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ANALYSIS OF THE PUBLIC REGULATION ISSUES IN IMPLEMENTING MECHANISMS TO FIGHT MONEY LAUNDERING: INTERNATIONAL AND DOMESTIC EXPERIENCES

Abstract. The article analyses the main stages of the state regulation formation processes that counteract the laundering of funds obtained by criminal means. In 1970, the United States of America (US) started the active fight against the laundering of “dirty” funds. It is proved that the US has the richest experience in counteracting the legalisation (laundering) of the proceeds of crime. In fact, state mechanisms to combat the legalisation of criminal incomes have been established long before the first Anti-Money Laundering (AML) legislations were adopted. The conducted analysis allowed this article to distinguish four key stages of money laundering: The emergence of activities related to laundering of criminal proceeds; Broad money laundering activities of organised crime; the emergence of the concept of “money laundering”; legislative regulation of this problem.

The analysis of the legislation of foreign countries made it possible to identify problematic issues of a national character, that the effectiveness of counteraction to this dangerous phenomenon depends on their solution. In turn, it outlines

a number of measures that should contribute to this: exchange of foreign currency should be carried out in accordance with clear rules; an electronic money transfer archive must be created; creation of mechanisms for monitoring compliance with international accounting standards; constant exchange of information between special units; continuous updating of information and carrying out of special researches on “money laundering”; adoption of international and national legal acts; creation and implementation of international anti-money laundering programs; introduction of obligations to transfer information to special bodies; strict adherence by individual countries of international standards in the area of combating money laundering; creation and expansion of training programs for the relevant banking professionals, law enforcement agencies, etc.; disclosure of information on the “black” list of countries that indulge in “laundering” of money in their territory.

It was emphasized that the issue of control in executive bodies existed and exists in all countries, but has different ways of resolving it. This requires the formation of a new understanding of the system of state financial control, as well as a rethinking of the forms of its implementation, in modern conditions.

Keywords: development analysis, state regulation of anti-money laundering, United States of America, legislative regulation.

ЕВОЛЮЦІЙНИЙ АНАЛІЗ ПРОБЛЕМАТИКИ ДЕРЖАВНОГО РЕГУЛЮВАННЯ ПРОТИДІЇ ВІДМИВАННЮ КОШТІВ: МІЖНАРОДНИЙ ТА ВІТЧИЗНЯНИЙ ДОСВІДИ

Анотація. У статті проаналізовано основні етапи, процеси формування державного регулювання протидії відмиванню коштів, отриманих злочинним шляхом. Доведено, що найбагатший досвід у протидії легалізації (відмивання) доходів, одержаних злочинним шляхом, мають Сполучені Штати Америки, оскільки, в 1970 р., саме в цій країні почалися історичні витoki активної боротьби з відмиванням “брудних” коштів. Дійдено висновку, що, фактично, становлення державних механізмів у сфері протидії легалізації злочинних доходів почалося задовго до її криміналізації та ухвалення перших нормативних актів, спрямованих на боротьбу з нею. Проведений еволюційний аналіз дав можливість виділити чотири ключові етапи генези відмивання коштів: виникнення дій, пов’язаних із відмиванням злочинних доходів; широке використання організованою злочинністю зазначених дій; виникнення поняття “відмивання грошей”; законодавче регулювання цієї проблеми.

Проведений аналіз законодавства зарубіжних країн дав змогу виявити проблемні питання національного характеру, що від їх вирішення залежить дієвість протидії цьому небезпечному явищу. У свою чергу окреслено ряд заходів, що мають сприяти цьому: обмін іноземної валюти повинен здійснюватись за чіткими правилами; має бути створений електронний архів міжнародних грошових переказів; створення механізмів контролю за дотри-

манням міжнародних стандартів бухгалтерського обліку; постійний обмін інформацією між спеціальними підрозділами; постійне оновлення інформації та проведення спеціальних досліджень щодо “відмивання” грошей; прийняття міжнародних і національних нормативно-правових актів; створення та реалізація міжнародних програм протидії “відмиванню” грошей; запровадження зобов’язань щодо передачі інформації спеціальним органам; чітке дотримання окремими країнами міжнародних стандартів у сфері боротьби з “відмиванням” грошей; створення та розширення програми навчання відповідних фахівців банківської сфери, правоохоронних органів тощо; оприлюднення інформації щодо “чорного” списку країн, які потурають “відмиванню” грошей на своїй території.

Підкреслено, що проблема здійснення контролю в органах виконавчої влади існувала та існує в усіх країнах, але має різні способи її вирішення. Це вимагає формування нового розуміння системи державного фінансового контролю, а також переосмислення форм його реалізації в сучасних умовах.

Ключові слова: еволюційний аналіз, державне регулювання протидії відмиванню коштів, Сполучені Штати Америки, законодавче регулювання.

ЭВОЛЮЦИОННЫЙ АНАЛИЗ ПРОБЛЕМАТИКИ ГОСУДАРСТВЕННОГО РЕГУЛИРОВАНИЯ ПРОТИВОДЕЙСТВИЮ ОТМЫВАНИЯ СРЕДСТВ: МЕЖДУНАРОДНЫЙ И ОТЕЧЕСТВЕННЫЙ ОПЫТЫ

Аннотация. В статье проведен анализ основных этапов, процессов формирования государственного регулирования противодействию отмыванию средств, полученных преступным путем. Доказано, что самый богатый опыт в противодействии легализации (отмыванию) доходов, полученных преступным путем, имеют Соединенные Штаты Америки, поскольку, в 1970 г., именно в этой стране начались исторические истоки активной борьбы с отмыванием “грязных” денег. Сделан вывод, что, фактически, становление государственных механизмов в сфере противодействия легализации преступных доходов началось задолго до ее криминализации и принятия первых нормативных актов, направленных на борьбу с ней. Проведенный эволюционный анализ позволил выделить четыре ключевые этапы генезиса отмывания средств: возникновение действий, связанных с отмыванием преступных доходов; широкое использование организованной преступностью указанных действий; возникновение понятия “отмывание денег”; законодательное регулирование этой проблемы.

Проведенный анализ законодательства зарубежных стран позволил выявить проблемные вопросы национального характера, от их решения зависит действенность противодействия этому опасному явлению. В свою очередь, определен ряд мер, которые должны способствовать этому: обмен иностранной валюты должен осуществляться по четким правилам; должен

быть создан электронный архив международных денежных переводов; создание механизмов контроля за соблюдением международных стандартов бухгалтерского учета; постоянный обмен информацией между специальными подразделениями; постоянное обновление информации и проведение специальных исследований по “отмыванию” денег; принятие международных и национальных нормативно-правовых актов; создание и реализация международных программ противодействия “отмыванию” денег; введение обязательств по передаче информации специальным органам; четкое соблюдение отдельными странами международных стандартов в сфере борьбы с “отмыванием” денег; создание и расширение программы обучения соответствующих специалистов банковской сферы, правоохранительных органов и т. д.; обнародование информации относительно “черного” списка стран, которые попускают “отмыванию” денег на своей территории.

Подчеркнуто, что проблема осуществления контроля в органах исполнительной власти существовала и существует во всех странах, но имеет разные способы ее решения. Это требует формирования нового понимания системы государственного финансового контроля, а также переосмысления форм его реализации в современных условиях.

Ключевые слова: эволюционный анализ, государственное регулирование противодействия отмыванию средств, Соединенные Штаты Америки, законодательное регулирование.

Problem statement. An indispensable component of the fight against corruption and money laundering is the government’s establishment of a national plan, as the “crime trap” constitutes a serious problem at the administrative level and affects most of the spheres of life of the society. This plan should aim at ensuring national security, the effective realisation of national interests, and creating appropriate conditions for the development of a human and civil society under the rule of law. Money laundering schemes are constantly being improved, which requires updating of relevant knowledge of state authorities in order to optimise the state regulation.

Analysis of recent researches and publications. Many works, of both foreign and domestic scholars, are de-

voted to the issues regarding the withdrawal from the shadow economy. In particular, the theoretical and applied foundations of the research conducted concerning shadow economies are covered in L. Babii, O. Vashchenko, O. Hryshchenko, M. Koldovskiy, M. Osipchuk, and others. Analysing the work of these scholars led to the conclusion that this issue has not received due attention in the field of public administration science in the Ukraine yet.

The purpose of the study is to analyse the issues of state regulation of the counteraction and prevention of money laundering, both in foreign countries and in the Ukraine.

Presentation of the main material. It is quite difficult to determine when the phenomenon of legalisation (laun-

dering) of money received in a criminal way appeared in the world.

Some scholars believe that its story began thousands of years ago. The author of the *Lords of the Rim* Stirling Segraw reflects, as merchants hid their wealth from the rulers, because they could take away its accumulation, and get rid of the merchant itself in China, about 2000 years before our era [1].

Some scholarly sources state that the process of formation and development of state mechanisms in the area of prevention and counteraction to money laundering from the criminal act dates back to the medieval states where the usurpation was banned by the Catholic Church under penalty of punishment. In order to conceal the true source of their income, traders had to use different ways to give them legality, which was very similar to money laundering schemes.

The signs of money laundering can be traced back to the Middle Ages. For example, in 1179 the church officially banned usury from Christians [2]. By the way, in general, interest was condemned by 17 Roman Popes and 28 cathedrals, including 6 Ecumenical Councils. In Europe, however, mishandling, though despised, existed. First, foreigners not belonging to the Christian religion were not subject to the general rule of interest rates and therefore continued their actions. Secondly, the prohibitions imposed were treated in different ways: interest was attributed to capital duty; the creditor was considered a participant in income, and so on. For example, Italian bankers and traders entered into an agreement to provide an interest-free loan, which subsequently was returned in a mo-

netary equivalent but in another state, and the difference was calculated in such a way as to include interest on the loan. In 1163 was convicted of a practice by the Cathedral in Tours where the priest was borrowed without interest, however, he demanded for himself, as a pledge, the property of the person who gave the loan and levied property income, which was, in fact, a hidden interest payment.

The golden age of piracy cannot but attract attention. The pirates maintained close ties with merchants and traders, who in fact supported the pirate captains and helped them to sell the looted property, getting a portion of their income. For example, in 1696 a well-known pirate Thomas Twe arrived in New York with property worth £ 8,000. Its share amounted to 1,2 thousand pounds, and the rest belonged to its shareholders as traders [3].

In 1920, in the United States, as is known, in the form of the 18th Amendment to the Constitution of the United States, came into force the so-called dry law, adopted by Congress in 1917. According to this Law, the production, sale and transportation, as well as the import and export of alcoholic beverages were prohibited. In fact, there was an attempt to consolidate, with the help of criminal law, the moral features of certain, so to speak, Puritan groups of American society, who considered alcohol to be the cause of all misfortunes. In practice, the implementation of the 'dry law' received a strong opposition to the middle class, since its representatives were, to a large extent, involved in the circulation of alcoholic beverages. As a result, the said law had the opposite result expected: it led to an increase

in crime, the formation of organized crime.

Alcohol business has suffered significant losses. This has led to the emergence and widespread of the shadow production of alcoholic beverages and their smuggling. On the 'black' market, alcohol was sold at extremely high prices. Many criminal organizations have emerged very quickly, whose revenues were related to smuggling and illegal trade in alcoholic beverages. The founding of this criminal business is sometimes attributed to the American gangster Al Capone. However, the money laundering of Al Capone and his criminal empire was limited, by its nature, carried out without taking into account the laws of the financial market, public administration and legislation. This was a mistake that ultimately led to the attribution of this infamous subject to criminal liability, according to the results of an investigation conducted by the staff of the US Internal Revenue Service.

The first ideologist in the criminal case of money laundering is Meyer Lansky, who, due to his criminal talent, was the head of the non-Italian origin of the world's largest 'syndicate' of the Mafia as the only one in history. M. Lansky, who used the advantages of numerical bills in Swiss banks, offshore jurisdictions of gambling business.

The relations of wastefulness are originally regulated in the Muslim states. In general, the Quran banned such relationships, so they masked a loan agreement that allegedly was not a means of enriching the lender (dai). Dai provides his belongings, or money, at the disposal of the maidun (debtor),

for the purpose of unselfish help and a noble cause [4, p. 16].

Formation of state mechanisms for combating legalization (laundering) of proceeds from crime, in their present form, began at the beginning of the 20th century.

In the 20–30's of the 20th century, a system of measures was introduced in the United States aimed at detecting lawful use of cash, money received as a result of the illicit manufacture and sale of alcoholic beverages, by law enforcement agencies. Another reason for the introduction of such a system of state regulation were numerous crimes of Mayer Lansky, who, using the advantages of number accounts in Swiss banks, turned into money laundered illegal amounts received from gambling business.

In the 50's of the 20th century, Lansky, who was concerned about arrests of gangsters for non-payment of taxes, bought one of the Swiss banks, who was laundering money in it, according to the following pattern: the cash received by Lansky as income from the gambling business in Havana, he invested in Miami banks, and then, through operations, cash was transferred to Switzerland, and the laws of this country protected these assets from investigations by American law enforcement and tax authorities [5, p. 24].

Solving money laundering problems has also been linked to the creation of the FATF in 1989. Thus, in 1912, on the eve of the First World War, an international convention on opium trade was signed and, in 1931, this Convention was replaced by a new convention that limited and regulated the production and distribution of plan-

etary drugs containing narcotic substances.

After the Second World War, the United Nations has taken the initiative to combat the spread of drugs and the laundering of dirty money. The first step in solving this problem is the creation of the United Nations Single Convention on Narcotic Drugs of 1953, subsequently supplemented and amended by the 1972 Protocol.

The Annex has considerably expanded the list of deceptive measures subject to prohibition. These, along with opium and its derivatives, included synthetic substances, cocaine products and Indian hemp. The next step was the adoption of the 1971 UN Convention on Psychotropic Resources, which expanded the scope of international control to a large list of synthetic drugs. This document has been ratified by more than 140 states. In 1988, the Vienna Convention was adopted by the United Nations with the development of criminal business, which in fact declared 'money laundering' an international crime (this convention was ratified by Ukraine on November 27, 1991). In addition to the recognition of money laundering as an international crime, the Convention demanded that countries ratifying the introduction of legislation on the extradition of perpetrators of such an offense, as well as the confiscation of property of criminals.

Further history is related to the search for effective ways to combat money laundering. In the late 1960s, the US government was concerned with the use of secret bank accounts of American citizens involved in illegal activities. Such accounts were used for various purposes: tax evasion; violation

of the rules of domestic gold trading; placing illegally received money; transfer of money received illegally, through a loan of laundered money.

The prerequisites for the spread of shadowing of economic relations have arisen even during the former USSR in Ukraine. Especially the accumulation of shadow capital was rapid over the years of so-called restructuring (1985–1991). The administrative-planning economic system of public administration existing in the Soviet Union has led to the fact that payments between individuals and legal entities, for the most part, were made in cash.

The beginning of the 1990s, in the post-Soviet states, due to the fall in the volume of gross domestic product, was affected by the negative growth of economic indicators. Particularly, small and medium businesses were represented by individuals as entrepreneurs, income tax payers, who at that time had a high tax rate of 40 %, and driven their business into shadow.

Additional conditions for the development of shadow criminal activity, created distorted sectorial and regional structures of the economy, and their excessive monopolization. There were also tangible mistakes in the implementation of the reform of public administration, in general.

The issue of combating legalisation (laundering) of proceeds from crime is urgent for Ukraine. Their decision will contribute to the further development of the national economy.

Conclusions. Therefore, there are determined by the system of subjects of state regulation, competent bodies of foreign states and international organi-

zations in the specified sphere, which carry out their activity for the purpose of revealing, termination and prevention of facts of legalization of proceeds from crime, and, as well, prosecution of guilty persons after analysing foreign and domestic experience the problems of forming the state policy in the field of prevention and counteraction to the legalization of proceeds from crime.

The international community recognises that money laundering as a result of unlawful activities has become a major threat to the country's economic security, which requires states to take concerted action to effectively combat this negative activity, both at national and international level levels.

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