

ANTI-MONEY LAUNDERING: FOREIGN EXPERIENCE OF INTERACTION BETWEEN LAW ENFORCEMENT AGENCIES AND FINANCIAL

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Abstract: The relevance of the problem described in the article is due to the need to improve the interaction between law enforcement agencies and financial institutions in the field of combating money laundering in Ukraine, despite the low level of interdepartmental relations between the law enforcement and financial sectors and the high level of economic crime. The purpose of the study is to study the foreign experience of interaction between law enforcement agencies and financial institutions in the field of combating money laundering and establishing the possibility of its use in Ukraine. The study is based on the methods of analysis and generalization, and the formal logical method. The

article states that the need for interaction between law enforcement agencies and financial institutions against money laundering is recognized internationally. The authors consider the process of interaction between law enforcement agencies and financial institutions in Ukraine in terms of information exchange and monitoring of bank accounts and analyze the foreign experience of interaction between these entities. It is concluded that Ukraine cannot fully borrow foreign experience related to the interaction of law enforcement agencies with financial institutions in this area, but the study and adapted implementation of certain provisions into the practice is possible

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and necessary. The results obtained can be the basis of legislative proposals for improving the interaction of these entities, which, in turn, will allow bringing the interaction to a new level.

Keywords: information exchange, bank accounts, financial stability, bank secrecy, economic crimes

Introduction

Money laundering is regarded as a crime that threatens the economic and financial stability in the world, impeding economic growth development and the adverse effects on all economic, social and political aspects at the local, regional and international levels (Masadeh and Al Hassan, 2018). The negative economic effects of money laundering on economic development are difficult to quantify (Sundarakani and Ramasamy, 2013). However, according to PricewaterhouseCoopers, which presented a report on global economic crime in 2016, money laundering accounts for 11% of the total crimes committed in the economic field (Global Economic Crime Survey..., 2016). At the same time, the amount of money laundered can be estimated only approximately, given the latent nature of the phenomenon, which is manifested in concealment, uncontrollability, and

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informality. However, according to expert estimates, annual laundered revenues make up 2 to 5 percent of world GDP or \$1.6 to \$4 trillion (Weeks-Brown, 2018).

Financial institutions that carry out operations with financial resources are legislatively participants in the system of combating money laundering, and play an important role in preventing and detecting money laundering and transferring data to competent authorities, including law enforcement agencies. However, in Ukraine, one of the main problems in counteracting money laundering is the lack of strong inter-agency relations between law enforcement and the financial sector. Closer interaction could significantly speed up the process of investigating money laundering, which would help to counteract this negative phenomenon more effectively. Considering the above, it is obvious that this state of affairs objectively requires bringing the interaction of law enforcement agencies with financial institutions in this area to a qualitatively new level, taking into account the foreign experience of such interaction.

Thus, D.M. Sat, G.A. Krylov, K.E. Bezverbnyi pay attention to money



laundering methods and conclude that counteracting and combating this phenomenon is complicated by the lack of proper communication between law enforcement agencies and banks, as well as specialists in this area (Sat et al., 2016). At the same time, R.A. Baranov notes that the priority areas for counteraction to money laundering are the improvement of mechanisms of interaction between banks, law enforcement agencies and specialized international organizations, and the development of the regulatory framework for such interaction, etc. (Baranov, 2018). Therefore, for Ukraine the necessity of establishing cooperation between law enforcement agencies and financial institutions in the sphere of combating money laundering is indisputable, and the study of foreign experience is timely and relevant.

Materials and Methods

The research is based on the analysis and generalization methods, as well as a formal logical method. Thus, the analysis method was used to analyze international acts that recognize the need for law enforcement agencies to interact with financial institutions against money laundering. The method of

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generalization was used in terms of studying foreign experience in the interaction between law enforcement agencies and financial institutions. One of the main methods that made it possible to formulate proposals for Ukraine in terms of improving the interaction between law enforcement agencies and financial institutions is a formal logical method.

The comparative legal method was used to clarify the features of the interaction between law enforcement agencies and financial institutions in other countries. The system-structural approach allowed determining the place of financial institutions in the system of preventing money laundering. The general scientific dialectic method was used to determine the essence of monitoring bank accounts. The analytical method identifies the reasons that influence the imperfection of the mechanism of information exchange between the interacting entities.

The scientific doctrine has repeatedly emphasized the importance of establishing cooperation between law enforcement agencies with financial institutions. This is due to the fact that laundered money is the dirty money laundered in legitimate financial systems



– directly or indirectly has a high demoralizing impact on the reputation of the international banking system, since banks have been one of the most important channels of money laundering in recent decades. Furthermore, the most widespread scheme to launder money is to make use of pecuniary institutions (banks, financial services companies). Moreover, the most common money laundering scheme is the use of a financial institution (banks, financial services companies) (Zali and Maulidi, 2018).

Results and Discussion

Money laundering, being a global crime, does considerable damage to the economy of each country and undermines its financial stability, and the problem of countering this crime is acute. Banks and other financial institutions are at the forefront of the battle against the money launderers. International society expects every bank to perform customer identification and due diligence as it is the important control measure in preventing criminals from entering into the legitimate economy (Sundarakani and Ramasamy, 2013). The role of banks in the system for prevention of money laundering is

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very important because bank employees first have information about suspicious transactions, suspicious customers which used any of schemes entering the dirty money into the financial system. Timely submission of information for suspicious transaction or suspicious activity is key element of discovery, clarifications and evidence of a crime that resulted in criminal proceeds obtained (Nikoloska and Simonovski, 2012). Therefore, in recent decades, governments, organizations and institutions worldwide have shown great interest in the phenomenon of money laundering resulting from illegal activity, especially after this phenomenon has exacerbated and complicated the schemes and methods of money laundering using the banking sector (Al-Mashhadani, 2012). The need for law enforcement to interact with financial institutions to combat money laundering has been recognized internationally.

Thus, the Declaration on the prevention of criminal use of the banking system for the purpose of money-laundering, adopted by the Basel Committee in December 1988 (Prevention of criminal use..., 1988). For the first time established international standards for combating



money laundering in the financial system and contains the basic principles and procedures to be implemented by the bank's administration to assist in the fight against money laundering, including the identification of a client's identity and cooperation with law enforcement agencies. At the same time, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, adopted on 16 May 2005, contains a section on assistance in investigation by responding to requests for banking information accounts and banking, as well as banking monitoring (Council of Europe Convention..., 2005).

Before considering the experience of other countries, let us briefly review the process of law enforcement agencies interacting with financial institutions in Ukraine in terms of information exchange and bank account monitoring. Thus, in order to solve the problem of insufficient information and analytical support of law enforcement agencies, the Ukrainian legislator gave the opportunity exclusively to the National Anti-Corruption Bureau of Ukraine to initiate the monitoring of bank accounts within

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the framework of covert investigative actions (Article 269 of the Code of Criminal Procedure of Ukraine, 2012).

The essence of bank accounts monitoring is that the bank is obliged to provide the National Anti-Corruption Bureau of Ukraine with current information on operations performed on bank accounts based on the decision of the investigating judge (term of validity should not exceed two months). Such information should be brought to the attention of the law enforcement agency prior to the execution of the respective operation, and in the case of impossibility, immediately after its execution (Code of Criminal Procedure of Ukraine, 2012). In fact, bank secrecy is revealed during the investigation. In this regard, it is important to ensure that it is not disclosed by employees who have been granted access to it in order to prevent damage to account holders being monitored.

With regard to information sharing, in Ukraine, the State Financial Monitoring Service coordinates information exchange between law enforcement agencies and financial institutions, since the service has a great amount of information on financial transactions that may be related to

money laundering from another crime. The State Service for Financial Monitoring of Ukraine receives such information from financial institutions that are the subjects of primary financial monitoring and provides it to law enforcement agencies in the form of generalized materials (additional generalized materials) as a criminal offense report and simultaneously a reason to start a pre-trial investigation (Steblianko, 2019). Therefore, this service is a kind of mediator in the exchange of information between the actors involved. At the same time, we consider the National Anti-Corruption Bureau of Ukraine, the security services, the National Police and the Prosecutor's Office, as well as the tax police divisions of the State Fiscal Service of Ukraine as law enforcement agencies within the framework of this issue. Considering the foreign experience, it is necessary first to recall the United States of America, because in this country, earlier than in others, the authorities faced the problem of money laundering and realized the need to develop measures to counter this phenomenon. Therefore, the specified country has the most extensive experience in combating money laundering.

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In the United States of America, the main investigating authority that detects, stops money laundering, identifies persons involved in laundering, and applies appropriate sanctions to them, is the Federal Bureau of Investigation. At the same time, the financial intelligence unit is FinCEN, which operates within the United States Treasury Department. Information on relevant financial transactions is provided by law enforcement agencies, at their request or on their own initiative, to the Financial Intelligence Unit. The bank may agree and provide to the law enforcement authority, upon request, additional information regarding the financial transaction that has become the object of financial monitoring. If the bank refuses to provide such information, it can be obtained by a law enforcement agency upon a court order (Kovalenko et al., 2007). In other words, FinCEN is a kind of source of information, because it facilitates the process of information exchange between the relevant entities, which, in turn, facilitates faster investigation of money laundering.

Since the United States Federal Bureau of Investigation relies heavily on BSA (Bank Secrecy Act) data, the



Bureau works closely with financial institutions to ensure open lines of communication, regularly meeting with banks, both large and small, to discuss which suspicious activity reports (SARs) were useful for the transactions and what type of data is useful for subsequent applications. The Federal Bureau of Investigation has started awareness-raising work with banks to share declassified information (D'Antuono, 2018). Italy's anti-money laundering system is based on the principles of interaction between financial, intelligence institutions and law enforcement. Thus, the Ufficio Italiano dei Cambi (UIC) is a body of the Bank of Italy that performs financial intelligence functions in close cooperation with the Financial Guard of Italy (Guardia di Finanza), which is a law enforcement agency specializing in the investigation of all economic crimes. The Financial Guard conducts investigative operations in the area of money laundering, while the functions of the financial intelligence unit are limited by information and analytical work in this area (Goryukova, 2014).

At the same time, in Italy, the financial operator of a financial institution that is suspicious of any

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 money transactions must immediately inform the general manager of the institution or its authorized representative. The manager of the institution, in turn, must inform immediately the chief of the law enforcement agency in the jurisdiction where the financial institution is located. The latter is obliged to inform the Special Branch of the Italian Financial Guard about suspicion (Shostko, 2002). French anti-money laundering and terrorist financing legislation specifies that banks have a mandatory responsibility to report any suspicions they may have about particular customers or transactions to a national financial intelligence unit – Tracfin (Favarel-Garrigues et al., 2011), which reports to the Ministry of Economy and Finance of France and the Ministry of Budget. This unit mediates the exchange of information between financial institutions and law enforcement agencies (National Gendarmerie of the French Republic, French Criminal Police).

However, the lack of personal contacts and feedback from Tracfin due to the low level of mutual trust forces financial institutions to search for ways to interact with law enforcement



agencies. Typically, such interaction is built on informal relationships on a regular basis through meetings and/or telephone contacts. Police intelligence helps to generate suspicious activity reports, while information from banks provides police investigations that are not necessarily related to money laundering. Such exchanges, which are illegal but common, reflect a form of interdependence. In addition, many banks have hired law enforcement professionals to use their knowledge and professional ties (Favarel-Garrigues et al., 2011).

In Belgium, a situation is similar to that in France, where there is no feedback between the banks and the Financial Intelligence Unit (CTIF), which is a financial intelligence unit. The provision of information is mainly in one direction: from banks to law enforcement. At the same time, police officers note that they lack information on monitoring systems and criteria used by banks (Verhage, 2017), which obviously complicates information exchange. It should be noted that not all Western countries are pursuing an active, targeted anti-money laundering policy. In particular, it concerns Switzerland, which legislation is rather liberal, and

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therefore does not oblige bank officials to inform law enforcement agencies about transactions in respect of which there is reason to believe that they are committed for money laundering. This is due to the fact that there are offshore zones in that country and, accordingly, bank secrecy is strict. The only reason for control and supervisory structures to gain access to information about an individual constituting a bank secret is a criminal case in connection with a crime committed by a client of an organization in order to conceal its income (Zolotarev, 2014).

The interaction of law enforcement agencies with financial institutions, as already noted, can also occur during the monitoring of banking operations, and is associated with a criminal investigation into money laundering. Moreover, in most cases, the legal document that authorizes law enforcement agencies to monitor bank accounts is the Code of Criminal Procedure, and its duration should not exceed the time required to collect evidence in relation to the crime. The monitoring process can be carried out either based on the internal decision of the bank or at the request of the competent authority, and is carried out



using automated systems. In most countries, bank accounts cannot be monitored at the request of institutions outside the judiciary. In some countries, the monitoring procedure is controlled and initiated only by the judicial authorities. In such cases, law enforcement agencies only carry out warrants. Thus, according to the Criminal Procedure Code of Georgia, a bank is required by the court to cooperate with the investigation and provide it with current information on transactions in one or more bank accounts. At the same time, monitoring decisions in Lithuania are made by the head of the body in writing. In an emergency, the order may be oral with subsequent written confirmation within 24 hours (The postponement of financial transactions..., 2013).

Thus, banks, as a rule, do not provide competent authorities with direct access to their system, but only send them relevant information. Direct access to the automatic monitoring system is rather the exception and is provided in Bulgaria, where a financial intelligence unit or law enforcement agency can connect to the bank software (Trydid and Oriekhova, 2014). Providing direct access to the software is

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associated with the risk of using information for purposes other than those originally planned. When other countries choose such a mechanism for the exchange of information, measures should be taken first to prevent the unauthorized disclosure of confidential information that is made available to them. For example, the introduction of limited access to systems for clearly defined groups of law enforcement officials may be such a measure. In the context of this issue, the experience of the Czech Republic and Slovenia is quite useful, where compensation mechanisms exist when the law enforcement agency issues a monitoring warrant that does not give rise to a criminal case but causes significant losses to the account holder (Trydid and Oriekhova, 2014). In this case, the compensation mechanism ensures the preservation of bank secrecy by law enforcement agencies.

It is worth noting that for Ukraine the issue of improving the interaction between law enforcement agencies and financial institutions in the field of combating money laundering is particularly relevant. The most common form of interaction between law enforcement agencies and financial institutions is the exchange of



information. At the same time, some scholars believe that the lack of information and analytical support of law enforcement agencies on information related to money laundering leads to improved information exchange (Cherniei et al., 2017). Indeed, imperfect mechanism of its exchange leads to a delay in the process of its receipt for appropriate investigative actions by law enforcement agencies, which allows persons guilty of money laundering to hide the crime and to avoid responsibility.

However, we believe that the main reasons for imperfect information exchange mechanism are certain restrictions in the law that do not allow the relevant entities to directly exchange data or prevent access to certain databases, lack of standard rules, procedures or instructions for the exchange of information. In addition, the length of time and complexity of the procedure for obtaining information, the low level of professional training of subjects authorized to exchange data, or their lack of knowledge about the mechanism of exchange, and the lack of close contacts for cooperation. As for granting the exclusive right to monitor bank accounts only to the National Anti-

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Corruption Bureau of Ukraine, O.Yu. Tatarov notes that this is not justified since other law enforcement agencies engaged in the investigation of financial and economic crimes require this covert investigative search action at the stage of the pre-trial investigation (Tatarov, 2016).

Conclusions

Thus, at the present stage of development, practical opposition to the money laundering lies in the plane of interaction between law enforcement and financial sectors. At the same time, having analyzed the foreign experience of interaction between law enforcement agencies and financial institutions, we can conclude that the interaction is most effective in the United States of America, while in Switzerland the anti-money laundering legislation is liberal due to the existence of offshore zones in this country.

It is worth noting that successful practices and excellent features of the interaction of these entities in the specified area in individual countries are characterized by:

- the feedback between law enforcement and banks;



- awareness-raising work by law enforcement officers for banks;
- building interaction on the principles of cooperation between financial, intelligence institutions and law enforcement agencies;
- informal relationships on a regular basis through meetings and/or telephone contacts;
- hiring former law enforcement officers in financial institutions in order to use the experience and contacts of the latter;
- providing direct access for law enforcement agencies to banking systems to monitor bank accounts;
- introduction of a mechanism for keeping bank secrecy by law enforcement officers that get access to it.

Of course, Ukraine cannot fully use the foreign experience in the interaction between law enforcement agencies and financial institutions in the field of combating money laundering. However, studying and adapting the implementation of certain provisions is not only possible but necessary. In particular, it is about the introduction of regular meetings of law enforcement officers with employees of financial institutions, at which the results of joint

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actions and forms of further work would be discussed, planning would be carried out to combat money laundering, etc. Moreover, it is important to establish an online exchange of information when carrying out joint steps to investigate money laundering. Equally important is the establishment of a procedure for the exchange of information that was discovered during financial monitoring or monitoring of bank accounts.

It is also advisable to conduct awareness-raising work and exchange experience between employees, because quite often law enforcement officers do not have sufficient knowledge in the field of banking, do not have knowledge about monitoring systems, which, in turn, reduces the quality of the investigation of money laundering. Law enforcement officers, in turn, could familiarize financial institution employees with the process of detecting and investigating financial and economic crimes. During monitoring of bank accounts, in exceptional cases, an oral order of the investigating judge, which would be confirmed in writing during the day, should be provided for the access of law enforcement authorities to the information necessary and urgent for the investigation. At the same time, to ensure

the protection of bank secrecy, a compensation mechanism should be provided if bank secrecy is violated.

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