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**NATIONAL BANK OF UKRAINE AS THE SUBJECT OF A STATE
FINANCIAL MONITORING**

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Summary

The article describes the certain aspects of the National Bank of Ukraine activity on prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing, as well as determine its position and role in the system of state financial monitoring.

Keywords: legalization (laundering) of proceeds from crime, the National Bank of Ukraine, financial monitoring.

Introduction. Prevention of legalization (laundering) of proceeds from crime and terrorist financing are integral parts to fight against crime, that has become especially topical today. The globalization of economic relations and the implementation of new technologies financial sector along with the development of society increase the vulnerability of the international financial system, that allows the criminals in different states to legalize illicit proceeds and financing of terrorism.

Statement of the problem. Analyzing recent publications dedicated to the topic of the Financial Monitoring of Ukraine we should mention the research works written by O. Bandurko, S. Butkevych, V. Zelenetsky, V. Krotiuk, V. Nekrasov, S. Simov'yana, V. Tymoshenko etc. However, the issue of highlighting the role and place of the National Bank of Ukraine in the system of financial monitoring has not

been studied separately, and the current research works have not yet found a good clarification of the issue.

The aim of the article is to analyze the current conditions of state financial monitoring in Ukraine.

Results of the study. In the period of the global financial crisis the share of shadow, laundering, property funds have been increased and the owners of these funds are trying to provide them with legal origin. The result is the penetration of such funds to the various sectors of the economy, including credit, financial and banking sectors and increase in the probability of such funds to be used by terrorist groups.

The problem of legalization (laundering) of proceeds from crime and terrorist financing arises globally. World and national experience shows that the most effective measure to minimize corruption is the implementation of financing monitoring.

Despite the fact that the term "financial monitoring" started to be used in the legal acts of Ukraine in the end of 2002, in the educational literature it was mentioned only in 2006 for the first time. The state strongly prevents and counteracts the introduction of the legalization of proceeds from crime in circulation and is trying to fight with the financing of terrorism or in other words take actions for the "pure" money.

The state financial monitoring is defined as a set of measures taken by entities of state financial monitoring focused to meet the requirements of the law on prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing.

According to Part 3 of the Article 4 of the Law of Ukraine «On prevention and counteraction to legalization (laundering) of proceeds from crime», the National Bank of Ukraine was included into the system of state financial monitoring, which performs control and supervision function over legal entities engaged in financial transactions [5].

The National Bank of Ukraine is the central body of Ukraine. Its legal status, objectives, functions, powers and organization principles of which are defined by the Constitution of Ukraine, the Law of Ukraine "On the National Bank of Ukraine "

dated 20.05.1999, № 679- XIV. Terrorist financing is also the real threat to the national security and it is carried out primarily via the banking system [1]. That is why the National Bank of Ukraine is one of the leading places in the national system of state financial monitoring.

The conducted analysis of the current legislation that regulates banking activities in the area of prevention and counteraction to legalization (laundering) of proceeds from crime shows that it is generally consistent with international standards, in particular those of the Financial Action Task Force on Money Laundering (FATF), the Basel standards Committee on Banking Supervision and other international legal standards. Our country is interested in organizing this process efficiently and receiving benefits not only in terms of recognition by the world community. The so-called "dirty money" causes moral losses to credit institutions and diminishes the depositors trust. What is most important is that the circulation of such funds harms the state economy. NBU does not operate directly with settlement transactions, opening of account, etc. Thus its basic functions in the system of prevention of proceeds from crime are the following:

- 1) the regulation of banks activity in order to prevent the use of the banking system for the legalization (laundering) of proceeds from crime;
- 2) monitoring of implementation by banks their functions concerning the prevention of legalization (laundering) of proceeds from crime;
- 3) sanctions for violation of the relevant requirements [6].

Defined higher responsibilities are referred to the scope of the administrative regulation of banks activity. Thus, the legal status of the National Bank of Ukraine, based on its special role involves two aspects:

- its internal (functional and regulatory) element defines the legal status of features in the management, regulation of specified object (monetized) according to bank functions, that are fulfilled in clearly defined legal forms;
- the external element of legal status as a special central government authority in the system of the state. By this element the role of the National Bank of Ukraine as a body of banking regulation and supervision is determined in the system of prevention of legalization (laundering) of proceeds from crime.

As the subject of the state financial monitoring the National Bank of Ukraine is obliged to demand to monitor the fulfilling of tasks and responsibilities stated by the law by the subjects of the primary financial monitoring. Another function of the NBU is to check the quality of organization of departments professional training for employees responsible for internal financing monitoring as well as to take the following actions stated by law:

- during the supervision to check the compliance with regulations of the law on prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing and take actions according to the law;

- to keep information received from primary reporting entities and state financial monitoring subjects and law enforcement bodies;

- to agree any regulations with the competent authority;

- to provide the authorized body with the information and documents necessary for fulfilling stated tasks (with the exception of information regarding citizens personal life).

Obviously, the basic principle of the internal programs development for financial monitoring of legalization (laundering) of the proceeds from crime is to ensure the participation of all employees, regardless of position within their competence, to identify transactions that are subject of financial monitoring and other operations with monetary funds or other property related to legalization (laundering) of proceeds from crime. In addition, these programs should be developed taking into account the need to maintain confidential internal documents of bank accounts and deposits of bank customers, the customers and their operations, and other information considering bank secrecy, exclusion of the involvement and complicity of the bank employees in the implementation of the legalization (laundering) of proceeds from crime.

The National Bank of Ukraine can take sanctions for not fulfilled requirements of the Law of Ukraine «On prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing», by the second level banking institutions in particular in the following cases:

- for not fulfilled established tasks and responsibilities of the primary subjects of the state financial monitoring;

- for failure to meet the requirements set for the compliance officer;
- for non compliance of procedure of persons identification engaged in financial transactions;
- in violation of the right to refuse from providing financial transactions that are subject to financial monitoring;
- in violation of order of providing the competent authority with information on financial transactions that are subject to financial monitoring.

Moreover, in order to prevent the use of weak sides of financial system, NBU has responsibilities to ensure implementation by banks the Basel Committee on Banking Supervision standard as well as the identification of new banking and financial technology that can be used for legalization (laundering) of proceeds from crime and terrorist financing, and measures to prevent its usage. NBU has established requirements for financial monitoring by banks approved guidelines on this matter, and sent letters with the explanation of certain articles of antilegalization law [5].

Thus, the NBU should consider the fact that nowadays there is no single risk management system acceptable to all banks as market conditions and banks internal structures are different. That's why each bank develops its own risk management system according to its needs and circumstances. Therefore, the organization of financial monitoring of NBU has to give banks the opportunity to make their own decisions whether to conduct questionnaires concerning the categories of customers that conduct operations with small amounts. According to the Law of Ukraine "On prevention and counteraction to legalization (laundering) of proceeds from crime" NBU may fine a commercial bank up to 1000 tax-free minimum incomes (based on the results of scheduled and unscheduled inspections of banks or their branches) [5]. In case of repeated violation of the requirements of the law, the National Bank of Ukraine appeals to the court with a claim about the restriction, suspension or withdrawal of the license for the banking activity or certain operations.

In addition, each year the National Bank of Ukraine and the Cabinet of Ministers of Ukraine develop and approve plans (programs) on prevention and counteraction to legalization (laundering) of proceeds. One of the aspects of inter-agency cooperation and collaboration of the National Bank of Ukraine in the field of prevention of legalization (laundering) of proceeds from crime is the conclusion and

implementation of interagency agreements about cooperation. Thus, the relevant agreement establishes that the NBU provides the State Service for Financial Monitoring of Ukraine with the directory of banks and their branches, information about provided licenses (permits), actions of violations of the laws on prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing, as well as the outcome of the information received from the State Financy Monitoring.

The exchange of information is carried out on a regular basis by providing information in electronic or paper form for consistent data and file structures [3].

From one hand, the National Bank of Ukraine, as the entity of state financial monitoring, provides regulation and control financial monitoring of banks and on the other hand, the mutual exchange of information with the State Financing Monitoring. With the aim to increase the effectiveness of such activities it is proposed to make the appropriate amendments to the Law of Ukraine "On the National Bank of Ukraine", identify the factors which NBU should consider regarding state regulation of financial monitoring and principles of programs development for banks internal financial monitoring.

The National Bank of Ukraine has the right to establish procedures for overseeing payment systems used in Ukraine, identify important categories of payment systems and their requirements, to evaluate and to audit compliance with the requirements and international standards. Hence, due to the absence of NBU permission for the activity or issue of electronic money WebMoneyTransfer in Ukraine in June 2013, the Ministry of Income and Charges of Ukraine has blocked WebMoney accounts of over 60 million hryvnias [6].

Conclusions. Government of Ukraine has developed legislation on combating money laundering, proceeds of crime. This problem, however, has not yet acquired sufficient scale and quality assessment among scientists.

Therefore, the following measures are to be taken to improve the activity of the National Bank as the financial monitoring body:

- 1) make changes to the Law of Ukraine "On the National Bank of Ukraine", namely amendments regulating the status of the National Bank of Ukraine as a subject of state financial monitoring;

2) establish an internal mode of regulation and supervision on banks and non-bank financial institutions;

3) create units with financial intelligence that will serve as a national center for the collection, analysis and dissemination of information on money-laundering;

4) implement measures for detection and control the movement of cash and appropriate negotiable instruments across the border;

5) develop a global, regional, subregional and bilateral cooperation among judicial and law enforcement bodies and agencies of financial regulation.

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Анотація

Казанський М. В. Національний Банк України як суб'єкт державного фінансового моніторингу

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У статті розглянуто окремі аспекти діяльності Національного Банку України у сфері запобігання та протидії легалізації (відмивання) доходів, одержаних злочинним шляхом і фінансуванню тероризму, а також визначені його місце та роль у системі державного фінансового моніторингу

Ключові слова: легалізація доходів, одержаних злочинним шляхом, Національний банк України, фінансовий моніторинг.

Аннотация

Казанский М.В. Национальный Банк Украины как субъект государственного финансового мониторинга

Ковальчук О.С. Национальный Банк Украины как субъект государственного финансового мониторинга

В статье рассмотрены отдельные аспекты деятельности Национального Банка Украины в сфере предотвращения и противодействия легализации (отмыванию) доходов, полученных преступным путем и финансированию терроризма, а также определены его место и роль в системе государственного финансового мониторинга

Ключевые слова: легализация доходов, полученных преступным путем, Национальный банк Украины, финансовый мониторинг.