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Haievskiy I. – Ph.D in Law, Associate Professor,
Doctoral Student of the National Academy of
Internal Affairs, Kiev, Ukraine

RISK ASSESSMENT IN THE FIELD OF COMBATING MONEY LAUNDERING AND TERRORISM FINANCING IN UKRAINE: PROCEDURE AND OUTCOMES

The procedure of the National Risk Assessment in the field of combating money laundering and terrorism financing has studied. The results of the national risk assessment in the context of identification threats and risks have compiled.

Keywords: national risk assessment, threat, risk, money laundering, terrorism financing.

The first in the history of Ukraine National Risk Assessment on preventing and countering legalization (laundering) of the proceeds of crime and financing of terrorism (NRA) was conducted recently.

NRA was conducted pursuant to the Law of Ukraine «On Preventing and Counteraction to Legalization (Laundering) of the Proceeds from Crime, Financing of Terrorism, and the Financing of Proliferation of Weapons of Mass Destruction» [1] and joint Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine «On Approving the Procedure for National Risk Assessment on Preventing and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Financing of Terrorism, and the Financing of Proliferation of Weapons of Mass Destruction» [2].

Moreover, NRA conduction is stipulated in Action Plan for 2016 on preventing and counteraction to legalization (laundering) of the proceeds from crime, financing of terrorism, and the financing of proliferation of weapons of mass destruction [3].

A national risk assessment at the national level is the system of measures undertaken to detect (identify) risks (threats) of legalization (laundering) of the proceeds from crime and terrorist financing, analyze, assess and develop measures to prevent and/or mitigate negative consequences.

NRA outcomes – is the result of joint work of all participants of the national financial monitoring system. In particular, NRA is based on the official information received from state authorities (financial

and non-financial market regulators, law enforcement and intelligence authorities, judicial authorities, and other government agencies); private sector (reporting entities, branch associations and self-regulated organizations, experts, researchers, scientists, etc.).

Study and analysis of such phenomenon as NRA was carried out by numerous scholars and practitioners, among the most famous of whom are O. O. Glushchenko, S. O. Dmitrov, A. T. Kovalchuk, Y. V. Kotlyarevskiy, M. V. Loshytskyi, A. G. Chubenko, etc. However, given the fact that NRA conduction is a new event for Ukraine, its outcomes are subject to consolidation and systematization.

An aim of this article is to examine the procedure of NRA conduction in the fight against money laundering and financing of terrorism, consolidate its outcomes in the context of identified threats and risks.

Consequently, the organizer and coordinator of NRA conduction was the State Financial Monitoring Service of Ukraine (the SFMS) that is pursuant to the provisions of Articles 18 and 21 of the Law.

In order to prepare for NRA conduction, the SFMS organized and took part in several international workshops, conferences, meetings. This work was supported by Project Coordinator of OSCE (Organization for Security and Cooperation in Europe) in Ukraine.

At the same time, the SFMS established a Working Group of NRA conduction.

During 2015–2016 6 meetings of Working Group were held, where a number of issues, required for NRA conduction in Ukraine were solved, including:

- draft Regulation of Working Group was approved;
- timeframe for each NRA stage was defined and worked out;
- sectoral questionnaires for NRA participants were developed;
- time period for statistical data collecting was set (2013–2015);
- process of consolidation and analysis of questionnaires was provided;
- draft NRA report was approved;
- it was taken a decision on holding a seminar for participants of financial monitoring based on the results of NRA conduction.

One of the key stages of NRA conduction was the development of sectoral questionnaires, which structurally consist of diverse components that cover the study of necessary issues in the fight against money laundering and financing of terrorism.

Questionnaires were divided into components which by the completeness correspond to the content of NRA Report:

I. General component (political and institutional component, social and psychological component, economic component, legal component, criminological component).

II. FIU.

III. State and regulatory component (banking and supervisory component, component of non-bank financial institutions regulation, component of the professional stock market regulation; component of representatives of non-financial professionals regulation).

IV. Private component (banking sector, non-banking financial sector, sector of professional participants of stock market sector; sector of non-financial professions representatives).

V. Law enforcement and judicial component (law enforcement component, intelligence component, judicial component, customs component).

In November, 2015 the SFMS sent mentioned questionnaires to NRA participants, including: state financial monitoring entities (Ministry of Finance of Ukraine, National Bank of Ukraine, National Commission for State Regulation of Financial Services Markets, Securities and Stock Market National Commission, Ministry of Infrastructure of Ukraine, Ministry of Justice of Ukraine, Ministry of Economic Development and Trade of Ukraine), law enforcement agencies (Security Service of Ukraine, Prosecutor General's Office of Ukraine, Ministry of Internal Affairs of Ukraine, National Anti-Corruption Bureau of Ukraine, State Fiscal Service of Ukraine), intelligence agencies (Main Department of Intelligence of Ministry of Defence of Ukraine, Foreign Intelligence Service of Ukraine, Administration of State Border Service of Ukraine), other state authorities (State Statistics Service of Ukraine, Ministry of Foreign Affairs of Ukraine, State Regulatory Service of Ukraine, Ministry of Social Policy of Ukraine, State Judicial Administration of Ukraine, Supreme Court Ukraine) and NGOs (Federation of Trade Unions of Ukraine, Ukrainian public organization «Sociological Association of Ukraine»).

In addition, questionnaires were sent to reporting entities for providing information within their competence.

After receiving information from respondents, the SFMS ensured its consolidation and systematization. Its result was NRA Report, which was originally approved by the Council on the prevention and counteraction to legalization (laundering) of the proceeds from crime,

financing of terrorism and the financing of proliferation of weapons of mass destruction [4] and then approved and promulgated on the SFMS official website [5].

NRA Report can be found on the SFMS official website [6].

Following processing of information, provided by participants of AML/CFT system, it can be stressed internal and external threats in AML/CFT area.

External threats – threats, which can cover any events on financial markets or in the economy. External threats emerge outside of the system and confronting these threats is not possible only through the efforts of participants of the national system of financial monitoring. These include:

- political instability;
- high corruption level;
- high level of the shadow financial system;
- unstable security situation in the country;

Internal threats – threats that can cover events related to the functioning of the system of financial monitoring.

Internal threats emerge with in the anti-money laundering/financing of terrorism system and confronting these threats is possible through own efforts of participants of the national system of financial monitoring. These threats include:

- insufficient level of training of the AML/CFT system participants;
- insufficient regulatory and legal support of the financial monitoring system;
- insufficient efficiency of the FIU activities;
- low efficiency of the anti-legalization process;
- insufficient regulation and supervision of the primary financial monitoring subjects' activities in the AML/CFT area;
- inefficient investigation of ML and predicate crimes;
- inefficient court review of the ML/FT cases;
- use of innovative technologies for ML/FT;
- non-detection of suspicious financial transactions;
- use of DNFBP for ML/FT;
- ML/FT through non-profit organizations.

The analysis is a key step in NRA process. This includes determining the nature, sources, probability and consequences of defined threats and vulnerabilities.

The purpose of this step is to achieve a holistic understanding of each risk, which consists of a combination of threats, vulnerabilities and

consequences, so that in the future they can be given them some relative value.

During risk analysis it shall be taken into account relevant nature and sources of risks relating to the general situation and conditions of the country, in the broadest sense, which influence on the development of risks. Such factors include various aspects and features, as well as other factors that shape the structure and the specific circumstances of existence of risks.

Analysis of the probability is in determining the likelihood of implementation of possible risk, excluding the existing measures taken at the moment to prevent or mitigate such risk.

The probability should be defined and assigned to one of the following categories:

unlikely (chances to implement risk are not actually present, but it can not be claimed that they do not exist);

possible (there are chances to implement risk, but there is no probability to implement risk in certain circumstances);

likely (there is the probability to implement risk in certain circumstances, but the frequency of its implementation is low);

very likely (probability to implement risk in certain circumstances and frequency of its implementation are high).

Therefore, NRA determined fifteen threats to the national system of financial monitoring (by components):

1. General component
 - 1.1. Political instability
 - 1.2. High corruption level
 - 1.3. High level of the shadow financial system
 - 1.4. Insufficient regulatory and legal support of the financial monitoring system
 - 1.5. Unstable security situation in the country
 - 1.6. Insufficient level of training of the AML/CFT system participants
2. Government Component
 - 2.1. Insufficient efficiency of the FIU activities
 - 2.2. Low efficiency of the anti-legalization process
 - 2.3. Insufficient regulation and supervision of the primary financial monitoring subjects' activities in the AML/CFT area
 - 2.4. Inefficient investigation of ML and predicate crimes
 - 2.5. Inefficient court review of the ML/FT cases
3. Private Component

- 3.1. Use of innovative technologies for ML/FT
- 3.2. Non-detection of suspicious financial transactions
- 3.3. Use of DNFBP for ML/FT
- 3.4. ML/FT through non-profit organizations

In accordance with the identified AML/CFT system threats, 36 risks were determined (table). Identified risks are ranged by the values «high», «substantial», «moderate», «low».

Table

Risks to AML/CFT system in Ukraine

| № | Risk | Risk level reduction |
|-----|---|----------------------|
| 1. | Low level of population income | High |
| 2. | Insufficient material and technical support of the FIU | High |
| 3. | Low salary of the FIU staff | High |
| 4. | Low level of confidence in the financial system | High |
| 5. | Outdated (inefficient) suspicious financial transaction information analysis system | High |
| 6. | Inefficient system of investigation of materials by the FIU | High |
| 7. | Inconsistency of the punishment and the severity of the ML/FT crimes | High |
| 8. | Absence of legal regulation of the activities of some NFBP representatives | High |
| 9. | Acts of terrorism and separatism | High |
| 10. | Progressing of the political risk and political instability | Substantial |
| 11. | Inadequate identification and sanctioning of suspicious financial transactions of the national publicly exposed persons | Substantial |
| 12. | Inefficient measures to identify end beneficiary owners (controllers) and establish control over them | Substantial |
| 13. | Inappropriate identification and inappropriate elimination of the factors which contribute to the growing size of the shadow and off-shore financial system | Substantial |
| 14. | High level of cash circulation | Substantial |
| 15. | Outflow of the financial capital from the country | Substantial |
| 16. | Inefficiently efficient actions by competent authorities to counter financing of terrorism and separatism | Substantial |
| 17. | Non-compliance of the SFMSU Training and Methodical Center organizational and legal form with the requirements of the Law | Substantial |
| 18. | Insufficient interaction between the law enforcement authorities and the FIU | Substantial |

Completion of table

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|-----|---|-------------|
| 19. | Inefficient sanctions for violation of the AML/CFT-related legislation | Substantial |
| 20. | Inefficient investigation of ML crimes | Substantial |
| 21. | Inefficient investigation of organized crime | Substantial |
| 22. | Inefficient investigation of tax crimes | Substantial |
| 23. | Inefficient investigation of ML predicate crimes | Substantial |
| 24. | NFBP failure to provide information on suspicious financial transactions | Substantial |
| 25. | Use of non-profit organizations for ML/FT | Substantial |
| 26. | Growing organized crime | Substantial |
| 27. | Insufficient staff and resources for efficient supervision | Substantial |
| 28. | Inefficient investigation of terrorist crimes | Substantial |
| 29. | ML/FT through remote services | Substantial |
| 30. | Insufficient level of understanding of the ML/FT risks | Substantial |
| 31. | Impossibility to check the client-provided information by the NFBP representatives | Substantial |
| 32. | Inefficient system of initial detection of suspicious financial transactions | Moderate |
| 33. | Non-transparent funding of political parties | Moderate |
| 34. | Insufficient level of training of the AML/CFT system participants | Moderate |
| 35. | Lack of the PFMS sectoral risk assessment in the AML/CFT sphere | Moderate |
| 36. | ML/FT through gambling business | Moderate |
| 37. | Incomplete implementation in the national legislation of the provisions of Directive EU 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing | Low |

NRA outcomes show that state authorities are properly aware of risks, developed action plan on risks management and are taking measures for their mitigation. This is an extremely important element of the objective instead of subjective assessment.

Now, all the efforts of financial monitoring participants should focus on the implementation of Action plan to mitigate identified risks and to establish an effective system of preventing and combating money laundering and financing of terrorism.

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