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ОСОБЕННОСТИ ЗАКОНОДАТЕЛЬНОГО КОНСТРУИРОВАНИЯ НОРМ ОБ ОТВЕТСТВЕННОСТИ ЗА НЕПРАВОМЕРНЫЙ ОБОРОТ ИНСАЙДЕРСКОЙ ИНФОРМАЦИИ В НЕКОТОРЫХ ЗАРУБЕЖНЫХ СТРАНАХ

Аннотация: *в статье рассматриваются дискуссионные аспекты регламентации ответственности за незаконный оборот инсайдерской информации в уголовном праве некоторых развитых зарубежных стран: США, Великобритании, Германии, Китае, Японии и др. Авторы исследуют особенности обрисовки признаков предмета преступления, объективной стороны, субъекта, отмечают положительные и отрицательные моменты нормативного конструирования состава преступления.*

Ключевые слова*: уголовная ответственность, преступление, экономическая деятельность, зарубежное уголовное законодательство, предмет преступления, инсайдерская информация.*

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FEATURES OF LEGISLATIVE CONSTRUCTION OF NORMS ON LIABILITY FOR ILLEGAL TURNOVER OF INSIDER INFORMATION IN SOME FOREIGN COUNTRIES

Abstract*: the article discusses the controversial aspects of the regulation of liability for illegal trafficking of insider information in the criminal law of some developed foreign countries: the USA, Great Britain, Germany, China, Japan, etc. The authors investigate the features of the delineation of the signs of the subject of the crime, the objective side, the subject, note the positive and negative aspects of the normative construction of the corpus delicti.*

Keywords*: criminal liability, crime, economic activity, foreign criminal legislation, the subject of the crime, insider information.*

Currently, in most foreign countries there are laws in one way or another directed against the use of insider information in order to obtain illegal profits. Prohibitions are established not only at the level of precedent or criminal (in some cases, sectoral) law, but also with the help of corporate governance codes and other advisory documents. It should be noted that in the States of the European Union, the norms concerning criminal liability for abuse of insider information differ very significantly from each other.

Thus, the amounts of fines and types of punishments vary significantly (for example, penalties in the form of disqualification, revocation of a license are not provided everywhere). In some States of the European Union, there is no criminal liability for disclosure of insider information by primary insiders, in others – for the same offenses committed by secondary insiders, in some states it is not a criminal offense – market manipulation [1, c. 62].

Traditionally, secondary insiders are understood as persons who have already received information mediated by other entities. A special legal approach in many States to the identification of signs of an illegal insider. We mentioned secondary insiders above, but in the development of the position, we will say that the doctrinal controversy regarding the signs of an insider as a general or special subject is actively developing in foreign law. In chapter 3 of this study, we will consider these issues in more detail in relation to the domestic criminal law [2, c. 78].

For example, in the UK, criminal liability for insider trading is regulated in the Financial Services and Markets Act 2000 [3]. The subject of responsibility for transactions of persons who are aware of facts unknown to the general public is specifically defined – insider dealing («insider transaction» – this is the wording used by English law). Thus, in Article 57 of the Law, an insider is described as a person: a) who received information and was a director, employee or shareholder of the company that issued the relevant securities; b) who obtained access to information as a result of employment or due to his professional activity, or if the direct or indirect sources of information were the persons specified in paragraph «a». It follows from the above that the norm defines an insider both as a special and as a general subject, which in our opinion is not entirely correct. Moreover, the sanctions for what they have done are equivalent.

Indeed, in this case, according to paragraph «b» of this article, there is a possibility of an ambiguous interpretation of such a concept as «a person who has gained access to information as a result of or through employment or his professional activity." Is it possible to recognize as an insider, for example, according to Article 57, a driver, waiter or tailor who, during the performance of his usual duties, heard such information from persons who owned it and discussed it during lunch or a taxi ride? There may be

countless situations when one or another person accidentally receives information during the performance of their professional duties. The study of judicial practice allows us to conclude that the information accidentally obtained during the performance of their professional duties also relates to the regulation of Article 57 of the Law. Such a broad understanding of the subject of criminal insider trading is also characteristic of domestic legislation. In addition, in order to be responsible for the use of such information, it is not necessary to make any effort to obtain it.

The objective side of «insider dealing» according to Article 52 is expressed in: a) making an insider transaction with securities (Article 52(3)); b) disclosure of relevant internal information (Article 52(2)); c) assisting third parties in making an illegal insider transaction with securities. As can be seen, in this case, criminal illegality is tied exclusively to transactions with securities. For example, the use of insider information in the currency or commodity markets does not fall under the scope of this article. This is primarily due to the peculiarities of the functioning of market economic institutions in England and its legal traditions. In this sense, the disposition of Article 185.6 of the Criminal Code of the Russian Federation has much wider boundaries.

According to Article 52(3), a securities transaction will only be considered criminal if it is carried out: 1) in a regulated market, 2) or if the person relied on a professional intermediary, or 3) acted as a professional intermediary himself. Article 59 of the English Law defines a professional intermediary: «This is a person who offers himself to the public as a participant in a transaction for the purchase or sale of securities or as an intermediary between persons involved in any securities transactions." The maximum penalty provided for by the legislation of England is quite severe: seven years in prison and an unlimited fine if convicted on indictment [4, с. 89].

In Germany, according to the Securities Trading Act, insider information refers to any accurate information about circumstances that are not publicly known, relating to at least one issuer of insider securities or to insider securities themselves, which, made publicly known, could have a significant impact on the stock market or the market price of an insider security. It should be noted that this definition of insider information is more complete and corresponds to the international one in comparison with the previously given

ones. Under Australian law, a person holding undisclosed information about the company's securities is prohibited from carrying out any transactions with securities if he knows or should know that this information is not publicly available to interested investors and may have a significant impact on the market price of these shares [5, c. 97].

In the People's Republic of China, the legislator operates with the concept of confidential information, the Criminal Code of the People's Republic of China provides for the responsibility of a person who owns confidential information concerning background transactions, or who obtained such information illegally and used this knowledge to purchase or sell securities, before the information influencing the issue, circulation on the securities exchange, their value was officially opened, or divulged this information before its official opening, under aggravating circumstances [5, c. 89]. In Japan, insider trading is considered to be an activity on the stock market using information containing important information about these securities [2, c. 67]. Japanese legislation is more concise than Chinese legislation, without additional optional features, which makes it difficult to distinguish insider information from non-insider information.

Список литературы

1. Пыхтин С.В. Инсайдерская информация: раскрытие и защита конфиденциальности / С.В. Пыхтин // Юридическая работа в кредитной организации. – 2012. – №3. – С. 60–74.

2. Edwin R. Gregory (2015)/ Crimes on the securities market in the United States and the European Union: judicial practice, investigations, convictions, and legal perspectives. Bulletin of European scientific articles, reports and abstracts. Brussels: criminal judicial practice Agency.

3. Financial Services and Markets Act, 2000 // Электронный ресурс. – Режим доступа: http://www.legislation.gov.uk/ukpga/2000/8/contents (дата обращения: 12.05.2023).

4. John C. (2007). Coffee. Law and the Market: The Impact of Enforcement // University of Pennsylvania Law Review.

5. Ведерников О.Л. Финансовые преступления в законодательстве зарубежных стран / О.Л. Ведерников. – М., 2012. – 134 с.