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IMPLEMENTATION OF RISK-BASED APPROACH IN FINANCIAL MONITORING IN UKRAINE

In close cooperation with FATF-type regional groups, United Nations (UN), World Bank and International Monetary Fund after mutual evaluations of members of the FATF in February 2012 at a plenary meeting of the Financial Action Task Force on Money Laundering was approved the new edition of 40 recommendations of the FATF [6]. This document is a standard for all countries of the UN in combating money laundering, financing of terrorism and spread of weapon of mass destruction.

Failure to comply with the recommendations of FATF - an intergovernmental body that sets standards and develops policies in the above area - leads to adding countries to the list of countries that are risky and to limit financial transactions with such countries or to "freeze" the resources of such countries from other members of the Group. Such conditions require the voluntary agreement of global market participants to implement standards into national legislation, take measures against violations in legalization of proceeds from crime financing of terrorism and spread of weapon of mass destruction.

Ukraine is one of the founders of the UN and it is an active participant of foreign trade. Also it is a base allocation of financial institutions that transfer funds and make currency conversion and other economic operations that provide a broad base of opportunities for financial crimes. Therefore, to neutralize the threat there is a need to implement FATF Recommendations in the legal framework and practices to the financial institutions at the highest possible level.

Among the main changes in the recommendations it is necessary to allocate using of a risk-based approach in financial monitoring system that requires a review of the financial monitoring, training methodical base, education and professional development of senior officials of financial institutions.

In this aspect, the FATF Recommendations were revised in 2012 in order to strengthen the requirements for situations that are high risk, allowing the country to use a more focused approach in such situations. Countries should firstly identify, assess and understand the risks associated with money laundering and terrorist financing they are facing, then they need to take appropriate measures to reduce the risk, including the appointment of a specific authority and the establishment of a mechanism for coordination of risk assessment. Wherein countries identify higher risks, public authorities should ensure adequate consideration of the risks and taking enhanced measures to reduce them. If countries identified low risk, they can decide what can be taken from the list of simplified management FATF recommendations [5].

The risk-based approach allows to choose a more flexible set of measures to more effectively allocate resources and implement preventive measures that are comparable to the nature of the risks [5].

FATF recommendations about risk assessment in anti-money laundering and combating of terrorism financing [7] describe the experience of countries with developed economies that use the risk-based approach in the fight against illegal actions in the financial system.

Switzerland developed a process of risk assessment using low risk avoidance. The working group consists of experts from banking, insurance and non-banking sector, auditors, law enforcement agencies and financial regulators. The working group identified the products of low risk, for which exceptions may apply. At the request of self-regulatory organizations and financial intermediaries committee of experts may permit some exceptions on an individual basis after receiving the necessary information from the requesting exceptions party account products, services, operations, and risk of the client and legal environment, checking with regulations, risk assessment, assessment of risk measures with little change in circumstances. This committee has a legal obligation to publish their practice.

In the USA threat assessment of money laundering in 2005 was divided into the following sections: banking, money services (i.e. money transfer, checks, currency exchange offices, money transfers and cards), online payment systems, trade-based money laundering, insurance companies, front companies and trusts; casino and others.

The project team made assumptions and comments on vulnerable sectors using the available information, considered which adequate security measures have been taken to eliminate the detected vulnerabilities and provided a subjective assessment of the residual danger. This process concerned the Department of Homeland Security, Justice and Finance, including the Federal Reserve and the United States postal inspection.

In the Netherlands a National Threat Assessment (NTA) was conducted. The evaluation was made by interviewing of all stakeholders, including financial sector, research institutions and law enforcement agencies. Based on these interviews, the project team identified a list of key issues and has organized several seminars to discuss selected items. Participants were politicians, supervisory authorities, prosecutors, police and tax authorities. As a result of this series of seminars main topics were the subject of in-depth research. Repeated and further discussions provided the basis for in-depth studies in criminal files and data systems. This became the basis for describing several methods of money laundering, the characteristics of the persons involved in this case, and the consequences of such activity for society.

According to the results of the Eurasian Group on anti-money laundering and combating of financing terrorism (EAG) seminar on national risk assessment the overall assessment of situation of anti-money laundering as a whole disappointing. Particularly, it is argued that in the short term:

- the scale organized crime and therefore money laundering will only grow;
- differences between countries regarding opportunities AML / CFT will increase;
- the main channel of money laundering in the foreseeable future will remain the official financial system;
- the second wave of the global financial crisis opens up new types of fraud and methods of money laundering [4].

Therefore the task of a system of AML / CFT today is to work on prevention: to define where to the dirty money comes but not where they are now. And just like predictions of predicate crimes, the forecasting revenues crimes legalization should be crimes and forecasting crimes legalization of

proceeds gained by criminal pursuits should be performed through the implementation of international recommendations on risk assessment [1].

Analyzing the Law of Ukraine "On prevention and combating the legalization (laundering) of proceeds from crime, terrorist financing and the financing of spread of weapons of mass destruction" (hereinafter - the Law № 1702) [2] can be identified such changes with the requirements of FATF:

- implementation of risk - based approach to assessment and managing risks;
- implementation of a national risk assessment of financial monitoring;
- the isolation of measures to combat the financing of spread of weapons mass destruction;
- change in the approach to the definition of predicate offenses (including tax crimes to predicate);
- improving the legislative aspects that affect the quality of investigation of crimes related to the legalization (laundering) of proceeds;
- amendments to the Criminal Procedural Code of Ukraine concerning investigative jurisdiction of crimes for legalization;
- implementation of public officials and officials of international organizations financial monitoring;
- setting the threshold for international money transfers;
- withdrawal thresholds to conducting financial monitoring by realtors and notaries;
- exclusion of persons engaged in cash transactions worth over 150 thousand UAH., from the number of entities of initial financial monitoring through the introduction of mandatory monitoring such transactions by banking institutions.

The above changes cause the need for legal interpretation of the legislation on counteracting on money laundering

Complex assessment of the system AML / CFT in Ukraine requires a combination of quantitative data, based on statistical data and qualitative data based on opinions of experts in various fields of AML / CFT. Quantitative data are benefits such as impartiality, consistency, measurability and therefore comparability.

However, this is often not enough for analyzing complex components of AML / CFT and the legislative level of AML / CFT and other non-measurable parameters. So quantitative statistical data cannot be the only source of data for analysis.

Qualitative data have the advantage because they are based on the views of experts from AML / CFT who are familiar with the features of the system, its difficulties and disabilities. However, it is also the disadvantage because it provides some subjective perceptions in assessment procedure. Therefore a combination of qualitative and quantitative approaches to risk assessment is most appropriate.

The sources of information necessary for NRA are particular in statistical information and administrative data of public authorities, results of the assessment of the shadow economy, law enforcement reports, the results of the sample analysis of court decisions in criminal cases and the results of the study of public opinion.

A national risk assessment covering all subjects participating in the system of anti-money laundering and combating of terrorist financing and other interested parties that can assist in solving the NRA. The participants of this system are:

- subjects of state financial monitoring and subjects of initial financial monitoring;
- law enforcement agencies, the judiciary and prosecutors;
- other public bodies who hold information necessary to perform the tasks of national risk assessments;
- public organizations and scientific institutions.

The methodical base of NRA in Ukraine is the NRA method developed by State financial monitoring under FATF recommendations, international experience and suggestions of experts from international organizations. It includes analytical and mathematical components.

The State financial monitoring analyzes, summarizes, unifies the information filed by participants of national risk assessment and prepares a report on its implementation.

Providing of NRA in Ukraine will be push for changes in the workflow, the legal framework, risk management, training system, competencies within

departments and offices of security personnel functions of financial institutions, their professional skills [3].

The expected results of NRA in Ukraine are:

- improving the quality of strategic decisions in the area of money laundering and terrorism financing;
- selection of the optimal size of the financial monitoring;
- improving the methods of supervision in the area of money laundering and terrorism financing;
- improving compliance ratings with international standards.

Transition to a risk-based approach to financial monitoring in Ukraine in accordance with FATF recommendations is possible only with providing effective training system of financial institutions officials.

Also, creating methodological framework which will identify risks of financial operations and establishment of Association of Independent financial monitoring officials could greatly help to the implementation of a risk-based approach. These measures will qualitatively strengthen the anti-money laundering, combating the financing of terrorism and proliferation.

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