

Criminal liability has been strengthened for actions connected with concluding an agreement that restricts competition

FAO: CEOs and employees of companies' legal departments

Pepeleiev Group advises that, on 13 December 2024, the Russian President signed Federal Law No. 467-FZ¹ aimed at improving criminal law mechanisms in the area of combating anti-competitive agreements.

Please be reminded that the Draft Law was put before the State Duma in November 2019 in view of the significantly growing numbers of anti-competitive agreements.

The final text of the adopted law has been substantially changed as compared with the initial version of the Draft Law. For example, amendments have not survived which were connected with bringing the disposition of article 178 of the Russian Criminal Code into line with the definition of a cartel specified in the Law on Protecting Competition².

Nevertheless, the Law provides for amendments both to the Russian Criminal Code (the "Criminal Code") and the Russian Criminal Procedure Code (the "Criminal Procedure Code") that come into force as early as on 24 December 2024.

Let us consider the new developments that have been adopted.

1. Amendments to the Russian Criminal Code

Article 178(2) of the Criminal Code has been amended, and the new version establishes criminal liability for entering into a cartel during a mandatory bidding process. In addition, an action being performed by an organised group of persons has been added as a new aggravating factor of a crime (article 178(3) of the Criminal Code).

¹ Federal Law No. 467-FZ "On amending articles 76-1 and 178 of the Criminal Code of the Russian Federation and articles 28-1 and 151 of the Criminal Procedure Code of the Russian Federation" dated 13 December 2024 (the "Law").

² Federal Law No. 135-FZ "On protecting competition" dated 26 July 2006.

Sanctions are stipulated for crimes as follows:

Crime Punishment	Entering into and participating in a cartel during a mandatory bidding process	An organised group of persons entering into and participating in a cartel
Compulsory labour + disqualification from holding specific positions or being involved in specific activities	up to 5 years + 1 - 3 years	2 - 5 years + 2 - 5 years
Imprisonment + disqualification from holding specific positions or being involved in specific activities + a fine	up to 5 years + up to 4 years + RUB 600,000 - RUB 800,000 (or the amount of the relevant person's salary for a period between 1 and 3 years)	2 - 6 years + 3 - 5 years + RUB 2,000,000 - RUB 4,000,000 (or the amount of the relevant person's salary for a period between 2 and 3 years)

Pepeliaev Group's comment

The introduction of criminal liability for a cartel in a bidding process is, in our opinion, altogether logical, because, at present, this is the most widespread category of collusion and its consequences inflict great damage on the country's economy. At the same time, participants of a cartel often have all signs of an organised group of persons which makes it logical to introduce an additional aggravating factor of "an action being performed by an organised group of persons".

Also, article 178 of the Criminal Code has been supplemented with new clause 4, under which the most severe liability measures are established for actions provided for in this article that were performed with violence being applied or threatened, or with property being damaged:

- compulsory labour for up to 5 years with or without the convicted person being disqualified from holding specified positions for a period between 4 and 5 years;
- imprisonment for a period from 3 to 7 years with or without a fine being imposed in an amount between RUB 3,000,000 and RUB 5,000,000 or in an amount of the convicted person's salary or other income for a period of between 2 and 4 years, and with or without the convicted person being disqualified from holding certain positions or being involved in certain activities for a period between 4 and 5 years.

The comment to article 178 of the Criminal Code has also been amended and supplemented with an explanation that income received as a result of an agreement that restricts competition (a cartel) should be understood as “proceeds from the sale of goods (performance of work or services) received by all parties to the agreement that restricts competition as a result of such agreement being performed, without any deductions of expenses that have been incurred or are necessary (planned)”.

In addition, a rule remains in the Comment which provides that a release from criminal liability is possible. However, according to the new version, a person that has committed a crime provided for by this article is released from criminal liability provided not only that he/she was the first among the accomplices in crime to voluntarily report the crime, actively assisted in solving the crime and/or in the investigation and has compensated the damage caused by the crime, but also that he/she has returned any income that had been unlawfully obtained.

Pepeliaev Group’s comment

The new development adds more clarity regarding the possible ways for a person to make up for harm, including by returning the income that such person has generated unlawfully, with a view to being released from criminal liability for entering into and participating in a cartel.

Please note that the corresponding amendments apply to the list provided for by article 76.1(2) of the Criminal Code (“Release from criminal liability in connection with the compensation of damage”) and article 28.1(3) of the Criminal Procedure Code (“Discontinuation of criminal prosecution in connection with the compensation of damage”) of crimes, having committed which a person is released from liability if he/she has compensated the damage caused.

2. Amendments to the Criminal Procedure Code

The Law has amended article 151(5) of the Criminal Procedure Code so that not only investigators of different Russian internal affairs bodies, but also

investigators of the body which has identified these crimes, can carry out a preliminary investigation.

Until the Law was adopted, article 178 of the Criminal Code was subject solely to the jurisdiction of the Russian Ministry of Internal Affairs.

Pepeliaev Group's comment

We believe that vesting in the bodies that have identified a crime powers to carry out a preliminary investigation of cases initiated under article 178 of the Criminal Code is aimed at expanding the jurisdiction to which this category of cases is subject and at increasing the efficiency of authorities in the general system that combats cartels.

What to think about and what to do

The new developments strengthen to a great extent measures of criminal liability for participation in anti-competitive agreements.

We recommend reading the text of the Law and taking account of its provisions when carrying out professional activities.

Help from your adviser

Pepeliaev Group's lawyers have considerable experience of providing legal support to clients with regard to antitrust regulation.

Our lawyers continually monitor changes in antitrust legislation and are ready to promptly advise clients on any legal aspects that arise in connection with the new provisions being adopted.

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