Artículo de investigación

International standards in the system of financial monitoring of Ukraine: issues of implementation

Normas internacionales en el sistema de seguimiento financiero de Ucrania: Problemas de implementación

Normas internacionais no sistema de acompanhamentofinanceiro da Ucrânia: Problemas de implementação

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Abstract

This article presents an analysis of issues of legal implementation of international norms, principles and standards generally accepted in developed economic countries, in particular, the countries of the European Union and the USA, into the national legal system of financial monitoring of Ukraine. The structural characteristic of the financial monitoring system inherent in any state was taken as a basis, and the authors analyzed the internal national financial monitoring system of Ukraine, its features and gradual modification. The article, through the prism of a review of the main elements of the financial monitoring system, draws conclusions about the possible results of such an implementation, as well as about the prospects for global integration trends in this area further. Following the article, it was concluded that, on the one hand, thanks to active cooperation with authoritative international organizations working in the field of Anti-money laundering and combating the financing of terrorism, the national financial monitoring system was able to rise to a new level of activity in preventing illegal income from entering the legal economy. At the same time, such cooperation was carried out to a greater extent not in a directive and administrative manner, but, in general, had a methodological and consultative nature and dealt with a fairly wide range of issues

Resumen

Este artículo presenta un análisis de los problemas de implementación legal de las normas internacionales, principios y estándares generalmente aceptados en los países económicos desarrollados, en particular, los países de la Unión Europea y los EE. UU., En el sistema legal nacional de monitoreo financiero de Ucrania. La característica estructural del sistema de monitoreo financiero inherente a cualquier estado se tomó como base, y los autores analizaron el sistema interno de monitoreo financiero nacional de Ucrania, sus características y su modificación gradual. El artículo, a través del prisma de una revisión de los principales elementos del sistema de monitoreo financiero, extrae conclusiones sobre los posibles resultados de dicha implementación, así como sobre las perspectivas de las tendencias de integración global en esta área. Tras el artículo, se llegó a la conclusión de que, por un lado, gracias a la cooperación activa con organizaciones internacionales autorizadas que trabajan en el campo de la lucha contra el lavado de dinero y la financiación del terrorismo, el sistema nacional de supervisión financiera pudo alcanzar un nuevo nivel. Nivel de actividad para evitar que los ingresos ilegales ingresen a la economía legal. Al mismo tiempo, dicha cooperación se llevó a cabo en mayor medida no

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in this area. On the other hand, it is possible to make a disappointing conclusion that such work, which, of course, brought its positive results, nevertheless, was more carried out on paper, because, when trying to implement some international standards into domestic law, there were a number of difficulties. This reduces the effectiveness of the important and necessary work, which was done in the field of reforming the legal system of financial monitoring of Ukraine. In this regard, Ukraine continues to be under the scrutiny of international organizations and should continue to cooperate with them in the field of Anti-money laundering and combating the financing of terrorism.

Keywords: system of financial monitoring; laundering of income obtained by illegal means; regulatory framework in the field of counteracting the legalization of income obtained by illegal means; institutional component; financial monitoring bodies and agents; functional (procedural) component; international information interaction; principles of international cooperation in the field of financial monitoring.

de manera directiva y administrativa, sino que, en general, tuvo un carácter metodológico y consultivo y abordó una gama bastante amplia de cuestiones en esta área. Por otro lado, es posible llegar a una conclusión decepcionante de que tal trabajo, que, por supuesto, dio sus resultados positivos, sin embargo, se llevó a cabo más en el papel porque, al tratar de implementar algunas normas internacionales en la legislación nacional, existe Hubo una serie de dificultades. Esto reduce la eficacia del trabajo importante y necesario, que se realizó en el campo de la reforma del sistema legal de supervisión financiera de Ucrania. En este sentido, Ucrania continúa bajo el escrutinio de las organizaciones internacionales y debe seguir cooperando con ellas en el campo de la lucha contra el lavado de dinero y la financiación del terrorismo.

Palabras claves: sistema de seguimiento financiero; Lavado de ingresos obtenidos por medios ilegales; marco regulatorio en el campo de contrarrestar la legalización de los ingresos obtenidos por medios ilegales; componente institucional; organismos y agentes de control financiero; componente funcional (de procedimiento); interacción de información internacional; Principios de la cooperación internacional en el ámbito del seguimiento financiero.

Resumo

Este artigo apresentaumaanálise das questões de implementação legal de normas, princípios e padrõesinternacionaisgeralmenteaceitosem países econômicosdesenvolvidos, em particular, os países da UniãoEuropeia e os EUA, no sistema jurídico nacional de acompanhamentofinanceiro da Ucrânia. A característica estrutural do sistema de monitoramentofinanceiroinerente a qualquer estado foi tomada como base, e os autores analisaram o sistema interno de monitoramentofinanceiro nacional da Ucrânia, suas características e modificação gradual. O artigo, através do prisma de umarevisão dos principais elementos do sistema de monitoramentofinanceiro, extraiconclusões sobre os possíveis resultados de tal implementação, bem como sobre as perspectivas de tendências de integração global nessa área. Nasequência do artigo, concluiu-se que, por um lado, graças à cooperação activa comorganizaçõesinternacionais autorizadas que trabalham no domínio do branqueamento de capitais e do financiamento do terrorismo, o sistema nacional de acompanhamentofinanceiroconseguiuchegar a umnovonível de atividade para evitar que a renda ilegal entre naeconomia legal. Aomesmo tempo, essacooperaçãofoi realizada emmaior medida, não de maneiradiretiva e administrativa, mas, emgeral, teveumcaráter metodológico e consultivo e tratou de umamploleque de questõesnessa área. Por outro lado, é possívelfazerumaconclusão decepcionante que tal trabalho, que, é claro, trouxeseus resultados positivos, no entanto, foimais realizado no papel, porque, ao tentar implementar algunspadrõesinternacionais no direito interno, Houveumasérie de dificuldades. Issoreduz a eficácia do trabalho importante e necessário, que foifeito no campo da reforma do sistema jurídico de acompanhamentofinanceiro da Ucrânia. A este respeito, a Ucrânia continua sob o controlo das organizaçõesinternacionais e deve continuar a cooperar comelas no domínio do combate aobranqueamento de capitais e do combate aofinanciamento do terrorismo.

Palavras-chave: sistema de monitoramentofinanceiro; lavagem de dinheiroobtido por meiosilegais; quadroregulamentar no domínio da luta contra a legalização dos rendimentosobtidos por meiosilegais; componente institucional; órgãos e agentes de monitoramentofinanceiro; componente funcional (processual); interação de informação internacional; princípios da cooperação internacional no domínio do acompanhamentofinanceiro.

Introduction

The problem of legalization (laundering) of money or other property obtained by criminal means is of particular importance for Ukraine, since the criminalization of the economy is the main threat to the economic security of the state. Currently, Ukraine is pursuing the adaptation of domestic legislation to the requirements of the legislation of the Member States of the European Union (hereinafter – the EU), including the norms aimed at combating money laundering of illegal origin. The process of such adaptation includes the implementation of a number of legal, organizational, socio-economic measures aimed at identifying the legislation of Ukraine with the modern European legal system through implementation. Such implementation is carried out in two main ways: 1) by issuing a separate regulatory act, which recognizes the relevant international standards and their provisions as mandatory ("the formal approach"); 2) by developing national legislation based on the requirements of international standards ("informal approach"). In the Ukrainian legislation, both approaches are used, but the prevailing trend is the use of the informal approach, which allows modifying the recommendations of international organizations, taking into account national legislation.

Although Ukrainian bodies of the financial monitoring system for the past period of the country's independence has done a great job in the fight against the illegal origin of money, nevertheless, as practice shows, these measures are not enough to minimize this problem. Therefore, it is necessary to continue to bring national legislation in line with international standards aimed at combating the legalization of illegal income. Of course, the issue of laundering of income obtained by illegal means cannot be solved only within the framework of the functioning of the financial monitoring system. Its roots lie deeper in other areas of knowledge. However, at the present moment the system of financial monitoring is the only adequate and, more or less, effective mechanism of organizational and legal regulation of public relations in the field of preventing money laundering, preventing the penetration of such funds into the legal financial system of the state. It is necessary to continue active cooperation with international organizations, which work in this direction, to learn from their experience, to exchange the necessary information and to provide introducing into the national financial monitoring system of the latest advances in the field of Internet technologies related to the development of virtual crime in the field of money laundering.

METHODOLOGY

The methodological basis of the article consists of universal scientific methods: historical, dialectical, empirical, logical; general scientific methods of knowledge: analysis, synthesis, generalizations, comparison, as well as specialized legal methods: conceptual legal, comparative legal, formal legal, etc. The use of these methods allowed conducting a scientifically-based analysis of the legal regulation of public relations on the organization and implementation of financial monitoring, explore the main legal categories in this area, identify emerging law enforcement problems and justify proposals for their solution. The priority of using methods was determined depending on the goals and objectives.

RESULTS AND DISCUSSION

The structure of financial monitoring systems and factors affecting their features

The decisive influence on the organizational and legal structure of national financial monitoring systems was made by international standards in the field of Anti-money laundering and combating the financing of terrorism (hereinafter – AML / CFT) developed by the United Nations, Financial Action Task Force on Money Laundering (hereinafter – FATF), the EU, the Wolfsberg Group, the Basel Committee on Banking Supervision. International standards in the field of AML / CFT became the primary cause and the legal foundation for the creation of national systems, which resulted in the presence of a number of common elements inherent in the financial monitoring system that operates in separate country.

Initially, in the practice of European states, and then of countries not included in the EU, there is a legal system of financial monitoring, which includes the following main elements: 1) regulatory framework in the field of counteracting the legalization of income obtained by illegal means and financing of terrorism; 2) an institutional component in the form of a list of bodies and agents of financial monitoring; 3) functional (procedural) component (basic legal procedures); 4) international information interaction in the framework of the functioning of national financial monitoring systems

(principles of international cooperation in the field of financial monitoring, information exchange). Financial-legal science also identifies these elements as fundamental (Proshunin, Tatchuk, 2014). It has traditionally been established that, in order to be able to talk about the existence of a financial monitoring system in a particular state, the presence of such elements that are basic and are used in the construction and operation of national financial monitoring systems, is necessary.

Each of the national financial monitoring systems is formed and modified depending on a number of factors, such as: ways of organizing financial monitoring units, information links with regulatory and law enforcement bodies, distribution of control powers among them, system of financial monitoring procedures, information system, administrative and criminal prosecution for violation of legislation on financial monitoring, etc.

Taking into account the degree of influence of these reasons on the functioning of the financial monitoring system of a state, we can distinguish, although to some extent arbitrarily, two main types of national financial monitoring systems of 1) developed and 2) developing countries. The financial monitoring systems of developing countries are characterized primarily by a low level of legal regulation of public relations in the sphere of AML / CFT and therefore, the non-inclusion of a number of financial measures in the field of financial monitoring, weak law enforcement, ineffective and insufficient state-law methods of coercion (criminal sanctions). In developed countries, the main purpose of the system is to "polish" it in the direction of quick and effective responding to changes in the field of laundering of illegal income. In other words, we are talking about the refinement of a functioning system in order to quickly confront new challenges of shadow criminal activity (Proshunin, Tatchuk, 2014).

The system of financial monitoring of Ukraine is included in the block of systems of developing countries, although it is miscellaneous in content. For example, the level of legal regulation of public relations in the sphere of AML / CFT in Ukraine is quite high (this will be clear from the further presentation). The system already has a number of necessary organizational, legal, functional measures, based on the recommendations of international organizations. However, law enforcement practice in these legal relationships, really is still at a low level, and the state coercion is ineffective. In other words, in Ukraine there are rare cases of criminal prosecution of individuals, especially ruling public figures, for committing crimes in the field of AML / CFT, and especially bringing criminal sanctions to the end.

In general, for both types of financial monitoring systems, i.e. systems in both developed and developing countries, the same causes of money laundering are common: corruption in bodies of state power, lack of proper control over the withdrawal of funds in offshore jurisdictions, non-transparent banking, the presence in circulation of significant amounts of cash (the latter, however, is more inherent in systems of developing countries). The differences here are taking place in the proportion of each of the reasons. If developing countries are characterized by a high level of state corruption, the use of alternative money transfer systems and significant volumes of cash flow, then developed countries are most inherent in inappropriate control over the use of offshore jurisdictions, imperfect control measures in the sphere of foreign economic activity.

The legal framework of Ukraine in the field of counteracting the legalization of income obtained by illegal means and financing of terrorism

Along with acts of national legislation, international legal acts and generally recognized principles of international law (the most important ones were developed by FATF, the Wolfsberg Group and the Basel Committee on Banking Supervision), which take precedence over national legal acts, are integral parts of the legal systems of most countries. Thus, in 2002 the Cabinet of Ministers of Ukraine and the National Bank of Ukraine (hereinafter – the NBU) jointly approved the Annual Program of counteraction to legalization of income obtained by illegal means. Each of the Programs provided for the introduction of amendments and additions to the national legislation on the implementation of 40 recommendations of FATF (FATF, 2001). At the end of 2002, the basic law of Ukraine "On the prevention and counteraction to the legalization (laundering) of income, obtained by illegal means" (VRU, 2002) was adopted in this sphere. This law generally complied with international standards in the fight against illegal income established by the Strasbourg Convention, the EU Directive "On the prevention of the use of the financial system for the purpose of money laundering" and the Basel Principles in the Banking Sector. At the same time, FATF experts monitored the implementation of this law

and further formulated recommendations for its improvement. By 2004, there were about 16 major changes to the law. Besides this law, amendments were proposed to be made in other financial laws regulating banking activities, activities in the financial services market and in the stock market. These were the qualitative changes made further in the current legislation of Ukraine in the field of financial monitoring, which contributed to improving the efficiency of this service.

If some international norms were implemented into domestic national legislation almost immediately (within a year) and were applied in practice, some were introduced with certain difficulties. For example, in 1995, the United States, in an explanation of the Law of Ukraine "On the Secrecy of Bank Deposits", presented the program "Know your customer", which obliged financial institutions to study their customers and their activities in order to protect themselves from the potential possibility of inadvertently becoming a channel for laundering of "dirty" money. Not immediately, but after a certain time, Ukraine was able to implement this principle in its domestic legislation. The Resolution of the NBU dated May 14, 2003 "On approval of the Regulation on the implementation of financial monitoring by banks" established the norm on assessing the risk of money laundering by clients of banks based on the named criteria. If the risk was high, then banks were required to apply additional methods: to re-identify the client once a year and verify the client's operations in detail. Banks in Ukraine did not immediately begin to fulfill such requirements and only in 2005 they started to use the principle of dividing clients into levels with a high or low degree of risk (signs, on which such a risk was determined, were borrowed from the experience of European legislation on this issue).

In the current legislation, this principle is preserved: when establishing relations with a client for servicing an account or conducting a one-time financial transaction that exceeds 150000 UAH banks are required to fill out certain documents in order to collect basic information about the client. Such documents help banks to receive information on the purpose and reasons for opening an account, on the client's operations, on the amounts and sources of funds received, on the client's reputation, etc. Constant monitoring of financial activities of customers is a key element of effective procedures for the US principle of "know your customer".

Another important principle of this program is the inadmissibility of opening anonymous accounts by banks to their clients or accounts opened with fictitious names. FATF Recommendation 11 clearly states that financial institutions should not contain anonymous accounts or accounts that are opened with fictitious names: in such cases, regulatory documents that identify their data and other reliable information should be required. Many states have joined this provision. Anonymous accounts in Ukraine were introduced in 1995 by the Decree of the President of Ukraine "On the opening of anonymous currency accounts of individuals (residents and non-residents)". The functioning of such accounts was also regulated by the Resolution of the NBU "On approval of the procedure of opening and functioning of currency accounts of individuals (residents and non-residents)". In 1998, the Decree of the President of Ukraine "On some issues of protection of bank secrecy" anonymous accounts were eliminated, but coded accounts were introduced instead. Later this decree was also canceled. And only in July 2003 it was finally decided to close such accounts. Currently, the legislation of Ukraine has introduced a direct standard – a ban on opening anonymous accounts (Part 1 Article 64 of the Law of Ukraine "On Banks and Banking Activity"). Thus, only by 2003-2005, Ukraine was able to almost fully implement the "know your client" principle in its legislation.

One way or another, but the integration process involves bringing all the legal standards of Ukraine in accordance with international requirements. Despite the fact that Ukraine has already done quite a lot for the implementation of international standards on financial monitoring in domestic law, it does not yet fully comply with modern international standards in this area of relations. To carry out this work, it is necessary to actively cooperate with the main international organizations working in the field of financial monitoring and learn from their experience. The most important of them are FATF, MONEYVAL, Egmont Group, International Monetary Fund and OSCE. Ukraine has its own constructive relations and experience with each of them.

FATF was established in 1989. In fact, it is a constantly functioning high-level expert working group. FATF member states collect information on major trends in money laundering (the use by criminals of complex and intricate ways of legalizing illegally obtained money, the use of different sectors of the financial system and

security, finding new geographical ways) in order to ensure that their recommendations comply with practice requirements. This organization is constantly expanding the geography of its members by joining new members and creating regional organizations (for example, the Committee of the Council of Europe MONEYVAL, a member of which is Ukraine).

During 2002-2018 Ukraine has implemented into its legislation (and continues to do so further) the most basic recommendations and criteria proposed by FATF in this area, namely: 1) the creation of a special body of financial control over dubious financial transactions – financial intelligence; 2) recognition of the laundering (legalization) of "dirty" money as a crime; 3) the introduction of mandatory requirements for all financial organizations regarding the identification of their clients, accounting and informing a special body of suspicious financial transactions; 4) establishing the responsibility of the subjects of primary financial monitoring for the failure by them to report about known facts of illegal enrichment; 5) confiscation of incomes from crimes and assistance to other states in the identification and confiscation of criminally obtained incomes; 6) cooperation with relevant international organizations in the field of money laundering and extradition of criminals (CEU, 1991; CEU, 2001; EP, 2000).

The implementation of the above-mentioned FATF recommendations into the internal legislation of Ukraine contributed to the fact that the national financial monitoring system began to rely in its activities on the basic principles of combating with laundering of "dirty" money, which are generally accepted in any country - member of FATF. All this contributed, on the one hand, to raising this system to a higher level of work, and on the other, it created additional difficulties in its work. Among such principles can be identified: 1) the principle of "know your client", which is used mainly in the financial-credit and banking sector, provides for clear rules for the identification of clients. So, for the implementation of this principle Article 9 of the Law of Ukraine "On preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction" established the mandatory identification, verification and examination of clients; 2) a clear identification of transactions subject to financial monitoring; 3) the requirement for financial and non-financial organizations about mandatory collection and transfer of information to the competent authorities (VRU, 2014). The first two principles are generally ground under the financial monitoring system, but the latter is extremely difficult to implement. This is due to the fact that strict bank secrecy rules are one of the serious problems that impede the efficient collection and transfer of information, for example, about illegal refinancing, which is one of the schemes for shadowing capital and bringing it abroad. Thus, a special court decision allowed detectives of the National Anti-Corruption Bureau (hereinafter – the NABU) to seize documents from the NBU, which (as it turned out later) confirms the suspicion of collusion of the NBU with officials of commercial banks, which received a custom refinancing in the amount of 12 billion UAH. These are "Delta Bank", "Terra Bank", "KievskayaRus" Bank, "AvtoKrazBank", "Local Commercial Bank". At the same time, the court denied access to materials regarding refinancing of banks "Khreschatyk" and "Finance and Credit", which, despite help from the NBU, became bankrupt, but managed to withdraw in offshore significant amounts of deposit funds. In this regard, it would be right to propose to expand the powers of the State Financial Monitoring Service of Ukraine (hereinafter – the SFMS) in exercising control over commercial banks in issues of financial monitoring with simultaneous simplification of the procedures for access to customers' banking secrets.

The last principle in Ukraine is currently not fully implemented, because there is no mechanism for transmitting information to the competent authorities (although this process is gradually proceeding). Thus, despite the introduction of amendments to Article 62 of the Law of Ukraine "On Banks and Banking Activities", law enforcement bodies did not receive the necessary procedure for accessing the banking information of offenders, since current legislation does not provide for any type of legal liability of officials of banks and other financial institutions for refusing to provide such information to the competent authorities (VRU, 2000).

Difficulties arose with the implementation in Ukraine of international standards in the fight against high-ranking corruption and money laundering at the level of higher-ranking public figures. These problems are quite serious in international relations. Such influential organizations as already mentioned – FATF and Group of States against Corruption (GRECO) pay close attention to them. These organizations determine world standards for combating against

such negative phenomena and directly carry out an assessment of states for compliance with these standards. In relation to the Ukrainian high-ranking officials, these international standards have not yet been sufficiently launched, or else their actions are imitated. Therefore, it is necessary, within the framework of legislation on financial monitoring, to develop in detail an institution for identifying and disclosing financial operations of public figures and strengthening the procedure for declaring their expenses, as well as for wide publicity in the media of their financial activities.

Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) was established in 1997. Ukraine is a member and is regularly evaluated by experts of this organization. The purpose of this Committee is to assist participating States in creating effective systems to counter money laundering and the financing of terrorism, ensuring the achievement of international standards in this area. The MONEYVAL Committee conducts typological research on the methods, patterns and trends of laundering "dirty" money. Thanks to such researches, this Committee has the opportunity to develop detailed recommendations on countering methods and schemes of laundering "dirty" money and submit them for consideration and implementation into national financial monitoring systems of other countries. One of the recommendations of the Committee was the creation of financial intelligence units in the territories of the member states. In Ukraine, on the basis of such a recommendation, the Department of Financial Investigations was created, which was entrusted with the functions of financial intelligence, although not to the extent necessary for our state. But not all the recommendations of the Committee were unconditionally accepted in Ukraine. For example, Ukraine has not yet legitimized such an innovation as the separation of the concepts of "legalization" and "laundering" in its domestic legislation. According to the Warsaw Convention adopted at the conference of Council of Europe in Warsaw in 1990, the paired category "legalization (laundering)" was withdrawn from circulation and such terminological concepts as "laundering", "revealing", "seizure", "confiscation" were launched. This question in Ukraine is being discussed only at the level of theory and science.

The Egmont Group (an organization of financial intelligence units of 155 countries around the world, which was created at the initiative of the Belgian and US financial intelligence agencies on June 9, 1995) is the coordination and consultation center for the prevention of money laundering and the financing of terrorism. Official representatives of the financial intelligence units of different countries regularly meet and share their accumulated experience, improve their skills by introducing new training programs, and share information. The heads of financial intelligence units, the Egmont Group Committee and the working groups form the organizational and operational structure of the Egmont Group. The SFMS is also a member of the Egmont Group since June 26, 2004. Since that moment the representatives of financial intelligence units of Ukraine take part in the activities of all working groups of the Egmont Committee.

Since joining the Egmont Group, Financial Intelligence of Ukraine (Financial Investigation Department) has carried out the following activities in the area of countering the laundering of illegal income, based on the recommendations of the abovementioned organization: 1) expanded international cooperation on the exchange of information regarding suspicious financial transactions; 2) regularly conducted training with the involvement of international experts in order to improve skills and acquire the necessary experience of financial intelligence personnel; 3) introduced some modern technologies (for example, the secure website of the Egmont Group); 4) participated together with other representatives of financial intelligence in the development of promising and strategic-analytical projects.But, despite these actions, foreign experts nevertheless drew the attention of the Ukrainian financial intelligence to the weak side of work in organizing the process of returning to Ukraine the financial capital that had been stolen and taken to offshore zones. Foreign experts have proposed to develop more organizational and practical methods aimed at more efficient identification of shadow schemes for offshore withdrawal of stolen funds and identifying the ultimate beneficiaries of such schemes and connections.

Currently, Ukraine is actively cooperating with International Monetary Fund (hereinafter – the IMF), an influential international organization in the field of countering the so-called "elite corruption", behind which there are public and state leaders of the highest level. It is thanks to the requirements of the IMF in Ukraine that anti-corruption legislation and the same system are gradually being formed (the NABU, the National Agency for the Prevention of Corruption, the National Agency of Ukraine for finding, tracing

and management of assets derived from corruption and other crimes). In accordance with the Memorandum concluded between Ukraine and the IMF on economic and financial policies, Ukraine has taken on new obligations to raise the regulatory framework in the area of AML / CFT to the required level. In this regard, changes were made to the Criminal Code and financial legislation (the Law of Ukraine "On preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction"). These changes took into account the basic standards of the so-called structural beacon of the IMF, namely: 1) financial institutions were required to conduct so-called «due diligence» audits of business relationships with state politicians (i.e. detailed independent verification procedure of the investment object); 2) illegal enrichment should be qualified as an offense related to money laundering; 3) laundering of proceeds from tax offenses should have been qualified as an offense related to money laundering; 4) financial institutions were granted the right to terminate a business relationship with a client in cases, when it is impossible to carry out the necessary "due diligence" audit; 5) the NBU had to strengthen the requirements and control over the banks and implement measures to restore confidence in the banking system.At the same time, the Bank had to carry out an effective risk-based system of supervision in the sphere of counteracting the legalization of "dirty" money obtained through corruption; 6) the special attention of supervisory authorities had to be paid to the analysis of suspicious financial transactions related to national public figures, in order to conduct objective investigations in the future, and further, relevant trials. It is clear that not all implemented norms are fully applied in practice in Ukraine.

In addition, Ukraine was tasked to take into account recommendations for making changes to the activities of the SFMS in the area of: 1) establishment of closer cooperation between the NBU and the SFMS in terms of providing of information about corruption in the banking sector; disciplining the procedure for pre-trial suspension of spending operations and imposed arrests (without a court decision) on the bank accounts of business entities, since the existing mechanism for suspending and unblocking funds contains a corruption component; 3) increasing the coordination of working relations between the SFMS and the NABU, as well as other anti-corruption services (State Bureau of Investigation). In this regard, the detectives of the anti-corruption bureau, following the example of the United States or Lithuania, should have access to the SFMS databases in order to be able to carry out the analysis independently. Such cooperation between the state structures is currently at a low level. Closer cooperation has developed between the SFMS and the Ministry of Finance, the NBU, the General Prosecutor's Office and other law enforcement bodies. However, this should not be an obstacle to closer cooperation in the field of combating corruption and money laundering with the NABU, the State Bureau of Investigation and National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes.

The OSCE plays an important role in the sphere of consulting and methodological support of countering the laundering of criminal proceeds. Ukraine is a member of this organization since January 30, 1992. Throughout this time, important contacts and meetings of heads of financial monitoring of Ukraine and coordinators of various important projects in this field have been carried out. Thus, under the auspices of the OSCE, the SFMS is implementing the project "Strengthening the capabilities of the financial monitoring system of Ukraine".

The main regulatory and legal act on which the activities of the SFMS are based is the Law of Ukraine "On preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction" (VRU, 2014). This is the latest version of the current law; therefore, the legal constructions proposed by it substantially approximated the national financial monitoring system to international requirements and standards. In general, the regulatory legal body of Ukraine in the field of financial monitoring can be divided into the following categories:

1) laws of Ukraine;
2) regulatory and legal acts of the President of Ukraine;
3) regulatory and legal acts of the Government of Ukraine;
4) regulatory and legal acts of the National Bank of Ukraine;
5) orders of the State Financial Monitoring Service of Ukraine;
6) orders of the Ministry of Justice of Ukraine, the National Commission on securities and the stock market, the National Commission for state regulation of financial services markets, central executive bodies ensuring the formation

of state policy in the provision of postal services and economic development.

Institutional component of the system of financial monitoring of Ukraine

Currently, there are two main types of financial monitoring units (hereinafter – FMU) in the international systems: 1) administrative and financial and 2) law enforcement. The type is determined depending on which government agencies include financial monitoring units: 1) state financial control (at the ministries of finance, at central credit institutions) or 2) law enforcement bodies. Nowadays, administrative-financial units dominate the world, which fully corresponds to the main task of FMU – creating a buffer between financial institutions and law enforcement agencies investigating crimes in the field of AML / CFT. The institutional component of the financial monitoring system in Ukraine also belongs to the administrative and financial type. This is due to the fact that the main authorized state body responsible for the creation and operation of the financial monitoring system (SFMS) belongs to the central executive body for the formation and enforcement of the state AML / CFT policy. Its activities are coordinated by the Cabinet of Ministers of Ukraine through the Ministry of Finance of Ukraine. SFMS is not a power structure, since its powers are more concentrated on effective counteraction against organized financial crime. According to international standards, this service is a division of financial intelligence of Ukraine, but in this structure itself there is a Financial Investigation Department with narrower specific functions.

At the first seminar of the International Organization for Combating Money Laundering (Legalization) of criminal capital "the Egmont Group", in January 2001, the opinion was expressed that in countries with transitional economies (Ukraine is one of them) it is more expedient to establish financial intelligence agencies under law enforcement bodies. This is primarily due to the high level of corruption in these countries, especially in the activities of state politicians. However, in Ukraine, this recommendation was not implemented and SFMS was created within the structure of the executive bodies belonging to the system of financial control bodies under the Ministry of Finance. It seems that if Ukraine took into account the recommendations of the Egmont Group and reformed SFMS according to the law enforcement type, then the country would have won rather than lost. Because the effectiveness of the work of the main body in the field of financial monitoring in law enforcement type would be higher, since it has certain advantages: 1) the possibility of a quick response of law enforcement and intelligence bodies to the laundering of criminal proceeds and other crimes related to the violation of financial monitoring rules; 2) direct access and exchange of information within the power system, which eliminates unnecessary procedures and formalism, especially in situations where time is precious. These problems are still not completely eliminated in Ukraine.

Apparently, having concluded that Ukraine is not going to restructure the financial monitoring system by law enforcement type, a number of international organizations (in particular, the IMF) strongly recommended Ukraine to increase coordination of the working relationship between SFMS and law enforcement bodies, make them more open and accessible, especially with the newly created ones: the NABU, the State Bureau of Investigation, the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes. As previously noted, such cooperation is still at a low level.

But the following recommendations of international organizations that counteract AML / CFT, Ukraine has mostly fulfilled. There is still something to work on and on. It is about expanding the circle of financial monitoring agents or subjects of primary financial monitoring, which is part of the institutional component of the financial monitoring system. In order for the entire system to counter the shadow financial sector of the economy effectively, appropriate mechanisms should be introduced in it to prevent money laundering. In particular, we are talking about the responsibilities of those entities that operate within the financial sector. For determination the range of such entities, FATF Recommendations use the general term "financial institutions". Directive 91/308 / EEC clearly defines the range of subjects, among which the main ones are financial and credit institutions (CEU. 1991). In this direction, Ukraine fully implemented the norm of this Directive in terms of establishing the subjects of primary monitoring. This provision was included in the internal Law of Ukraine "On the prevention and counteraction of the legalization (laundering) of proceeds from crime". As subjects of primary monitoring are called: 1) banks, insurance and other financial institutions; 2) payment organizations, members of payment systems, clearing institutions; 3) commodity, stock and other exchanges; 4) professional

participants of the securities market; 5) joint investment institutions; 6) other legal entities that, in accordance with the law, carry out financial operations (VRU, 2014).

However, in most countries (the USA, the UK, Russia, Germany, Japan) not only financial, but also non-financial sector organizations are considered as agents of financial monitoring: entertainment venues, garbage collection companies (Japan), non-profit organizations (Georgia), antique shops (Brazil), casino (Denmark, Greece, Spain), auctions (Germany). Therefore, taking into account the further recommendations of the FATF, as well as the aforementioned Directive, Ukraine has expanded the range of subjects of primary financial monitoring by adding participants in the non-financial sector: playing institutions, pawnshops, entities conducting lotteries, real estate agents, casinos, notaries, auditors, dealers of valuable goods, etc. This is undoubtedly the right decision, since the listed entities (their activities) can be used by criminals for the purpose of laundering "dirty" money. We believe that such a list can be expanded further, given the positive European experience in this matter.

The institutional component of a national financial monitoring system may be represented by a three-tier (Russia, the USA) or two-tier (Australia, Spain, Canada) models, depending on the existence of supervisory bodies, which, as a rule, are delegated the authority to verify compliance with supervised financial monitoring. Ukraine has a two-tier institutional component of the financial monitoring system. The first level is characterized by conducting primary financial monitoring and is carried out by the subjects of primary financial monitoring. The state level is characterized by conducting state financial monitoring and is defined as a set of measures that are carried out by subjects of state financial monitoring.

Functional (procedural) component of the financial monitoring system of Ukraine

Financial monitoring as a system of procedures is a formally established and consistent order of actions. Procedures presuppose the existence of a certain legal arrangement in the form of an order, provision and instruction, enshrined in regulatory legal acts. All legal procedures of financial monitoring on the target orientation are divided into 1) information, 2) control and 3) law enforcement (Proshunin, Tatchuk, 2014). The main purpose of information procedures is the collection and storage of information (identification of clients, client representatives, beneficiaries, beneficial owners, storage of documents, personnel training). The purpose of control procedures is to monitor transactions and operations in order to identify illegal activities, to evaluate and analyze information received from financial monitoring agents. In turn, law enforcement procedures are aimed to suspend operations, freeze (block) money and provide the results of the analysis carried out by the financial monitoring units. Further such data are transferred to law enforcement bodies to make a decision to initiate a criminal case or to initiate it in the framework of an existing criminal case.

Such an informational procedure as the identification of clients, client representatives and beneficiaries in international financial monitoring systems involves the use of two main approaches. The first approach fixes the identification of individuals and legal entities, when they perform a transaction of a certain amount of money. In the EU, identification of the client or the beneficiary is required if the amount of the transaction or cash transaction exceed 15 thousand euro. Client identification is required in Japan at the opening of the deposit in the amount of 2 million yen (Proshunin, Tatchuk, 2014). The second approach establishes the procedure for identifying all clients, who are serviced by a financial institution, regardless of the type and amount of transactions and operations (for example, Germany, Russia, South Africa). In Ukraine, in the framework of this procedure, the first approach is applied. In accordance with paragraph 3 of Article 9 of the Law of Ukraine "On preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction" client identification is carried out in the case of a transfer (including international) of the amount of 15000 UAH and higher (VRU, 2014).

Regarding the identification of beneficial owners, we can also distinguish two traditionally established approaches in international practice. The first approach assumes the obligation of a legal entity to provide information on the ultimate owners of a legal entity (the UK, Italy, the Netherlands). The second approach does not establish any requirements for disclosing information about the ultimate owners of a legal entity (Russia, Brazil). We believe that the first approach seems to be the most effective in such a situation, since with it the control over the operations and transactions conducted by clients is more transparent and logical. On this issue, Ukraine implemented and enshrined in its

national legislation the obligation of the primary financial monitoring entity (agent) to require information and documents from the client, a legal entity, in order to establish the ultimate beneficial owner (controller).

With regard to such a control procedure as monitoring transactions and operations, two main approaches should also be distinguished. The first approach involves informing financial monitoring units about transactions and operations that cause a reasonable suspicion of only possible involvement in the process of laundering criminal proceeds or the financing of terrorism. Here we are again talking about a certain amount of money. First of all, cash transactions fall under close attention. Within the framework of this approach, in such countries as the USA, Mexico, Brazil, Japan, it is proposed to send messages to financial monitoring units about transactions and operations with cash or international transfers exceeding a certain amount. For example, for Brazil it is more than 5 thousand reals, for Mexico it is more than 20 thousand US dollars, Japan is more than 30 million yen, in the USA it is more than 10 thousand US dollars (Havdyo, 2006). It is not difficult to understand why exactly transactions and operations associated with the movement of cash get under the attention. In those countries, which use this approach, there is a fairly low percentage of cash payments due to the high level of financial culture and the introduction of cashless payments in most daily payments. Therefore, the use of significant amounts of cash in such conditions initially causes a reasonable suspicion about the source of their origin. The positive point of this approach is that much less information is assigned to agents and financial monitoring bodies compared to the second approach. The latter implies the obligation of financial monitoring agents to inform financial monitoring units not only about a wide range of transactions and operations that only formally meet the established criteria and are often not related to money laundering or terrorist financing (“mandatory monitoring”), but also about transactions and operations in respect of which financial monitoring agents have reasonable suspicions about their involvement in illegal activities (“optional monitoring"). It should be noted that Ukraine uses the second approach. Perhaps, at first glance, it seems that the second approach looks more expedient and comprehensive. But just by the example of Ukraine, we can conclude that the use of such a detailed approach in relation to monitoring operations and transactions is not more effective than the first. Many scientists will agree that the level of laundering of criminal income in Ukraine is growing and has further such a tendency. Of course, there are certain results of detection of these crimes in Ukraine, but due to the corruption component, it is extremely rare for the perpetrators to be held accountable by the law. The application of the first approach is characterized, firstly, by the respectful attitude of the state towards its own and foreign citizens (in Ukraine, on the contrary, the presumption of guilt principle applies in this case), and, secondly, it suggests a higher level of functioning of the system of financial monitoring of operations and transactions. Perhaps it would also be right for Ukraine to apply the first approach here.

The suspension of transactions and operations related to the possible legalization of criminal proceeds is an important law enforcement procedure of financial monitoring. There are two directions in the implementation of this procedure in international jurisdictions. The first is that the right to suspend such operations is granted directly to agents and bodies of financial monitoring (the UK, the USA, Finland). The second direction involves only informing the financial monitoring units about the operations and transactions. Such units either independently or through law enforcement bodies, can suspend certain operations. Ukraine is working in accordance with the second direction. Although the ability of quick and less bureaucratic respond to such offenses belongs to the first direction.

Important in the implementation of financial monitoring procedures is a quick and complete information exchange between government agencies, financial monitoring units and law enforcement bodies. In this regard, in the information space there is a two-stage and three-stage model of information exchange. The first model is characteristic of systems in which the units of financial monitoring belong to the law enforcement type. This involves the exchange of information between the client and the financial agent (stage 1) and the financial agent and the financial monitoring unit, which is already a law enforcement structure (stage 2), (the UK, Austria, Denmark, Germany). In the three-stage model, as the third stage, there is an information exchange between the unit of financial monitoring and law enforcement bodies (CIS countries). Since the financial monitoring system of Ukraine is built according to the administrative and financial type, the information exchange is carried out here using a three-stage model. Such a model was borrowed from the world practice of information exchange in the field of financial monitoring.

CONCLUSION

In conclusion, the following should be noted: 1) due to active cooperation with authoritative international organizations working in the field of AML / CFT (the UN, FATF, the Wolfsberg Group, the Basel Committee, the Egmont Group, etc.) the national financial monitoring system of Ukraine was able to rise to a new, higher level of activity in the sphere of preventing illegal income from entering the legal economy. This was possible due to the active implementation of international standards and norms in the national legal system of financial monitoring. Such implementation was based on an informal approach, i.e. by modifying national legislation based on the requirements of international standards. These processes took place and are still taking place not in a directive and administrative manner, but, in general, were methodological and consulting in nature. However, sometimes the system of financial monitoring of Ukraine was taken under international supervision by international organizations and it was required to eliminate identified shortcomings as soon as possible, for example, when Ukraine was included on the FATF blacklist. As it can be seen from the above material, the methodological and consulting work of Ukraine's SFMS with international organizations, whose activities are aimed at preventing the laundering of "dirty" money, dealt with a fairly wide range of issues in this area. It was introduced into the national legal system precisely because it acted "gently", in the form of recommendations and successful examples (experience). 2) however, part of this enormous and undoubtedly constructive work, still remains "on paper", because attempts to implement certain important international norms into national legislation caused a number of difficulties. This reduces the positive effect of the work done in reforming the legal system of financial monitoring of Ukraine. In this regard, Ukraine continues to be under the scrutiny of international organizations and should continue to cooperate with them in the field of AML / CFT.

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