

# ФИНАНСОВОЕ ПРАВО; НАЛОГОВОЕ ПРАВО; БЮДЖЕТНОЕ ПРАВО

## THE FURTHER DEVELOPMENT OF REGULATION OF THE MANDATORY FINANCIAL MONITORING IN RUSSIA

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The Russian system of anti money laundering was set up in 2001. Now the financial legislation of financial monitoring is a very dynamic part of Russian financial law. However, the author suggests to deregulate some law provisions covering mandatory monitoring procedures due to their inefficiency. Most of the operations and transactions sent to the Federal Financial Monitoring Service, has nothing to do with money laundering and financing of terrorism, and in most cases can be treated as an information garbage. Criterion operations subject to mandatory monitoring is defined by the legislator in the following way: deposit of funds into individual accounts opened in the authorized bank by the prime contractor for delivery of products under the state defense order, or by the executor who is involved in the supply of products under the state defense order for the execution of the state defense order in accordance with the Federal law dated on 29 of December, 2012 № 275-FZ «On the State Defense Order» from any other accounts, transactions on withdrawal of funds from these separate accounts to any other accounts, transactions on the first placement of funds to these separate accounts with other separate accounts are subject to mandatory control, if the amount of transaction is equal to or exceeds 600 thousand rubles (equivalent in foreign currency). Also the author determines the further steps of development of financial monitoring in Russia and suggests the possible solutions of the current legal issues of financial monitoring.

**Key words:** money laundering, financial monitoring, combating of financing of terrorism, Rosfinmonitoring, financial law, deregulation of some law provisions covering mandatory monitoring procedures, Federal Financial Monitoring Service.

The national system of financial monitoring of Russia is one of the most dynamic financial and legal categories. Since 2001, the financial legislation in this area has repeatedly changed as by expanding of the list of legal entities obliged to monitor and report to Rosfinmonitoring (microfinance institutions, credit consumer cooperatives, mobile operators), and by the legislative adoption of new directives for the implementation of financial monitoring (identification of the representatives of the client, ultimate beneficiary owners etc).

However, the modern law enforcement practice in Russia leads to further changes in the national system of anti money laundering and combating of financing of terrorism. Now there is a need for deregulation of mandatory financial monitoring and transfer of some public functions to collect information to state authorities.

It was stressed by us several times that there was a need for legal abolishment of the institution of mandatory financial monitoring, which can be defined as a set of agents (legal entities and entrepreneurs) are obliged to identify, detect and provide the Rosfinmonitoring (Rosfinmonitoring) with information on operations and transactions subject to mandatory control [4].

The apparent improvement in the tactical plan was to increase the term of the agents of financial monitoring information on operations and transactions subject to mandatory control in the Federal Financial Monitoring Service, up to three business days from the date of the transaction. However, from strategic perspective it should be considered such regulatory improvement as «half-hearted».

Information pressure on the Federal Financial Monitoring Service in the form of daily incoming information on operations and transactions not related to money laundering and financing of terrorism, once again proves that the Federal Financial Monitoring Service receives a significant volume of information that has no practical significance in countering the legalization (laundering) of proceeds from crime and financing of terrorism.

The next reason to consider the mandatory control as ineffective is that the exhaustive list of criteria of transactions subject to mandatory control is set out in the Federal law [1]. Therefore it allows professional «launderers» and terrorists to structure the transaction in such a way as to avoid sending information about them in the Federal Financial Monitoring Service.

It should be stressed that that the institution of the mandatory financial monitoring was extremely important and necessary during the formation of the Russian national system of counteraction to legalization (laundering) of criminal incomes and financing of terrorism. It allowed to «teach» the agents of financial monitoring to monitor and report about transactions to the state authority — Federal Financial Monitoring Service.

A decade later, the institution of mandatory financial monitoring, in our opinion, prevents the transition from quantity to quality when the detection of operations related to money laundering and terrorist financing is achieved by way of analytical work of agents of financial monitoring (legal entities).

In this context, we can talk about the need for synergy of information when an analytic function of Rosfinmonitoring will be complemented by the results of the analytical work already carried out by agents of the financial monitoring. In other words, the analytical work of the Federal Financial Monitoring Service will be based on analytical work of the agents of financial monitoring.

The argument of the supporters of preservation of mandatory financial monitoring that the specified type of financial monitoring can detect the majority of transactions related to illegal activities, can be offset by the allocation criteria and indicators of transactions subject to mandatory monitoring for suspicious transactions and operations.

In other words, the criteria for operations and transactions subject to mandatory monitoring should be criteria for operations and transactions subject to monitoring of suspicious transactions. The advantage of this approach is that the operations corre-

sponding to the «formal» criteria of operations subject to mandatory control will be sent to the Federal Financial Monitoring Service, in case of suspicion of money laundering and terrorist financing.

We call this approach «intelligent» as opposed to «mechanical» measures taken to send the information to the national financial intelligence unit. The undeniable advantage of this approach would be, on the one hand, a significant decrease in the volume of information sent to Rosfinmonitoring, on the other, — improving the quality of information provided to the Federal Financial Monitoring Service.

The mandatory financial monitoring has a negative impact on the financial monitoring agents, who focus primarily on mandatory monitoring of transactions.

In this regard, most of the labour and monetary resources are spent on collecting information as part of mandatory financial monitoring, and not on the analysis of the operations and transactions that may be connected with money laundering and terrorist financing.

With a high degree of confidence it should be said that the mandatory monitoring is formal, as the list of operations and transactions subject to mandatory monitoring, comprehensive and enshrined in federal legislation [1]. The latter allows all entities planning illegal activities for money laundering or terrorist financing, designing financial schemes to bypass the existing criteria and indicators.

In this regard, most of the operations and transactions sent to the Federal Financial Monitoring Service, has nothing to do with money laundering and financing of terrorism, and in most cases can be treated as an information garbage.

However, now the mandatory financial monitoring continues to grow, turning into a nation-wide financial control over the operations and transactions in respect of which the risk of money laundering and terrorist financing is not obvious.

So, in 2014, it was expanded by the list of operations of non-profit organizations, subject to mandatory monitoring. If before 2014 the mandatory monitoring covered operations of the non-profit companies receiving of cash and other assets from foreign states, international and foreign organizations, foreign citizens and persons without citizenship, but now the mandatory monitoring covers operations of non-profit companies as to receiving of cash and (or) other assets from foreign states, international and foreign organizations, foreign citizens and stateless persons, and spending of money and (or) other assets of the non-profit companies, if the amount of the operation is equal to or exceeds the 100 thousand rubles (equivalent in foreign currency), or exceeds it.

Another novel in the mandatory financial monitoring was securing control over the operations of the funds are credited to the account (deposit), covered (deposited) letter of credit or debit the account (deposit), covered (deposited) letter of strategic companies for the defense industrial complex and the security of Russia, as well as companies under their direct or indirect control [3].

Any operation corresponding to this quality criterion, is subject to the mandatory financial monitoring, if the quantitative criterion of operation is equal to 50 million rubles (equivalent in foreign currency), or exceeds it.

The agents of financial monitoring (namely credit institutions and non-credit financial institutions) have to inform the Federal Financial Monitoring Service of each

opening, closing, changing the details of the account, covered (deposited) letter of credit, custody, termination of contracts of bank accounts and contracts of bank deposit (deposit) and amendments thereof, the purchase and the sale of securities by strategic companies, as well as companies under their direct or indirect control.

It should be noted that the appearance of this criterion of transactions subject to mandatory monitoring in the activities of agents of the financial monitoring has certain specifics: the set up of this criterion is to control the operations of strategic companies and companies under its direct or indirect control, rather than countering the legalization (laundering) of proceeds from crime and terrorist financing.

The appearance of this criterion indicates an extension of competence of the Federal Financial Monitoring Service, which thus begins to carry not only the state financial control in the sphere of combating the legalization of proceeds from crime and terrorist financing, and national financial control over the activities of national largest companies such as JSC NK «Rosneft», OAO «Gazprom» and others.

The monitoring of the execution of the state defense order set out in 2015 is under question as well. The very name of the subject of state financial control says there is no direct connection with the prevention of legalization (laundering) of criminal incomes and financing of terrorism and therefore groundless consolidate these provisions in the Federal Law № 115-FZ of 07 of August 2001 «On counteraction to legalization (laundering) proceeds of crime and financing of terrorism» [1].

Criterion operations subject to mandatory monitoring is defined by the legislator in the following way: deposit of funds into individual accounts opened in the authorised bank by the prime contractor for delivery of products under the state defense order, or by the executor who is involved in the supply of products under the state defense order for the execution of the state defense order in accordance with the Federal law dated on 29 of December 2012 № 275-FZ «On the State Defense Order» from any other accounts, transactions on withdrawal of funds from these separate accounts to any other accounts, transactions on the first placement of funds to these separate accounts with other separate accounts are subject to mandatory control, if the amount of transaction is equal to or exceeds 600 thousand rubles (equivalent in foreign currency).

The subsequent operations and subsequent placement of funds to separate accounts with other separate accounts or withdrawal of funds from these separate accounts on different individual accounts are subject to mandatory financial control, if the amount of operation is equal to or exceeds 50 million rubles (equivalent in foreign currency) [1].

It should be stressed that such type of monitoring can be implemented in other regulations, in particular the specialized legal acts in the field of state defense order to which the Federal Law of 29 December 2012 № 275-FZ «On the State Defense Order» [2].

The question is the appropriateness of involving the agents of financial monitoring in the implementation of this type of financial control. The state financial control would not be less effective if the strategic companies and companies under their direct or indirect control themselves reported to the Federal Financial Monitoring Service.

The collection of information in the framework of the state defense order can be arranged by way of providing information to the Federal Financial Monitoring Service by prime contractor of the delivery of products under the state defense order, executor, participating in their delivery of products under the state defense order.

A similar approach could be implemented on a number of transactions subject to mandatory monitoring and associated with a high risk of money laundering and terrorist financing. So, Rosreestr (Federal Service of State Registration, Cadastre and Cartography) as a federal executive authority could effectively perform function to collect information on transactions with the real estate in the amount equal to or exceeding 3 million rubles [1].

We think that such approach should be better than existing one. It allows analyzing all transactions with real estate are to be registered in Rosreestr, while financial monitoring agents can identify only those transactions that are settled through bank accounts.

The proposed approach would eliminate the necessity of laying additional public legal functions on economic entities, which are the agents of financial monitoring. In turn, the implemented approach, in our view, evidence of strategic short-sightedness of the national legislator, which in such a difficult period for the Russian sanctions discourages the development of commercial financial institutions by increasing the number of the public functions carried out by financial institutions and other entities.

In conclusion, we note that the deregulation in the mandatory financial monitoring and transfer of some monitoring functions to the state authorities will significantly reduce the state pressure on agents of financial monitoring, which are commercial entities, and allow them to be focused at the analytical work to identify true operations and transactions related money laundering and terrorist financing.

In turn, the intention to extend the number of public functions for legal entities agents, namely, adoption of new criteria for operations and transactions subject to mandatory monitoring which are not directly related to the risk of money laundering and financing of terrorism, will give a positive effect neither for the development of the state financial control, nor to the development of the Russian economy.

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## ПЕРСПЕКТИВЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ОБЯЗАТЕЛЬНОГО ФИНАНСОВОГО МОНИТОРИНГА В РОССИИ

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Российская национальная система противодействия легализации доходов, полученных преступным путем, была создана в 2001 г. В настоящее время финансовый мониторинг — один из самых динамично развивающихся институтов финансового права. Однако автор предлагает провести дерегулирование в области обязательного финансового мониторинга в силу его неэффективности. Большинство операций и сделок, направляемых в Федеральную службу по финансовому мониторингу, не имеет ничего общего с отмыванием денег и финансированием терроризма, и в большинстве случаев может рассматриваться как информационный мусор. Критерий отнесения операций, подлежащих обязательному мониторингу, определяется законодателем следующим образом: внесение средств на отдельные счета, открытые в уполномоченном банке генеральным подрядчиком на поставку продукции по государственному оборонному заказу, или исполнителю, который участвует в поставках продукции по государственному оборонному заказу в соответствии с Федеральным законом от 29 декабря 2012 года № 275-ФЗ «О государственном оборонном заказе», если сумма, на которую совершается сделка, равна или превышает 600 000 руб. либо равна сумме в иностранной валюте, эквивалентной 600 000 руб., или превышает ее. Также автор определяет дальнейшие шаги по совершенствованию финансового мониторинга в России и предлагает возможные варианты решения существующих правовых вопросов.

**Ключевые слова:** отмывание преступных доходов, финансовый мониторинг, противодействие легализации доходов, противодействие финансированию терроризма, Росфинмониторинг, финансовое право, дерегулирование в области обязательного финансового мониторинга, Федеральная служба по финансовому мониторингу.