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MODERN STATUS OF THE RISK-BASED APPROACH IMPLEMENTATION IN UKRAINE ANTI-MONEY LAUNDERING SYSTEM

One of the modern directions of improvement the system of anti-money laundering and combating the financing of terrorism and proliferation is an active implementation of the risk-based approach (RBA) in the field of anti-money laundering in Ukraine.

This approach is not new in the world. Its use is constantly emphasized by the group of the FATF in its recommendations. However, the adoption in May 2015, after two years of discussions, Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [1], that should be implemented into the domestic law of States parties to 26 June 2017, provides these requirements mandatory.

Taking into account the European integration vector of Ukraine adaptation domestic legislation to international requirements in the sphere of anti-money laundering and combating the financing of terrorism on the implementation of RBA is becoming quite an actual problem for Ukraine.

In accordance with Directive (EU) 2015/849 underpinning the risk-based approach is the need for Member States and the Union to identify, understand and mitigate the risks of money laundering and terrorist financing that they face.

The risk of money laundering and terrorist financing is not the same in every case. Accordingly, a holistic, risk-based approach should be used. The risk-based approach is not an unduly permissive option for Member States and obliged entities. It involves the use of evidence-based decision-making in order to target the risks of money laundering and terrorist financing facing the Union and those operating within it more effectively [1].

It was established by Directive (EU) 2015/849 that a risk-based approach should be implemented at four levels:

– supranational (EU level) – at this level is provided that the European Commission must prepare a report on identifying the spheres of the domestic

market which are most at risk, and the risks associated with each relevant sector every two years;

- national (the level of member States of the EU) – it is established the need for national risk assessment (NRA);

- public (the level of the competent authorities) – base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State.

- private (the level of the obliged entities) – identification and assessment of the risks of money laundering and financing of terrorism, which are peculiar to their customers, countries or geographic regions, products, services, transactions or delivery channels.

There are many constraining the implementation of the RBA factors for each of these levels in Ukraine.

The main attention should be focused on a system of National risk assessment (hereinafter – NRA) as a system of measures taken by entities of state financial monitoring by the authorized state authorities with the involvement of other actors (if necessary) to determine the risks of legalization of proceeds received by a criminal way, and terrorism financing, their analysis, evaluation and development of measures aimed at preventing and/or reducing negative effects [2].

A comprehensive assessment of the AML/CFT system in Ukraine requires the combination of quantitative data, based on statistical data and qualitative data based on opinions of experts in various areas of AML/CFT. Quantitative data have advantages such as impartiality, consistency, measurability and, consequently, comparability.

However, this is often insufficient for the analysis of the rather complex components of AML/CFT, as well as the legislative level of AML/CFT and other measured parameters. Therefore, quantitative statistics cannot be the only source of data for analysis.

Qualitative data have the advantage because they are based on the views of experts on AML/CFT who are familiar with the peculiarities of functioning of the system, its complexities and disadvantages. However, this is also the disadvantage, because it lays in the assessment procedure certain subjective perceptions. Therefore, combining quantitative and qualitative approaches to risk assessment is the most appropriate.

NRA which was held in Ukraine in 2016 was greatly based on statistical data, that complicated the interpretation of the results.

The report data show that an overwhelming part of the risky financial operations (FO) in the transferred generalized materials (GM) is occupied by FO, messages on which are sent by the subjects of primary financial monitoring (SPFM) to the state subjects of financial monitoring (SSFM) on signs of

internal monitoring and consequently operations which are connected with money laundering or other crimes are revealed by SPFM by own criteria and risks. Also, the results of the analysis of observance the requirements of the Law by SPFM demonstrate that implementation of some requirements of representation to SSFM the information on FO is too burdensome for SPFM and inefficient, and also leads to significant increase in volume of expenses of SPFM by holding procedures of financial monitoring. In 2015 about 89% of information submitted by SPFM to SSFM is information about FO which are subject to obligatory financial monitoring. At the same time, the majority of FO which are transferred in structure GM are received from SPFM on signs of internal financial monitoring [3].

Thus, the shift of attention of SPFM to FO, concerning which there was a suspicion on the basis of assessment and risk analysis, will give the chance to considerably increase probability of identification of suspicious FO and illegal financial streams. Therefore need of transition to implementation of RBA during representation of information by SPFM to SSFM is obvious.

Certain difficulties are at the public level of implementation of RBA in the sphere of supervision base the frequency and intensity of on – site and off – site supervision on the risk profile of obliged entities is relative. As in the Law No. 1702 mechanism of implementation by subjects of the state financial monitoring of supervision taking into account assessment of risks is not revealed and it is only noted as one of their powers (the item 3 parts of the second article 14 of the Law № 1702) [2].

Carrying out the RBA has to be based on studying of considerable volumes of information, as for, first of all, results of NRA, features of a certain sector of the financial market which cause its potential weaknesses in the sphere of AML/FT, tendencies and types of money laundering and financing of terrorism which publish the international organizations and national special competent authorities including domestic.

Among factors which influence vulnerability to the subject of primary financial monitoring to risk to be involved in processes of legalization of the criminal income is weakness of internal system of financial monitoring, non-compliance with its requirements and procedures, insufficient qualification of personnel, and also factors, connected with the management of financial institution.

Implementing RBA at the private level in Ukraine is considerably prevented by bureaucratization of procedures of financial monitoring and lack of motivation at subjects of primary financial monitoring.

For reduction of bureaucratic pressure it is necessary to consider the information of Directive (EU) 2015/849 that risk itself is variable in nature, and the variables, on their own or in combination, may increase or decrease the potential risk posed, thus having an impact on the appropriate level of

preventative measures, such as customer due diligence measures. Therefore, there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence may be appropriate.

Therefore, implementation of RBA in Ukraine in the sphere of anti-money laundering and financing of terrorism happens according to requirements of the international documents and needs laborious work in the legislative and organizational plane.

In order to motivate entities to fulfill their responsibilities it is necessary to provide advisable feedback on the usefulness and follow-up of the suspicious transactions reports they present should, where practicable, be made available to obliged entities. To make this possible, and to be able to review the effectiveness of their systems for combating money laundering and terrorist financing, Member States should maintain, and improve the quality of, relevant statistics.

Therefore it is necessary to improve the Law № 1702 by empowerment of the competent authorities.

Thus, the implementation of the risk-based approach in anti-money laundering in Ukraine occurs in accordance with international documents and needs hard work in the legal and organizational field.

References:

1. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [Elektronnyj resurs]. – Rezhym dostupu: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=EN>.

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3. Zvit pro provedennya nacionalnoyi ocinky ryzykiv [Electronic resource]. – Access mode : http://www.sdfm.gov.ua/content/file/Site_docs/2016/20161125/zvit_ukr.pdf/.