

Financial Monitoring: an Economic and Legal Tool for Countering Terrorist Threats

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Abstract. The concept financial monitoring has been developed and substantiated as a set of measures carried out by subjects of primary and state financial monitoring in the field of prevention and counteraction to the proceeds legalization from crime, financing terrorism, separatism, and proliferation weapons in mass destruction.

The relevance categories “terrorism” and “finance” in the following areas has been determined: funds paid to terrorists for renouncing their intentions to commit violent acts; clandestine financing terrorist organizations by individual states, non-state funds, criminal groups, and legal entities; “money laundering” and their introduction into legal circulation; creation by terrorist organizations of their structures in the commercial and credit and financial spheres; cash resources obtained as a result of active criminal transactions.

The risks in the preventing manifestations system of terrorist threats and counteraction to the legalization proceeds from crime have been outlined. Such platforms are identified as: “non-transparent” financing political parties; organized crime; a significant share the specific weight of cash circulation; “outflow” capital; lack of sectoral risk primary financial assessment monitoring entities in the field of prevention and counteraction to the legalization (laundering) proceeds from crime.

Priority areas of financial investigations are identified as financing terrorism and separatism, laundering proceeds from corruption, and use cash in schemes for the legalization proceeds from crime.

It is proposed that the risk of financing terrorism and separatism through deposit transactions be attributed to banking risks.

It is proposed to supplement the Regulations on the Internal Control System Organization in Ukrainian Banks and Banking Groups, in terms of determining risk categories, with a definition “compliance risk financial monitoring” – the risk of being held legally liable, incurring financial losses and reputational losses that a depository corporation may experience due to non-compliance with the norms of current legislation and corporate ethics rules in terms fulfilling its duties as a primary financial monitoring subject.

Keywords: financial monitoring, terrorist financing, terrorist threat, financial compliance, compliance risk, legalization (laundering) proceeds, property obtained by crime, national security.

Introduction

In today’s conditions, one of the main sources of threats to the national security in Ukraine in the

field of ensuring sovereignty and territorial integrity is recognized as terrorist activities aggressor states, organizations, groups, and individuals. Such crimi-

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nal activities involve causing direct, sometimes irreversible damage to the state's national interests, civil society, and individual citizens.

Financial monitoring is an effective and efficient economic and legal tool for countering terrorist threats and challenges in modern globalization.

Further research and identification of tools to counteract such criminal acts as financing terrorism, financing proliferation mass destruction weapons, war crimes ("crimes of aggression"), crimes against humanity, genocide, ecocide, crossing the state border of Ukraine for terrorist purposes, and any other terrorist activity becomes especially relevant during the declared martial law in the country.

Literature Review

The study of theoretical issues of financial monitoring as a tool in the preventing and countering legalization field was carried out by such scientists as A. Bazyluk, O. Baranovsky, O. Balanutsa, B. Boslosky, O. Vovchak, V. Zhuravel, O. Komarov, S. Ly-sak, O. Reznikova, L. Urtaeva and other scientists.

In 2024, I. Grabchuk defended his dissertation research for Doctor of Sciences on the topic: "Development of international and national financial monitoring systems in combating terrorist financing" [1].

At the same time, the issue of a comprehensive economic and legal approach to determining the financial monitoring tools and introducing compliance into the risks of primary financial monitoring entities was considered fragmentarily or within the framework of a separate economic and legal plane, requiring further scientific research.

Purpose

The author makes an attempt to conduct an economic and legal survey of the sources and financial mechanisms and instruments for countering terrorist threats. The objective is to develop proposals for improving the system of financial monitoring measures as an economic and legal instrument for countering terrorist activities in Ukraine.

Methodology

The study is based on general philosophical and scientific methods for understanding phenomena and processes in finance, banking, and criminal law and procedure. To justify the economic and legal

instruments for combating terrorist threats through financial monitoring, the research employs methods of analysis and synthesis, deduction and induction, generalization, classification, grouping, and systematization, particularly in defining the conceptual and categorical framework.

Results and Discussion

Terrorist activity, identical to any other vector of human activity, requires for its implementation material and financial donation, assets in cash and non-cash forms, with the aim of their further use for the preparation and commission a criminal act. Countering terrorist threats involves permanent improvement of financial monitoring and prioritizing state policy in general economic and national security.

To prevent and counteract the legalization proceeds from crime, the development and justification the concept of financial monitoring is becoming relevant. One of the tools of primary financial monitoring is compliance risk, the implementation a unified algorithm for the assessment which requires further scientific and applied research (laundering proceeds from crime, financing terrorism, and financing the proliferation mass destruction weapons) [2].

The issue of developing methods for combating terrorist threats on a global scale gained particular importance after September 11, 2001, in the USA, in the context of applying preventive measures to minimize the connection between terrorist activities and "dirty" capital.

UN Security Council Resolution No. 1373 dated September 28, 2001, emphasizes the need for international cooperation between states in the context of taking measures to prevent and combat the financing terrorist acts on their territories [3].

Ukraine ratified the International Convention for the Suppression the Financing Terrorism, which states that the financing terrorism is a matter of serious concern to the international community as a whole, which necessitates the strengthening international cooperation in developing and adopting effective measures to prevent the financing terrorism, as well as combat it by prosecuting and punishing perpetrators [4].

The mission of the international organizations Financial Action Task on Money Laundering (FATF)

and the Egmont Group is to prevent and combat the use crime proceeds and the financing terrorism.

From a criminal law perspective, terrorist activity is the use of weapons, the commission of an explosion, arson, or other actions that create a danger to human life or health or cause significant property damage or other serious consequences; if such actions were committed to violate public security, intimidate the population, lead to a military conflict, international issues, or influence the situation a military conflict, international complication, or to influence decision-making or the commission or non-commitment of actions by state authorities or local self-government bodies, officials of these bodies, associations of citizens, legal entities, international organizations, or drawing public attention to certain political, religious, or other views perpetrator (terrorist), as well as the threat committing the above actions with the same purpose [5].

Financing terrorism – the provision, collection, or storage any assets directly or indirectly for their use or with the awareness the possibility that they will be used in whole or in part for any purposes by an individual terrorist or terrorist group (organization), or for the organization, preparation or commission a terrorist act, involvement in the commission a terrorist act, public calls to commit a terrorist act, creation a terrorist group (organization), assistance in the commission a terrorist act, training in terrorism, crossing the state border of Ukraine for terrorist purposes, carrying out any other terrorist activity, as well as attempts to commit such actions [5].

Legalization (laundering) property obtained by crime – acquisition, possession, use, disposal property, in respect which the factual circumstances indicate that it was obtained by crime, including the performance a financial transaction, the performance a transaction with such property, or the movement, change form (transformation) such property, or the performance actions aimed at concealing, masking the origin such property or possession there, the right to such property, its source of origin, location, if these actions are committed by a person who knew or should have known that such property was directly or indirectly, in whole or in part, obtained by crime [5].

At the same time, Article 209-1 the Criminal Code of Ukraine (as amended by the Law of Ukraine dated August 23, 2023) provides liability for intentional violation the requirements of the legislation on

preventing and countering the legalization (laundering) proceeds from crime, financing terrorism, and financing the proliferation mass destruction weapons [5].

According to the subject of our study, from the criminal procedural perspective, monitoring bank accounts is conducted as an investigative action when there is reasonable suspicion that a person is committing criminal acts to use a bank account or to search for or identify property subject to confiscation or special confiscation. In criminal proceedings under the jurisdiction the National Anti-Corruption Bureau of Ukraine or the Economic Security Bureau of Ukraine, the prosecutor may apply to the investigating judge following the procedure outlined in Articles 246, 248, and 249 of the Code of Criminal Procedure in Ukraine to request a ruling on the monitoring bank accounts [6].

Terrorist activity, from an economic and financial platform, should be considered in two aspects:

- first, strategic financing terrorist activity for the long term (propaganda of extremist ideas, attracting young people and training in terrorist methods and techniques, logistical support for terrorists, creation of camps and training bases, etc.);

- second, current financial support for committing a terrorist act by one person or a terrorist group [2].

Manifestations terrorism, as a threat to the security of the national economy, are manifested in a slowdown in economic growth and a deterioration in the investment climate in the state. Terrorism is positioned as a special insurance risk, the mechanism of which is regulated by the Terrorism Risk Insurance Act (TRIA), according to which insurance companies provide anti-terrorist coverage losses caused by an insured event, and the state acts as a solidary reinsurer.

For example, the dramatic attack on the United States in September 2001 caused macroeconomic losses of approximately \$80 billion. Despite the enormous amount, the losses were tiny (less than 0.1 percent) relative to the US GDP 2001 of \$10.6 trillion. It has also been found that 177 countries worldwide suffered from transnational terrorist attacks between 1968 and 2000, with per capita GDP growth declining by an average of 0.048 percent per year. More dire consequences have been found in

Colombia and Israel and in the Basque Country in Spain, where terrorism-related losses were much higher, with per capita GDP declining by an average 10 percent [7].

It is generally accepted that the phenomenon “terrorism” involves a financial component as one of its origins:

- in the form of clandestine financing terrorist organizations by individual states, non-state funds, criminal groups, and legal entities – for recruiting militants, purchasing weapons, ammunition, and explosives, maintaining training bases, bribing officials;

- in the process “money laundering” and their introduction into legal circulation;

- in the course terrorist organizations creating their structures in the commercial and credit and financial spheres in the form of companies, firms, banks, insurance companies, funds, etc.;

- in the form of cash previously received by terrorists during active criminal operations (banks robbery, jewellery stores, companies, and firms, as well as wealthy citizens) [2].

Researchers distinguish two main channels influence of terrorism on financial and economic results: 1) direct impact on the economy through destruction of physical and human productive capital; 2) stress resistance reduction of economic agents, an increase uncertainty threshold [7, p. 451].

It is possible to distinguish “traditional” ways criminal income legalization by terrorists using financial and financial and economic operations:

- 1) using intermediary firms, correspondent accounts through a system of mutual settlements, counter payments, other settlement obligations, and clearing settlements;

- 2) using multilateral settlements and payments with a large number participants in such operations, territorially distant from each other;

- 3) through registration false accounts in banking institutions, keeping double-entry book-keeping by a business entity, a banking institution;

- 4) by moving “converted” funds abroad through bank accounts of “fake companies”, business entities; conversion centres specially created for their legalization;

- 5) by conducting financial and economic transactions using fictitious companies;

- 6) using new technologies in the banking sector, particularly the “cyber payment” system;

- 7) temporary placement funds in bank accounts in business entities;

- 8) placement of the specified funds in small deposits on deposit accounts;

- 9) artificial fragmentation of a financial, financial, and economic transaction, significant or large sizes into several small (as a rule, fictitious), etc. [8, p. 83].

In the context countering the legalization (laundering) proceeds from crime, the financing terrorism and the financing the proliferation mass destruction weapons, the Cabinet of Ministers in Ukraine has implemented the “Strategy for the Development System for Preventing and Countering the Legalization (Laundering) Proceeds from Crime, the Financing Terrorism and the Financing the Proliferation Mass Destruction Weapons for the Period Until 2020” (currently in effect – authors) [9].

This regulatory act identifies the risks of the system for preventing and countering the legalization (laundering) proceeds from crime and the financing terrorism, the main in our opinion, are:

- low level financial and legal literacy;

- non-transparent financing political parties;

- distrust the financial system;

- a high proportion cash circulation;

- capital outflow;

- growth organized crime;

- manifestations terrorism and separatism and the ineffectiveness of measures to counter them;

- financing terrorism and separatism;

- lack of sectoral risk assessment primary financial monitoring entities in the field of prevention and counteraction to the legalization (laundering) proceeds from crime, financing terrorism, and financing the proliferation mass destruction weapons;

- financing terrorism through remote services [9].

Financing counter-terrorism measures is carried out at the macro level at the expense state and local budgets through monitoring financial contracts, strengthening control over depository corporations in terms preventing the laundering funds obtained through crime and as a result fraudulent actions, arresting bank accounts whose owners are likely to

be involved in terrorist activities; increasing the efficiency and implementation modern financial monitoring mechanisms [2].

The phenomenon terrorism, as one of the threats to the integrity the state and its financial stability, requires certain tools of supervision and influence, the dominant which is financial monitoring, which is understood as a set of measures carried out by financial monitoring entities in the field of preventing and counteracting the legalization (laundering) proceeds from crime, the financing terrorism and the financing the proliferation mass destruction weapons, which include conducting state financial monitoring and primary [10]. Conducting financial monitoring measures, by the requirements the Law of Ukraine "On Ratification the Council of Europe Convention on the Laundering, Search, Seizure and Confiscation Proceeds Crime and the Financing Terrorism" [11], is attributed to the functions the financial intelligence unit, which in Ukraine is performed by the State Financial Monitoring Service of Ukraine (the SFMS).

The State Financial Monitoring Service of Ukraine (the SFMS) conducts a comprehensive analysis suspicious financial transactions according to their risk level, based on which a dossier is formed, which indicates the probability connection, the specified transaction with the legalization (laundering) proceeds from crime, financing terrorism and financing the proliferation mass destruction weapons, or is associated with the commission of another socially dangerous act.

The priority areas of financial investigations have been determined as follows:

- financing terrorism and separatism;
- laundering proceeds from corruption;
- Cash is used in schemes to legalize proceeds from crime.

Also noteworthy is that banks are present in transactions related to financing terrorism and separatism as a "blind trust". That is fact, the risk of financing terrorism and separatism also applies to banking risks, although this is not regulated by law.

The National Bank of Ukraine identifies only nine categories of risks: credit risk, liquidity risk, interest rate risk, market risk, currency risk, operational and technological risk, reputation risk, legal risk, and strategic risk. This list should be

supplemented with compliance risk since banks are subjects of primary financial monitoring [2].

The State Financial Monitoring Service of Ukraine approved the Criteria for the Risk of Legalization (Laundering) Proceeds Crime or Financing Terrorism [9]. It defined "compliance" as the bank's compliance with legislative norms, market standards, regulations, internal documents, and procedures for organizing the financial monitoring system [10].

Compliance risk of financial monitoring is defined as the risk of legal liability or the risk applying measures influence by the National Bank of Ukraine, the occurrence financial losses, and reputational losses that the bank may suffer due to failure to ensure the proper level of compliance with all requirements laws of Ukraine, regulatory legal acts, rules, internal bank documents, and conduct rules that may be applied during the bank's performance of its duties as a subject primary financial monitoring [12].

Compliance risks are directly related to the correct organization internal business processes, in particular, to counteract the legalization funds obtained through criminal means and the financing terrorism, which is additionally one of the inspection subject within the operational risk management system [13, p. 65]. The compliance peculiarity is that it is carried out not upon the fact committing illegal actions but with the aim of their prevention.

The bank ensures the functioning risk management system for money laundering and terrorism financing by:

- 1) documenting facts that may affect the formation appropriate level of money laundering and terrorism financing risk;
- 2) taking into account the results of the assessment, monitoring, and analysis the levels of money laundering and terrorism financing risks when making decisions by the bank, as well as assessing the possible impact on the levels of money laundering/terrorism financing risks bank's decisions before making them;
- 3) taking precautionary measures [12].

So far, Ukraine does not have a single regulatory mechanism for assessing compliance risks, as all regulations only fragmentarily outline the subject, object and subject of compliance, without focusing on the methodology for assessing these

risks, although it is structural in nature and directly affects the bank's liquidity [2].

Some domestic banks still do not clearly distinguish the functions of the compliance department from the other departments activities of. A creates grounds for inefficient resource allocation in implementing compliance, threats to the independence of the compliance function, and conflicts of interest. According to the "three lines of defence" model defined by the regulatory acts of the National Bank of Ukraine, only the internal audit department provides an assessment the adequacy and effectiveness the compliance function as one of the key internal control system elements [14].

Despite the obvious expediency applying a unified approach to conducting financial compliance, deposit-taking corporations individually form their own assessment methodology and management program.

We believe that the template program for managing the compliance risk depository corporations should accumulate the following platforms:

- 1) organization the terrorist financing risk management system and the algorithm for their assessment;
- 2) a mechanism for monitoring client risks;
- 3) measures to minimize the level legalization proceeds risks obtained as a result of criminal acts, including terrorist financing;
- 4) an algorithm for monitoring compliance by agents with the identification and verification procedure;
- 5) improving the specialists competence in the compliance risk management field;
- 6) other [2].

Conclusions

Identifying financing terrorist activities channels is characterized by increased complexity. Effective countermeasures in this direction can be achieved only due to the comprehensive application capabilities the State Financial Monitoring Service of Ukraine, law enforcement agencies, and depository corporations, united by a single goal.

A scientifically sound approach to understanding the phenomenon of "financing terrorism" will help expand the set measures, to counter the financing terrorist activities and will contribute to

increasing the effectiveness fight against such a negative phenomenon.

A feature countering the financing terrorism and separatism is implementing the financial monitoring procedure. However, until now, common standards for determining the risks financing terrorism and separatism and banking risks have not been unified because the presence fact banks in transactions related to the financing terrorism and separatism as a "blind trust" is obvious. That is, de facto, the risk of financing terrorism and separatism also applies to banking risks, although this is not regulated by law.

In our opinion, it is advisable to supplement the "Regulations on the Organization the Internal Control System in Ukrainian Banks and Banking Groups" in defining risk categories terms, with the category "compliance risk of financial monitoring" as a risk was being held legally liable, incurring financial losses and reputational losses that a depository corporation may suffer due to non-compliance with the norms of current legislation and corporate ethics rules in fulfilling terms its obligations as a primary financial monitoring entity.

It is urgent to implement a unified methodology for conducting financial monitoring by primary monitoring entities, using both the current legislative framework and Directive (EU) 2018/843 the European Parliament and the Council dated May 30, 2018 "On the prevention using the financial system for money laundering or terrorist financing" [15].

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**Фінансовий моніторинг: економіко-правничий інструмент
протидії терористичним загрозам**

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Анотація. Розроблено та обґрунтовано концепцію фінансового моніторингу як сукупності заходів, які здійснюються суб'єктами первинного і державного фінансового моніторингу у сфері превенції та протидії легалізації доходів, одержаних злочинним способом, фінансуванню тероризму, сепаратизму та розповсюдженню зброї масового знищення.

Визначено дотичність категорій “тероризм” і “фінанси” у таких площинах: грошові кошти, що виплачуються терористам за відмову від намірів вчинення насильницьких дій; негласне фінансування терористичних організацій окремими державами, недержавними фондами, злочинними угрупованнями та юридичними особами; “відмивання грошей” та їх введення в легальний обіг; створення терористичними організаціями власних структур у комерційній та кредитно-фінансовій сферах; готівкові ресурси, отримані внаслідок активних злочинних операцій.

Окреслено ризики в системі запобігання проявам терористичних загроз та протидії легалізації доходів, одержаних злочинним способом. Такими платформами, зокрема, визначено: “непрозоре” фінансування політичних партій; організованої злочинності; значна частка питомої ваги обігу готівки; “відплив” капіталів; брак секторальної оцінки ризиків суб'єктів первинного фінансового моніторингу у сфері запобігання та протидії легалізації (відмивання) доходів, одержаних злочинним способом.

Пріоритетними напрямками фінансових розслідувань визначено: фінансування тероризму та сепаратизму; відмивання доходів, отриманих від корупційних діянь; використання готівки у схемах легалізації доходів, одержаних злочинним способом.

Ризик фінансування тероризму та сепаратизму опосередком депозитних операцій запропоновано зарахувати до банківських ризиків.

Запропоновано доповнити Положення про організацію системи внутрішнього контролю в банках України та банківських групах, у частині визначення категорій ризику, дефініцією “комплаєнс-ризик фінансового моніторингу” – ризику притягнення до юридичної відповідальності, виникнення фінансових збитків і репутаційних втрат, що може зазнати депозитна корпорація у зв'язку з недотриманням норм чинного законодавства і правил корпоративної етики в частині виконання нею обов'язків суб'єкта первинного фінансового моніторингу.

Ключові слова: фінансовий моніторинг, фінансування тероризму, терористична загроза, фінансовий комплаєнс, комплаєнс-ризик, легалізація (відмивання) доходів, майна, одержаних злочинним способом, національна безпека.