

THE EVOLUTION AND PROBLEMS OF FINANCIAL MONITORING SYSTEM DEVELOPMENT IN UKRAINE

The article's purpose is to research the historical aspects of development of anti-money laundering and financing terrorism system in Ukraine and international level, to define the main current problems of financial monitoring realization in Ukraine and the ways of their overcome. The article contains a historical research of anti-money laundering and financing terrorism system in Ukraine and over the world. The main current problem of financial monitoring in Ukraine is defined as a delay with adoption of national law system to renovated FATF Recommendations, which threatens with imposing some kind of FATF sanctions.

Key words: money laundering, financing terrorism, mass destruction weapons proliferation, FATF, FATF Recommendations.

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СТАНОВЛЕННЯ ТА ПРОБЛЕМИ РОЗВИТКУ ФІНАНСОВОГО МОНІТОРИНГУ В УКРАЇНІ

Метою статті є дослідження історичних аспектів розвитку системи протидії відмиванню грошей та фінансуванню тероризму у світі та в Україні, а також визначення головних сучасних проблем здійснення фінансового моніторингу в Україні та шляхів їх подолання. У статті досліджується історія розвитку системи протидії відмиванню грошей та фінансуванню тероризму в Україні та світі. Головною сучасною проблемою реалізації фінансового моніторингу в Україні визначено зволікання з адаптацією національного законодавства до оновлених Рекомендацій FATF, що загрожує застосуванням певних санкцій з боку цієї організації.

Ключові слова: відмивання грошей, фінансування тероризму, розповсюдження зброї масового знищення, FATF, Рекомендації FATF.

Introduction. Combating illegal incomes legalization (money laundering) and financing terrorism is an actual current problem all over the world. This problem strengthens with increase of world globalization tendencies. Issues of further development and improvement of financial monitoring system in Ukraine also become more actual, taking into consideration current economic and political situation in the country, when the necessity of combating financing terrorism grows up.

An analysis of last researches and publications. Researches on financial monitoring as anti-money laundering and financing terrorism system were held by many scientists, in particular Butkevich S.A., Dmytrov S.O., Kovalenko V.V., Kuryshko O.O., Levkivska K.D., Petruk O.M., Shyyan D.V., Yegorycheva C.B. etc.

The purpose of the article is to make a research of anti money laundering and financing terrorism system development in Ukraine and on international level, and also to define actual problems of financial monitoring realization in Ukraine and ways they can be solved.

The essence of research. According to international practice, illegal incomes are money, which have been received of illegal drug or weapon trading, prostitution, smuggling, racket, people trafficking, illegal gambling business, corruption acts, computer fraud etc. Another way of getting illegal incomes is tax avoidance, which was estimated differently in various countries up to this time. But at the beginning of 2012 Financial Action Task Force (FATF) recommended to all countries' governments to include tax avoidance to the list of crimes, which can be sources of illegal incomes and forego their legalization. It is also necessary to add, that stealing state funds by high authorities and clerks is another significant source of getting illegal incomes [1].

Another actual danger, which can be prevented by financial monitoring, is financing terrorism. According to Ukrainian law, financing terrorism is defined as providing or gathering any assets with awareness, that they will be used, in whole or partly, for organization and realization of terror act by individual terrorist or terrorist organization. This definition also says, that financing terrorism may be purposed on involvement to terrorist activity, public calls for terrorist activity, creating terrorist group or organization, terror acts facilitating and any other terrorist activity, as well as an attempt of such activity.

The last global danger, which can also be prevented by financial monitoring system, is mass destruction weapons proliferation. FATF recommendations have been changed appropriately in 2012. Now within such combating FATF recommends to identify persons and organizations, who finance and support mass destruction weapons proliferation, gather information about them and impose target sanctions on these persons, including freezing their assets and all operations with them [10, 11].

It is necessary to say, that historically the formation of financial monitoring came through some stages, namely:

1) 1st stage (1970) – foundation of Financial Crimes Enforcement Network (FinCEN) – a special department in US Treasury;

2) 2nd stage (1989) – foundation of Financial Action Task Force (FATF)/ this group had powers to research money laundering methods, to define actions, which are needed to take for combating money laundering and financing terrorism, and also to examine the realization of such actions by separate countries all over the world;

3) 3rd stage (1990) – FATF had made the report, which included 40 anti money laundering Recommendations. At that time 29 countries and such known structures, as European Commission and Gulf Cooperation Council took part in FATF's work. Henceforth the number of countries increased up to 34. In that period most of developed countries created national law base for combating money laundering;

4) 4th stage (1993-1998) – included enactment and correction of national laws, connected with combating money laundering, as well as FATF Recommendations correction;

5) 5th stages (1999) – special agencies, internationally called “Financial Intelligence Units”, were created in many countries. According to Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [3], Financial Intelligence Units are central national authorities, responsible for gathering, analysis, transfer to other competent organizations and disclosure financial information:

- which is suspicious incomes and potential terrorism financing;

- which is necessary, according to national law, for combating money laundering and terrorism financing;

6) 6th stage (from 2000 year to present time) characterizes significant renewal of FATF Recommendations that led combating money laundering to a new level. Thus, at 2003 FATF renewed Recommendations, worked out earlier, for the purpose of displaying the changes, which happened in combating money laundering, and facilitation of other countries' development in such combating. The new redaction of Recommendations included 40 General and 9 Special Recommendations. Last ones exactly concerned combating financing terrorism. On 16th of February 2012 FATF passed new Standards, which also provide using of 40 Recommendations, worked out before, and are called “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation” [10].

Also the last stage of development of world anti-money laundering system was marked by formation of financial monitoring system in post-soviet countries. The first country, which passed laws against crime incomes legalization, was Belarus (2000), next were Russia (2001), Ukraine (2002), Uzbekistan (2004), Kyrgyzstan (2006), Moldova (2007), Armenia (2008), Turkmenistan (2009), Kazakhstan (2010) and Tajikistan (2011) [4, 5].

In our country the law base on combating crime incomes legalization was created gradually. The first Ukrainian step in this field was ratification the UNO Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1991. In December 1997 the law “About Ratification the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism”, which provided responsibility for illicit incomes legalization despite the source of their origin, was passed [9].

Attention to organization of combating money laundering was also paid in the Program of Ukraine Integration to European Union, approved by President of Ukraine Decree in September 2000. After passing the mutual Decree of Government and National bank of Ukraine “About 40 FATF Recommendations” on 28th August 2001, these Recommendations became part of Ukrainian state law.

However on 21st September 2001 FATF Plenary all actions, held by Ukraine for combating illicit incomes legalization, were recognized as insufficient. Among the disadvantages of national anti-money laundering system FATF determined the absence of central authority (financial intelligence unit) and adequate mechanisms of gathering information about suspicious financial transactions, its analysis and transferring to competent authorities. Other disadvantages considered insufficient client identification, opportunities for a financial organization to make fund transactions without knowing their owners and benefitters, inappropriate financing of combating money laundering process. FATF particularly emphasized the absence of special law, aimed at combating crime incomes [4].

Though, in September 2001 FATF decided to include Ukraine to high-risk and non-cooperated jurisdictions list (“black FATF list”). It meant that FATF called on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from these jurisdictions. To overcome this situation:

- Government of Ukraine was instructed to create special State Financial Monitoring Department in the structure of Ministry of Finance. The new authority had a status of Government state management unit. This Department was created by the Government Resolution “About creation of State Financial Monitoring Department” from 10th of January 2002;

- at the beginning of 2002 Ukraine ratified Council of Europe Convention on the Prevention of Terrorism;

- at the 28th of November Ukrainian Parliament passed the law “About Prevention and Combating Illicit Incomes Legalization (Laundering) or Financing Terrorism”, which in whole was appropriate to international standards [8].

Up to the middle of 2003 the special anti-money-laundering law base in Ukraine was formulated. In whole these laws were appropriate to European standards. Its qualitative realization allowed FATF, after special inspection, exclude Ukraine from the “black list” at the beginning of 2004.

In February 2010 Ukraine was included to so-called “FATF grey list” (list of countries, which co-operate

with FATF on implementation of its Recommendations into national law) because of some disadvantages in anti-money laundering and financing terrorism laws. In particular FATF recognized an absence of requirements considering realization of financial monitoring principles by such subjects, as non-finance organizations (notaries, advocates, real estate professionals etc.). After necessary correction of Ukrainian law and report to FATF Ukraine was excluded from this list in October 2011.

Currently Ukrainian anti-money laundering and financing terrorism law system needs next renovation. However in 2012 new FATF Recommendations took effect. They contain essential novations, such as:

- total unification of combating money laundering and financing terrorism procedures;
- introducing new requirements for combating mass destruction weapons proliferation;
- widening of predicate crimes list;
- strengthening of requirements about combating corruption incomes legalization;
- strengthening of requirements about using an approach, based on estimation of money laundering and financing terrorism risks;
- introducing requirements concerning coordination of anti-money laundering and financing terrorism procedures on the national level;
- increasing of requirements about international cooperation;
- strengthening of finance intelligence units role.

For the implementation of renovated FATF Recommendations a new redaction of law "About Prevention and Combating Illicit Incomes Legalization (Laundering), Financing Terrorism and Mass Destruction Weapons Proliferation" [6] was worked out and transferred to Ukrainian Parliament in September 2013. This law contains a lot of significant novation, as follows:

- definition of the essence of mass destruction weapon proliferation;
- establishment of national risk estimation system – a system of measures, provided by state authorities in purpose of estimation of illicit incomes laundering and terrorism financing risks;
- widening of law defined public persons list, whose financial operations must be subject of financial monitoring. While previous law redaction included to such list only foreign public persons, new law project includes to it all persons, who realize defined public functions or did it before, both national and foreign. There is also defined a specific list of such public functions and supplemented with political parties' officials. The new law also establishes a requirement of yearly renovation of such persons identification data;
- establishment of financial monitoring secret definition;
- correction of primary financial monitoring subjects list. Thus, such a subjects as entrepreneurs - physical persons and legal persons, who provide cash financial operations with more than 150 000 UAH sum, are excluded from this list. However state lotteries distributors, advocate bureaus and bodies, and subjects, who provide accounting services, are added to this list;
- establishment of clear requirements to working out and realization of financial monitoring programs;
- establishment of requirement of client's assets source documental confirmation during his identification. The new law also allows to get additional information for client's identification not only personally from him, but from other reliable sources;
- establishment of requirement about financial monitoring all real estate sell-and-buy operations regardless of their sum;
- establishment of requirement to provide identification of a client, who makes electronic remittance if it's sum is more than 10 000 UAH.;
- the financial institutions authorized to instruct other primary financial monitoring subjects to provide client's identification and research of its activity;
- strengthening of requirements about legal persons identification in terms of getting information about their controllers;
- including financial operations, held by persons, registered in offshore zones, to the list of operations, which are subject of mandatory financial monitoring;
- radical change of inner financial monitoring operations criteria;
- widening of national financial intelligence unit's authorities;
- definition of the order of national risk estimation realization;
- widening of national authorities' powers concerning international cooperation for preventing and combating money laundering, financing terrorism and mass destruction weapons proliferation.

But currently this law project has not been passed. This fact causes a danger of recognition Ukraine as a country, which law is inappropriate to FATF Recommendations, and a new inclusion of our country to FATF non-cooperative jurisdictions list. Despite this it is necessary to activate passing of the new anti-money laundering and financing terrorism law. This will improve the international image of Ukraine as a country, which follows international standards. Besides this, law base renovation will allow to create legal prerequisites for effective combating money laundering, corruption incomes legalization and financing terrorism inside Ukraine, what is extremely actual in current economic and political conditions.

Summary. Combating money laundering and financing terrorism is an object of intent attention of international community. In Ukraine active formulating of law base, concerning this issue, started at 2002 after

including our country to FATF “black list” and imposing sanctions from this organization. Following renovation of national law was also made as a consequence of some FATF’s pressure, because Ukraine did not take well-timed measures for adoption of national law to renovated international standards. Today Ukraine can be included to FATF non-cooperating jurisdictions list again because of delay with passing new law “About Prevention and Combating Illicit Incomes Legalization (Laundering), Financing Terrorism and Mass Destruction Weapons Proliferation”. Moreover this law could be extremely useful for effective combating terrorism financing and overcome corruption in Ukraine.

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