterprise before its expiry by decision of the Administration of Krasnodar Krai and the Executive Agency, in the event of absence of culpable actions (or lack of action) on the part of the Director, a compensation shall be paid to the Director for the early termination of the Labour Contract in the amount of three regular salaries.

5. The liability of the Director

5.1. The Director of the Enterprise shall bear responsibility in the procedure and on the conditions established by the legislation of the Russian Federation and the present Contract.

5.2. For the improper execution by the Director of his duties, the Executive Agency may apply to him the following measures:

a) reproof;

b) reprimand;

c) dismissal, including on the grounds envisaged by the present Contract;

d) dismissal, including on the grounds envisaged by the present Contract. The disciplinary penalty shall be effective for one year and may be Terminabled before the termination of this period on the initiative if the Executive Agency on the basis of an appeal by the staff of the Enterprise.

5.3. The Director may be brought to material, administrative and criminal responsibility in the cases envisaged by the existing legislation of the Russian Federation.

6. Changes and termination of the Contract

6.1. Each of the parties under the present Contract shall have the right to bring up a question to the other party concerning making changes (corrections) or additions to it, which shall be documented by an additional agreement supplementing the Contract.

6.2. The Contract may be Terminabled on the grounds envisaged by the labour legislation of the Russian Federation. It may be Terminabled by decision of the Executive Agency in the event of:

a) failure to meet the established economic efficiency indices of the unitary enterprise's activity;

b) failure to ensure that audits of the unitary enterprise be conducted in the established procedure;

c) failure to implement the decisions of the Government of the RF, Director of the Administration of Krasnodar Krai, and the Krai executive agencies;

e) effecting transactions with the property in the economic jurisdiction of the unitary enterprise, with violation of the requirements of legislation and the specific legal capacity of the enterprise as determined by the charter of the enterprise;

f) the presence of arrears of salary for more than 3 months through the Director's fault.

6.3. The Contract with the Director may not be Terminabled if his failure to execute his duties occurred for objective reasons nor depending on the will of the Director.

6.4. The Contract with the Director may also be Terminabled in accordance with Item 3 of Article 278 of the Labour Code of the Russian Federation on other additional grounds, including:

- violation, through the fault of the Director as found out in the procedure established by the legislation of the Russian Federation, of the requirements concerning occupational safety, which entailed a decision made by the director of the State labour inspectorate and a State labour inspector to the effect that the operation of the enterprise or its structural subdivision be suspended, or a court decision to the effect that the enterprise be liquidated, or the operation of its structural subdivision be terminated;

- failure to ensure the use of the property of the enterprise, immovable including, according to the purposes corresponding to the activities of the enterprise as determined by the Charter of the enterprise, as well as failure to use according to the established purposes the budgetary and extrabudgetary funds allocated to the enterprise for more than three months;

- inflicting losses on the Enterprise.

7. Other provisions of the Contract

7.1. The present Contract signed by both parties shall come into force from the date of its coordination with the Krai Agency for Managing State Property.

7.2. The period of the Contract shall be 5 years.

7.3. As to the part not envisaged by the present Contract the parties shall abide by the legislations of the Russian Federation and of Krasnodar Krai, and the Charter of the enterprise.

8. The parties' addresses and other information

Executive Agency:

Administration for interaction with structures of financial market of Krasnodar Krai, 350014, Krasnodar, Krasnaia, 35.

Enterprise:

State unitary enterprise of Krasnodar Krai "_____" _____.

Director:

Director of State unitary enterprise of Krasnodar Krai "_____" _____.

Passport: series ____ No_____, issued _____.

Home address: _____. Telephone: _____.

Director:

S.N.P.

_____

(signature)

"__" _____ 200 _

The Contract is signed:

On behalf of the Executive Agency:

Director of Administration

S.N.P.

STAMP_____

(signature)

"__" _____ 200 _

The Contract is COORDINATED with Krai Agency

for Managing State Property

Department for Property Relations of Krasnodar Krai

First Deputy Director of Department

S.N.P.

_____

(signature)

"__" _____200__

Annex 7. Charter of a municipal unitary enterprise of the city of Krasnodar

COORDINATED: Sectoral department (administration), City Administration of Krasnodar General Director of department (administration)	Charter confirmed by Founder - Administration for municipal property under City Administra tion of Krasnodar Director of administration
_____……	_____
"__"_____2002	

Charter of a municipal unitary enterprise of the city of Krasnodar

"_____"

KRASNODAR

2002

1. General provisions

1.1. "_____ " shall be a municipal unitary enterprise (hereinafter "Enterprise") created in accordance with Decree of Director of City Administration of Krasnodar of _____No_____, as well of the Civil Code of the Russian Federation and other existing legislative and normative acts.

1.2. The Founder of the Enterprise shall be the Administration for municipal property under the City Administration of Krasnodar (hereinafter "the Founder"). The Charter confirmed by the Founder shall be the sole constitutive document of the Enterprise.

1.3. The Enterprise shall be a juridical person, have a separate balance, as well as the right to open, in the established procedure, a settlement account and other accounts, including foreign currency accounts, with banks of the territory of the Russian Federation; shall have a stamp with its name, a letterdirector stamp, letterforms and other attributes.

1.4. The Enterprise shall be a commercial organization not endowed with the right of ownership in the property consolidated to it. The property of the Enterprise shall be indivisible and may not be distributed according to contributions (or participatory shares, shares), including among the workers of the Enterprise.

1.5. The Enterprise shall acquire the rights of a juridical person from the moment of State registration.

1.6. The full name of the Enterprise shall be: Municipal unitary enterprise "_____".

The abbreviated name shall be: MUE " _____".

1.7. The location of the Enterprise shall be: Russian Federation, Krasnodar Krai, postal code, Krasnodar, _____Orkrug, _____ street.

2. The subject, purposes and goals of the activity of the Enterprise

2.1. The Enterprise shall be created with the purpose of generating profit.

2.2. The Enterprise shall have the right to perform the following types of activity:

_____;

_____;

_____.

3. The rights, the duties and the liability of the Enterprise

3.1. The Enterprise, in order to realize its activity as determined by the Charter, shall have the right to:

– possess autonomous property, in its own name acquire property rights and personal non-property rights and bear responsibilities, be a plaintiff and defendant in a court, an arbitrage court or a tribunal of arbitrators;

– to conclude contracts on its own with any organizations, institutions, enterprises, as well as citizens, in accordance with the purposes and goals of its activity;

– to establish the prices (tariffs) on the goods, works and services presented by it as a result of its chartered activity in accordance with the existing legislation;

– purchase material resources and property by means of clearing and in cash settlements;

– settle accounts in cash with other enterprises and citizens in the established procedure;

– purchase product and goods in the procedure of wholesale trade;

– purchase goods, necessary materials and articles in retail outlets, as well as from citizens in the established procedure;

– purchase goods, materials, equipment, raw materials at current purchase, retail and contract prices;

– create, with the consent of the Founder, subsidiaries[147], subdivisions and branches, including territorially independent ones, that are necessary for its industrial activity in accordance with the chartered goals;

– use credit funds obtained on a commercial basis, in roubles or in any foreign currency, from any juridical and physical persons in the Russian Federation and abroad.

[147] New Federal Law "On state and municipal unitary enterprises" No 161–FZ of 14 November 2002 (Article 2) forbids that they create, in the form of juridical persons, other unitary enterprises by means of transferring to them part of their property (subsidiaries).

– with the consent of the Founder, invest funds in joint ventures, participate in joint-stock societies and other societies and unions;

– dispatch on business trips persons fulfilling the assignments of the Enterprise, including abroad.

3.2. The Enterprise shall not have the right to sell, lease, pledge, or contribute to the charter (or contributed) capital of economic societies the immovable property belonging to it by right of economic jurisdiction, or otherwise dispose of this property without the consent of the Founder.

The Enterprise shall on its own dispose of the other property belonging to it, except in the instanced determined by law or other legal acts.

3.3. The Enterprise shall have the right to engage in foreign economic activity in accordance with the legislation of the Russian Federation.

The foreign exchange relations of the Enterprise with the budgets of different levels shall be regulated by the legislation of the Russian Federation. The profit of the Enterprise in foreign currency, after the payment of taxes to appropriate budgets, shall be used by the Enterprise on its own.

3.4. The Enterprise shall have the right to keep correspondence, international telephone, telegraph, teletype, telefax, telex or other communication, connect to computer databases, create its own databases and archives, use photocopiers, computers and other kinds of office equipment, and publishing equipment.

3.5. The Enterprise shall have the right to attract citizens to perform jobs at the Enterprise on the basis of labour contracts, independent-work contracts, or other civil contracts.

3.6. The regime of work and rest of the workers of the Enterprise, their social security and social insurance shall be regulated by the norms of the existing legislation of the Russian Federation.

3.7. The Enterprise shall, in accordance with the norms of the existing legislation of the Russian Federation, determine the forms and systems of payment for labour, the procedures for hiring and dismissing the employees and their shifts, make decisions concerning summary accounting of the working hours, determine the procedure for granting free days and leaves.

3.8. The Enterprise shall on its own determine the duration of additional annual paid leaves and other social privileges.

3.9. The Enterprise shall be obliged to:

– when raising the prices (tariffs) on the goods, works, or services rendered, coordinate them with the Financial-Treasury Administration and the Administration for pricing of the city of Krasnodar;

– include in the order concerning the accounting policy of the Enterprise a provision as to the creation of the repair fund;

– annually submit to the Founder a budget of expenses on capital repairs of capital assets in both the industrial and general economic spheres, based on the production needs;

– quarterly transfer to the Founder a part of the profit (25%) from the use of the property in the economic jurisdiction of the Enterprise;

– provide all the workers with safe working conditions;

– bear responsibility, in the established procedure, for the harm caused to the health or capacity to labour of the workers ;

– fulfill obligations in accordance with the existing legislation and the contracts concluded;

– settle in full all accounts dealing with the payment for labour to all the workers of the Enterprise in accordance with the agreements and contracts concluded, irrespective of the financial status of the Enterprise;

– perform all kinds of social, medical or other kinds of mandatory insurance of the workers of the Enterprise;

– in a timely fashion declare the bankruptcy of the Enterprise in the event of an impossibility to fulfill the obligations to the creditors.

3.10. The Enterprise shall bear responsibility for the violation of:

– contractual, credit, settlement and tax obligations;

– the rules of production safety;

– the established procedures of the use of natural resources.

3.11. The Enterprise shall be liable for its obligations with all the property belonging to it.

The Enterprise shall not be liable for the obligations of the Founder, and the Founder shall not be liable for the obligations of the Enterprise.

4. The management of the Enterprise

4.1. The management of the Enterprise shall be executed by the Director.

The appointment of the Director of the Enterprise and his dismissal from the post shall be effected in accordance with the Charter of the city of Krasnodar and the Provision on the procedure of ownership, use and disposal of the municipal property of the city of Krasnodar confirmed by Decision of the City Duma of Krasnodar of 06.28.2001 No12 i.1.

The Director shall be the sole director of the Enterprise. He shall be appointed on the basis of a Terminable labour contract.

4.2. The Director of the Enterprise shall act without a power of attorney in the mane of the Enterprise, conclude contracts, including labour contracts, open settlement accounts and other accounts with banks, exercise the right to dispose of the funds, confirm the staff list, issue orders and give instructions mandatory for all the workers of the Enterprise.

For the period of the absence of the Director of the Enterprise, his duties shall be executed by the deputy director of the Enterprise or the worker in whose job description there is a provision to this effect.

4.3. The Director of the Enterprise shall:

– organize the operation and interaction of the industrial structural subdivisions of the Enterprise;

– ensure the implementation of the prospective and current plans of the Enterprise;

– ensure profitable operation according to appropriate programmes of industrial-technological and commercial development developed at the Enterprise and envisaging, in particular, measures aimed at improving the profitability of the product (services);

– deliver pecuniary aid to the employees;

– upon an agreement with the Founder, confirm the list of information to be considered the commercial secret of the Enterprise, ensure that it is kept properly, and the workers of the Enterprise shall keep the commercial secret;

– organize the development and implementation at the Enterprise of internal legal documents: the Rules of internal order, the Provision on the payment for labour, job descriptions, etc.;

– ensure that labour legislation, the norms and rules concerning labour conditions and occupational safety are abided by;

– report on the results of the operation of the Enterprise by filling in a form confirmed by the Founder.

4.4. The Director, in accordance with the Laws of the Russian Federation "On defense" and "On military duty and military service", as well as other normative acts, shall:

- organize military registration of the citizens arriving to stay on reserve and the citizens to be drafted for military service;

- create appropriate conditions for the exercise by the employees of their military duties;

- submit reporting documentation and other information to local self-government agencies and military commissariats;

- fulfill contractual obligations, and at the time of war also the assignments established by State orders;

- organize release from military service of the citizens who are to be drafted for military service, in the event of receiving the mobilization assignments set by the empowered State agencies;

- ensure timely notification and the arrival at assembly points or military units of the citizens to be drafted for military service at the time of mobilization who participate in labour relations with the Enterprise;

- ensure supplies of machinery and equipment to assembly points or military units according to mobilization plans;

- act as director of civil defense staff of the Enterprise.

5.Accounting, planning, reporting

5.1. The Enterprise shall pursue its activity on the basis of plans developed by its on its own. The prospective plans shall be confirmed by the sectoral department (administration) under the City Administration of Krasnodar in coordination with the

Founder. Annual and current plans shall be confirmed by the Director in coordination with the sectoral department (administration) under the City Administration of Krasnodar. The plans shall be based on the contracts with suppliers and consumers.

The Enterprise shall be free to choose the subject of contracts, to determine obligations or any other terms of economic relationships that do not contradict the legislation of the Russian Federation.

5.2. The Enterprise shall keep accounting records of the results of its activity and keep statistical records.

The Enterprise shall submit to State agencies the information needed for the purposes of taxation and the State-wide system for collecting and processing economic data.

The officials of the Enterprise shall bear responsibility as determined by legislation for any distortion of the reported data.

5.3. The control over the industrial-economic and financial activity of the Enterprise shall be effected by the sectoral department (administration) under the City Administration of Krasnodar, the Founder and the Director of the Enterprise appointed in the established procedure. The Enterprise shall submit reports to the sectoral department (administration) under the City Administration of Krasnodar and to the Founder on a quarterly basis, within 35 days after the end of a quarter.

5.4. The Chief Accountant of the Enterprise shall be subordinated directly to the Director of the Enterprise, bear responsibility and enjoy the rights established by the legislation of the Russian Federation for the chief accountants of enterprises (organizations).

5.5. The revisions of the operation of the Enterprise shall be done by appropriate agencies responsible for taxation, environmental protection, antimonopolistic policy, etc., as well as by the sectoral department (administration) under the City Administration of Krasnodar and the Founder in accordance with the existing legislation.

6. The property of the Enterprise and the finances

6.1. The Enterprise shall be based on the municipal form of ownership and have no right of ownership in the municipal property consolidated to it by the Founder (Owner). The municipal property shall belong to the Enterprise by right of economic jurisdiction.

6.2. The property of the Enterprise shall consist of capital assets and working capital, as well as of other valuables whose value shall be reflected in the Enterprise's autonomous balance:

– appliances, instruments, all kinds of equipment and everything pertaining to capital assets and working capital;

– intellectual, science-and-technology and any other product;

– money in the currency of any country, all kinds of securities;

– other property acquired at the expense of its own funds.

The capital assets and working capital of the Enterprise, or the property used by it may not be withdrawn from the Enterprise, except in the instances envisaged by the existing legislation.

6.3. The amount of the charter fund of the Enterprise shall be_____ .

6.4. If after the end of a financial year the value of the net assets of the Enterprise is found to be less than the declared amount of the charter fund, it shall declare and register this decrease through the agency empowered for the creation of such enterprises. If the value of net assets becomes less than the amount determined by law, the Enterprise may be liquidated by decision of a court.

In the event of making a decision as to decreasing the charter fund the Enterprise shall be obliged to inform its creditors thereof in writing.

The creditor of the Enterprise shall have the right to demand the termination or the performance before time of the obligation, the debtor with regard to which this Enterprise is, and compensation of losses.

6.5. The sources of the formation of the property shall be:

– the charter fund;

– the incomes resulting from sale of goods, product, services, as well from other types of economic and commercial activity;

– incomes from securities;

– credits of banks and other creditors;

– gratis contributions of organizations, enterprises and citizens.

6.6. The Enterprise shall be obliged to create a reserve fund in the amount of 15 percent of its charter fund.

6.7. After all the payments and deductions envisaged by the existing legislation have been made, the net profit of the Enterprise shall be formed which shall be used by it independently. The net profit shall be used as follows:

– deductions to the Founder;

– development and expansion of the financial and economic activity of the Enterprise;

– investments;

– implementation and mastering of new equipment and technologies;

– compensating of the shortage of its own funds and covering losses;

– construction, reconstruction, renovation of capital assets;

– environment protection.

7. Foreign economic activity

7.1. The Enterprise shall engage in foreign economic activity on the basis of foreign-exchange self-recoupment and self-financing in accordance with the existing legislation.

7.2. The foreign currency funds received as a result of foreign economic activity, after the deductions to the State have been made according to the established standards, shall be left at the disposal of the Enterprise and may be used for the import of equipment, raw materials, materials, or other goods necessary for the development of the activity of the Enterprise, for consolidating its material base and socio-cultural sphere, as well as the commercial turnover, with the purpose of generating profit.

7.3. The subject of the export operations of the Enterprise shall be its activity envisaged in Item 2 of the present Charter in the procedure established by law.

8. Reorganization and liquidation of the Enterprise

8.1. The liquidation and reorganization of the Enterprise shall be effected on the basis of the decision of the Founder, and also by a court in the instances and in the procedure envisaged by the existing legislation.

8.2. In the event of a reorganization or liquidation of the Enterprise, the workers being dismissed shall be paid a compensation and granted other privileges and guarantees envisaged by the existing legislation of the Russian Federation.

8.3. The property left after the liquidation of the Enterprise shall be distributed by the liquidation commission in accordance with the existing legislation.

The property and monetary funds left after the demands of the creditors have been satisfied shall be left in municipal ownership.

8.4. The Enterprise shall be considered to be reorganized, except in the instances of a reorganization in the form of accession, from the moment of State registration of the newly arisen juridical persons.

The Enterprise shall be considered to be reorganized in the form of an accession to it of another juridical person from the moment of an entry in the unified State register of juridical persons concerning the termination of the activity of the acceded juridical person.

The Enterprise shall be considered to be liquidated from the moment of its exclusion from the unified State register.

9. Archiving. Safety of documents

9.1. The Enterprise, with the purposes of implementing the State social, economic and tax policy, shall bear responsibility for the safety of documents (administrative, financial and economic, pertaining to the staff, etc.); shall ensure the handover for State keeping of the documents of scientific and historical importance, shall keep and use in the established procedure the documents pertaining to the staff.

9.2. In the event of a reorganization of the Enterprise all the documents (administrative, financial and economic, pertaining to the staff, etc.) shall be handed over in accordance with the established rules to the enterprise – legal successor.

9.3. In the event of liquidation, the documents intended for permanent keeping, those of scientific and historical importance, shall be handed over for State keeping to appropriate archives. The documents pertaining to the staff (orders, personal files, registration cards, personal accounts, etc.) and the constitutive documents shall be handed over for keeping to the Archive Department under the City Administration of Krasnodar. The handover and putting the documents in order shall be done by the manpower and at the expense of the funds of the Enterprise in accordance with the demands of the archive agencies.

Appendix to the Charter
of MUE "_____"

LIST

of municipal property belonging to

MUE "_____" by right of economic jurisdiction

	Name	**Unit of measure**	**Quantity**	**Year of commissioning**	**Balance-sheet value**		**Depreciation**	**Residual value**
	TOTAL:							

Director of Administration
for municipal property
of City Administration of Krasnodar

_____

Annex 8. Terminable Labour Contract with the director of a municipal unitary enterprise of the city of Krasnodar

DECREE of Director of Administration of the city of Krasnodar
of 06.17.2002 No 888

Terminable Labour Contract with the director of a municipal unitary enterprise of the city of Krasnodar

Krasnodar
"__"_____200__

The Administration of the city of Krasnodar, in the person of Head of Administration of the city of Krasnodar Nikolai Vasilievich Priz, acting on the basis of the Charter of the city of Krasnodar confirmed by Decision of Krasnodar City Duma of 07.05.96 No 37 P.9, hereinafter referred to as "the Employer", on the one hand, and _____ hereinafter referred to as "the Employee", on the other, have concluded the present Terminable Labour Contract, hereinafter referred to as "Contract", concerning the following:

1. Subject of the contract .

1.1. The present Contract shall regulate the relations between the Employer and the Employee dealing with the execution by the latter of the duties of the Director of the Enterprise.

1.2. The Employee shall be hired to work at municipal unitary enterprise "_____" performing the duties pertaining to the job of the director.

1.3. The Employee shall start working from _____.

2. The powers, the rights and the duties of the Employee

2.1. The Employee shall be the sole executive organ of the Enterprise.

The Employee shall manage the Enterprise in accordance with the existing federal legislation, the legislation of Krasnodar Krai, the normative legal acts of local self-government agencies of the City Administration of Krasnodar, the orders, decrees and decisions of the founder – the Administration for Municipal Property of the city of Krasnodar (hereinafter referred to as "the Founder"), the sectoral department of the City Administration of Krasnodar and the Charter of the Enterprise.

2.2. The Employee shall have the right to:

conclusion, changes and termination of the Labour Contract in the procedure and on the conditions established by the Labour Code of the Russian Federation, other federal laws and the present Contract;

being assigned to the job as determined by the present Contract;

a workplace in conformity with the conditions determined by the State standards for occupational organization and safety;

timely and in full payment of salary according to his qualification, the complexity of tasks, the quantity and quality of the work performed;

adequate rest, to be ensured by the establishment of normal working hours, weekly free days, free holidays, and annual leaves;

complete and true information concerning the working conditions and the occupational safety requirements at the workplace;

protection of his labour rights, freedoms and lawful interests in any way that is not forbidden by law; mandatory social insurance in the instances envisaged by federal laws.

2.3. The Employee shall be obliged to:

2.3.1. Organize the operation of the Enterprise, in good faith and reasonably manage the Enterprise, ensure that the basic economic indices set for the Enterprise be met, and exercise other powers placed within his competence by the legislation of the Russian Federation, the Charter of the Enterprise and the present Contract, ensure the operation of the Enterprise without losses in accordance with the appropriate programmes of industrial, technical and commercial development of the Enterprise developed by him that would envisage, in particular, measures aimed at improving the Enterprise's profitability and year-to-year profitability growth.

2.3.2. In the event of termination of the present Contract, to hand over the affairs to the newly appointed Director of the Enterprise.

2.3.3. Ensure quarterly transfers to the Founder of a share of net profit from the use of the property in the economic jurisdiction of the Enterprise.

2.3.4. Ensure timely and high-quality fulfillment of all the contracts and obligations of the Enterprise, participate on a contractual basis in the fulfillment of municipal orders for supplies of product (goods, works, services) set for the Enterprise in accordance with the powers of the City Administration of Krasnodar.

2.3.5. Ensure the development of the material and technical base of the Enterprise, increase the volume of paid works and services.

2.3.6. Ensure that the results of the Enterprise's activity meet the basic economic indices set in the established procedure. Avoid making decisions that may result in the Enterprise's insolvency (bankruptcy). Implement the planned targets approved by the sectoral department of the City Administration of Krasnodar and by the Founder.

2.3.7. Ensure safety, target-oriented use and appropriate maintenance of the movable and immovable property consolidated to the Enterprise. Annually (in October-November) make an inventory of it, submitting the results to the Founder, make timely capital and current repairs of immovable property, create the repair fund to cover capital repairs of capital assets, the procedure for creating it being determined by the order concerning the accounting policy of the Enterprise.

2.3.8. Ensure that all the workplaces are adequately equipped with technical appliances and create therein working conditions that are in conformity with the uniform

intersectoral and sectoral rules of occupational safety, with sanitary norms and rules that are to be developed and approved in the procedure established by legislation.

3.1.9. Ensure timely and in full payment by the Enterprise of all the taxes, fees and mandatory payments established by the legislation of the Russian Federation to the federal, Krai and city budgets and extrabudgetary funds.

3.1.10. Ensure timely payment of salaries, bonuses, allowances and other payments in the monetary form to the workers of the Enterprise.

3.1.11. Ensure that civil defense requirements be met.

2.3.12. Ensure that the property of the enterprise, immovable including, be used according to the purposes corresponding to the activities of the Enterprise as determined by the Charter of the Enterprise, as well as ensure that the budgetary and extrabudgetary funds allocated to the Enterprise be used according to their purposes.

2.3.13. After the end of a financial year, submit a report on the financial and economic activity of the Enterprise with proposals as to improving its operation, to the Founder, to the sectoral department of the City Administration of Krasnodar, and to the sectoral committee under the City Duma of Krasnodar.

2.3.14. Submit, at the request of the Founder and the sectoral department of the City Administration of Krasnodar, the information needed concerning the operation of the Enterprise during the period between submitting accounting reports, as well as reports on the results of economic activity on a quarterly basis within 35 days after the end of a quarter.

2.3.15. Submit to the Founder proposals concerning the ways to achieve the purposes of the Enterprise's activity, as well as information on current and prospective planning of the financial and economic, economic and other results of the Enterprise's activity, the information concerning the budgetary allocations needed for implementing the programmes of prospective development, reconstruction and industrial modernization (annually, by November 15).

2.3.16. Meet the archive requirements concerning the record-keeping of the staff of the Enterprise, industrial/technological, financial-economic and other documentation.

2.3.17. Meet the requirements of the existing legislation for setting prices (tariffs) on the goods, works and services produced by it; in the event of raising the prices (tariffs) which are nor subject to State regulation, to coordinate them with the Financial-Treasury Administration and the Administration for Pricing under the City Administration of Krasnodar.

2.3.18. Effect the collective contract with the workers of the Enterprise and ensure that it be implemented.

2.3.19. Follow the procedures of working with professional information and the employment ethics standards.

2.3.20. Ensure execution and protection of the rights and lawful interests of citizens.

For the director of a municipal unitary repair-and-exploitation enterprise:

2.3.21. Coordinate the appointment of the Chief Accountant and the Chief Engineer of the Enterprise with the sectoral department of the City Administration of Krasnodar and the Administration of _____Okrug of the city of Krasnodar.

2.4. The Employee, in order to realize his rights and the duties imposed on him, shall:

2.4.1. On his own resolve all the issues dealing with the Enterprise's activity, except the issues that by the legislations of the Russian Federation and of Krasnodar Krai are placed within the competence of other organs, act without a power of attorney in the name of the Enterprise, represent its interests on the territory of the Russian Federation and beyond its borders.

2.4.2. Dispose of the property of the Enterprise in the procedure and within the limits established by the legislation of the Russian Federation, the Charter of the Enterprise and the present Contract.

Exclusively with the Founder's consent in writing may effect the following actions with the immovable property belonging to the Enterprise by right of economic jurisdiction: sale, lease, pledge, contribution to the charter (or contributed) capital of economic partnerships and societies, as well as dispose of it in any other way.

2.4.3. Conclude in the name of the Enterprise contracts, including labour contracts.

2.3.4. Issue powers of attorney, effect other legal actions.

2.3.5. Open settlement accounts and other accounts with banks.

2.3.6. Confirm the staff list of the enterprise.

2.3.7. Apply to the personnel of the Enterprise disciplinary penalty measures and incentives according to the existing legislation of the Russian Federation.

2.3.8. Delegate his rights to his deputies, distribute among them the duties.

2.4.9. Within his competence, issue orders and decrees, and give instructions that shall be mandatory to all the personnel of the enterprise, confirm the provisions concerning representations and branches, and the charters of subsidiaries[148].

2.4.10. Determine, in accordance with the legislation of the Russian Federation, the content and volume of the information to be considered as commercial secrets of the Enterprise and the procedure for its protection, and be responsible for not disclosing it.

2.4.11. Resolve other issues placed by the legislation of the Russian Federation, the Charter of the Enterprise, and the present Contract, within the competence of the Director of the Enterprise.

2.5. The Employee shall not have the right to:

be the founder (or participant) of a juridical person of which this Enterprise is one of the founders (or participants) ;

hold office and perform other paid work at State agencies, agencies of local self-government, commercial and non-commercial organizations (except academic, research

[148] New Federal Law "On state and municipal unitary enterprises" No 161–FZ of 14 November 2002 (Article 2) forbids that they create, in the form of juridical persons, other unitary enterprises by means of transferring to them part of their property (subsidiaries).

and other creative activity), engage in entrepreneurial activity, act as a sole executive organ or a member of a collegial executive organ of a commercial organization, except the cases when the participation in the organs of a commercial organization is part of his official duties in accordance with the legislation of the Russian Federation.

3. The rights and duties of the Employer

3.1. The Employer shall have the right to:

3.1.1. Change and Terminable the present Contract in the procedure and on the conditions determined by the existing legislation.

3.1.2. Reward the Employee for conscientious and efficient work.

3.1.3. Demand that the Employee execute his official duties and treat with care the property of the owner and of other workers, conform with the rules of internal working order of the Enterprise.

3.1.4. Bring the Employee to disciplinary and material responsibility in the procedure established by the existing legislation.

3.1.5. Implement other rights established by the existing legislation.

3.2. The Employer shall be obliged to:

3.2.1. Conform with the existing legislation, as well as the terms of the present Contract.

3.2.3. Provide the Employee with occupation conditioned by the present Contract.

3.2.4. Execute other duties envisaged by the existing legislation.

4. Payment for the labour and social guarantees to the Employee

4.1. The amount of the monthly salary of the Employee shall be _____roubles.

4.2. The salary to the Employee shall be paid simultaneously with the payment of salaries to all the workers of the Enterprise.

4.3. To the Employee a bonus shall be paid in the procedure and in the amount established by the Provisions on the payment of bonuses to the workers of the Enterprise.

The Employee shall lose his right to receive a bonus in the event of:

4.3.1. Failure to perform or improper performance of official duties.

4.3.2. Violations of labour discipline.

4.3.3. Failure to implement the decisions of the City Administration concerning the performance by the Enterprise of the activity envisaged by the Charter of the Enterprise.

4.3.4. Suspension of operation of the Enterprise by the empowered State agency in connection with a violation of the normative requirements for occupational safety and the ecologic or sanitary-epidemiological standards.

4.3.5. Failure to ensure that the results of the activity of the Enterprise meet the basic economic indices confirmed in the established procedure.

4.3.6. Making decisions that have resulted in the Enterprise's insolvency (bankruptcy).

4.3.7. Failure to ensure that the planned targets confirmed by the sectoral department of the City Administration of Krasnodar be met.

4.3.8. Failure to ensure a timely payment to the workers of the Enterprise of the bonuses, allowances, additional payments and compensations envisaged by legislation and/or the collective contract, until the moment when the arrears on those kinds of payments to the workers of the enterprise are liquidated in full.

For the director of a municipal unitary repair-and-exploitation enterprise:

4.4. To the Employee a bonus shall be paid in the procedure and in the amount established by the Provisions on the payment of bonuses to the workers of the Enterprise confirmed by the sectoral department of the City Administration of Krasnodar, with regard to the proposals of the Administration of _____Okrug of the city of Krasnodar.

4.5. In accordance with Article 279 of the Labour Code of the Russian Federation, in the event of an early termination of the present Contract, to the Employee a compensation shall be paid in the amount of one monthly salary.

4.6. The Employee shall be entitled to an annual basic paid leave with the duration of 28 calendar days and an additional paid leave in accordance with the collective contract.

5. Changes and termination of the Contract

5.1. The disputes between the Employee and the Employer shall be subject to regulation in accordance with the existing legislation.

5.2. The Contact may be changed by mutual agreement of the parties.

5.3. The Contact may be Terminabled on the grounds envisaged by the existing labour legislation.

5.4. The Contact may be Terminabled on the initiative of the Employer in accordance with I. 13 of Article 81 of the Labour Code of the Russian Federation, i.e. in the event of a failure on the part of the Employee to execute the duties envisaged in Item 2.3 of the present Contract.

6. Other terms

6.1. The Employee shall bear responsibility in the procedure and on the conditions established by the legislation of the Russian Federation.

6.2. The control over the operation of the Enterprise in the part dealing with the conformity with the requirements of the Charter, the financial and economic activity and the implementation of the planned targets shall be effected by the Founder and the sectoral department of the City Administration of Krasnodar.

The operation of the Enterprise shall be coordinated by the Administration of _____Okrug of the city of Krasnodar.

6.3. The present Contract shall be in effect for the period of _____, that is from ____to _____, in accordance with Article 59 of the Labour Code of the Russian Federation.

6.4. As to the part not envisaged by the present Contract, the parties shall abide by the legislation of the Russian Federation and the Charter of the Enterprise.

6.5. The Contract shall be made and signed in three copies, each with similar legal force: one copy shall be handed to the Employee, two copies – to the Employer.

6.6. The Contract shall be in effect from the day when it is signed.

7. The information concerning the parties

Employer:
City Administration of Krasnodar
Krasnodar, Krasnaia, 122

Employee:
_____
_____

8. Signatures of the parties

Employer:
Head of CityAdministration
of Krasnodar
_____N.V. Priz
(signature)
STAMP

Employee:
_____
(signature)

Contract coordinated with
sectoral department of
City Administration of Krasnodar
Director of
sectoral department
_____S.N.P.
STAMP

Contract coordinated with
Administration for municipal
property of City Administration
of Krasnodar
Director of Administration
_____N.V. Telegin

Annex 9. International Experience: State-owned unitary Enterprises in the Countries of Western Europe

A notion of 'State-owned enterprise' in some form is present in the legal systems of practically all countries of Western Europe[149]. But its specific substance differs in most cases from the substance of this notion in the Russian law. For example, according to the terminology accepted in the legal system of France State-owned enterprises are economic entities of any organizational and legal form that produce goods and services offered to the market, provided there is a real control over their activities by the State authorities (which excludes cases of insignificant participation of the State in business capital). All State-owned enterprises constitute a State sector of economy. The notions of 'State-owned enterprise' and 'State sector' have similar definitions in the legal systems of a number of other West European countries, in Germany in particular.

The Russian law interprets the adopted in France notion of 'State-owned enterprise' as including both State-owned unitary enterprises and enterprises of mixed ownership with prevailing State participation in the capital.

1. State-Owned Enterprises as a Constituent of a Development Model of the European Union Countries

In all without exception countries European Union State-owned enterprises have been and continue to be an important constituent of the chosen model of their development. It should be noted that these countries are strongly committed to the principles of market economy, which, nevertheless, doesn't prevent them from combining a traditional market regulation with participation in economic turnover by means of State-owned enterprises. Presence of State controlled economic entities in many key sectors of economy is not, in the case of EU countries, an alternative to the market, but an important prerequisite for its effective operation. This particular approach constitutes one the main peculiarities of social and market economy of West-European countries that distinguishes it from traditionally market economic systems of the USA and Japan.

[149] The following materials of reports were used in this section: J. Fournier *State-Owned Enterprises in the Countries of European Union* (September, 1999) and *Legal Aspect of the State Interference in the Market Economy* (July, 2000), J-M. Belorgier *Legal Norms of Public Participation in Commercial Activity in France* (September, 1999), A. Travis *State Participation in Commercial Activity of Enterprises* (September, 1999), K. Graham *On Forms of Organization of Legal Persons in Great Britain* (September, 1999), G. Lechlair *Norms, Spheres and Forms of Governmental Economic Activity at the Level of Federal Center and Federal States in Germany* (January 2000) in the framework of Tacis-EDRUS 9607 Project.

Enterprises can belong to the State sector on a permanent or temporary basis. The basis is permanent if a clear political decision has been taken to retain enterprises in State sector. The basis may be temporary if a State plans to carry out privatization of enterprises in the future, but only after all necessary conditions for their transfer to private owners will be created.

Reasons for permanent presence of some economic entities in the State sector may be their belonging to the so-called socially useful sphere or an industrial policy implemented by the State.

Providing the following vital services is customary to attribute to the socially useful sphere in Western Europe: water supply, heat supply, power supply, transport, communications. In all EU countries some or other branches of socially useful sphere (in different forms and under various names) form part of a State sector. It goes without saying that such services can be offered by private enterprises if they are provided various privileges and special mechanisms of State control over their activities are provided for. However, the position of EU countries authorities is that some vital functions are better supported by State-owned enterprises, rather then private businesses, even if a special regulation of the latter is provided for. In some EU countries this principle is even Stated in the Constitution, for example in Germany as far as post and railroads are concerned. The most striking instance of socially useful sphere enterprises being a part of State sector is France where such branches as transport, power supply, communications, public utilities form part of State sector. The enterprises of the above mentioned branches have a number of special duties, connected with a continuous operation, provision of equal access conditions, etc. At the same time these enterprises enjoy some special rights and can receive financial support of the State.

The reasons of such or other enterprises being a part of State sector can be also conditioned by the industrial policy of the State. In this case the grounds for a certain part of economic entities presence in the State sector usually are strategic interests of the State and a lack of entrepreneur initiative in some fields of activity. State-owned enterprises can be used as a means of economic policy implementation, provision of regional development, etc. In EU countries the biggest percent of State sector enterprises could be found in metallurgy, aircraft building, motor-car construction, production of armaments and defense technologies, as well as in banking and insurance. In should be noted that a branch structure of State sector in different countries varies significantly.

2. Trends of State Sector Development in West-European Countries

The period following the end of World War II saw a significant expansion of State sector in West-European countries, both at national and at regional and local levels. It is noteworthy that this process, which affected in various countries different economic industries – power engineering, transport, communications, financial sector, hi-tech industries, etc., wasn't considered as a withdrawal from principles of market economy. In most cases the results of a greater State participation in commercial activities in a post-war period were evaluated as positive ones, since such a policy contributed, in a great extent, to restructuring of certain industries and recovery of economic systems.

Lately a trend towards reduction of the level of State participation in economic turnover by means of commercial organizations of State sector has been clearly seen in West-European countries. Economic liberalization policy adopted during two last decades has led to a shift of their economic policy from the State entrepreneurship, carried out with the help of State sector enterprises, to the regulation of private activities. Practically all West-European countries follow a well-directed policy of privatizing State ownership.

Here a reservation should be made, that this trend practically doesn't cover the sphere of such services as security, education, public health. However it can be noted that in some countries (in Great Britain, for example) certain measures are taken to involve a private sector in these fields of activities. Besides, there are examples of implementing mechanisms similar to market ones in these spheres.

As far as commercial activity is concerned it becomes in a greater extent a responsibility of the private sector. In other words, the purposes of industrial policy or protection of national interests that led to creation of a significant State sector in most West-European countries has presently lost a big part of their importance. Nowadays a presence of this or that enterprise in sate sector can be fairly conditioned by the fact that the situation with its business or a market situation doesn't allow to privatize it at sufficiently favorable conditions.

The policy of West-European countries relative to economic entities acting in a socially useful sphere is not so 'unanimous'. Some countries include them in a general process of privatization retaining at the same time a stricter mode of such entities regulation. A typical example of the above mentioned approach is Great Britain where a number of measures aimed at privatizing enterprises in telecommunications, power engineering and railway transport were taken during the last 15 years. Other countries, to the contrary, maintain a full State control over corresponding spheres of activity. This approach has been implemented in France till late. Between these two utmost solutions lays a broad range of intermediate options that were used in other West-European countries.

3. Organizational Forms of State-Owned Enterprises

There is no a general organizational model of State-owned enterprises in West-European countries. To the contrary we can see a great variety of organizational and legal forms used in State sector. This situation is due to historical background, different approaches to forming a State sector and a specific character of economic and legal system of each country. But we can single out three organizational forms of State-owned enterprises that are somehow typical to the majority of West-European countries.

State organizations not having a status of legal person. Such economic entities doesn't have, as a rule, significant economic independence, their activity is directly administered by State authorities.

In France these entities are known as 'entities of public and legal administration'. At a national level such organizational and legal form was used in the field of post services and communication means till the beginning of the last decade. State-owned enterprises of such kind were created by State authorities for commercial activity in a corresponding sphere without forming a special legal person. Employees of public and legal

administration entities were public servants, property they were vested was State owned, and their budgets were a part of the founding bodies.

In Italy such economic entities were known as 'autonomous State-owned enterprises' and operated in such spheres as railroad transport, post and telegraph, and in some others. Their budget was approved in the framework of a national budget, but they have some financial autonomy. The autonomous State-owned enterprises were managed by boards of directors headed by corresponding ministers.[150]

In Great Britain the so called 'governmental trade funds' have the organizational form under review. Such economic entities are created for commercial activity in spheres of their responsibility, they are provided with necessary property and financed by corresponding ministries. The fund is directly managed by a director appointed by the minister.

The described form of State-owned enterprises is also typical and to other West-European countries, to Germany, in particular, where such economic entities having a certain organizational and financial autonomy are widely spread at a communal level.

State organizations having a status of legal person. The single participant in such enterprises is the State. Such economic entities posses a greater degree of economic independence than State organizations without a status of legal person, and their activity is regulated both by general and special legal norms.

In France the enterprises of organizational and legal form under review are known as 'public agencies' and operate in such spheres as railroad transport, power engineering and gas supply. Their authorized stock capital is fully formed by the State, but as distinct from entities of public and legal administration, property, which they are vested, is not formally a State-owned. However, property of such enterprises is not subject to seizure, and if an enterprise is to be liquidated it is returned to the State. Employees of public agencies are not public servants and have a special status. A number of important aspects of public agencies activity, such as book-keeping procedures, are defined by special legal norms, while other aspects are being regulated by general legislative rules. A procedure of such enterprises management, in particular, is defined by common corporate law.

In Italy organizations of such kind are known as 'entities of public law'. Striking examples of such organizations can be State managers of IRI, ENI and ENEL companies till their transformation to joint-stock companies in the first half of the last decade. An authorized capital stock of public law entities, called ' granted fund', is fully State-owned. The State also acted as guarantor of their debentures. Acting at the market together with enterprises of other organizational and legal forms entities of public law were not subject to bankruptcy. Boards of directors of such organizations were appointed directly by the government

In Great Britain such form of State-owned enterprises was a classic one for production enterprises and industries nationalized in the second half of 1940s. Organizations of the kind under review, known as 'State-owned corporations', operated till

[150] It should be noted that in some situations autonomous State-owned enterprises were given a status of legal person in spite of the fact that it contradicted principles of State administration.

the beginning of 1980s in such industries as coal-mining, power engineering, gas industry. State-owned corporations were founded by special legislative acts and were managed by boards of directors appointed by corresponding ministers. In particular circumstances ministers were entitled to dissolve boards of directors and could give directions mandatory for execution on a number of questions (financial included).

State-owned enterprises of a form under review also existed (and continue to exist) in other countries of Western Europe: in Germane, Sweden, Denmark, etc.

State controlled economic societies. The State or a State controlled structure is a prevailing (in many instances the only) shareholder of such societies. Such economic entities are regulated, as a rule, by general legal rules, but in some circumstances special norms may apply. For example, in France acting regulation rules define a number of peculiarities of State controlled economic societies status that cover a property mode, composition of management and State control over their activity. Besides, similar to public and legal administration entities and public agencies such societies are founded by special legal acts defining the subject of their activity, form of organization, etc, but as distinct from other economic societies they are considered founded not from the date of corresponding entry in the organization register, but from the date of such an act. It should be also noted that in a number of West-European countries acting regulation rules doesn't define any peculiarities of the legal status of economic societies under State control, however special legal rights of the State relative to these societies are often Stated in their charters.

Thus, the first described form of State-owned organization is the most often used by the State authorities to conduct commercial activity on their own behalf. For the last two decades Western Europe has seen a trend to reduce the use of this form at a national level that is why presently these entities are more often present at regional and local levels. The second form was the most widely used in socially useful sphere. Since the beginning of 1980s a trend has developed to reduce the use of this form, however, today it remains prevailing in organization of socially useful sphere branches in a number of countries. Finally, the third form was historically used mainly in those sectors where competition of private business exists, however lately a trend has developed to use this from in socially useful sphere as well (railroad transport in Italy and Germany).

4. Level of Subordination of State-Owned Enterprises

State-owned enterprises in EU countries can have either national or local (regional) level of subordination. And both the first and second form of State sector organization may dominate here. Prior to the beginning of privatization in France, Italy, England the basis of State sector was composed of large national companies, daughter enterprises of which were located at all territory of the country. Such form of State sector organization remains the same in the field of transport, power engineering, telecommunications in France. Besides, some large national companies still operate in industry and banking sector. In present England a national level of subordination have State-owned companies acting in gas supply, railroad transport, post services, telecommunications and in some other fields.

In some other countries a local (regional) level of State-owned enterprises prevails. This form of State sector organization is typical, in particular, to Germany and Scandinavian countries. In Germany power distribution and State-run transport are organized at a level of large inhabited localities. State-run banks of regional subordination play an important role in regional development.

It should be noted that a privatization process, now under way in West-European countries, affects national companies in a greater extent than State-owned enterprises of a regional (local) level.

5. Management System of State Sector Enterprises

Different forms of State-owned enterprises control system configuration are used in various EU countries. In a number of countries a multilevel system of State sector control has been established. In the framework of this system the State controls State sector enterprises not directly, but through special company managers. State sector of Italy, for example, had four base levels (three of which were managerial) till the beginning of 1990s: Ministry of State Participation that carried out general management of State sector; specialized State managing companies (acting in the form of public law entities); branch holding companies under their control, and finally, ordinary enterprises of State sector. In Spain State sector was amalgamated in three holdings by a special legislative act in 1995. The first one included enterprises planned to be privatized in the short term, the second holding combined enterprises that are to be privatized in the medium term, and finally, the third holding was formed by economic entities not subject to privatization. Large State-run holdings that play an intermediate role between the State and State sector enterprises also exist in Austria.

In other countries, to the contrary, State authorities directly participate in State sector enterprises control. In France, for example, State sector enterprises are controlled by corresponding branch ministries: this is Ministry of Industry for *Electricite de France* and *Gaz de France* companies, and Ministry of Transport for *National society of railroads of France*. At the same time all enterprises are under control of Ministry of Finance, which protects financial interests of the State in the process of State-owned enterprises operation.

6. State-Owned Enterprises Activity Control

Management boards of State-owned enterprises, as a rule, are directly appointed by the State if there is no private shareholders participation in the capital of these enterprises. General procedures provided for by the corporate law are normally applied to State controlled enterprises of mixed ownership: the State along with other shareholders nominates its candidates, votes using its shares, etc.

Profile agencies or the government normally play a leading role in forming management boards of State-owned enterprises: their delegated representatives receive a majority in the quantitative composition of these boards. Besides, representatives of enterprises personnel are often included in management boards. This example is very typical to France where State-owned enterprises boards of directors called administrative councils are formed on a trilateral basis: one third of administrative council members is

appointed as proposed by the interested agencies, another third is composed of specialists appointed by the government, and the last third is formed out of representatives of the enterprise personnel. Chairman of administrative council (sometimes of executive body – director general) is appointed by the government at a suggestion of administrative council.

Besides a direct participation in management, State authorities normally have some additional capabilities of controlling State-owned enterprises activity. A typical example again can be found in France. A special service of State controllers reporting to the Minister of Finance exist in France, which supervises economic and financial activity of large State-owned enterprises. Besides, enterprises accounts are controlled by the Accounting Chamber.

7. Financial Relations Between Enterprises and the State

Accounts of State-owned enterprises having a status of legal person are separated from accounts of the State, which is, generally speaking, a direct consequence of their status. Financial relations of the State with State sector enterprises, if we are to ignore taxation, include two oppositely directed cash flows:

- a transfer to the budget of a part of State-owned enterprises profits (including dividends on the shares belonging to the State);

- a transfer of funds to State-owned enterprises out of expenditures of the State budget in a form of subventions if these enterprises conduct planned unprofitable activity in a socially useful sphere. It is necessary to take into account the fact that in many West-European countries the State bears responsibility relative to liabilities of certain groups of State-owned enterprises. There are examples when such enterprises, for some reasons, accumulated big indebtedness. In these cases the State had to assume a grate part of accumulated debt. Such situation took place, for example, in the carriage by rail in Germany.