**Правительство Российской Федерации**

**Федеральное государственное автономное образовательное учреждение высшего профессионального образования   
"Национальный исследовательский университет   
"Высшая школа экономики"**

Общеуниверситетская кафедра публичной политики

**Программа дисциплины**

Soft Law and Regulatory Governance

для направления 030200.62 «Политология» подготовки магистра

для магистерской программы «Политический анализ и публичная политика»

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Москва, 2013

# Scope of implementation and normative references

The present program establishes minimum demands of students’ knowledge and skills and determines content of the course, themes of classes and evaluation system.

The present syllabus is aimed for the course’s teachers, their teaching assistants and students of the department 030200.68 ‘Political Science’, master’s program ‘Political Analysis and Public Policy’, specialization "Political Analysis and Public Policy," "Human Rights and Democratic Governance" studying the discipline " Soft Law and Regulatory Governance "

This syllabus meets the standards required by:

* Educational standards of National Research University Higher School of Economics of Federal Masters’ Degree Program 030200.68 “Political Science”,
* Master’s program ‘Political Analysis and Public Policy’ of Federal Masters’ Degree Program 030200.68 “Political Science”,
* Curriculum for the Master degree program 030200.68 "Political Science", the master’s program ‘Political Analysis and Public Policy’, specialization ‘Human Rights and Democratic Governance’ as of 2013.

# Objectives of the course

Objective of the course « Soft Law and Regulatory Governance » is formation and consolidation of students’ knowledge of the Soft law regulation: the definition of the soft law, its other distinguishing features and main mechanisms, place in the Russian legal system among legal systems based on this tradition.

# Student’s competence by the end of the course

As a result of passing the course a student should:

* Know:
* history of development of soft law regulation;
* key attributes of soft law;
* different approaches to soft law concept;
* modern understanding of the soft law regulation in world, include political and legal issues;
* history of origin and development of the soft law in Russian legal system;
* role of the soft law in the Russian legal system in future.
* Be able to:
* analyze cases of soft law regulation in European countries and Russia;
* compare approaches implemented in the modern Russian legal system with approaches of other Western legal systems for using soft law mechanisms;
* analyze jurisprudence doctrine of soft law.
* Have skills of:
* work with political and legal literature;
* preparation of reports on the given topic, their public presentation and participation in discussion.

As a result of passing the course a student acquires the following competences:

|  |  |  |  |
| --- | --- | --- | --- |
| **Competence** | **Code** | **Descriptors – indicators of learning** | **Forms and methods of studying, promoting development of competences** |
| Ability to adapt to new situations to re-evaluate experience and to analyze his/her own opportunities | ОК-7 | Demonstration of common skills to analyze practical cases | Tutorials |
| Ability to use profound knowledge of legal and ethical norms to evaluate the outcomes of professional activities, during development and realization of socially important projects | ОК-12 | Use the knowledge of main features of soft regulation for analyzing practical cases | Tutorials |
| Ability to prepare, present and defend results of his/her work | ОК-20 | Implementation of acquired knowledge to prepare reports | Home tasks, Tutorizls |
| Ability and readiness to make researches, reviews, reports and articles professionally (in accordance with the profile of Master's program) | ПК-3 ГОС | Implementation of acquired knowledge to make an article | Home task |

# Place of the discipline in the structure of the educational program

This course is not an obligatory, but the one on the of the student’s choice on the second year of Master Program ‘Political Analysis and Public Policy’ for the specialization ‘Human Rights and Democratic Governance’. The course requires prior knowledge of basics of law, politology, sociology and economics, as well of in human rights.

Main theses of this course may be further implemented/developed during the following courses:

* National and international mechanisms of human rights
* Human Rights in non-Western cultures,
* Migrants and ethnic minorities
* Freedom of Expression and Hate Speech
* Freedom of assembly and mass actions
* Academic-research seminar “Human Rights Monitoring”.

# Course contents

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **№** | **Section** | **Hours** | **Working in class** | **Home work** |  |  |
|  |  |  | **Lection** | **Tutorials** | **Practice** |  |
| 1 | Introduction | 36 | 4 | 2 | - | 30 |
| 2 | Soft law: origins of the term | 25 | 8 | 2 | - | 15 |
| 3 | Instruments and Methods of the Soft law regulation | 31 | 12 | 2 | - | 17 |
| 4 | Using soft law in regulatory governance (case study) | 52 | 8 | 4 | - | 40 |
|  | Total | 144 | 32 | 10 | - | 102 |

# System of students’ grading

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Type of grading** | **Type of work** | **1 year** | **Parameters** |  |  |  |
|  |  | **1** | **2** | **3** | **4** |  |
| Current | Home task | 8 |  |  |  | Presentation in Power Point (15-20 slides) on one of the topics given in p.8.1 of the present program. The work is publicly presented during the tutorial |
| Final | Examination |  | 8 |  |  | Verbal exam on the questions given in p.8.2 |

## Grading criteria – evaluation of knowledge and skills

In his/her home task student should demonstrate:

* ability to analyze cases where soft law was used;
* skills of work with data-search systems if normative documents and work with legal literature.

Students’ work is evaluated by 10-point grading system

# CONTENT OF COURSE

## Section 1. INTRODUCTION

**Lecture** -4 hours on the following topics:

Short course introduction, problems of the discipline. Issuing texts for short annotations and glossaries preparation by students. Methodology of studying literature and glossaries elaboration. Distribution of topics for reports. Methodology of reporting and preparation for seminars. Methodology of students’ activity evaluation and final grading.

**Tutorials** 2 hours on the topic studied during the lectures.

**Home work** – to study literature and other materials from the Reader

**Literature**:

## Section 2. SOFT LAW: ORIGINS OF THE TERM

**Lecture** -8 hours on the following topics:

Soft law and its communicative function. Western political and legal discourse from Papal revolution (XI) to the end of 70s of the ХХ century: natural law theories, sociological theories of law, legal positivism. *Westphalian* system and sovereignty. Communicative attributes of law. Social responsibilities. Comparison of soft law, hard law and moral obligations. Soft law as a type of law. Soft law and legal certainty.

**Tutorials** 2 hours on the topic studied during the lectures.

**Home work** – to study literature and other materials from the Reader

**Literature**: Morth U. ed [1], Introduction, Robilant A, de. [2], p. …………., Kerchov M. van de Ost F. [3], Bruschke J [12], Teubner G. (ed.) [13].

## Section 3. INSTRUMENTS AND METHODS OF SOFT LAW REGULATIONS

**Lecture** -12 hours on the following topics:

EU soft law instruments. Other instruments of soft law: rules of organizations, self-regulation, standards, codes of best practice, resolutions, declarations, etc. Open method of coordination: its implementation in EU and other soft law based organizations, Reputation responsibility. Threat of “hardening”. Risks of soft law instruments.

**Tutorials** 2 hours on the topic studied during the lectures.

**Home work** – to study literature and other materials from the Reader

**Literature**: Morth U. ed [1], Introduction, Senden L. [4], Chinkin C. [5], Snyder F. [6], Trubek M. Trubek L. [7]

## Section 4. USING SOFT LAW IN REGULATORY GOVERNANCE (CASE STUDY)

**Lecture** -8 hours on the following topics:

Reputation responsibility in В2С and B2B relations, Soft law in practice of ECJ, Soft law of OEDC, Soft law of WTO legal system, Soft Law in taxes, competition, corporate relations, Soft regulation inside the country, Standards of financial systems stability, Lex mercatoria as Soft Law,

**Tutorials** 4 hours on the topic studied during the lectures.

**Home work** – to study cases review from the Reader

**Literature** Morth U. ed [1], Senden L. [4], Ştefan O.A. [10], Peters A. Parotto I. [17]

# Current activities and examination

## Topics for preparation of classes and examination, questions for examinations

1. Concept of Law in Ancient Rome
2. Medieval concept of Law
3. Review of sociological law theories
4. State and Law in Westphalian system
5. Sovereignty: Jean Bodin’s and modern concept
6. Legal Positivism. Open texture of norms: Gerber Hart’s concept
7. Concept of Law in rational legal discourse
8. Autopoietic law theory
9. Structure of EU law and necessity in soft law*)*
10. Open method of coordination (OMC)
11. Reputation responsibility in В2С relations (Nestle case)
12. Reputation responsibility in В2В relations (Kimberly case)
13. Soft Law in taxes relations
14. Soft law in competition relations
15. Soft law in corporate relations
16. Soft law in practice of ECJ
17. Soft law of OEDC
18. Soft law of WTO
19. Soft law regulation inside the country (Public Administration)
20. Soft law regulation inside the country (Swedish health care)
21. Soft Law in State Aid policy
22. Standards of financial systems stability
23. Lex mercatoria as soft law

# Grading system of the course

Students' work **during tutorials** is evaluated for participation in discussions, ability to work out position and defend it via argumentation. Grades for work during tutorials are put in grades-list of the course. Final grade (out of 10 points) for tutorials is determined before the examination – *O tutorials*

**Home work** is evaluated by the following criteria: quality of the material and scope of its study, presentation skills in case it is a public report. Marks for home tasks are put in grades-list of the course. Final grade (out of 10 points) is determined before the examination – *О hometask*.

**Cumulative grade for current activities** is calculated as follows:

*Оcumulative = 0,75 Оtutorials + 0,25 О hometask*.

**Final resulting grade for the course is calculated as follows:**

*Оfinal = 0,25·Оexamination + 0,75·Оcumulative*

During the examination students have no opportunity to get additional points to raise their grade for current activities.

In Final resulting grade rounding is applying to integer number. In Cumulative grade for current activities rounding is applying to one decimal digit.

# Literature and technical support of the course

**Basic books**

1. Soft Law in Governance and Regulation Ulrika Mörth ed., Cheltenham, UK - Northampton, MA, USA, Edward Elgar Publishing Ltd, 2004.
2. Anna Di Robilant Genealogies of Soft Law // The American Journal of Comparative Law. Vol.54 №3, 2006. P.500-501
3. Van de Kerchove M. Ost F. Legal System between order and disorder. Oxford, 1994
4. Linda Senden Soft Law in European Community Law, Oxford and Portland Oregon, Hart Publishing, 2004
5. Chinkin Christine Normative Development in the International Legal System In: Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System, Dinah Shelton (ed.), Oxford, Oxford University Press, 2000, P.21-42
6. Snyder Francis Soft Law and the Institutional Practice in the European Community In: The Construction of Europe. Essays in Honour of Emile Noël (Stephen Martin ed.), Dordrecht-Boston-London, Kluwer Academic Publisher, 2010
7. M. Trubek and L. Trubek Hard And Soft Law In The Construction Of Social Europe: The Role Of The Open Method Of Co-Ordination, European Law Journal, Vol 11, No. 3, May 2005.

**Additional reading**

1. Sahlin-Andersson Kersten Emergent Cross-Sectional Soft Regulation: Dynamics at Play in the Global Compact Initiative In: Soft Law in Governance and Regulation (Ulrika Mörth ed.), Cheltenham, UK - Northampton, MA, USA, Edward Elgar Publishing Ltd, 2004, P.129-154
2. Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters) / OJ C 101, 27.4.2004, p. 78–80 Доступно на электронном ресурсе http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC0427(05):EN:NOT
3. O.A. Ştefan European Competition Soft Law in European Courts: A Matter of Hard Principles, in European Law Journal, 2008, 753 et seq.
4. Inger Österdahl The ECJ and Soft Law: Who’s afraid of the EU Fundamental Rights Charter? In: Soft Law in Governance and Regulation (Ulrika Mörth ed.), Cheltenham, UK - Northampton, MA, USA, Edward Elgar Publishing Ltd, 2004, P.37-61
5. Bruschke J. Deconstructive Arguments in the Legal Sphere: An Analysis of the Fischl/Massey Debate about Critical Legal Studies // Argumentation and Advocacy. Volume: 32. Issue: 1. Publication Year: 1995
6. Teubner G. (ed.) Autopoietic Law. A New Approach to Law and Society. Berlin; New York, 1988.
7. T. Brandsen, M. Boogers, P. Tops Soft Governance, Hard Consequences: The Ambiguous Status of Unofficial Guidelines, Public Administration Review, July-August 2006
8. Martin Marcussen OECD Governance through Soft Law In: Soft Law in Governance and Regulation (Ulrika Mörth ed.), Cheltenham, UK - Northampton, MA, USA, Edward Elgar Publishing Ltd, 2004, P.103-126
9. M. Fredriksson, P. Blomqvist, U. Winblad Conflict and Compliance in Swedish Health Care Governance: Soft Law in the „Shadow of Hierarchy“, Scandinavian Political Studies, 2011
10. Anna Peters and Isabella Parotto. Soft Law as a New Model of Governance: A Legal Perspective // NewGov New Model of Governance, University of Basel. 2006. <https://ius.unibas.ch/uploads/publics/3940/20100219145119_4b7e9757829c2.pdf>
11. H. L. A. Hart Positivism and the Separation of Law and Morals. Harvard Law Review 71 (4): 593–629.
12. Lon L. Fuller Positivism and Fidelity to Law — A Reply to Professor Hart. Harvard Law Review 71 (4): 630–672.
13. Lili Jiang, An Evaluation of Soft Law as a Method for Regulating Public Procurement from a Trade Perspective, Thesis submitted to the University of Nottingham for the degree of Doctor of Philosophy July 2009 // Электронный ресурс <http://etheses.nottingham.ac.uk/700/>
14. Ulrika Mörth Introduction In Soft Law in Governance and Regulation Ulrika Mörth ed., Cheltenham, UK - Northampton, MA, USA, Edward Elgar Publishing Ltd, 2004

**Hand books, dictionaries and encyclopedia**

Wikipedia – free encyclopedia http://ru.wikipedia.org

# Equipment

The course requires a computer (laptop) and projector for Power Point presentations. For home work “Consultant Plus” database installed on computers is needed (available in HSE computer classes)