



Agreement-Based Regulation of Joint Activities in Energy and Transport Industries

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Abstract

The relation of transport and energy industry is not always taken into account in the legal regulation of emerging social relations. Unfortunately, there is currently no systematic legal regulation of transport and energy industry relations, as well as no scientific research on this issue. It is mainly due to the fact that both bachelor's and master's programs study two different disciplines "Transport law" and "Energy law". Or worse, the educational program does not provide for such disciplines. Agreements on joint activities are one of those unifying bases that can be form integration of regulatory material in the studied fields. The research focuses on forming a scientific image of joint activities agreements used in the transport and energy industries. Methods The research involved system approach, comparison, description, and interpretation, as well as theoretical methods of formal and dialectical types of logic. The specific scientific methods included the comparative legal method and interpretation of legal norms, and legal modeling. Results This work outlines the range of agreements on joint activities in the transport and energy sectors and make up a single integrative system. The study reveals the common features of these agreements that give them the proper legal qualification. The legal nature of the code-sharing agreement is defined, its independence is proved. The work involved the separation of this agreement from other types of civil law agreements. This paper is written in a separate co-authorship. Introduction and the first part deal with the common characteristics of the agreements on joint activities in energy and transport industries and are written by S. Yu. Morozov. The second part on the interaction of carriers under the terms of the code-sharing agreement is written by Fedotova D. S.

Keywords: Agreements on joint activities; Agreements between transport organizations; Organizations in energy industry, Simple partnership, Code-sharing

1 Introduction

Transport and energy sectors are two interrelated spheres of the economy. Transport cannot operate without energy consumption, and energy delivery is usually impossible without transport. Thus, these areas of public relations require unified legal regulation. This statement can also be justified by the fact that transport law and energy law are complex branches of legislation that regulate social relations that are similar in many aspects. It is particularly about the agreement-based regulation of joint activities. The freedom-of-contract doctrine is recognized in many countries (32; 34; 36; 39). It allows not only forming new contractual structures, but also to study their impact on the feedback-based systematization of law and legislation.

The range of such relations both in transport and energy is quite wide. They include the agreements between the owners of infrastructures. In turn, these agreements can be divided into: agreements between the owners of transport

infrastructures; agreements between the owners of oil/gas pipelines; agreements regulating the interaction of the system operator and the organization for the management of the Federal (all-Russian) Grid Company (hereinafter-FGC); agreements between the system operator and the subordinate entities of the operational dispatch control; agreements between the higher and lower entities of the operational dispatch control; agreements on the use of electric grid facilities belonging to FGC,

Other agreements regulating the interaction of organizations in energy industry include the agreement on accession to the trading system, contracts for the implementation of operational dispatch control, the agreement regulating the interaction of the system operator and the administrator of the wholesale market trading system. The transport industry also uses nodal agreements, contracts for centralized import/export of goods, contracts between carriers on the terms of code-sharing, contracts of simple partnership

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between carriers carrying out interregional and intermunicipal regular road transport of passengers and baggage, contracts between carriers in transport of passengers and baggage in direct mixed traffic, contracts of technological outsourcing of planning processes and operational management of empty wagons transport, etc.

The study of this legal regulation is of interest, because the current civil law of Russia has no single definition of the agreement on joint activities. There is also no scientifically based classification of such agreements, there is no legally enshrined concept of transport organization. All this creates difficulties in the legal qualification of contracts between transport organizations. There organizational role of agreements (37) and the nature of organizational relations is under discussion (30). In economic and social aspects, the relevance of the study lies in the need to stimulate new contractual forms of cooperation between transport and energy enterprises in order to reduce their costs and tariffs for consumers and expand the rendered services (16, 38).

This paper does not claim to solve all these problems, since the research field is very wide. This work is to identify common features of agreements on joint activities of organizations working in the studied economic fields. In addition, on the example of the code-sharing agreement with blocking seats, the paper analyzes some problematic issues related to the legal qualification of these contracts.

2 Methods

Finding out the common features of the studied contracts involved a systematic approach that allowed identifying the aim of the contracts. It is directly connected with the integrative properties of the system. Based on the properties of communication systems, the subsystems of agreements on joint activities in transport and energy sectors are considered as part of a higher level system. The study of this system using the methods of comparison and interpretation allowed to give legal qualification to all civil law agreements on joint activities.

Further, the study discovered that the code-sharing agreement was one of the elements of the studied system. The comparative legal method and method of interpreting legal norms allowed distinguishing this agreement from contracts of simple partnership, transportation of the passenger, chartering, transport expedition, and contracts of agency. The method of legal modeling was used to identify the legal structure of the code-sharing agreement.

3 Results

The main results of this study is definition of common features of the system of joint activity agreements and the identification of the legal nature of the code-sharing agreement. It is proved that the common features of civil law agreements on joint activities are: 1) focus on the organization of activities aimed at achieving a common goal; 2) dependence of the subject of the contract on the legal institute provisions on the contract, or on the legal entity, or on the subject organization (the relationship of organizational and organized legal relations); 3) organizational, non-personal, non-property nature of the contract; 4) multilateralism; 5) gratuitousness; 6) lack of reciprocity.

All these features are manifested in the agreements on joint activities between transport and energy organizations and determines the commonality of their legal regulation. At the same time, it is equally important to highlight the common features of the agreements, which are typical for the regulation of joint activities only for these two fields of activity. The solution to this problem can also serve for unification of the legal norms regulating similar relations.

The code-sharing agreement is an independent civil law agreement on joint activities concluded between transport organizations. It is a framework organizational agreement aimed at organizing the conclusion and execution of contracts of transporting passengers and baggage. The code-sharing agreement is gratuitous and multilateral and cannot be recognized as mutual. Non-personal, non-property civil relations arise from this agreement.

4 Discussion

4.1 General characteristics of agreements on joint activities in energy and transport industries

4.1.1 On the question of systematization of agreements on joint activities concluded in the transport and energy industries.

In the civil law of Russia, among the classic agreements on joint activity, there is a simple partnership agreement (article 1041 of the Civil Code of the Russian Federation – hereinafter the CC). However, this is not the only representative of this type. The memorandum of association and corporate agreement (article 67.2 of the CC) also refer to this type. E. B. Poduzova includes agreements on the foundation of legal entity into this type (clause 1 of article 89 of the CC and clause 5 of article 11 of the Federal Law dated February 8, 1998 #14-FZ "On limited liability companies", clause 1 of article 98 of the CC, and clause 5 of article 9 of the Federal Law dated December 26, 1995 #208-FZ "On joint-stock companies"). The researcher also mentions the insurance pool and the investment partnership agreement as a kind of partnership agreements (23). Another type of agreements is called the intercreditor agreement (article 309.1 of CC) (24).

Experts of family law suggest that 'the family itself as an institution of family law is nothing but a contract on joint activity' (17).

It should be noted that agreements on the organization of joint activities are also applicable in the common law system. In English law, there are partnership agreement (40, 35) and memoranda of association (33).

4.1.2 General characteristics of joint activity agreements

Agreements on joint activities have common features. All of them are aimed at achieving a common goal. Therefore, their subject is the activity of all participants aimed at achieving a common goal (13). The subject matter of the contract is a priori its essential condition. Yu. V. Romanets notes that depending on the specific purpose of the agreement, the essential conditions can be determined on the basis of the relevant agreement institutions (27). Thus, if the purpose of a contract of joint activity between the owners of transport infrastructures is to organize the performance of the transport contract within these infrastructures, then the data on the subject of the transport contract relating to the points of

departure and destination is important. Such activity is organizational since it is about organization: voting at the general meeting; incorporation of a legal entity; conclusion or performance of civil contracts; other property and non-property relations. In this regard, it seems reasonable that such treaties are organizational (6, 23). The consequence is the recognition of legal relations arising from organizational contracts as non-property.

The whole essence of organizational legal relations is that they are aimed at organizing and streamlining other civil law relations that would arise in future. Even when the terms of the agreement and the requirements of the legislation require joint actions to make contributions, such activities do not change the overall focus of the joint activity agreements (11). Moreover, the organizational legal relations arising from the agreement on joint activities are not only non-property, but also non-personal. The legal literature expresses an opposite opinion. S. P. Grishaev believes that the rights and obligations of the parties in the simple partnership agreement are either personal or property in their nature (13). This statement can be argued since there is no inseparable link with the identity of the rights and obligations of the parties with the agreement.

The existence of a common goal among the parties to the agreement on joint activities justifies their multilateral character. At the same time, the division of agreements into unilateral, bilateral and multilateral is made not by the number of parties to the agreement, but by the mutual 'location' of civil rights and obligations. Thus, an agreement is unilateral not only because it has a one party, but this is impossible because the agreement needs a counterparty. Multilateral agreements differ in that the rights and obligations of the parties are unidirectional, while those of bilateral agreements are reciprocal.

G. F. Shershenevich has described this situation in the following way: 'numerous members of the partnership agreement are not divided into two parties (active and passive) but all are in the same legal position. Each party in relation to all other parties has rights and responsibilities, being both active and passive subject' (31). I. V. Eliseev reasonably notes that in such a contract 'neither of the parties has the right to demand the performance of himself personally and, accordingly, should not perform (the obligations) directly in respect of any other party' (12). This circumstance is not taken into account by S. P. Grishaev. He believes the simple partnership agreement is bilateral and mutual (13). A multilateral agreement on joint activities may also be concluded between the two parties.

Meanwhile, agreements on joint activities are described by the presence of rights and obligations of each participant. In fact, this is their difference from the cases of plurality of persons on the side of the creditor. Thus, V. V. Vitryansky notes that the agreement between the co-owners concluded by virtue of clause 6, article 356 of the CC doesn't form any simple partnership agreement (10).

4.2 Interaction of carriers on the terms of the code-sharing agreement

4.2.1 Notion and types of code-sharing agreement

One example of the joint activities of transport organizations is the interaction of carriers under the terms of

the code-sharing agreement. In their vast majority, such contracts are used in air transport, but in Germany they may be concluded between railway and air carriers. This became possible because of the active position of Deutsche Bahn on the organization of interaction with many well-known air carriers.

Frequent is the picture when the scoreboard at the airport displays information that several airlines fly on the same route at the same time.

The term 'code-sharing' refers to the exchange of codes. These are the codes assigned to each airline by the International Air Transport Association (IATA) (note 1). These two-character codes make it possible to personalize air carriers, and their receipt is one of the prerequisites for the international passenger traffic. They can be seen in the numbers of tickets as the first characters. So, the widely known code S7 is rated to S7 Airlines (former Siberia airlines). According to IATA Resolution #762, the codes are allocated by the Association's headquarters in Montreal.

The provisions of the Warsaw (note 2), Guadalajara (note 3) and Montreal (note 4) conventions regulate the relationship between air carriers in the organization of joint carriage of passengers and baggage and determine the legal status of contractual and actual carriers. At the same time, the actual carrier is the one that directly performs transportation. The contract carrier (the carrier under the contract) enters into contracts for the transportation of passengers and baggage, but it may not be engaged in rendering services for the delivery of passengers to the point of destination. Thus, the passenger may not be transported by the airline specified in the ticket. It implements the classical pattern of imposing obligations on a third party by the debtor, where the contractual carrier acts as the debtor, and the actual carrier acts as a third party.

International Civil Aviation Organization (ICAO) also regulates the exchange of codes between airlines (note 5). In Chapter 4.1. of document #9626 'Guidelines for the regulation of international air transport' issued in 2004 by virtue of the resolution of the Assembly of the Association provides for the possibility of concluding agreements on joint use of codes, 'i.e. the use of the code designation of a flight of one air carrier for a flight operated by a second air carrier, while the flight is usually defined (and may need to be defined) as a flight operated by a second air carrier' (28).

Code-sharing agreements give a lot of advantages to both carriers and passengers. For carriers, at zero cost, the market for providing transport services is increasing. Due to the expansion of the route network, it is possible to operate the capacity of aircraft, increase the number of flights without increasing the number of aircraft on the line. Other advantages include: the use of well-known brands and increasing the recognition of little-known air carriers, building more flexible logistics schemes, free advertising, allowing to increase brand awareness, reduce operating costs, etc. As for the passengers, as S. A. Kmit' believes, they get the opportunity to reduce the flight time for connecting flights, they do have not check in additionally for transfers, the price for transportation is reduced due to discounts and special offers, increased comfort during transfers through the joint use of air carriers of air infrastructure, booking tickets for a convenient flight preferred airline are also such advantages (25).

Usually there are several types of code-sharing agreements:

Block code. The contract contains a condition according to which the contract carrier blocks a certain number of passenger seats on the flight of the actual carrier and sells tickets for these seats at a surcharge and under its code. The risk that tickets for blocked seats would not be redeemed is borne by the contracting carrier, which in any case reimburses the actual carrier for the cost of transportation. The actual carrier shall bear all costs of the flight.

Access to booking seats on the partners' flights. The code-sharing agreement contains a condition on the possibility of the cooperating companies' access to booking seats on the principle of free sale, with the determination of the number of seats of each of the partners and the deadline for the sale end. The flights in this case are carried out under a double code. The order of income distribution is carried out in accordance with the terms of the contract.

This type of code-sharing can be carried out according to the principles of free flow corridor and limited flow. In both cases, the data exchange on sold tickets takes place in real time without reference to specific locations to any of the contracting airlines. However, in case of the free flow corridor, the number of sold seats is not limited, and in case of a limited flow, the contract contains a condition on the maximum number of tickets for partners.

Code-sharing agreement with the condition of transfer of passengers on connecting flights. This scheme is implemented when each of the airlines carries passengers and baggage on their own segment of the path. Thus the transfer of passengers occurs without re-registration in the place of flights connection.

Each of these types of code-sharing agreements deserves attention in terms of their legal qualification. However, the first type of contract that contains a condition of blocking seats is the most interesting. Let us consider it in detail. Before talking about a particular case, it seems appropriate to identify common legal features typical to all code-sharing agreements.

There is no doubt that the legal relations arising from the code-sharing agreement are of a civil nature. First, they are governed by the method of legal equality of the parties. Secondly, this work studies the regulation of property social relations included in the subject of civil law.

There are different opinions about the possibility of legal qualification of this contract as a lease of vehicles with the crew, the contract of chartering, the contract of carriage of passengers and baggage, the contract of simple partnership, or a special type of organizational contract. It seems that a comparative analysis of the code-sharing agreement with these types of contracts will possibly reveal its subject matter and the most significant features. Then it will be possible to draw a conclusion about the legal nature and type of the contract.

4.2.2 Delineation of the code-share agreement from the chartering agreement

According to experts of Moscow State University named M. V. Lomonosov and judges, the closest contractual construction to the code-sharing agreement is the chartering contract (14). Indeed, there is some similarity because both are about the capacity of the vehicles. However, it is impossible

not to see a number of fundamental differences between the two agreements.

First, the code-sharing applies only to regular transport on a schedule set by the carrier, while the charter flights are non-regular. Regularity of transportation is a significant feature for determining the legal nature of code-sharing.

Secondly, the charter provides for the payment of freight, and code-sharing is free of charge. Even if a particular agreement provides for the condition of payment to the contract carrier, it is about the income distribution between carriers received from joint activity, i.e. on the distribution of money received from the passengers. No carrier pays to other carrier according to the code-sharing agreement. There is an opinion that the code-sharing is 'a veiled form of payment of compensation for the granted right to operate flights on the airline' (8). In fact, the actions of the contracting carrier to reduce the granting of the right to fly to the actual carrier seems wrong. It is not a question of granting a right, but, on the contrary, of imposing an obligation on a third party, as well as a prohibition to provide seats on the flight to passengers who have not concluded a contract of carriage with a contractual carrier. The assignment of the right of claim is also out of the question in the absence of an assignable claim.

Third, the chartering agreement allows the possibility of coincidence of the charterer with the passenger in person. Only carriers participate in the code-sharing agreement.

Fourth, the chartering agreement is a bilateral agreement, where the interests of the parties are counter, while the code-sharing agreement is a multilateral agreement.

Fifth, the chartering contract does not imply the organization of conclusion and performance of other contracts in future. The obligation to deliver the passenger and their baggage to the destination arises directly from the charter. By contrast, a code-sharing agreement does not create an obligation to transport and is of an organizational nature. In order to perform such agreement, it is necessary to conclude separate transport contracts with passengers.

4.2.3 The correlation of the code-sharing agreement and the partnership agreement

One of the proposed variants of the legal classification of the code-sharing agreement is its recognition as simple partnership agreement (joint venture agreement). In accordance with article 1041 of the CC, under this contract two or some persons (companions) undertake to connect the contributions and jointly act without creating a legal entity for making profit or for other legal purpose. At first glance, the code-sharing relations of airlines fully fit into the framework of the simple partnership agreement, which simultaneously regulates the organizational and property relations (6).

The partnership agreement in one form or another has been used in transport for a long time. A. I. Kaminka believed that the basis for such entity as Naryshkinsky Railways is a contract of partnership (18). The similarity of the considered agreements is that in the contract of a simple partnership and in the code-sharing contract there is no antagonism of the interests of the parties. They are unidirectional and converge at one point (22). Therefore, these agreements are always multilateral (11). The single (common) goal is seen in the fact that 'neither of the parties has the right to demand the

performance of himself personally and, accordingly, should not perform (the obligations) directly in respect of any other party' (12). It is impossible to clearly distinguish an active and a passive parties (11). If the goals of the parties to the code-share agreement may be presented as the organization of performing contract of carriage of passengers and baggage, then there is no conflict of interests of the parties, and the interests of the parties are unidirectional.

Speaking about the differences between the two types of contracts, it should be noted that the secondary (subordinate to the main) purpose is only present in the contract of simple partnership. The code-sharing agreement has no secondary goal. The question if the focus 'on creating an appropriate entity that is not a legal entity' (5). Transport organizations at the conclusion of the code-sharing agreement do not pursue the goal of creating some kind of non-subject entity. The lack of legal personality of a simple partnership leads to the fact that 'in terms of *societas*, there can be no claims and debts of the partnership in itself, but there are only debts and claims of individual partners' (3). This statement about *societas* (made by Yu. Baron), which meant partnership contract in Roman law, is significant for distinguishing the contract of partnership from a code-sharing agreement. Under a simple partnership agreement, a third party may submit claims only to the person with whom the transaction was concluded or to all partners specified in the power of attorney. Under the agreement on the assignment of duties to a third party, the debtor is responsible to the creditor for the actions of a third party.

Secondly, an indispensable feature of a simple partnership agreement is the investment club of the partners. In respect of each partner, this duty is established directly; the condition of the agreement on the amount of deposits is very significant. V. S. Em and I. V. Kozlova reasonably note that the contract in which participants do not form the property at the expense of deposits (by this making their common share property), do not bear the expenses and losses from the common business. They also do not distribute the obtained results among themselves and cannot be qualified as the contract of simple partnership (11, 20).

Is there an investment club of air carriers', and if so, what is the contribution to the common property? This work sticks to the point that there is no investment club. Even assuming that the actual carrier contributes property rights to the blocked passenger seats as a deposit, and the contractual carrier contributes, for example, its business reputation, then the whole thing is not about investment clubs. First, there is no segregation of deposits, there is no separate accounting. Secondly, the profit is not distributed among the participants in proportion to the contribution. Third, the deposits are not assessed. The rules on the allocation of shares is inapplicable too.

Third, there is no fiduciary relationship between the parties to the code-sharing agreement, which is a characteristic feature of the simple partnership agreement. For this reason, personal non-property relations do not arise from the code-sharing agreements.

Fourthly, unlike the partners in the simple partnership agreement, the parties to the code-sharing agreement are not responsible for their own property.

All of the above allows concluding that the code-sharing agreement is not a simple partnership agreement. A simple partnership agreement is not the only agreement relating to joint venture agreements. Therefore, it seems that the code-sharing agreement is one of the types of the agreement on joint activities.

S. A. Kmit' suggests to differentiate code-sharing agreements and passenger transportation agreements as a kind of transport contract of passengers and baggage (19). His statement is based on the decision of the Federal Arbitration Court of the Moscow district dated 15.08.2014 in the case #A40-125605/13. It states that the agreements on the joint use of flights services are not services for the transportation of passengers and the norms of current legislation. This work states that this position is not fully justified. On the one hand, it should be agreed that both the actual and contractual carrier are involved in the provision of services to the passenger under the transport contract. On the other hand, this statement concerns the relationship of carriers with the passenger and does not explain the sense of the contractual relationship between the carriers themselves.

The actual carrier provides transport services to the passenger, but not to the contractual carrier. The carrier doesn't move anywhere under the code-sharing agreement. It is obvious that the contracting carrier does not purchase tickets in order to be delivered to the destination by the actual carrier. On the contrary, it is engaged in selling tickets to passengers. Therefore, the conclusions of the Supreme Court of the Russian Federation, made in the Determination of 30.07.2015 in the case # A40-140893/2013 that the essence of the code-sharing relationship assumes that under this agreement, its parties do not provide transportation services directly to each other, are correct. The actual recipient of the service is the air passenger (note 6).

It should be noted that the relationship between the debtor and the third parties involved in the performance of their duties under the contract (subcontractors, subcontractors, co-carriers, etc.), are based on an organizational civil law contract, which in the opinion of V. A. Belov is a framework (4). An example is a nodal agreement between carriers of different means of transport for the performance of the debtor's duty to deliver the goods to the destination point. A good example is the statement of A. G. Bykov, D. I. Polovinchik and G. P. Savichev that nodal agreements 'are one of the types of organizing transport agreements, the task of which is to determine the order of relations between transport enterprises at transshipment points. These relations do not regulate the transport relations with shippers and consignees that send and receive goods in a direct mixed traffic' (7). From the point of view of G. B. Astanovsky, nodal agreements are organizational in nature and regulate internal relations of transport organizations (2). V. V. Vitryansky (9), S. Yu. Morozov (21), B. I. Puginsky (26) and others insist on considering the nodal agreements to be organizational.

Internal contractual legal relations between the contractual and actual air carriers are also focused on organizing the performance of obligations within the framework of another (external) legal relationship arising from the contract of transportation of passengers and baggage. Thus, a third party (the actual carrier) should be considered as a party to the

internal organizational relationship, in which it is opposed by the contractual carrier. Simultaneously, it is a party to the initial (organized) legal relationship for the transportation of passengers and baggage. It is this legal relationship between the internal and external legal relationship that V. K. Andreev points out (1).

The organizational legal relations arising within the framework of the code-sharing agreement are of non-personal non-property nature. At least, this concerns paying for transportation. In any case, transport services are paid by the passenger, not by transport organizations. The latter can only transfer money received from the passenger to each other (9, 29). Only income received from passengers, which is sometimes wrongfully referred to as remuneration, is distributed between carriers under the code-sharing agreement. For example, the terms of the contract may provide that the actual carrier gets only the money for meals and passenger fee, while 90% of the ticket price remains with the contractual carrier and is its 'remuneration'. Thus, there are practices of using this scheme in Aeroflot airlines (contract carrier) and Delta Airlines (actual carrier) when making a flight from New York to Moscow. In fact, the remuneration is out of the question, and along with the organization of civil-law relationship, there is no additional contractual relationship for the provision of property benefits. The code-sharing agreement is always gratuitous.

Unlike the contract of transportation of passengers and baggage, the subject of code-sharing contracts is not rendering services. However, the recognition of the studied agreement as an organizational contract raises the question about the possibility of applying the design framework for this type.

4.2.4 Dividing the code-sharing agreement from the transport expedition agreement and the agency agreement

There are certain similarities between the code-sharing agreement and the transport expedition agreement. They lie in fact that the contractual carrier, as well as the freight forwarder, performs representative functions. However, the code-sharing agreement cannot be a kind of transport expedition agreement for the following reasons.

First, the services provided under the transport expedition contract are related to the transportation of cargo, not to the transportation of passengers and baggage. Although there are the reasonable proposals to expand the scope of the contract of transport expedition, the legal validity indicates the limitation of the scope of the freight forwarder.

Secondly, the parties to the code-sharing agreement are transport organizations, while in the contract of transport expedition either the consignor or the consignee always acts as the client.

Thirdly, the code-sharing agreement is a multilateral organizational agreement, while the contract of transport expedition is a contract for the provision of services and can be qualified as bilateral and reimbursable.

Fourth, the code-sharing agreement organizes the transportation of passengers itself, not the related services.

It is necessary to study the possibility of legal qualification of the code-sharing agreement as an agency contract, in which the contractual carrier performs the functions of an agent to

attract passengers for transportation, representing the interests of the actual principal carrier to passengers.

First, it should be noted that the agent provides services for a fee, while the contractual carrier does not provide any services under the code-sharing agreement and does not receive money for it. The view that the contracting carrier receives an agency fee in the form of the difference between the price paid by the passenger for the carriage and the part of that price paid to the actual carrier is wrong. The actual carrier does not pay any money to the contractual carrier, the parties only distribute the money received from the passengers.

Secondly, the agreement on assigning the obligation to a third party has the opposite scheme of mutual rights and obligations to the agency agreement. If the code-sharing contract is viewed as a contract for the assignment of performance of obligations to a third party, the contractual carrier (debtor) imposes on the actual carrier (third party) the performance of its duties. If it would be possible to classify the code-sharing agreement as an agency contract, the actual carrier would be considered as lender, and the obligations would arise from the contractual carrier. Once again, the paper emphasizes that in the code-sharing agreement it is impossible to clearly identify the active or passive party.

Third, in the agency agreement, the agent, as a rule, is not responsible for the execution of the transaction by a third party, and in the agreement on the assignment of obligations of the debtor to a third party, the original debtor is responsible to the creditor for the actions of third parties.

Fourth, under the agency agreement, the agent transfers all received transactions with third parties to the principal. In the code-sharing agreement, the parties decide how to distribute the funds received from the passenger.

4.2.5 Dividing of the code-sharing agreement from the escrow agreement

Some similarities with the agency agreement and the condition of blocking seats give some similarity to the code-sharing agreement with the escrow agreement. It provides for the blocking of transferred property for storage by the escrow agent before the circumstances stipulated by the contract. The similarity is in the fact that both contracts can be classified as a contract in favor of a third party (15).

One can assume that contract between the actual and the contractual carrier, which provided for a condition of blocking seats, should be regarded as a contract of carriage with a conditional deposit of property rights (escrow). At the same time, the assignment of duties to provide the transportation of passengers and baggage to a third party is complicated by the service of escrow. Contract carrier in this agreement could be the escrow agent, blocking (consigning) the rights of passengers (beneficiaries) to the occupation of seats on the flight undertaken by the aircraft of the actual carrier (bailor). Neither the actual carrier nor the passenger may exercise the right to take seats on the flight. Blocking occurs before the occurrence of the bases provided by the contract between the transport organizations. Such bases are the actual composition consisting of a sequence of two legal facts: passenger seat reservation and ticket purchase.

However, this is only a hypothesis, which is not confirmed by the following circumstances.

First, the escrow agreement applies when there is no trust between the beneficiary and the depositor. The code-sharing agreement, on the contrary, is aimed at cooperation.

Second, the escrow contract is signed by three persons: beneficiary, escrow-agent and depositor (clause 1 of article 926.1 of the CC) (10). This is due to the fact that this agreement is a way to ensure another contractual obligation to transfer property. Therefore, the obligation arising from the escrow agreement is accessory. In most cases, two carriers are enough to sign a code-sharing agreement.

Third, the contractual carrier does not receive agency fees from the actual carrier, and even more so from the passenger. In the escrow agreement, the agent receives remuneration from both the beneficiary and the depositor.

Fourth, if it was the beneficiaries who are to recognize passengers under the code-sharing agreement, the acquisition of their right to transport would have been burdened with a condition. This is contrary to the legal nature of not only the code-sharing, but also the contract of transportation of passengers and baggage.

5 Conclusion

Thus, the code-sharing agreement is an independent framework organizational agreement on joint activities between transport organizations. It and cannot be recognized as agreement of simple partnership, transportation of passengers and baggage, escrow, agency, or transport expedition contract.

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