FUNCTIONS OF THE FINANCIAL INTELLIGENCE (MONITORING) FROM THE CRIMINAL LEGAL PERSPECTIVE

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Abstract. Given the level of economic crime and the growth of money laundering, the issue of conducting a comprehensive analysis of financial intelligence (monitoring) is relevant. It is one of the effective mechanisms in combating the legalization of so-called criminal proceeds. In the article, the authors focused on the main functions of financial intelligence (monitoring). The primary and essential directions of its influence on social phenomena and theoretical and practical purpose directions were determined. Financial intelligence (monitoring) should be seen in the context of its affiliation as one of the elements of the public duty of the state, which plays a leading role in combating the legalization of the proceeds of crime. The authors emphasized that the International Standards for Combating Money Laundering and Terrorist Financing, developed by the Financial Action Task Force on Money Laundering (FATF), provide a set of measures and procedures to identify financial transactions related to money laundering, and which are entrusted to the financial sector of each country. The authors agree with the position that all procedures and methods of financial intelligence (monitoring) are to some extent reduced to solving three functional tasks or performing three main functions: identification of participants in the financial transaction; recording information about suspected transactions and their participants; informing the specially authorized body about suspicious transactions. However, the authors also classified and identified the following functions of financial intelligence (monitoring): (1) information-analytical; (2) preventive; (3) law enforcement; and (4) stabilization (mobilizing).

Keywords: shadow economy; financial system; financial intelligence (monitoring); financial intelligence (monitoring) functions, economic crime, money laundering.
INTRODUCTION

The crime rate, including economic crime, tends to increase. The same disappointing position is maintained concerning indicators of money laundering. Such destructive phenomena are, to some extent, due to the general deterioration of the criminogenic situation in the country. One of the effective mechanisms to counter the legalization of so-called criminal proceeds is financial monitoring, which dates back to the development of Ukraine as an independent, sovereign, and legal state. Regardless of how much time has passed, financial legislation is currently in the process of its formation and active development, or rather – the reform.

Changes are constantly being made, and new normative acts are being adopted, which confirms the state’s efforts to carry out real, and not only formal, prevention and counteraction to the legalization of proceeds from crime. In particular, the Law of Ukraine, which regulates the issue of financial monitoring – “On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction” (2020). This Law aims to protect the rights and legitimate interests of citizens, society, and the state, ensuring national security by defining a legal mechanism for preventing and counteracting the legalization (laundering) of criminal proceeds, terrorist financing, and financing proliferation of weapons of mass destruction.

The last changes were made on March 17, 2022, in connection with the entry into force of the Law of Ukraine “On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on applying norms for the period of martial arts law” from 15.03.2022 № 2120-IX. The provisions of the Law, among other things, remove specific administrative barriers to financial monitoring during wartime and establish certain rules for the functioning of the financial monitoring system in wartime. Defining the functions of financial intelligence (monitoring), in general, is being raised.

MATERIALS AND METHODS

This research methodology includes system and structural methods that help analyze the theoretical, organizational, and legal bases of financial intelligence (monitoring) in general and its functions. The application of this method allowed to systematize the introductory provisions on financial intelligence (monitoring). The system-structural method was used, combined with the method of terminological analysis and operationalization of concepts.

The authors use the doctrinal legal research approach to analyze and describe the legislation connected to financial intelligence (monitoring) and the latest amendments. To identify functions” and “financial intelligence (monitoring) functions” essence, the peculiarities of the scientific community views on the given definitions, the authors use the method of terminological analysis and concepts operationalization.

The method of analysis and synthesis in their systemic combination and the ascent from the abstract to the concrete were directly used to determine the impact of money laundering on the financial and economic security of Ukraine in the context of globalization.

RESULTS AND DISCUSSION

Given the global nature of the problem of money laundering and one of the biggest
economic threats – the shadow economy, we note that they significantly impede the economic development of the country as a whole and improve living standards in particular. In this context, it is vital to study the impact of financial intelligence (monitoring) on the shadow economy to find ways to increase its effectiveness in de-shadowing the banking sector (Bukhtiyarova, Tetereva, 2019). The functioning of financial and economic activities is closely linked to the constant response and appropriate adaptation to changes in the internal and external environment.

The International Standards for Combating Money Laundering and Terrorist Financing, developed by the Financial Action Task Force on Money Laundering (FATF), provide a set of measures and procedures to identify financial transactions related to money laundering, which are assigned to the financial sector of each country (The FATF Recommendations, 2012). To this end, the National Bank of Ukraine carries out financial intelligence (monitoring) to prevent the use of the banking system of Ukraine to legalize proceeds from crime. In general, financial intelligence (monitoring) is a rather complex and complex phenomenon, which is detecting illicit proceeds and preventing the financing of terrorism.

In this context, we support the position of V. Pershyn, who aptly emphasizes that every state in the world must build a financial system so that the latter is responsible for the implementation of a set of components of the system. In particular: ensuring the proper functioning of money circulation; the optimal number of goods produced and services provided within the country with the number of banknotes issued to control inflation; positioning the domestic currency as a reliable means of current payments and long-term investments, and meeting household needs. The scientist proposes to include the number of wages, procurement at public expense, etc. (Pershyn, 2017).

Thus, we can determine that the primary purpose of financial intelligence (monitoring) is to promote the successful implementation of the state’s fiscal policy, ensuring the process of effective formation, distribution, and use of financial resources in all parts and spheres of the economy. In turn, the state’s financial policy is a set of measures for financial activities for a specific, purposeful influence of the form on the development of the financial system and the national economy as a whole. In our opinion, there is a clear relationship between financial intelligence (monitoring) and the implementation and implementation of the state’s fiscal policy, which aims to ensure the effective functioning and creation of an effective financial system of the state as a whole. In the context of budgetary policy implementation, it impacts society’s economic and social development, as the search for the optimal model of formation, distribution, and use of financial resources is one of its priorities.

Thus, financial intelligence (monitoring) should be positioned as one of the elements of the public duty of the state. It is a mechanism, a system of interacting structures (entities), the fundamental purpose of which is the observation and detection of suspicious or suspicious financial transactions; comprehensive analysis of the received information, and certain conclusions, the consequence of which is the adoption of particular preventive or terminating procedural actions.

Considering the issues of financial intelligence (monitoring) functions, it should be emphasized that according to its characteristics, financial intelligence (monitoring) can be positioned as a specific management function and be interconnected with other
management functions. However, it should be noted that a kind of scientific vacuum in the study of the essence of financial intelligence functions (monitoring). Monitoring in general, not just financial, is closely linked to the control process. In some ways, some members of the scientific community believe that it is its form and is a kind of informative foundation, which is formed through a system of continuous constant:

1. observation;
2. information gathering;
3. accumulation of information;
4. analysis and observation of any process, phenomenon, state.

In general, before defining financial intelligence functions (monitoring), it is necessary to define “function”. In particular:

- encyclopedic dictionary of public administration defines the category of “function” as (Latin functio – activity, performance) – has become a set of homogeneous specialized works (actions, operations), the ability to implement which is supported in the organization, duty (sometimes – capacity) operator technical object or person) to perform any operation (Encyclopedic dictionary of public administration, 2010);

- legal science interprets the concept of “function” as the social role of the state and law, the direction of influence on society (Makeyeva, 2019).

It should be noted that different doctrinal sources contain different interpretations of the concept of “function”. In our opinion, this is due to the variety of meanings, contents, and properties that are directly taken into account. We also state that there is a pluralism of scientific views on the definition of “function” depending on the scope, area, objects, and subjects: “functions of law”, “functions of a particular branch of law”, “functions of public authorities”, “management functions” “Functions of administration”, “functions of legal process “, “functions of administration “, “functions of state regulation “, “functions of public administration “, “functions of public administration “, “functions of control “, etc.

In general, financial intelligence (monitoring) functions provide the economic, legal, political, and social spheres of society, which is carried out to achieve the public interest. Turning to the consideration of specific functions of financial intelligence (monitoring), based on the most common research and scientific papers in various spheres of public life, we can highlight the following:

1. information-analytical; (or separately informational and analytical);
2. preventive;
3. law enforcement and
4. stabilizing (mobilizing).

The information-analytical function of financial intelligence (monitoring) has one the fundamental values. It consists of obtaining information as a result of financial intelligence (monitoring), particularly about the consequences of managerial influence. As a result, it serves as a basis for making appropriate management decisions and taking specific actions that will ensure the effectiveness of the financial policy. However, before that, the above information needs to be carefully and thoroughly studied and processed to make the necessary decisions to ensure the implementation of the purpose and objectives of financial intelligence (monitoring). Also, in our opinion, it is expedient to include information
exchange between the subjects of financial intelligence (monitoring) in the context of suspicious transactions.

The preventive function is to prevent the subjects of financial intelligence (monitoring) of illegal business and financial transactions legalization of proceeds from crime.

The law enforcement function provides for financial intelligence (monitoring) because of the expediency of the formation, distribution, and use of funds and the legality of the relevant economic and financial transactions.

The essence of the stabilizing function is that financial intelligence (monitoring) serves to improve economic and financial activities, taking measures to identify internal reserves of production to increase financial resources.

In turn, I. Rekunenko defines a slightly larger number of financial intelligence (monitoring) functions with their ranking. In particular, the researcher emphasizes that the main functions characterize financial intelligence (monitoring):

(1) regulatory (organizational and managerial) – based on existing legislation provides for the definition of the system and procedure for monitoring, its performers, their tasks, responsibilities, forms, and means of financial supervision;

(2) control and supervision – is implemented through the identification and study of the client who carries out the financial transaction, verification of its activities, comparison with them of the objects of transactions in respect of which financial intelligence (monitoring) is carried out;

(3) operational-analytical – includes analysis of the content of the financial transaction and the probability of risk of money laundering;

(4) information, which consists of the exchange of information between the subjects of state and primary financial intelligence (monitoring) of suspicious transactions;

(5) preventive – is to prevent the subjects of state and primary financial intelligence (monitoring) of money laundering (Rekunenko et al., 2020).

In our opinion, such functions of financial intelligence (monitoring) are clearly defined and identified with specific parts of the subjects of financial intelligence (monitoring).

We also need to focus again on the FATF recommendations. In particular, they clearly state that all procedures and methods of financial intelligence (monitoring) are reduced to solving three functional tasks or functions:

(1) identification of participants in the financial transaction – recording information about suspicious transactions and their participants – informing the specially authorized body about suspicious transactions;

(2) recording information on suspected transactions;

(3) informing the specially authorized body of suspicious transactions.

In general, in our opinion, the functions of financial intelligence (monitoring) follow its system’s definition – a set of methods of analysis, control, and forecasting aimed at achieving financial stability as an individual entity and the financial sector in general.

CONCLUSIONS

Summarizing the above, financial intelligence functions (monitoring) are closely interrelated, as they serve the set purpose and are aimed at fulfilling the set tasks. In
particular, it was determined that the main functions of financial intelligence (monitoring) are information and analytical; (or separately informational and analytical), preventive, law enforcement, and stabilization (mobilizing). However, in our opinion, financial intelligence (monitoring) is fully characterized by streamlining (organizational and managerial), control and supervision, operational and analytical, and informational and preventive functions.

REFERENCES


