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**The Russian system of financial monitoring**

**inthe modern conditions**

*In this article activities of the Russian system of financial monitoring in the modern period, negative influence of the western sanctions on the economy of Russia, activities of the Federal service on financial monitoring, efficiency of the measures of counteraction to laundering of the income gained in the criminal way are considered. Search of the allowances directed to reducing of the federal budget deficit is offered, the risk management of legalization of the criminal income including the different elements is analyzed: identification, analysis, assessment, control and decrease in the risks. The attention is paid to considerable financial losses from the capital flight and to clarification of the reasons of this negative phenomenon. It is affirmed, that in a case of removal of sentences by the judicial system on the structures about legalization of criminal income practically doesn't apply the article of the Criminal Code of the Russian Federation about confiscation of the property. Measures for an increase in effectiveness of the system of financial monitoring in the conditions of forthcoming visit of inspection of the Group of development of financial measures of anti-money laundering are proposed (FATF).*

**Российская система финансового мониторинга**

**в современных условиях**

*В статье рассматриваются деятельность российской системы финансового мониторинга в современном периоде, отрицательное влияние западных санкций на экономику России, деятельность Федеральной службы по финансовому мониторингу, эффективность мер противодействия отмыванию доходов, полученных преступным путем. Предлагается поиск резервов, направленных на сокращение дефицита федерального бюджета, анализируется управление рисками легализации преступных доходов, включающее различные элементы: выявление, анализ, оценку, контроль и снижение рисков. Уделяется внимание значительным финансовым потерям от бегства капитала и выяснению причин данного негативного явления. Утверждается, что при вынесении приговоров судебной системой по составам о легализации преступных доходов практически не применяется статья Уголовного Кодекса РФ о конфискации имущества. Предлагаются меры по повышению результативности системы финансового мониторинга в условиях предстоящего визита инспекции Группы разработки финансовых мер борьбы с отмыванием денег (FATF).*

***Keywords:*** *financial monitoring, counteraction of legalization of the criminal income, capital flight, money laundering risk management, system effectiveness of financial monitoring confiscation of the income from criminal activities.*

***Ключевые слова:*** *финансовый мониторинг, противодействие легализации преступных доходов, бегство капитала, управление рисками отмывания денег, эффективность системы финансового мониторинга конфискация доходов от преступной деятельности.*

Value of the financial monitoring system in connection with the deterioration in the main economic and financial indicators of economy, entering of the anti-Russian sanctions of the western countries, fall of the energy costs, federal budget deficit increases in the modern conditions.

The Russian system of financial monitoring includes international legal agreements and recommendations of the inter-governmental organizations in the sphere of counteraction to laundering of the income and to the terrorism financing; the national legal system considering international standards, the system of law enforcement and supervisory authorities participating in implementation of the measures for counteraction to money laundering and financing of terrorism; the organizations performing transactions with a money; a package of measures and the control actions directed to counteraction of legalization (washing) of the criminal income and to the terrorism financing.

In March, 2014 the USA, the European Union, Canada, Switzerland, Japan, Australia and New Zealand in connection with the events in Ukraine imposed sanctions against Russia which concerned physical persons, companies, some credit institutions, also the programs of cooperation in different industries of economy, and against the Russian defensive entities of the USA "the blocking sanctions", providing complete cessation of contacts and freezing of the assets in the American banks were imposed. The other structures lost access to the long-term financing. As the answer to the restrictions Russia entered countersanctions, including also food embargo.

It is impossible to deny the fact that the anti-Russian sanctions negatively affected a gross domestic product growth (further – GDP) of the Russian economy which on average lost 2 items of the quarterly GDP growth because of the sanctions of the West. The actual GDP growth from the second quarter 2014 when the first sanctions were imposed, on the third quarter 2015 made minus of 4,1% whereas counter-actual (if sanctions weren't) plus 6,9%. It is possible to estimate a difference at 11% as an upper limit of damage connected with the sanctions. At the end of 2014 the Minister of Finance A. Siluanov noted that because of the sanctions Russia loses $40 billion a year or 2% of GDP. Besides, imposition of sanctions matched with the beginning of drop in the oil prices [1]. In these conditionsin the bill "About the Federal Budget for 2017 and for the Planning Period of 2018 and 2019" preserving budget deficit following the results of 2016 at the level of 3,7% of GDP or 3034 billion rubles is planned. In 2017 - 2019 growth of the income of the federal budget in nominal terms from 13 368,6 billion rubles in 2016 to 14 844,8 billion rubles in 2019 is predicted. But in relation to GDP the income will be reduced gradually from 16,1% of GDP in 2016 to 15,5% of GDP in 2017, 15,2% of GDP in 2018 and 15,0% of GDP in 2019. Also the share of the oil and gas income of the federal budget will continue to decrease from 37,4% in 2017 to 36% in 2019. [2]

In these conditions a search of not only new conditions for economic growth, but also of the internal allowances for completion of economic and financial losses and, first of all, reducing the budget deficit is necessary. In our opinion, the Russian system of financial monitoring directed to prevention of legalization (washing) of money or the other property received in the criminal way, the shadow economy causing damage to the bases of economic safety and financial stability of the state creating a basis, giving an opportunity to criminal groups and communities to perform, expand and finance unlawful activity possesses one of such allowances.

In the system of financial monitoring the fundamental place belongs to the Federal Service for Financial Monitoring (Rosfinmonitoring) which is the federal executive body of Russia performing the functions on counteraction of legalization (washing) of the income gained in the criminal way and terrorism financing, and also on development of the state policy, standard legal regulation and coordination of activities in this sphere of the other federal executive bodies.

Rosfinmonitoring, in the presence of good causes of connection of financial transaction with legalization (washing) of the income gained in the criminal way, or financing of terrorism sends information to the law enforcement agencies according to the art. 8 of the Federal law No. 115 "About counteraction of legalization (washing) of income gained in the criminal way and to the terrorism financing". In the materials the analysis results of financial transactions are specified; the adjusting data allowing identify legal entities and physical persons; period; total quantity and amount of perfect financial transactions; the revealed scheme of legalization of money; the materials received by Rosfinmonitoring from the tax, customs and state bodies; statements from the state registers; schemes of financial transactions and promotional connections of the checked persons, and also the information concerning which additional check with the use of methods of operational search activities is necessary. Also information obtained in the analysis result of messages of the organizations performing transactions with money can be sent; the analysis of information from the state bodies and the local government bodies, organizations and citizens, divisions of financial investigations of the foreign states.

In the modern conditions one of the perspective directions of the system of financial monitoring is identification and the prevention of the risks connected with legalization of the criminal income. Eventually, it is about the risks management and minimization of their consequences.

We consider the risks as possible actions of the legal entities and physical persons which lead to the committing of crimes and legalization of the criminal income.

In recommendations of the international Group of development of financial measures of anti-money laundering (further – FATF) requirements to the countries are specified "… to determine, estimate and understand the risks of money laundering and financing of terrorism". Risk management includes the following elements: identification, analysis, assessment, measures for prevention, efficiency evaluation of the taken measures, control and decrease in the risks. [3]

Control and decrease in risks

Risk evaluation

Assessmentof efficiency of measures

Measuresfon prevention

Analysis of risk

Risk identification

*Fig. 1. Risk management*

The process of identification of risks represents creation of the initial list of risks, proceeding from the phenomena or the taken place events which can interfere with decrease in the efficiency or achievement of the effective objectives. The new assumption of availability of risk can be got from a combination of the available or possible threats of legalization of the criminal income. The process of identification of risks assumes the complexity, comprehensiveness and fixed readiness of consideration of the appearing risks in the subsequent periods.

Risks analysis is the main part of the risks management process and includes consideration of the reasons, sources, offers on availability of the risks and probability of the appearance of negative consequences. The purpose of this stage is achievement of understanding of the revealed risks for the further assignment of the certain relative values tothem. Risk analysis can be carried out with the different extent of disaggregation depending on the type of risks and the purpose of risks assessment, and also proceeding from the available information, data and resources.

The risks assessment consists in comparison of the characteristics and level of the risks revealed during the analysis with the criteria of risks determined originally in case of establishment of the purposes of general process of the risks assessment. Based on the results of assessment the need of taking measures for the risk minimization including development of the offers of organizational, legal nature is considered.

In the analysis result of the first stages the measures for prevention of risks are developed and the efficiency evaluation of the offered directions and the control actions is made.

Proceeding from it, activities of the Russian system of financial monitoring and the Federal Service for Financial Monitoring are based on the risk-oriented approach which shall build with the higher quality and effectively general system of counteraction to laundering of the criminal income and to the terrorism financing.

But at the same time, the revealed risks on which the adequate measures weren't taken, don't exclude the negative consequences that is the result of low effectiveness of work of the system of financial monitoring.

From the moment of adoption of sanctions in the credit institutions,the shadow schemes of provision of financial services in cashing in and a withdrawal of money abroad are revealed. At the beginning of 2015 in the Russian bank system there were 836 credit institutions, in 2016 – 733. The Bank of Russia for the last year revoked the licenses from 93 credit institutions from which 34 banks had established the facts of violation of provisions of the Federal Law No. 115-FL, and at 47 – carrying out the doubtful transactions connected with functioning on their platforms of the shadow financial schemes. Only for violations of the law in the sphere of counteraction to the criminal income the licenses were revoked from 9 credit institutions. [4]

Today in the conditions of budget deficit the problem of need of return of the income from the criminal activitiescomes to the forefront, which purpose of solution is quite obvious: prevention of reintegration of such income into the society as the legal money, and also their uses as a deterrent. There is a need for programs of the asset recovery which owing to the nature create the imbalance strengthening the risks of a crime before the incentives. And in this respect they help to strengthen the moral and social bases of the state – nobody whatever he was influential and exclusive, shan't benefit from the crime committing. [5]

It is about the confiscation of property which as criminal sanction is excluded from the Criminal code of the Russian Federation (CC of RF) in 2003, but since 2006 the art. 104.1, according to which the property received as a result of crime committing including money and values, to which such property was transformed is a subject to confiscation is introduced. Between the confiscation of property as a punishment and the existing rule about confiscation the basic difference is available. When confiscation of the property was a punishment, according to the articles under which it was applied (for example, sale of drugs), any the property belonging to the guilty person was a subject to confiscation. Now only that property concerning which its criminal origin is proved can be confiscated.

According to the Resolution of the Plenum of the Supreme Court of the Russian Federation of July 7, 2015 No. 32 "About the court practice on the cases of legalization (washing) of money or the other property purchased in the criminal way and of acquisition or sale of the property which is obviously got in the criminal way" the attention of the courtsto the need of solution of a question of confiscation of property concerning the persons found guilty of making of the crimes provided by the article 174 or the article 174.1 of CC RF according to the rules established by the art. 104.1 – 104.3 of CC RF is drawn.

For the Russian system of counteraction to the criminal income the number of convicts under the above-stated articles is insignificant. According to the article 174 of CC RF (legalization of money or the other property purchased by the other persons in the criminal way) in 2014 22 people are condemned: bank clerks, accountants of commercial firms, businessmen, etc.

According to the article 174.1 of CC RF (legalization of money or the other property purchased by the person as a result of committing a crime by him) 19 people were condemned. But more than 170 people are attracted under this article both for legalization of the criminal income, and for a predicate crime and got additional punishment. The courts withdrew the means only from 20condemnedfor legalization of criminal income. In total only a little more than 17 million 700 thousand rubles were brought to the treasury [6]

It is impossible to deny that the adopted Resolution of the Supreme Court of the Russian Federation a little simplifies the approaches to proofs that money isreceivedin a criminal way. It isn't obligatory that money or property appeared in the certain convictions. For example, the person involved in the criminal case was condemned for corruption, and was proved that the property is purchased illegally and there are financial resources on the bank accounts. In certain cases there can be enough the fact that for the persons involved there is a trace of criminal case. Conclusions about the criminal nature of property acquisition can be based on the resolutions on closing of the criminal case on the not rehabilitating circumstances, i.e. didn't acquit the defendant, but for the certain reasons exempted from liability (for example, prescriptive limit expired or the person involved was amnestied). At the same time the criminal case shall contain the proofs testimonial of availability of a crime to which the investigation gave the corresponding assessment. The process of direction, analysis, assessment of information and materials from the organizations to Rosfinmonitoring, then in the law enforcement agencies and the judicial system shall come to the end not only with the terms of punishment, but also confiscation of the criminal income.

Sentence:

punishment term,

confiscation of

criminal income

Law enforcement agencies: investigation of materials about legalization

criminal income

Courts: removal

judgments

Information of the organizations

Rosfinmonitoring: analysis, information assessment

*Fig. 2. Passing of information from the organization to the judicial system*

In the system of financial monitoring not enough attention is paid to the measures,interfering a capital flight which is used for concealment of criminal source of the origin of means and it is in the most cases connected with legalization of the criminal income.

Only in 2010 – 2012 more than 140 bln.dollars a year was illegally exported from Russia, the equities were exported not only by oligarchs, but also the small businessmen. According to the experts of the GlobalFinancialIntegrity (GFI) companies the total amount of means removed in 1994 – 2012 from Russia in circumvention of legislative normsmade more than $1,341 trillion. More than 90% of capital outflow were provided by the use of practice of trademisinvoicing in case of which from the country more goods were exported, than in the official documentswas specified, and the received excesses of revenue remained on the foreign accounts. During this period, on average, in a year it was illegally taken out for $70,5 billion, but in recent years the amounts withdrawal considerably increased. In particular, in 2011 the total volume of means which illegally are taken out from Russia exceeded $174 billion that made 9,9% of GDP of the country. On average in 2010 – 2012 from Russia more than for $140 billion a year, that is more than on 8,8% of GDP was illegally taken out. [7]

The situation didn't improvein subsequent: on materials of the Audit Chamber of Russia in 2013 – 2015 by the means of dummy export-import transactions from Russia 1,2 trillion rub are illegally taken out. The work of all system of financial monitoring, including the law enforcement agencies was inefficient in this direction. In particular the Federal Customs Service (FCS) for the last three years initiated and transferred to Rosfinnadzor (at that time operating) 17 374 cases on offenses in the sphere of currency exchange control and regulation which imposed on the violators 663,4 billion rubles of penalties. In the budget only 3 million rubles, or 0,0005% of the amount of the revealed violations came, at the same time a part of the means collected on the court was returned back to the companies.

Besides, the number of cases on the offense with the expired prescriptive limit of accountability increases – in 2013 there were 7,4%such cases, and in 2015 already about one third. At the same time the number of checks of observance of the foreign exchange legislation is consistently reduced: from 6% of all external economic transactions in 2013 to 4,1% in 2015. Six persons involved in criminal cases, in 2015 – eight are condemned for the illegal withdrawal of capital in 2013 – 2014, at the same time five are released under the amnesty. [8]

The considerable amounts are removed abroad under the dummy contracts through the phony company then these firms stop their activities or will be re-registered. The insignificant authorized capital for the organization (10 thousand rubles) allows one physical person register the almost unrestricted number of the companies in different regions, at the same time responsibility comes only in the amount of the authorized capital. In the materials of the Audit Chamber of the Russian Federation the example of one entrepreneur who founded 1243 firms through which in three years about 500 million rubles were illegally taken out from the country is given.

At the same time, according to the Central Bank of Russia (CBRF), recession of the trade because of fall of the oil prices and the financial sanctions which limited the capital flows led to reducing the shadow outflow: from $26,5 billion in 2013 to $1,5 billion in 2015. But in recalculation at the annual average ruble to dollar exchange rates the total withdrawal of funds in three years made 1,4 trillion rub. The Central Bank of the Russian Federation carries to doubtful transactions the not only suspicious foreign trade transactions, but also similar to the dummy security transactions, the credits and money transfer for the own accounts. [8]

Thus, the modern system of financial monitoring is inefficient first of all from the point of view of rejection of the measures to financial losses from a capital flight, criminal prosecution of the persons participating in washing of criminal money, confiscation of the illegally received financial resources.

In 2018 FATF planned conducting the inspection of Russia. Not established legislation compliance to the FATF standards, and the overall performance of all system of the counteraction to money laundering and financing of terrorism will be the main direction of the check. According to a technique of checks the quantity of convictions, application by the courts of confiscationon the relevant articles of the Criminal Code of the Russian Federation, coordination and exchange of information with the law enforcement agencies, coordination of actions with the divisions of financial investigations of the other countries, availability of information on beneficiaries of the companies, effectiveness of application by the banks of measures for counteraction to the criminal income etc. is evaluated.

By the results of inspection the scores of overall performance are given to the all system of counteraction of legalization of the criminal income with the subsequent requirement of improvements [9]. It should be noted that taking into account the international situation and deterioration in the relations of Russia and the USA in the forthcoming inspection of FATF the political component which will negatively affect the resulting effects of the check can prevail. Therefore during this period it is necessary to prepare and realize the offers directed to the efficiency of functioning of all system of financial monitoring: to reveal and minimize the available risks of money laundering, to develop the mechanism of confiscation of the income from the criminal activities; to establish criminal liability for the legal entities, and also for the top managers of financial institutions; to develop and approve the measures counteracting a capital flight from Russia.

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