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Project Number:	205/107-256	
Country:	Russian Federation	
	Local operator	EC Consultant
Name:	Financial Monitoring Committee	Council of Europe Economic Crime Dept
Address:	Myasnitskaya Ul, 39 107450-Moscow	Strasbourg
Tel. number:	+7 095 927 3365	+33 3 9021 4506
Fax number:	+7 095 927 3219	+33 3 8841 3955
Email:	<a href="mailto:kfm@kfm.ru">kfm@kfm.ru</a>	<a href="mailto:alexander.seger@coe.int">alexander.seger@coe.int</a>
Contact person:	Mr S Osipov	Mr A Seger
Signature:	_____	_____

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Author of report:	Simon Goddard – Project Consultant

## 1 PROJECT SYNOPSIS

Project Title:	Policy Advice Project 'Improving legislation and practices on dealing with money laundering and the financing of terrorism.'
Project Number:	205/107-256
Country:	Russian Federation

Project objective: To improve Russian legislation and practices on dealing with money laundering and the financing of terrorism by supporting the adoption and implementation of new international standards on money laundering and the financing of terrorism by the Russian Federation.

Planned outputs:

1. Recommendations, including legislative proposals will be available to permit ratification of the Convention ETS 198 of the Council of Europe by the Russian Federation.
2. Competent officials of the Russian Federation will be aware of (trained in) the meaning and importance of the new standards introduced by the Convention.
3. Practical guidelines for authorities involved in combating terrorist financing will be available.

### Synopsis of Project Activities:

1. Start-up seminar including working sessions on new standards set by the Convention.
2. Two workshops to identify specific legislative solutions for the Russian Federation using the experience of other countries.
3. Two workshops on confiscation including the reversal of the burden of proof.
4. Two workshops on countering terrorist financing – the legal and practical aspects.
5. One workshop to discuss the content of the practical guidelines created for CFT issues.
6. A regional seminar for the FATF EurAsian Group (EAG) countries on the content of the CFT practical guidelines.
7. A 2 day closing seminar to present [and adopt or reject] all the project results and proposals.
8. Support Rosfinmonitoring and the secretariat of the EAG through the provision of short-term advisors and expert opinions to:
  - Support the solving of practical issues resulting from the Convention
  - Drafting the practical guidelines
  - Drafting the legislative proposal

## **2 ANALYSIS OF PROJECT**

### **2.1 Background**

The Russian Federation ratified the 1990 Convention on Laundering, Search, Seizure and confiscation of the Proceeds from Crime [Strasbourg Convention] in 1999 (entry into force in 2001). The development of the Russian anti-money laundering system started in 2002 with the creation of the Committee for Financial Monitoring and was essentially completed in 2004 with their conversion into the Federal Service of Financial Monitoring (Rosfinmonitoring).

The creation and development of the system was assisted by the Project Against Money Laundering in the Russian Federation (MOLI-RU) implemented by the Council of Europe between February 2003 and June 2005 with full financing by the European Commission. The project addressed a wide range of issues and, while having the Rosfinmonitoring as the main partner, it also responded to the most urgent needs of law enforcement authorities, prosecutors and judges as well as those of the financial sector. The project successfully contributed to the creation of a fully functional system against money laundering and terrorist financing in the Russian Federation.

However, certain issues still need to be given particular attention and require follow up support. A new technical assistance project to contribute to the development of the anti-money laundering training/counter terrorist financing strategy and creation of a training centre has been proposed to be included in the TACIS 2005 Programme for the Russian Federation. This MOLI-RU 2 project is likely to start in late 2006.

Rosfinmonitoring approached the Policy Advice programme of the European Commission and requested support for the continuous efforts of the Russian authorities to keep up with recent international developments in the anti-money laundering/terrorist financing field and to further improve the national legislation in this field. Such a support should be provided through a project which would also help maintaining the momentum created by MOLI-RU 1.

The new Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (ETS 198), opened for signatures during the Warsaw summit on 16-17 May 2005 and was signed by 11 Member States on that occasion. The convention sets a number of new international standards in the field of combating money laundering and the financing of terrorism based on international experience and best practices developed since the Strasbourg convention of 1990. It is in the interest of member States to ratify the convention as soon as possible and introduce the new legal instruments into national legislation thus facilitating effective implementation of the principle that “crime must not pay”.

The objective of the project proposed herein is to support the adoption and implementation of new international standards on money laundering and the financing of terrorism.

This project will facilitate the provision of expert advice to the Russian authorities responsible for the drafting and interpretation of relevant legislation on the legal and practical aspects of the mentioned convention and of the Nine Special Recommendations of the FATF. This will facilitate the ratification of the new Convention and full implementation of the Recommendations by the Russian Federation. It furthermore envisages the elaboration of practical guidelines for adoption by all the competent authorities responsible for preventing and combating terrorist financing. The guidelines could then also be used for the activities of the EurAsian Group of which the Russian Federation currently holds the Secretariat.

The proposed project will complement and build on the achievements of the MOLI-RU project and constitute a logical introduction to its follow-up in late 2006.

## 2.2 The Project Team

The project is administered by Przemyslaw Musialkowski based within the Department of Crime Problems, Directorate of Legal Affairs, Council of Europe, Strasbourg and by one full-time locally hired office manager/interpreter, Mrs Elena Ivanova, based in Moscow at the offices of the Rosfinmonitoring Central Federal District Regional Office. Mrs Ivanova is responsible *inter alia* for the day-to-day organisation of activities in the Russian Federation, for contact with the designated short-term experts, direct contact with the beneficiary, and with the EC Delegation in Moscow for administrative matters. In addition, one key international expert (Simon Goddard - UK), and one key Russian expert (Prof. Dr Leonid Fituni), are responsible for interactions with the beneficiary at a senior management level (Head and Deputies of Rosfinmonitoring), to organise the specific activities foreseen in Objective 2 and to design and implement other project activities and to coordinate the inputs of other short term international and national experts. In order to achieve the outputs as envisaged by the TOR of the Project it has been identified that additional expertise is required in the following areas.

1. Expertise on the new Convention
2. Expert analysis of existing compliance by the Russian Federation
3. Expert proposals for legislative solutions for the RF
4. Expertise in the preparation of a report containing legislative proposals
5. Expertise in confiscation including the reversal of the burden of proof
6. Expertise in the legal and practical aspects of countering terrorist financing
7. Expertise in the preparation and drafting of practical guidelines on countering terrorist financing.

Accordingly the following individuals have been identified who have indicated a willingness to assist in the delivery of the project activities.

International experts:

### Objective 1 – Legislative issues

- Dennis Evans – Former Senior Civil Servant – United Kingdom [Lead Expert]
- Anders Cedhagen – High Court Judge, Sweden
- Vid Jakulin – Professor of Law, University of Ljubljana, Slovenia
- Lorna Harris – Procurator Fiscal’s Office, Scotland

### Objective 2 – Training Issues

- Melvin Dickin – Training Expert, United Kingdom
- Felix McKenna – Chief Bureau Officer, Criminal Assets Bureau, Republic of Ireland
- Secretariat of CARIN – [Camden Asset Recovery Information Network], Europol

### Objective 3 – Practical guidelines on terrorist financing

- Adriana Holtslag – Legal Consultant, Netherlands [Lead Expert]
- Various officers of the Terrorist Finance Teams of selected EU Financial Intelligence Units, Europol and EuroJust.

The list is not exhaustive and other experts may be involved in the project as necessary at a later stage.

At the request of the RESFINMONITORING no external local experts will be used and the international experts will work directly with the key staff of the Beneficiary. The following staff will actively participate in the expert work groups and will receive no fees:

- Mr Vladimir Fomin – Legal Department, Rosfinmonitoring
- Mr Pavel Livadny – Legal Department, Rosfinmonitoring
- Mr Eduard Ivanov – Legal Department, Rosfinmonitoring
- Mr Alexander Klemenchenok – Terrorist Finance Team, Rosfinmonitoring
- Mr Alexey Ponomarov – Terrorist Finance Team, Rosfinmonitoring

However other national experts can be involved as necessary at the later stage.

### **2.3 The Beneficiary Organisations**

The primary beneficiary is the Federal Service for Financial Monitoring (Rosfinmonitoring) who is the lead agency within the Russian Federation for AML/CFT issues. This position has recently been strengthened by the establishment of a high level inter-agency commission chaired by the Head of Rosfinmonitoring to develop working practices across all relevant authorities to fully implement the national strategy against AML and CFT. The members of this commission comprise senior representatives of the following authorities who will therefore also be project beneficiaries. In accordance with the Federal Law 115 FZ (of 2001) Rosfinmonitoring besides its other functions plays the role of the nation-wide coordinator of activities of agencies in fighting money laundering and terrorist financing. This combined responsibility and right were reconfirmed in the recently adopted National Strategy on Fighting Money Laundering and Terrorist Financing and in practical terms the coordination of everyday work, strategy and tactics is performed through the inter-agency commission. In addition to the coordination element the interagency commission considers and takes recommendations on individual cases of money laundering when files are transferred to the law enforcement agencies for taking legal action.

Inter-Agency Commission – Responsibilities re AML/TF issues

Federal Service for Financial Monitoring – Financial Intelligence Unit of the Russian Federation

- Ministry of Finance  
General supervision of situation in the monetary system and formal guidance of Rosfinmonitoring as a Federal Service under the Ministry of Finance
- Ministry of Foreign Affairs  
Responsible for international co-operation in the field of AML/TF, including preparation of intergovernmental agreements on mutual legal assistance, participation in major AML/TF conventions etc.
- Ministry of Interior  
Investigation of “ordinary” AML cases. Mutual provision of information concerning ML/TF suspicions and data. Sending enquiries to Rosfinmonitoring in connection with cases under investigation.
- Ministry of Justice  
Legal framework of AML/TF, development and implementation of legislation, punishment system (prisons etc)

- Federal Security Service (FSB)  
AML action and investigations in cases within the competence of FSB (security related cases), and all TF cases. Provision of information concerning ML/TF suspicions and data.
- External Intelligence Service (SVR)
- Federal Service for Drug Control  
AML/TF cases related to drugs trafficking and associated issues
- Federal Service for Financial Markets  
AML/TF supervision of the securities' brokers
- Federal Service for Enforcement of Sentences
- Federal Customs Service
- Federal Service for Insurance  
Supervision of insurance markets in connection with AML/TF activity

Representatives of both the General Prosecutor's Office [Prosecution of AML and TF cases. Supervision of observance of AML/ATF legislation] and the Central Bank [AML/TF supervision of the credit institutions (banks)] are also able to participate in the inter-agency commission and accordingly they will also be project beneficiaries.

From the Russian side the success of the project relies on the willingness of the beneficiary organisation to support the project work plan and to ensure that all other involved organisations interact sufficiently with the foreign experts to deliver the anticipated outputs. The senior management of Rosfinmonitoring have already expressed this commitment. From the international side the success of the project relies on the willingness of the nominated experts to participate fully according to their individual responsibilities and for there to be continuity of management and control of the activities and outputs.

## **2.4 Communication within the Project**

In principle the Project Coordinator is responsible for the daily communication between on the one hand the short-term experts, and on the other hand the beneficiary country. However some of these responsibilities have been delegated to the key short-term international and national experts who will also liaise either directly with the beneficiary or through the office manager based in Moscow. The Project Coordinator will maintain regular communication with the European Commission Delegation in Moscow. All written reports required by the European Commission under this project will be channelled through the Secretariat of the Council of Europe in Strasbourg.

The key short-term experts will keep the strategic overview on the Project and will be responsible for the quality check on the execution of the activities and on the periodical reports. Furthermore they will monitor the activities of the short-term experts and will report to the Project Coordinator in Strasbourg and the Project Director appointed by the Rosfinmonitoring in Moscow.

### 3 PROJECT OUTPUTS - WORK PLAN

#### Objective 1

**Objective - Recommendations, including legislative proposals, will be available to permit ratification of the Convention ETS 198 of the Council of Europe by the Russian Federation**

#### **CURRENT SITUATION IN THE FIELD OF LEGISLATION**

The 1990 Strasbourg Convention (ETS 141) was signed by the Russian Federation on 07.05.1999 (i.e. 9 years after its adoption and 6 years after it entered into force. It was ratified with and statement (Federal Law N 62-FZ of 28.05.2001. The Ratification [Note was deposited with the Secretary General of the Council of Europe on 02.08.2001. In Russia the Convention entered into force on 01.12.2001. That means that it took more than 10 years for the country to fully join the Convention.

Unlike the previous document the 2005 Warsaw Convention (ETS 198) was developed with the participation of Russian experts, and Russian official delegations took part in preliminary discussions and preparatory work at all stages. This may allow a shortening of the period before the new Convention is signed and ratified.

ROSFINMONITORING experts took part in formulating Russia's position during the preparatory work on the draft text of the Convention and in fact are among the few Russians aware of its contents. Other agencies that to a different extent participated in working out the Russian position include Ministry of Foreign Affairs, Ministry of Justice, and Federal Security Service (FSB).

ETS 198 has a larger scope as compared to the 1990 Convention, as it covers laundering and confiscation, as the 1990 Convention, but also financing of terrorism. As to the latter, the Convention first stresses the necessity for States to take immediate steps to ratify and implement fully the 1999 UN Convention on the suppression of the financing of terrorism, thereby recognizing its fundamental value in defining an international legal framework to cut terrorists off from their funds. The reference to the UN Convention aims at stressing the crucial importance of this treaty in the global fight against the financing of terrorism. It recognises that the 1999 UN International Convention for the Suppression of the Financing of Terrorism provides, for the first time, an agreed global framework within which the international community can collaborate more effectively in seeking to fight the financing of terrorism.

The new Convention also expands the possibilities for international co-operation, in particular in ensuring a corrective and extensive application by the signatories and in order to take into account the development of new investigative techniques adopted in other international *fora*, as those foreseen in the framework of the EU Protocol of 16 October 2001 to the Convention on mutual legal assistance in criminal matters.

#### **EXISTING GAPS AND BOTTLENECKS**

The current awareness of the issues posed by the new Conventions and about its difference from the old one is quite low in Russia. The main tasks related with this output may be divided into two groups: a) raising the awareness about the contents of the new convention and facilitating the understanding of the new elements within it, b) provide assistance with evaluation of the current legislation, finding the gaps within it and actual preparation of amendments and drafts for the introduction of new legal norms, corresponding to the requirements of the new Convention. Special emphasis during the lifetime of the Project should be paid to adjusting the existing



legislative to the Convention in what concerns terrorist financing, confiscation, international cooperation.

At the same time not all groups within the Russian society and consequently legislature are equally prepared to work for Russia's joining the new Convention's and for its speedy ratification. Certain new elements introduced by the new Convention (such as those related to confiscation, shifting the burden of proof, intensive and simplified international cooperation) may pose concerns with some agencies or groups of interest.

### **ORGANISATION OF WORK TO ACHIEVE THE OUTPUT**

This objective will be achieved by the creation of a small working group comprising Russian and international legal experts who will maintain ownership of the issue throughout the lifetime of the project. The composition of the group will as far as is possible remain constant throughout the project with the number of meetings equalling or [subject to available budget] exceeding the three outlined above. This constancy will enable clarity of roles and responsibilities within the group to be established and in addition, the organisation of the work of the group and the subsequent production of the recommendations will be ceded to one specified international expert who will work closely with the key national expert that will ensure maintenance of standards and continuity of purpose.

#### Activities

- a) Organise a start-up seminar, including working sessions on new standards set by the Convention.
- b) Short-term advisers in cooperation with Rosfinmonitoring to prepare an analysis of the current Russian legislation in terms of its compliance with the Convention and FATF Nine Special Recommendations.
- c) Organise 2 workshops to identify specific legislative solutions for the Russian Federation making use of the experience of other countries.
- d) Support Rosfinmonitoring through the provision of short-term advisers and expert opinions – aimed at supporting the drafting of legislative proposals.
- e) Prepare a report containing legislative proposals, the implementation of which would enable early ratification and efficient implementation of the above convention.
- f) Organise a 2-day seminar presenting and adopting all proposals developed under this project (this will also serve as the closing event of the project).

### **Objective 2**

**Objective - Competent officials of the Russian Federation will be aware of (trained in) the meaning and importance of the new standards introduced by the Convention**

#### **CURRENT SITUATION**

The task of assisting ROSFINMONITORING in training its staff and the workers of sister agencies in the meaning and importance of the new standards introduced by the Convention will be fulfilled on the basis and with the help of fundamental infrastructure created under the MOLI RU project. At that stage a group of 10 representatives from the Federal Service of Financial Monitoring were instructed by professional trainers from the Centre of Excellence of the UK Asset Recovery Agency providing the training at a national level. The aim of this training was to



build on the Russian trainees' background and experience by equipping them with the knowledge, understanding, skills, attitudes and behaviour needed to design a basic financial investigation course, and to create lesson plans and deliver the product to students utilising student centred training techniques. This initiative provided that project with a particularly powerful, cost effective and sustainable methodology to achieve the improvement of effective co-operation along the whole chain of national anti-money laundering services

The practical result was that once the initial training under the Project was completed, persons working in the field of combating money laundering in the beneficiary country were instructed in their own language by their own tutors. This means that also under the current Project the same team may be used for the purposes of raising the awareness of the meaning and importance of the new standards introduced by the Convention

### **EXISTING GAPS AND BOTTLENECKS**

However, the overall numbers of people competent in the new Convention is quite limited. In fact, only a few people from ROSFINMONITORING itself, and to a lesser extent the Foreign Ministry and the Ministry of Justice have the necessary competences. Therefore, the consultants of the projects after contacting the leadership of FSFM came to the conclusion that it would be advisable to include some of the competent workers of FSFM into the experts' team.

The original team of trainers created under MOLI-RU project may be used for support training purposes.

### **ORGANISATION OF WORK TO ACHIEVE THE OUTPUT**

This objective will be achieved by the holding of two seminars and / or workshops in Moscow attended by representatives of the relevant authorities of the Russian Federation and selected international experts in the field of asset tracing, forfeiture, seizure, and confiscation. These experts will be drawn from the UK Asset Recovery Agency, the Irish Republic Criminal Assets Bureau and the Camden Asset Recovery Interagency Network (CARIN), that is an initiative brought about by Belgium and the Netherlands and developed by the national asset confiscation units of Austria, Belgium, Germany, Ireland, the Netherlands, and the United Kingdom and the organisations of Europol and Eurojust, to establish an informal international network in respect of tracing, seizing and confiscation of the proceeds of crime.

It is envisaged that one seminar / workshop be held in the spring of 2006 and the other in late summer 2006.

#### Activities

- a) Organise 2 seminars/workshops in the Russian Federation on confiscation of the proceeds (including in particular the reversal of the burden of proof)
- b) Organise 2 seminars/workshops in the Russian Federation on legal and practical aspects of countering terrorist financing.
- c) Support Rosfinmonitoring and the secretariat of the EurAsian Group through the provision of short-term advisers and expert opinions – to support solving practical issues resulting from the Convention.

### Objective 3

**Objective - Practical guidelines for authorities involved in combating terrorist financing available.**

#### **CURRENT SITUATION**

Russia is the signatory to all previous basic conventions concerning fighting of terrorism and its financing.

The scope of application of the 2005 Warsaw Convention includes questions relating to the financing of terrorism. ETS 198 requires signatories to ensure the application of the provisions of the new Convention concerning measures to be taken at a national level and at an international level, to the financing of terrorism. This includes, for instance, provisions concerning the prevention of the financing of terrorism, confiscation measures and international co-operation. These provisions apply therefore to both money laundering and the financing of terrorism.

The convention specifically requires countries to ensure that they are able to search, trace, identify, freeze, seize and confiscate property, of a licit or illicit origin, used or allocated to be used by any means, in whole or in part, for the financing of terrorism, or the proceeds of this offence, and to provide co-operation to this end to the widest possible extent.

During the Implementation of the MOLI-RU project, the Council of Europe assisted in preparing a handbook of international best practices in the field of combating terrorist financing. A thick volume was published on the issue in which experience of 10 leading countries was reviewed. However, this handbook was mainly covering the regulatory aspect of combating terrorist financing in various countries. The new guidelines will be fully oriented towards day-to-day practical work in the field in the light of implementation of the 2005 Warsaw Convention (ETS 198).

#### **EXISTING GAPS AND BOTTLENECKS**

The committee that drafted the 1990 Convention discussed whether it was possible to define certain offences to which the Convention should always be applicable. The experts agreed then that Parties should not limit themselves to offences as defined by the United Nations Convention. The offences would include drug trafficking, terrorist offences, those committed by organised crime, violent crimes, offences involving the sexual exploitation of children and young persons, extortion, kidnapping, environmental offences, economic fraud, insider trading and other serious offences. Offences which generate huge profits could also be included in such a list. When drafting the 1990 Convention, the experts thought however that the scope of application of the Convention should in principle be made as wide as possible. For that purpose, the 1990 Convention created an obligation to introduce measures of confiscation in relation to all kinds of offences. At the same time, the drafters of the 1990 Convention felt that this approach required a possibility for States to restrict co-operation under the Convention to certain offences or categories of offences. The possibility of entering a reservation was therefore introduced in the 1990 Convention.

This provision allows for an all-crimes approach to confiscation, as well as explicitly providing for an enumerated list of categories of offences approach and a threshold approach. The drafters of this Convention have added a list of categories of offences in the Appendix, which constitutes for the Parties a minimal list of offences to which confiscation must apply and which cannot be excluded by a declaration contained in paragraph 2.

## **ORGANISATION OF WORK TO ACHIEVE THE OUTPUT**

This objective will be achieved by the project team facilitating a strategic partnership between Rosfinmonitoring and the Financial Intelligence Unit of another Council of Europe Member State and in particular, a working partnership between their respective Terrorist Finance Teams to develop the practical guidelines as mentioned above. It is suggested that the United Kingdom be invited to form this partnership as it is internationally recognised that the Russian and British approach to the issue of combating terrorist financing is of a more sophisticated and developed nature than many other countries, certainly within Europe. Both Russia and the UK can demonstrate elements of their approach that are impressive but taken together their best practices would be an example for other countries to emulate. Although there are a number of publications relating to CFT issues they are generally of a policy or legal nature relating to international standards and do not provide practical guidelines to practitioners. Consequently the development of these best practice guidelines by the two countries and facilitated by the project resources will be a welcomed by many other jurisdictions. Three workshops and a regional seminar are envisaged sufficient to develop and publicise these guidelines.

An additional objective of this particular aspect of the project is to circulate the finished guidelines within the countries that comprise the EurAsian FATF style regional body and this will be achieved by the conduct of a seminar involving those countries where they may be issued. In order to achieve economics of scale it will be proposed that the guidelines will be introduced to the EAG during one of their scheduled working meetings in the third quarter of 2006.

It is strongly believed that the strategy outlined above will deliver the project outputs and objectives in an economical, efficient, and effective manner and will provide for sustainable results that will contribute to the further development of the anti money laundering and counter terrorist financing efforts of the Russian Federation.

A new and specific element of the delivery of the Output 3 (as distinct from MOLI RU) is the extending of further assistance to ROSFINMONITORING in order to support them in fulfilling their international obligations and responsibilities within EAG FATF-style body.

### Activities

- a) Organise 1 workshop in the Russian Federation to discuss the content of the practical guidelines.
- b) Prepare a report containing the results of the workshops and summarising the proposals for guidelines.
- c) Publish the guidelines.
- d) Support the Rosfinmonitoring and the secretariat of the EurAsian Group through the provision of short-term advisers and expert opinions in drafting the practical guidelines
- e) Organise a regional seminar for members of the EurAsian Group on these guidelines.

It is strongly believed that the strategy outlined above will deliver the project outputs and objectives in an economical, efficient, and effective manner and will provide for sustainable results that will contribute to the further development of the anti money laundering and counter terrorist financing efforts of the Russian Federation.