

Voznjakovskaja K. A.

**SIGNIFICANCE OF FINANCIAL MONITORING
AS A TOOL FOR COMBATING AGAINST LEGALIZATION (LAUNDERING)
OF PROCEEDS FROM CRIME**

Significance of financial monitoring as a tool for combating against legalization (laundering) of proceeds from crime

*Voznjakovskaja Kristina
Anatol'evna,
c.j.s. (PhD of jurisprudence), As-
sociate professor of the Chair of
civil-legal disciplines at the Sep-
arate structural unit Chernovt-
sovsky branch of National Uni-
versity «Odessa Law Academy»,
Ukraine.*

The legalization (laundering) of proceeds of crime as the final phase of the transformation of crime in a high-yield and effective type of illegal entrepreneurship is considered in the article.

Here are determined the basic forms and methods for the implementation of primary financial monitoring, its basic tasks. Listed conditions, the fulfillment of which turns financial monitoring system in the field of combating laundering of illegal income into a reliable tool for regulating economic relations.

The author notes that the system of financial monitoring of Ukraine has been developed largely due to the pressure on it by the international community, which through its main international institute for combating money-laundering has created such conditions for Ukraine, in which further delay of establishing the system of combating money-laundering could cause irreversible damage to the Ukrainian economy.

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The need to study the economic and legal aspects of combating money laundering is due to the growing need for the protection of vitally important legitimate economic interests of society and the state. Contemporary methods and means of the legalization of “dirty” money are constantly being improved due to the development, including of global economy and criminal interaction of the transnational organized criminality. Appear new mechanisms of integration the proceeds of crime. Noted the role of corruption component, the willingness of government officials to become a part of this system. Legalization (laundering) of proceeds from crime and their penetration into the legitimate economy in recent decades has being developed in the world and has gained an international, transnational nature. This is a final stage of the conversion of criminality into a highly remunerative and effective form of illegal entrepreneurship. The illegal and socially highly dangerous accumulation of economic and later of political power in the hands of an uncontrolled group occurs in the course of this process. The lack counteraction to this social phenomenon inevitably stimulates crimes related to drug trafficking, extortion, banditry, fictitious entrepreneurship, etc.

The purpose of the present study is the analysis of concept and value of financial monitoring, determination of its specific character, purpose and system of bodies, which exercise it, as the tool of counteraction to the legalization of incomes, obtained from crime.

The established national system of counteraction to legalization of proceeds from crime is designed to provide implementation of a uniform state policy in this area, is an important component of the strategy to combat crime and aimed at protection the rights and freedoms of man and citizen, ensuring national security and protection of the economic interests of Ukraine. This system consists of two major subsystems that differ in their subjective composition, features of legal regulation and resolved tasks: law enforcement unit and financial monitoring [6, 118]. Subjects of law enforcement unit of the national system of counteraction to legalization of proceeds from crime are law enforcement bodies whose responsibilities include the investigation of these crimes. Relations in this subsystem are governed mainly by the norms of criminal and criminal procedural legislation and other normative legal acts that define the rights and duties of these bodies. The basic task of the law-enforcement bodies within the framework of this subsystem is revealing, suppression and investigation of crimes, which are connected with the legalization of the incomes obtained from crime, and with financing of terrorism, i.e., combating with these forms of crimes.

Financial monitoring can be divided into two levels: primary financial monitoring and state financial monitoring. The main subjects of primary financial monitoring are organizations, which carry out transactions with funds or other assets, and other persons authorized by the state whose duties include: checking of customers, revealing of suspicious transactions and providing of relevant information to a special body (State Financial Monitoring Service [7, 10]). First of all the task of preventing the legalization of proceeds from crime is solved at this level.

State financial monitoring is carried out primarily by an authorized body, which provides control over the legality of financial transactions on the basis of information that has been obtained from the relevant subjects of primary financial monitoring, verifying the information received and transmission of the information to law enforcement bodies if necessary [9, 9]. The subjects of state financial monitoring are also oversight bodies that exercise control over implementation by natural and legal persons of the Law of Ukraine "On Prevention and Counteraction to Legalization (laundering) of Proceeds from Crime and Financing of Terrorism" [4]. It should be noted that the subjects of primary financial monitoring are the objects of control and supervision by the subjects of state financial monitoring.

The term of "financial monitoring" 'is used in Ukraine and many CIS states for the generalized name of a complex of measures taken by financial institutions and competent state bodies in order of prevention, revealing and termination of transactions with funds or other assets related to legalization of proceeds from crime. More complete disclosure of the term of "financial monitoring" is facilitated by the overall analysis of the structure and the main provisions of the Law of Ukraine "On Prevention and Counteraction to Legalization (laundering) of Proceeds from Crime and Financing of Terrorism" [4], on the basis of which we can distinguish the following main directions of activity regulated by this law:

- prevention of legalization of proceeds from crime;
- organization of activities on counteraction legalization of proceeds from crime;
- international collaboration in the sphere of combating with the legalization of proceeds from crime.

Given the high degree of public danger of actions on the legalization of proceeds from crime and financing of terrorism, today there is no doubt concerning the topicality of combating these kinds of criminal activity either in Ukraine or at the international level, as evidenced by the allocation of enormous resources, both

human and financial, to conduct appropriate activities by national jurisdictions, international structures and organizations.

Financial monitoring is characterized by imperative method of legal regulation that combines three ways of regulation: permission, obligation and prohibition. At that, as legal means act such juridical facts as, for example, an established list of transactions with funds or other assets that are subject to mandatory control, subjective rights and legal responsibilities of the participants of the mentioned relations, various prohibitions and sanctions for violation of established regulations, as well as financial control that is carried out both by organizations, which carry out transactions with funds, and by the public authorities.

It would be appropriate to distinguish the following basic forms and methods for the implementation of primary financial monitoring:

- initial verification of customers when establishing relations, including identification of the very customers and determination of the beneficiary (in the form of questioning);
- next check of the identification data of a customer (in case of making suspicious transactions);
- general monitoring over financial activities of different objects of control to identify transactions that meet certain criteria of unconventionality or suspiciousness;
- high level monitoring (observing) over the financial transactions of a certain object of control, in respect of which there is an information (suspicions) about a possible involvement in criminal (terrorist) activity.

State financial monitoring includes: supervision of compliance by financial institutions and other persons the requirements of the legislation on combating money laundering and financing of terrorism in order to reveal possible violations of the rules of internal control, as well as transactions, which have not been declared and which are subject to mandatory control; primary or operational analysis of submitted reports on financial transactions in order to identify additional signs of their possible connection with money laundering or financing of terrorism; tactical analysis or financial investigation regarding the facts that require additional check, including at the request of law enforcement agencies; strategic analysis of submitted reports on suspicious transactions in order to identify potential criminogenic trends in certain sectors of financial and economic system or geographical regions.

The main objectives of financial monitoring may be considered as follows:

- preventing, revealing and termination of financial transactions related to money laundering;

- information support for the activities of law enforcement agencies concerning investigation of crimes related to money laundering and financing of terrorism [3, 286];

- identification and freezing of the proceeds from crime and terrorist assets.

Depending on the specific of controlled financial transactions, can be distinguished the following areas of financial monitoring conditioned by the specialization of the subjects of the primary financial monitoring: banking sector; securities market; insurance sector; leasing market; postal services market; market of precious stones and precious metals; gaming business; lombard activity; real estate market; financial assets management market.

In terms of subject (functional) content the main directions of financial monitoring are:

- internal control exercised by financial institutions and other entities that are authorized by the Law (verification of customers, revealing of suspicious transactions, submission of information, freezing of transactions, etc.);

- oversight over observance by financial institutions the rules and procedures of internal control and other statutory requirements; mandatory control, which is carried out by financial intelligence unit (collection, generalization and analysis of information, provision of materials to law enforcement agencies);

- study of the typology of implementation offences related to money laundering, with the purpose of improving the methods to counteract them;

- formation and exercising of a unified state policy in the sphere of counteraction to legalization of proceeds from crime;

- coordination of interagency cooperation in the sphere of counteraction to legalization of proceeds from crime and financing of terrorism;

- international cooperation, including informational interaction..

Within the framework of financial monitoring we also distinguish its "own" kind of state financial control, which manifests itself in the exercising of:

- monitoring over transactions with funds (assets) in order to prevent the legalization of proceeds from crime;

- control and oversight over compliance by physical persons and legal entities the requirements of the Ukrainian legislation on combating the legalization of proceeds from crime.

At that, principles, forms, methods and institutional mechanisms of state control within the framework of financial monitoring system are similar to those used in other financial legal relations, such as budget, tax, credit, accounting and currency ones.

It should be noted that an important feature of financial monitoring is the responsibility of financial institutions to submit to an authorized state body the information on suspicious transactions (agreements), as well as on a wide range of other transactions subjected to mandatory control, which can be used for legalization of proceeds from crime. Existence of the system of mandatory control contributes to the formation of necessary database, which provides efficiency of investigations (without submission of additional information requests), as well as the ability to study their typologies and new trends in the field of money laundering. This ensures transparency and security of economic activity (at national and international levels) and achieves the main objective of financial monitoring, which manifests itself in preventing the use of this system for legalization of proceeds from crime.

Creation of financial monitoring system in Ukraine has many objective reasons, among which we should emphasize the public danger of legalization of proceeds from crime, which is due to not so much the degree of wrongfulness of their origin, but due to the nature of their uncontrolled introduction into the legal economy, as well as the nature of actions regarding the use of lawful mechanisms for implementation of entrepreneurial or other economic activity for introducing in legitimate turnover monetary funds and another property.

However, it must be recognized that this system has been developed largely due to the pressure on Ukraine by the international community, which through its main international institute for combating money-laundering has created such conditions for Ukraine, in which further delay of establishing the system of combating money-laundering could cause irreversible damage to the Ukrainian economy. The Ukrainian system of financial monitoring, as a totality of financial and legal measures to counter legalization of proceeds from crime and financing of terrorism, meets international standards in this field, embodied in 40+9 FATF Recommendations [1, 8]. At that, financial monitoring is a comprehensive financial and legal institute whose rules govern social relations that have emerged between individuals, organizations, and public authorities in the process of making transactions with funds (property) by physical and legal persons. The goal is to take measures on revealing, as well as prevention and cessation of penetration of criminally obtained funds or other property in the lawful economy of the country and its financial system, i.e. counteraction to legalization of proceeds from crime [2]. An important element in the system of financial monitoring is the implementation of the state financial control over transactions with funds and another property in order to prevent the legalization of proceeds from crime, as well as over the implementation by legal entities and individuals of norm requirements of the corresponding

legislation of Ukraine and bringing to justice those, who have committed violation of this legislation.

Specificity of money laundering requires the use of such counteraction tools that would allow undertaking a systematic collection, processing and analysis of information on financial transactions and other operations associated with the flow of monetary funds and other assets implemented by any business entity. These requirements are met only by financial monitoring, and information about financial transactions and operations associated with the flow of monetary funds (as in cash and non-cash form) and other assets is the basis for conducting the financial monitoring in order to counteract legalization processes. In the process of counteracting the legalization the tools of state control may not be applied, since: the control is associated with the check of conformity of the actual state of the object of control to desired or normatively established legal acts, plans, programs, agreements, etc., it does not allow assessment of transactions in terms of their validity; every year the control is aimed at different objects and is carried out by different public authorities, it does not take into account the full flow of funds and other assets in the implementation of, for example, internal organizational transfers or international payments between commercial entities. Financial monitoring allows the analysis and systematization of any information on the flow of funds and other assets of business entities, the directions of the flow of funds and another property, and allows the detection of violations of legislation. However, the financial monitoring is not limited to the collection of information and processing of reporting and statistics; it requires the evaluation of information on transactions with a view to their possible connection with the legalization of illegal incomes. In order that public authorities could use the system of financial monitoring in the sphere of counteraction to legalization of illegal incomes as a reliable tool of regulation of economic relations, several conditions must be met:

- to structure the monitoring process so that all participants in the process of combating the legalization of illegal incomes could enjoy its results;
- to ensure the interaction and the active use of financial monitoring in counteraction to the legalization of illegal income in the process of state regulation of financial relations;
- to provide financial, technical, human and organizational conditions that are necessary for the implementation of monitoring.

Thus, the aim of financial monitoring is – assessment of legality and correctness of the formation and use of money incomes, savings and revenues by business entities through using a totality of forms and methods of collection, processing

and analysis of information on financial transactions and operations with funds and other assets. At the same time the correctness should be understood as expediency, economic justification of operations, and conditionality of transactions to the purposes of obtaining income. That is, in the process of financial monitoring there should be evaluation of the transactions not only in terms of their legality, but also on the basis of the principle of rationality and conditionality to the customs of business intercourse. The main objectives of financial monitoring in the sphere of counteraction to legalization of illegal incomes include: combating of penetration of illegally obtained funds in the legitimate economy, as it undermines the foundations of competitive and free market; ensuring the growth of budgets' incomes of the budget system of the country; creating the conditions for sustainable economic growth and financial stability in the country; ensuring the efficiency of the state regulation of financial relations at the level of the state, regions, organizations; increasing the validity of decisions of public authorities and officials in the course of exercising the aims and objectives of state policy.

Financial monitoring in the field of counteraction to legalization of illegal incomes allows public authorities to systematize information about the flow of budgetary funds and their redistribution among areas of economy, administrative-territorial formations, to combat the plundering (embezzlement) of funds allocated to the solution of social and economic problems, to ensure the growth of revenues in budgets of different levels, to control the status of foreign trade balance through monitoring of conducted international settlements, to support the achievement of balance between budgets at different levels of the budgetary system. V. A. Zubkov stated the main features of the financial monitoring in the sphere of counteraction to legalization of illegal income:

- 1) Focus on the determination of the scope of influence, factors, manifestation aspects and trends of the process of money laundering.
- 2) Setting up a monitoring system on the basis of clear interpretation of the concept of money laundering, including in normative legal acts.
- 3) Determination of the subjects and objects of monitoring, and elaboration of monitoring technique based on the distinguishing of methodological features and schemes of money laundering through the systematization of the practical world and domestic experience.
- 4) Assessment of the socio-economic consequences of money laundering both at the state level and within the framework of global community [5, 31].

In connection with the foregoing, financial monitoring in the field of counteraction to money laundering as a tool for regulating economic relations represents

a totality of procedures for collecting, recording, processing and analysis of information on economic entities' transactions involving funds and other assets in order to ensure the legality and correctness of formation and use of financial resources. Financial monitoring concerning counteraction to money laundering should have comprehensive, systemic nature and create conditions for improving efficiency of relations regulation, both at the international and national levels, support the normal functioning of the main economic institutes of the state and markets of goods and services, provide stability and steady economic growth in the country.

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