

IMPROVEMENT OF INTERACTION BETWEEN ROSFINMONITORING AND LAW ENFORCEMENT AGENCIES IN CONDUCTING INVESTIGATIONS**

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The subject of the research are the problems of organization and normative-legal regulation of interaction between the financial intelligence unit and law enforcement agencies in the process of combating crime. In Russia, the financial intelligence unit is organized according to the administrative type. Federal Financial Monitoring Service (Rosfinmonitoring) conducts financial investigations in accordance with anti-money laundering legislation, while law enforcement agencies conduct preliminary investigations in accordance with criminal procedure legislation. This leads to time lags and increased transaction costs of interaction between the competent authorities.

The purpose of the study is to develop proposals to improve interaction between Rosfinmonitoring and law enforcement agencies when conducting investigations as part of interdepartmental investigative and operational groups.

Methodology. General scientific and formal-dogmatic research methods were used.

The main results. The article substantiates the necessity of organizing joint work between Rosfinmonitoring and law enforcement officials in interdepartmental investigative and operational groups. The key legal acts regulating the organization and activities of investigative and investigative-operative groups in Russia are reviewed. As a result of the study, amendments to the criminal procedure legislation and Rosfinmonitoring's regulations were proposed. A register of unified powers of Rosfinmonitoring officials when working in interdepartmental investigative and operational groups has been developed. It may also be used when including officials of control and supervisory authorities authorized to investigate predicate offenses (tax, competition, etc.) in interagency investigative and operational groups. The general procedure for organizing the work of Rosfinmonitoring officials in interdepartmental investigative and operational groups is described. It is recommended that the regulations on interaction between Rosfinmonitoring and law enforcement agencies in the course of interagency investigations should be included in the federal standard for interagency cooperation in the sphere of combating money laundering and terrorism financing. In addition, it is recommended to adopt interdepartmental normative and legal acts that enshrine a simplified procedure for interaction and use of the results of financial investigations in criminal proceedings.

Conclusions. The results of the study have practical significance and can be used to improve the effectiveness of interaction between the commissioner, control and supervisory and law enforcement agencies in the process of combating crime. This will not require revolutionary transformations of the status and powers of the financial intelligence unit.

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1. Introduction

Cooperation between competent authorities is a key factor in the effectiveness of investigations into crimes such as money laundering, terrorist financing, and the proliferation of weapons of mass destruction, as well as other serious predicate offenses. According to a World Bank study, law enforcement agencies in most countries highly value the role of financial intelligence units (FIUs) in investigations and consider regular meetings and daily, direct contact with FIUs to be the most important means of strengthening cooperation. In a number of countries, joint working groups or joint task forces are being set up to conduct the most pressing and complex investigations [1, p. 23].

In Russia, law enforcement agencies also consider it necessary to interact with the PFR in various forms. Thus, A. I. Bastrykin notes “the need to involve Rosfinmonitoring in the development of mechanisms for detecting and investigating crimes: corruption and economic crimes, legalization of criminal proceeds, financing of terrorism, etc.” [2, p. 498]. However, both in the sphere of legislative regulation and in law enforcement practice, there are a number of problems that prevent Rosfinmonitoring from fully utilizing its potential in the investigation of crimes. E. G. Sakharova notes “numerous violations in practice of the Instructions on the Organization of Information Interaction” [3, p. 113]. O. A. Surov and L. P. Klimovich believe that “the materials of financial investigations are not used effectively enough in the investigation of criminal cases due to the lack of special knowledge among law enforcement officers” [4, p. 44]. D. V. Koltsov considers “financial investigation methods to be special and rarely used in operational and investigative activities” [5, p. 128]. O. Yu. Sigalova points to the organization of “interdepartmental interaction mainly through the functioning of working groups and the problem of information exchange within the framework of the Criminal Procedure Code of the Russian Federation” [6, p. 76]. O. N. Tisen and A. V. Grinenko highlight “the similarities between the stages of financial investigation and the stages of criminal

proceedings, the legal status of the results of financial investigation and operational-investigative activities, but at the same time the restrictions on the use of Rosfinmonitoring materials” [7, p. 497].

The literature offers some solutions to these problems, ranging from the trivial—complying with existing instructions—to those that are atypical for the current administrative model of financial intelligence unit structure. Thus, O. A. Abramov proposes “creating financial intelligence units within the economic security and anti-corruption units of internal affairs agencies” [8, p. 32]. N. V. Polyakov proposes “questioning Rosfinmonitoring employees as witnesses (specialists) in criminal cases on the results of financial investigations” [9, p. 125]. The proposal to grant Rosfinmonitoring powers to conduct operational and investigative activities is found in publications by various authors [10; 11]. V. M. Danilina and M. S. Shuvaeva conclude that “in order to find new forms of investigation of financial offences, it is necessary to combine the efforts not only of lawyers, but also of economists” [12, p. 278].

Publications on foreign countries also contain proposals to strengthen the role of financial investigations. A. N. Akhpanov and A. G. Madieva consider it necessary to “introduce the institution of financial investigation into criminal procedure legislation” [13, p. 68]. O. Bondarenko et al. propose “involving financial intelligence units in the investigation process” [14, p. 49]. G. Pavlidis recommends “expanding law enforcement agencies' access to financial information and facilitating the exchange of information between the PFR and law enforcement agencies” [15, p. 377]. S. Zolkafilil et al. justify the need to create an integrated financial investigation support system for law enforcement agencies [16].

In Russia, the financial intelligence unit is structured along administrative lines and is not authorized to conduct operational-search and investigative activities. Therefore, in our opinion, the integration of the activities of Rosfinmonitoring and law enforcement agencies without revolutionary changes in their status and redistribution of powers between them is possible only in the form of interdepartmental investigative teams.

Attention should be paid to the differences between the concepts of “investigation team” and “investigative and operational team” in terms of both the regulatory and legal basis of the organization and the purpose and content of the activities [17]. The problem is that criminal procedure legislation regulates only the activities of investigative teams created by the head of the investigative body [18]. Investigative-operational teams are created and operate on the basis of departmental regulations, such as orders of the Prosecutor General's Office of the Russian Federation [19]. The investigative and operational group as a form of interaction is recognized as more effective than the investigative group [20]. It is proposed to regulate the issues of its organization in Article 163 of the Criminal Procedure Code of the Russian Federation [21]. However, a uniform approach to the organization of interdepartmental investigative and operational teams (MSOG) has not been developed in Russian legislation and law enforcement practice [22]. Issues of interaction between the head and members of investigative teams, including those from operational units, are not sufficiently regulated [23]. This highlights the need to develop uniform powers for Rosfinmonitoring employees when they are included in investigative task forces created by various law enforcement agencies.

The purpose of this study is to develop proposals for improving the interaction between Rosfinmonitoring and law enforcement agencies when conducting investigations as part of interdepartmental investigative and operational teams.

The study of existing legislative and regulatory acts in the field of organizing the work of investigative and investigative-operational groups, as well as the interaction between Rosfinmonitoring and law enforcement agencies, was conducted using general scientific and formal-dogmatic methods.

2. The investigative-operational group as a form of interdepartmental interaction

The administrative model for building a financial intelligence unit in foreign literature is

criticized for its distance from law enforcement agencies [24]. However, FATF standards allow for the establishment of financial intelligence units within the structures of both financial and law enforcement and judicial authorities. Therefore, there are no comments on the organizational basis of Rosfinmonitoring, which was created according to the administrative model. However, the technical compliance of the organization of cooperation between competent authorities with the requirements of Recommendation 30 of the FATF international standards in Russia is not complete. In their 2019 mutual evaluation report, FATF experts point to “the blurring of law enforcement responsibilities for conducting parallel investigations, as well as the risk of a lack of necessary qualifications and motivation among their staff, which could lead to a reduction in the volume of proactive financial investigations.” Recommendation 30 establishes the requirement to “use, where necessary, permanent or temporary interagency teams specializing in financial or property investigations.” The inclusion of Rosfinmonitoring officials in interagency investigative and operational teams will address these concerns.

Currently, financial and preliminary investigations are not closely linked and can be carried out independently of each other. The process of countering crime consists of a series of stages: prevention, detection, investigation, disclosure, and suppression. N.A. Krainova notes that “through countering crime, both the goals of prevention and the goals of combating crime are achieved” [25, p. 103]. Rosfinmonitoring's tasks are focused on prevention and conducting financial investigations. The key tasks of law enforcement agencies are to combat crime: preliminary investigation, disclosure, and suppression. Rosfinmonitoring's powers are sufficient to detect various types of criminal schemes in the course of financial investigations, but do not cover operational-search and investigative activities. Thus, in practice, the investigation stage is divided into a financial investigation, which is conducted by Rosfinmonitoring, and a preliminary investigation, which is conducted by law enforcement agencies. As a rule, they are not carried out simultaneously.

The results of financial investigations can be

both a reason for operational-search measures and investigative actions, as well as additional information for assessing the operational situation, which is stored in archives. The decentralization of investigations, the lack of coordination in their timing, and the sequential conduct of the same criminal acts, first by Rosfinmonitoring and then by law enforcement agencies, not only delays the response but also contributes to increased damage and the evasion of responsibility by the perpetrators. In this regard, it is necessary to switch to technologies for joint parallel financial and preliminary investigations.

The role of the results of financial investigations conducted by Rosfinmonitoring is particularly important at the stage of deciding whether to initiate criminal proceedings, regardless of the reason for doing so – whether it is the transfer of relevant information by Rosfinmonitoring itself to law enforcement agencies or other facts requiring verification in accordance with Articles 144-145 of the Criminal Procedure Code of the Russian Federation. A temporary lag is already formed at this stage. It includes both periods of interaction between agencies (transfer of requests and responses to them) and the period of the financial investigation itself, if it did not precede the initiation of criminal proceedings. In addition, even after criminal proceedings have been initiated at the preliminary investigation stage, Rosfinmonitoring can provide significant informational support to law enforcement agencies on complex issues related to the use of financial instruments, technologies, and economic mechanisms by criminals. Currently, such support can only be obtained through formal channels in the form of official requests, which takes time. At the same time, the time lag may increase due to the need for Rosfinmonitoring to collect additional information from private sector entities and control and supervisory authorities using standard interaction procedures.

It is clear that in order to increase the effectiveness of countermeasures, these time lags must be minimized. In this regard, it is proposed that in cases involving threats to the national security of the Russian Federation, posing a great

public danger, or causing particularly large-scale damage, Rosfinmonitoring employees, as well as key control and supervisory authorities, if necessary, be included in interdepartmental investigative and operational groups (MSOGs). This will not only allow for coordination of their actions, but also increase the efficiency of information exchange, not through the exchange of messages, but through personal contact within the framework of joint work.

Currently, the regulatory and legal basis for the creation of interdepartmental investigative and operational groups is laid down in several acts:

- Criminal Procedure Code of the Russian Federation. Article 163 “Preliminary investigation by an investigative group”; Article 223.2. “Preliminary investigation by a group of investigators”;

- Decree of the President of the Russian Federation No. 567 of 18 April 1996 “On the coordination of law enforcement agencies' activities in the fight against crime” refers to the creation of investigative and operational teams to investigate specific crimes as one of the main forms of coordination of activities (hereinafter referred to as Decree No. 567);

- The Agreement on the Procedure for the Creation and Activities of Joint Investigative and Operational Groups in the Territories of the CIS Member States (ratified by Federal Law No. 15-FZ of February 22, 2017) regulates issues related to the creation of international investigative and operational groups.

They provide for collective forms of investigation: investigative and investigative task forces, teams of investigators, and establish the procedure for their organization. However, the direct (personal) participation of Rosfinmonitoring employees in their work is not provided for. Information exchange with team members is carried out according to standard request procedures and on an initiative basis. At the same time, the maximum response time for mutual requests can be quite long – up to 30 days from the date of receipt.

3. Powers of Rosfinmonitoring officials when participating in interdepartmental investigations

In order to legalize Rosfinmonitoring's participation in the work of investigative teams, we

propose amending Article 163 of the Criminal Procedure Code of the Russian Federation to allow the head of the investigative body to involve officials of control and supervisory bodies in the preliminary investigation of predicate crimes relating to their sphere of activity, for the purpose of providing information and analytical support to the investigative team within the limits of the powers established by the regulatory legal acts governing their activities. This will also require mirror amendments to the fundamental acts governing the organization and activities of control and supervisory bodies. In particular, with regard to the activities of Rosfinmonitoring, it is necessary to expand the powers enshrined in Decree of the President of the Russian Federation No. 808 of June 13, 2012, "Issues of the Federal Financial Monitoring Service." In addition, it is necessary to strengthen coordination between Rosfinmonitoring and law enforcement agencies on the basis of Decree No. 567. Currently, the heads of control and supervisory bodies are not members of the coordination meeting of law enforcement agencies, but may be invited to attend. We propose amending paragraph 7 of Section III, "Powers of Participants in Coordination Activities," of Decree No. 567, according to which Rosfinmonitoring officials must be invited to coordination meetings on issues within their competence, and Rosfinmonitoring employees may, by decision of the coordination meeting, interact with law enforcement agencies on the main areas of coordination activities. This will allow Rosfinmonitoring to be involved in the work of investigative and operational groups set up by the Prosecutor General's Office in accordance with Decree No. 567 to investigate specific crimes, as well as to cooperate in the form of joint activities to detect and suppress crimes and eliminate the causes and conditions that contribute to their commission.

The involvement of Rosfinmonitoring in the work of the MSOG requires clarification of the powers of officials for a number of reasons. First, given that, in accordance with current legislation, Rosfinmonitoring does not carry out operational-search and investigative activities, it is necessary to:

1) to distinguish between the powers to conduct financial and preliminary investigations;

2) to determine the degree of access and permissible forms of involvement of Rosfinmonitoring employees in procedural actions within the framework of the preliminary investigation carried out by the MSOG.

Secondly, it is necessary to clarify the powers of Rosfinmonitoring employees in connection with the change in their disciplinary and functional subordination for the period of their work in the group. With regard to the conduct of the relevant investigation, they are subordinate to the Head of the interdepartmental MSOG. However, they must perform their work in accordance with established standard procedures and using departmental resources.

The main objective of Rosfinmonitoring's work as part of the MSOG is to conduct an operational analysis of available and accessible information to assist in the preliminary investigation of a specific criminal case by identifying and interpreting financial traces (facts of economic activity, cash transactions, property transactions, etc.) that lead the investigation to the speedy detection and suppression of crimes. The results of the work of Rosfinmonitoring employees within the MSOG must subsequently be summarized and used for strategic analysis.

Taking into account the above prerequisites and objectives, we propose that when Rosfinmonitoring employees work as part of the MSOG, their official powers in the field of planning and conducting financial investigations as part of the MSOG be expanded:

– independently direct the course of financial investigations, interpret their results within the limits of their competence, including in areas and on issues not specified by the head of the MSOG but relevant to the investigation being conducted;

– independently conduct parallel financial investigations, put forward hypotheses, choose methods and techniques for collecting, processing, and analyzing information within the scope of their official powers, taking into account the specifics of the case and the tasks set by the head of the MSOG;

- request and receive information from the head and members of the investigative team on the progress of the preliminary investigation, as necessary to understand the context of the tasks assigned.

The activities of Rosfinmonitoring officials as part of the MSOG may be organized either on a full-time or part-time basis, depending on the amount of additional work, with the provision of a number of additional rights to use the resources at their disposal at their main workplace and new responsibilities as members of the MSOG. At the same time, they retain their rights and continue to perform a number of duties in the standard working order in accordance with their job description and applicable departmental acts. For example, the duties to document the results of financial investigations and comply with document flow procedures, etc.

For the MSOG to function in practice, it is also necessary to adopt a number of interdepartmental regulatory acts establishing:

- a simplified procedure for interaction between Rosfinmonitoring and law enforcement agencies within the framework of joint work in the MSOG;

- the procedure for using the results of Rosfinmonitoring's financial investigations in criminal proceedings (at least in terms of materials that do not contain legally protected secrets). The inclusion of employees from other control and supervisory bodies in the MSOG may be useful in investigating complex predicate crimes committed in the areas under their supervision. In this case, their powers will relate to information and analytical support for preliminary investigations. Such employees may be employees of supervisory authorities that are included in the financial supervisory unit of the national AML/CFT/CFT system (Bank of Russia, Federal Tax Service of Russia, Federal Treasury of Russia) or not (Federal Customs Service of Russia, Federal Antimonopoly Service of Russia).

The powers of law enforcement officials to carry out operational-search or investigative activities when included in the MSOG do not change significantly. They should also be given the

right to interact with Rosfinmonitoring in a simplified manner and to use the results of financial investigations in the course of operational-search and investigative activities. In all other respects, they are guided by the Criminal Procedure Code of Russia, relevant federal laws, and interagency cooperation agreements.

4. Conclusion

The federal standard for interagency cooperation in the field of combating money laundering and terrorist financing should include regulations on cooperation between control and supervisory authorities and law enforcement agencies in conducting interagency investigations. It should regulate:

- the general procedure for organizing and conducting activities both by the MSOG itself and by the officials of the control, supervisory, and law enforcement agencies included in its composition;

- a register of the unified powers of Rosfinmonitoring officials and other state agencies when working as part of the MSOG.

These are described in this article. In order to include Rosfinmonitoring in the work of the MSOG, amendments to the Criminal Procedure Code of the Russian Federation and regulations governing its activities have been proposed, as well as interdepartmental regulatory and legal acts necessary in practice, establishing a simplified procedure for interaction and use of the results of financial investigations.

Conducting preliminary investigations into particularly important cases with the involvement of Rosfinmonitoring employees and other control and supervisory bodies within the framework of interdepartmental investigative and operational groups will reduce the time lag by organizing a simplified procedure for interaction. The ability to jointly plan actions, hold meetings, and exchange information between control and supervisory bodies and law enforcement agencies will contribute to improving the effectiveness of combating money laundering and terrorist financing.

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