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LEGAL REGULATION OF THE ACTIVITIES OF TAX INFORMANTS: PROTECTION, LIMITATIONS, AND MOTIVATION

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The article discusses the issues of protection of informants, the experience of which in the future may be in demand in the process of integrating the legal regulation systems of the Eurasian Economic Union member states when developing issues of countering tax crimes. Using a systematic and logical method, modern law enforcement practice is analyzed, which indicates that due to the increasing complexity of forms of tax evasion and concealment of actual financial and business transactions, traditional tax control verification practices are becoming insufficient to limit tax violations in an acceptable manner.
The historical and legal approach allows us to come to the conclusion that the activities of informants over the centuries could have various results - beneficial when they act out of patriotic or other disinterested motives, or destructive if denunciation is used as a means of enriching or settling personal accounts.
The author substantiates the expediency of state support for tax informants, which objectively contributes to the protection of public interests by strengthening guarantees of transparency and accountability, and eliminating violations and mismanagement in the public and private sectors at the national and cross-border levels.

1. Introduction

There is no legal protection for informants in the Russian Federation. In an extremely truncated form, the activities of informants are regulated by departmental regulations. In particular, these include the Order of the Ministry of Internal Affairs of the Russian Federation dated 06.06.2018 No. 356 "On Approval of the Regulations on the Appointment and Payment of Remuneration by the Police for assistance in Solving crimes and detaining those who committed them" (Registered on 15.08.2018 No. 51903), which provides for remuneration to those who provide reliable information to the police.

It can be assumed that the actions of informants under this departmental act do not concern the detection of latent offenses, since the possibility of payment follows if the transmitted information helps to solve a crime or detain a criminal, provided that the Ministry of Internal Affairs has officially appointed a reward in advance for assistance in solving this crime. In addition, there is a negative attitude towards informants in Russia: it is believed that the end does not justify the means.

However, the popularity of this institution is only growing in the world [1, p. 64]. This is especially noticeable in recent years, when governments generate large amounts of taxes in the form of income from taxation of consumption and wages, and tax evasion by the most influential economic entities is fraught with a decrease in the social acceptability of taxation [2, p. 17].

Under the influence of the acute aggravation of the economic situation, fiscal tasks are once again becoming dominant [3]. At the same time, tax abuses are carried out in the form of coordinated actions characterized by a certain level of sophistication and aimed at obtaining financial benefits to the detriment of the state budget [4, p. 245].

The European authors argue that timely informing fiscal authorities about tax violations and abuses is an important and effective tool for promoting transparency, fairness and democracy in the financial sector. It can prevent damage to the budget system in the form of tax evasion, tax fraud and illegal money laundering [5, p. 422].

At the same time, it should be borne in mind that information about exposure raises complex ethical and legal issues, issues of a clear distinction between what is due and unacceptable. These issues include: (1) the problem of a false informant; (2) the problem of retaliation against an informant from their employers; (3) legislative encouragement of informants to act by defining protective measures and financial incentives.

The author believes that these circumstances indicate the relevance of issues related to the activities of tax informants, the elaboration of which can be used as the basis for legislative decisions to improve the effectiveness of tax control in the Russian Federation, as well as in the integration space of the Eurasian Economic Union [6].

2. The historical experience of enantiophany in the activities of tax informants and the problem of false informants.

The very idea of using tax informants as reward informers has a long history dating back to the ancient world. In the Sumerian city-state of Lagash in modern-day Iraq, archaeologists have discovered an archive made on thousands of baked clay tablets. After deciphering the texts, it turns out that most of the tablets are ordinary denunciations. Thus, about five thousand years ago, numerous informants in the Middle East "signaled" the authorities about violators of existing laws and regulations.

The activities of tax informants are gradually institutionalized, receiving their own regulatory framework. For example, the idea of the divine origin of popular rumor, widespread in ancient society, according to which the voice of the people (vox populi) is considered the will of the gods[1], in

[1] Many ancient authors adhere to the ideas about the

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ancient Rome followed the general rule that any citizen has the right to initiate legal proceedings. Using this right, Roman delatoria [2] accuse wealthy fellow citizens of concealing taxes, since they were paid a quarter of the confiscated property [7, p.75].

Gradually, huge fortunes are created thanks to denunciations, and denunciation itself, already under Tiberius (reign: 14-37), degenerated into widespread abuses, which forced the emperor to take measures to limit the activity of informers, on whose testimony Roman justice relies.

Emperor Titus Flavius Vespasian (reign: 69-79) publicly flogged and expelled his predecessor's "delatorians" from Rome.

Emperor Titus Flavius Domitian (reign: 81-96), having come to power, suppresses false "denunciations in favor of the treasury, severely punishing slanderers, even his words were passed on: "A ruler who does not punish informers, thereby encourages them." [3] According to Suetonius, "he kept the metropolitan magistrates and provincial governors in check so tightly that they had never been more honest and just."[4]

After the assassination of Emperor Domitian, the Governor of Egypt adopts an edict on the regulation of the collection of taxes, the performance of duties and the distribution of competence among various officials, which specifically stipulates the situation of the territories: "Since the city (we are talking about Alexandria) is almost depopulated by many informers and every house is in fear, I categorically order that the prosecutor from the apparatus of the royal treasury, if he filed a complaint based on the statement of a third party, present his informant, so that he is exposed to a certain risk[5].

Pliny the Younger describes the expulsion of the delatorians by Emperor Trajan (reign: 98-117) as retribution for the constant fear of denunciations: "Nothing was so pleasant to us and so worthy of your age as the fact that we had to look down at the faces of the informers bent back and their necks twisted with rope. All of them were put on quickly assembled ships and given over to the storms: let them leave, let them flee from the land devastated by their denunciations" (34)[6].

Emperor Constantine the Great (reign: 306-337) sets the strictest legal restriction on whistleblowing and passes an edict on the death penalty for those convicted of defamation.

The concern of the authorities and the public about serious social threats of false information is taken into account in the regulation of tax relations in more recent times. For example, an English legislator of the 19th century tried to distinguish between genuine and false informants when he passed the taxation laws of 1803 and 1806, which provided for punishment in the form of pillorying for false statements. Consolidated Taxation Act of 1842 recognizes perjury in the tax sphere as a crime, providing that "persons who give false testimony or falsely swear are subject to punishment for perjury" (TA 1842, p. 180) [8, p. 10].

sacred speeches of the people and about the divine principle of popular rumor: Homer (Iliad, II, 94, etc.), Hesiod (poem "Works and Days"), Seneca the Elder ("Contraversions", I, 1, 10), Tertullian ("Against Praxeas"). As a result, it is formulated in the form of the maxim "Vox populi, vox Dei".

[2] Delatorians (from Latin delatores – informers) were ancient Roman informers who were an integral part of the judicial system of the state.

[3] Suetonius Gaius Tranquille The Life of the Twelve Caesars. Moscow, Publishing house "Fiction", 1990. The eighth book. Domitian. P.216.

[4] Suetonius Gaius Tranquille Decree. soch., P.215.

[5] Sventsitskaya I. Informer and philosopher (Roman Empire I - early II century.) Incident. Individual and unique in history - 2003. Issue 5. Moscow: OGI, 2003. P.79.

[6] Panegyric to Emperor Trajan. Letters of Pliny the Younger. 2nd edition. Moscow, Nauka Publishing House, 1984. Translation and notes by V. S. Sokolov. 408 pages .

An analysis of the historical circumstances known to us allows us to assert that the activities of informants could have various results - beneficial when they act out of patriotic or other disinterested motives, or destructive if denunciation is used as a means of enriching or settling personal accounts. Similar motives motivate modern tax informants to act.

3. General characteristics of tax informants and their motivation

Modern researchers in their publications say that a fairly effective way to combat tax crimes is to obtain information from third parties about violators [9; 10; 11], which helps in disclosing the tax base and taxable objects.

Limitations in human resources (checks on a complete sample of taxpayers are beyond the capabilities of tax administrations) and extremely complex legislation make it difficult to detect evidence of tax violations. Legal regulation at the national level does not contain procedures for the consistent and rigorous detection of tax crimes.

The latent nature of tax crime requires the establishment of an administrative regime of regular preliminary monitoring to obtain evidence of financial abuse, identify suspicious transactions, and conduct thorough tax audits.

In these circumstances, tax policy, tax legislation and practical law enforcement should be clearly oriented towards the universal fulfillment of tax obligations.

The experience of law enforcement and fiscal authorities shows that when this task is formulated on the basis of measurable performance indicators, the quality of control work can be sacrificed to quantity, and most tax crimes will be ignored.

Tax crimes are long-lasting. In the course of their commission, traces of the movement of commodity and cash flows always remain, and there are almost always witnesses who may have evidentiary information about illegal events. Therefore, it can be argued that tax crimes would be significantly damaged if informants were socially motivated and a comprehensive autonomous protection regime was established on the territory of the state.

The interests of informants have not undergone any significant changes since ancient times.

As before, potential informants are inclined to transfer information about tax violations that has become known to them in order to receive monetary rewards. In the countries of the modern West, the financial side of the issue acts as the main motivation for transferring information about tax crimes to the state.

Another driving force for tax informants is often the internal need to protect society from loss of budget revenues and unfair competition between business entities, when a tax evader gets a better market position in comparison with a bona fide taxpayer, who has significantly lower financial opportunities for competition after making all tax payments.

In this case, we can talk about a worthy civic position of a tax informant who considers the interests of the state as the institutional basis of law and order. His actions are objectively aimed "at transforming public relations in order to streamline existing social ties and protect them from internal and external threats to the state" [12, p. 70].

Such a position does not arise by chance, but only in those social conditions when a citizen recognizes himself as part of a specific cultural and historical community closely linked to the state and feels the need to ensure the practical positive interests of its members. The positive attitude of a citizen to assist in the fight against tax crime should be supported by "the state, whose sovereign rights in the matter of taxation leave discretion to the legislator and tax authorities in the exercise of their powers" [13, p. 83].

It is possible that a person, being a bearer of information about tax violations, may fear for

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personal integrity, and for the purpose of protecting himself or for some other reason (for example, feeling a sense of hostility towards persons managing and controlling a tax evader) cooperate with government authorities.

It should be borne in mind that the activities of tax informants may be significantly limited by legislation and corporate procedures, as well as the high probability of a wide range of possible negative consequences for whistleblowers in connection with their activities to identify violations.

The authors note that whistleblowers are subject to risks such as threats of retaliation, including prosecution, reputational costs, defamation, physical and psychological harm, dismissal or temporary suspension from work [14].

These factors influence informants when making decisions about disclosing information about tax violations. The level of risks is also influenced by the actual environment in which informants operate, the procedures for protection and disclosure of information established in this jurisdiction and a specific organization.

Examples of the application of Swiss banking secrecy legislation are relevant to illustrate the risks incurred by tax informants.

According to Article 47 of the Swiss Banking Act of 1934, the disclosure of information or activities of clients conducting banking operations within the country to foreign organizations, third parties, or even the Swiss authorities, which is conducted without the consent of the clients themselves or an accepted application for criminal prosecution, falls under the category of a criminal offense [15].

Using this rule, the Swiss federal Court in 2015 did not recognize Herve Falciani, who exposes tax violations at HSBC bank, as a tax informant by handing over information about 130,000 secret accounts to the French authorities. The court sentenced him to five years in prison for violating commercial and banking secrecy, data theft, and aggravated financial espionage[7].

On March 21, 2018, the Swiss Ministry of Justice authorized the Zurich Prosecutor's Office to investigate allegations of industrial espionage and announced that anyone who discloses information about a client in a court case involving a Swiss bank could be charged with espionage in addition to charges related to violations of banking secrecy laws.

In this case, the case was initiated as a result of a legal dispute between the Swiss bank J. Safra Sarasin and the German pharmacy owner Erwin Muller over transactions using capital gains tax minimization. Based on information provided by lawyer Eckart Zeit and two former employees of the bank, in 2017 a German court ruled that J. Safra Sarasin bank should pay Mueller $50 million for incorrect tax recommendations on investments[8].

The thin line separating a tax informant from the dock can be seen in the story of Bradley Birkenfeld, a former asset manager at UBS bank, who became the first international financier to report illegal offshore accounts belonging to U.S. citizens in Switzerland.

In April 2007, Birkenfeld's lawyers passed information about UBS's illegal activities to the U.S. Department of Justice, which refused to grant the financier immunity from criminal prosecution and inclusion in the whistleblower program.

Birkenfeld's revelations lead to unprecedented tax revenues to the budget, paid by UBS in the form of $780 million in fines, and $200 million under a

[7] Juliette Garside, HSBC Whistleblower, sentenced to Five years in Prison for a large Leak of Information in Banking History. The Guardian, November 27, 2015 www.theg uard ian.com / news/ 2015/ November 27/ hsbc-informant-locked-in-jail-for-five-years-Herve-Falciani?CMP= twt _ gu

[8] Reuters Editorial (March 21, 2018). Swiss charge three Germans in bank secrecy. clash. https://www.reuters.com/article/idUSKBN1GX1GN/

settlement agreement with the Securities and Exchange Commission to avoid legal action against UBS for opening and maintaining offshore accounts for American clients in Switzerland and other countries in order to evade payment of taxes[9].

As a result of this investigation, the Swiss government was forced to change its tax agreement with the United States and release the names of more than 4,900 American taxpayers who had illegal offshore accounts[10].

Nevertheless, on May 7, 2008, Birkenfeld was arrested at Boston Airport upon arrival from Switzerland, and on May 13, a Fort Lauderdale (Florida) court formally charged Birkenfeld. Prosecutor Kevin Downing approved the detention, stating that "anyone who wants to be considered an informant should understand that accurate and complete information should be provided and done immediately ... Mr. Birkenfeld did not provide accurate and complete information, therefore he is not entitled to the status of an informant."[11]

On August 1, 2012, after serving 40 months in prison[12], Birkenfeld was released from prison, and in September 2012, the Internal Revenue Service, in accordance with the Whistleblower Act, paid Birkenfeld a reward of $104 million, amounting to 25% of the $400 million in additional taxes collected from individuals[13]. This payment is the largest awarded to an individual in the history of U.S. legislation on whistleblower compensation.

By paying remuneration, the US Internal Revenue Service actually recognizes Bradley Birkenfeld as a tax informant, but legally he does not receive the status of a whistleblower.

The disclosure of information about organizations in the European Union is quite contradictory. In 2019, Transparency International notes that 8 of the 28 EU member states have sanctions for disclosure of corporate tax data by informants[14].

4. Supranational legislative regulation of tax informants (informants) Of the European Union

The weakening of moral and ethical norms in force in modern Western society arouses the active interest of legislators in institutions capable of assisting the state in countering tax evasion, fraud and corruption at the national and supranational levels. In recent years, steps have been taken in the European Union to strengthen the institution of protection of informants by law and to increase their effectiveness.

Tax fraud and tax evasion at the national and cross-border levels undermine the social cohesion of the EU countries and significantly affect the size of the tax deficit of the pan-European budget and the budgets of the member states, threatening the financial stability of the EU [16, p. 108].

After extensive preparation, the European Commission is conducting an open exchange of views on whistleblower protection measures from March 3 to May 29, 2017.[15] The basic position put forward during the discussion is the assertion that

[9] U.S. SECURITIES AND EXCHANGE COMMISSION Litigation Release No. 20905 / February 18, 2009.

[10] https://www.whistleblowers.org/whistleblowers/bradley-birkenfeld/

[11] Sanders Laura. (2016-03-11). The UBS decryptor was created from the Wall St. Journal Prison.

[12] Sanders Laura. (2016-03-11). The UBS decryptor was created from the Wall St. Journal Prison.

[13] Temple-West Patrick & Lynnley Browning (2012-09-11). Whistleblower in UBS tax case gets record $104 million. Reuters.

[14] Transparency International Nederland, Mapping the EU on Legal Whistleblower Protection: Assessment before the Implementation of the EU Whistleblowing Directive (April 2019) 4. https://www.transparency.nl/wp-content/uploads/2020/06/Mapping-the-EU-on-Whistleblower-Protection-TI-NL.pdf

[15] https://ec.europa.eu/newsroom/just/items/54254

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the protection of informants in the European Union is fragmented. Only a few EU member States have extremely limited legal protection for whistleblowers who cannot be sure that they will enjoy sufficient legal protection.

It is also noted during the hearings that informants make a significant contribution to protecting the financial and tax interests of society, to fighting corruption and other illegal activities, but informing about this is difficult, given the general reluctance to report such actions in their own countries.

In order to ensure the qualitative development of the institute of informants, the European Parliament and the Council of the EU are preparing and adopting an act of consolidated legislation on the protection of informants in the European Union in October 2019. The EU Directive on the Dissemination of Information (WBPD) [16] enters into force on December 16, 2019 and provides for each of the 27 EU member states a two-year period until December 17, 2021, in order to transfer its provisions to their legal systems and establish appropriate safeguards for the protection of persons reporting violations.

For most EU member States, the implementation of the WBPD opens up the potential to adopt comprehensive national legislation on the protection of whistleblowers. In this regard, two factors should be considered.: (1) a subjective factor in the form of the unwillingness of the governing elite of individual EU member states to take into account all the requirements of the WBPD in the relevant national legislation; (2) an objective factor in the form of the need for a thorough theoretical study of gaps and problem areas in the legal regulation of the status of tax informants, their protection and restrictions.

Examples of the subjective factor can be given in relation to a number of European States.

Due to missing the two-year deadline for the implementation of the Whistleblower Directive on February 15, 2023, the European Commission decides to hold eight EU countries accountable. Among them: Czech Republic, Germany, Estonia, Spain, Italy, Luxembourg, Hungary, Poland. As a result, on April 25, 2024, Poland was fined 7 million euros by the European Court of Justice for non-compliance with the requirements of the EU Directive 1937/2019 (WBPD)[17]. Under the threat of an additional fine of 40,000 euros per day, Poland complies with the EU Directive. June 24, 2024 The official publication of the Law on the Protection of Informants brings Polish legislation into line with Directive (EU) 2019/1937.

Due to the numerous flaws in the adopted legislation on the protection of informants, the authors note that it still does not fully comply with the requirements of the WBPD [18] in most EU countries.

In particular, two parallel regulatory systems are being created in Hungary: (1) the previously existing national system that covers whistleblowers reporting violations of Hungarian law; (2) a new system that implements the Directive and applies only to whistleblowers who report violations of EU law. In fact, Hungary formally complies with the requirements of the WBPD, but in fact leaves the existing rules regarding tax informants unchanged.

Taking into account the objective rules defined by the WBPD, it is necessary to point out conceptually important gaps in the legislation under consideration, as well as to take into account the

[16] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law PE/78/2019/REV/1 [2019] OJ L305/17.

[17] https://www.whistlelink.com/blog/legal-alert-two-years-have-passed-since-the-deadline-for-implementation-of- the-law-on-whistleblower-protection-in-poland/

[18] https://www.taylorwessing.com/en/insights-and-events/insights/2024/04/the-court-of-justice-of-the-european-union-has-issued-a-judgment-against-poland

fact that the European Union still does not have common rules for combating tax evasion, unlike other economic crimes [17, p. 527].

The first gap lies in the fact that Article 2 of the WBPD narrows the possibilities of applying the directive itself in the field of taxation. Paragraph "c" of this article provides for "violations related to the domestic market in connection with actions that violate corporate tax rules or agreements aimed at obtaining a tax advantage that contradicts the object or purpose of applicable corporate tax legislation." In this case, the logic of the legislator, who proposed to limit himself to violations regarding the calculation and payment of corporate taxes, is not entirely clear. If the administration of corporate tax in many cases has a cross-border character, then it should be noted that VAT in the EU is considered as a union-wide tax, both in terms of the specifics of payment after the abolition of customs borders in 1993 between EU member states [18], and under the terms of supranational regulation organized through the adoption of relevant EU directives.

Article 4 of the WBPD establishes that the Directive in question applies to information-reporting persons working in the private or public sector, which include: (1) persons with employee status, including government employees; (2) persons with self-employed status; (3) shareholders and persons belonging to to the administrative, management or supervisory body of the enterprise, including non-executive members, as well as volunteers and paid or unpaid interns; (4) persons working under the supervision and guidance of contractors, subcontractors and suppliers; (5) persons reporting violations, if they publicly disclose information about violations obtained in the course of an employment relationship that has since ceased.; (6) persons whose employment relationship has not yet begun, in cases where information about violations was obtained during the hiring process; (7) third parties who may suffer from retaliation, such as colleagues or relatives of persons who reported information about violations.

Thus, the WBPD concept of informing and disclosing information defines an informant as a person who reports violations of EU law that are harmful to public interests due to activities related to work in a public or private organization or who is in contact with such an organization [19].

However, if we take into account the peculiarities of obtaining and distributing information in modern society, it is necessary to expand the circle of people who, due to their professional qualities and competencies, can act as potential informants of government agencies. Obviously, these include investigative journalists and independent media themselves, as well as computer and other independent specialists who penetrate companies' information systems in order to disclose data on tax crimes.

In the context of tax crimes, informants can be financial organizations, accounting and auditing firms, close partners, other independent individuals or companies with access to financial and business activity data systems. Thus, informants should be considered as persons who are not related to the traditional relations between an employer and an employee.

In addition to generally protecting whistleblowers from retaliation and related harm, the WBPD provides for a number of important measures that further strengthen the whistleblower protection system. These include confidentiality, guarantees of anonymity, personal protection, presumption of innocence and disclaimer of liability (Articles 21 and 22 of the WBPD). Regarding confidentiality, it is expected that the identity of the informant will not be disclosed without his explicit consent (art. 16 WBPD).

Article 6 of the WBPD stipulates that whistleblowers have the right to protection if they had reasonable grounds to believe that the

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information about the reported violations was reliable at the time of submission, as well as if they report internal violations (art. 7 of the WBPD), or external violations (art. 10 of the WBPD) or publicly disclose information (V. 15 of the WBPD).

The immunity is due to the fact that it operates within the framework of national legislation on information disclosure. If immunity is permitted, the burden of proof is placed on the person against whom the information is disclosed in order to demonstrate the real intentions of the informant who reported a violation of applicable law.

Applicants are also provided with personal protection against any identified or perceived threat. Similar protection is provided to family members of applicants.

The WBPD requires the Union States to impose proportionate penalties against reporting persons who publicly disclose false information in their reports, as well as compensation for damage caused as a result of such communication or public disclosure (paragraph 2 of Article 23 of the WBPD).

Penalties should be applied to individuals or legal entities who: (1) obstruct or attempt to obstruct reporting.;

(2) take retaliatory measures and/or initiate controversial cases against informants and related persons; (3) violate the obligation to keep the identity of the reporting persons confidential (art. 23, paragraph 1, WBPD).

In our opinion, a fundamentally important disadvantage of the WBPD is the lack of a legally expressed desire on the part of the European legislator to balance the risks of harm and protective measures for informants and those persons against whom public disclosure has been initiated.

It is necessary to define the boundary that separates the "conscientious mistake" of the informant from his abuse of the right. In particular, when it is absolutely obvious that the informant is aware of the facts, but continues to damage the reputation of the company, the injured person should be provided with legal remedies, and legal measures applied to the perpetrator.

It is hoped that this flaw will be filled in the relevant national legislation. Otherwise, there is a high probability of a repeat of the incidents of past times, when false informants aroused reciprocal hatred from their fellow citizens.

Nevertheless, the universal implementation of this directive among the Union States suggests that the European legislator is gradually implementing his plan aimed at widely integrating the institution of informants into all significant financial and economic structures of EU members.

5. Conclusions

1. Informants play an important role in protecting the legitimate economy from organized crime, financial and tax fraud, money laundering and corruption, which hinder economic development and competitiveness, harm social justice and the rule of law.

2. The protection of whistleblowers who expose wrongdoing objectively promotes respect for the public interest by strengthening guarantees of integrity, transparency and accountability, and eliminating violations and mismanagement in the public and private sectors, including cross-border corruption related to government financial and tax interests.

3. Subject to careful scientific and practical study and verification, successful proposals for the use of the institute of tax informants can be applied in the field of combating tax evasion and tax fraud by other states.

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