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THE INTERNATIONAL ASSESSMENT OF ANTI-MONEY LAUNDERING AND TERRORISM FINANCING SYSTEM IN UKRAINE

At the beginning of 2018 MONEYVAL declared the results of the Fifth Round Mutual Evaluation in Ukraine, which had continued from 2016.

MONEYVAL – the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The system of mutual assessments is based on the special FATF Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of Anti-Money Laundering and the Counter-Financing of Terrorism systems.

The Methodology relates to two assessment components of FATF international standards implementation: 1) technical compliance; 2) results, indicators, data and other factors, which are used for measures implementation effectiveness assessment.

According to Methodology, effectiveness is the key component in the compliance degree assessment of the country by FATF international standards. The assessment process should consider the effectiveness evaluation and technical compliance as well. The effectiveness evaluation is aimed at attention increasing to results and the determination of what goals of FATF international standards has been achieved by National System AML/CFT, and detection of system disadvantages. It enables countries to pay priority attention to their systems improving measures.

Consequently, the summary MONEYVAL Report clarifies the state of technical compliance and the effectiveness of anti-money laundering, terrorism financing, and weapons of mass destruction proliferation countering measures in Ukraine.

This international document presents the analysis of Ukrainian legislation level of compliance to actual FATF recommendations, practicality and effectiveness assessment of the financial monitoring system in Ukraine, and gives the recommendations for its improving.

The general result, which was conducted on the Fifth Round Mutual Evaluation of financial monitoring system in Ukraine, is positive. It was stated in prepared

MONEYVAL Report that Ukraine is reliable jurisdiction in anti-money laundering, terrorism financing, and weapons of mass destruction proliferation countering and doesn't need to conduct special measures by Council of Europe Committee MONEYVAL and FATF [2].

Taking into account that Ukraine has been in "black" and "grey" FATF lists twice, this result proves the certain progress in national financial monitoring system construction.

It was determined by the technical compliance assessment results that Ukrainian legislation totally meets (Compliant) 12 FATF Recommendations, mainly meets (Largely compliant) 20 of them, partly meets (Partially compliant) 7 and the only 1 Recommendation isn't used in Ukraine (Non-compliant) [1].

By the level of effectiveness, according to established ratings, Ukraine got the grade "Substantial" for 2 results, the grade "Moderate" for 8 results and a "Low" score for 1 indicator [1].

The main MONEYVAL remarks were aimed at the necessity of effectiveness increasing:

- law enforcement system, particularly in the improving of practical measures for investigation criminal proceedings, arresting and criminal proceeds confiscation;
- the measures for regulation and supervision of non-financial institutions and professions;
- the procedure implementation for checking the reliability of the data on the final beneficial owners;
- the measures for the prevention and counteraction of terrorism financing and awareness of private and non-profit sectors with corresponding threats, vulnerability and risks, which are related to their professional activity;
- the measures for comprehensive, authentic and continuous administrative reporting in the field of financial monitoring;
- transformation of legislation base relative to crimes of terrorism financing and targeted financial sanctions to the international standards, etc.

Comments and suggestions of MONEYVAL Committee for Ukraine mostly are corresponded with the results of National risks assessment in the field of preventing and countering legalization (laundering) of proceeds of crime and financing of terrorism (NRA) 2016, which were made by State Financial Monitoring Service, for example, for corruption risks, organized crimes, high cash flow, terrorism manifestations, the absence of sector assessment of financial sector risks, inefficient sanction policy, the activity of law enforcement system, etc. [5].

In accordance to the Fifth Round Mutual Evaluation Report, Ukraine faces considerable money laundering risks due to the corruption and illegal economic activities, including fictitious entrepreneurship, tax evasion and fraud. The sheer size of the shadow economy exacerbated by the widespread use of cash makes the country especially vulnerable. Among the prevalent mechanisms to launder money in Ukraine are the so-called conversions centers through which funds are siphoned from the real to the shadow economy, and which are used to convert proceeds into cash and transfer them out of the country [2].

Since the last evaluation in 2009, Ukraine has taken a number of welcome steps, namely the adoption of a dedicated law in 2014 strengthening the procedure of financial monitoring and enhancing efforts to fight corruption through the establishment of the National Anti-Corruption Bureau of Ukraine (NABU) and the National Corruption Prosecutors Office. Other positive initiatives, the report reads, include “very significant efforts” by the National Bank of Ukraine to remove criminals from having controls of banks, and the successful development of complex money laundering cases [2].

It should be emphasized that Ukraine is at the same level with such FATF countries-members like Australia, the USA, Canada, Singapore, Denmark, Sweden and Switzerland in the rating of monitoring mode.

For the comparison, there were considered the Mexican and Portuguese reports of Mutual Evaluation at the regular FATF Plenary Session (1-3/10/2017). Following the discussion, Mexico got the enhanced monitoring with the necessity to yearly account to FATF Plenary Session. The Portuguese National System AML/CFT was recognized as sufficiently efficient and the country will present the information about its progress in three years. Delegates also admitted the significant progress of Austria, Brazil and Uganda in conformity to Recommendations.

According to results of FATF Plenary Session, the “black” list of FATF remained unchanged: Iran and North Korea (countermeasures are used only in North Korea). The “grey” list replenished with Trinidad and Tobago, Tunisia and Sri-Lanka. This list includes Bosnia and Herzegovina, Vanuatu, Iraq, Yemen Syria and Ethiopia for December 2017.

On the 6th April, 2018, FATF published the summary table of ratings, which were formed by the results of Mutual Assessments of National Systems AML/CFT, which were made by FATF and regional groups like FATF by Technical Conformity to FATF Recommendations Evaluation Methodology and systems effectiveness AML/CFT in the editorial office 2013 [1].

The National Systems of 47 countries has been already assessed by the new Methodology by now.

In the part of Technical Compliance to FATF Recommendations Assessment, which represents the biggest interest for Ukrainian financial market (R1 “Risks evaluation and the application of risk-oriented approach”, R10 “Proper customer verification”, R11 “Data storage”, R13 “Correspondent banks”, R14 “The services of funds and valuables transferring”, R16 “E-transfers of money”, R17 “Trust in third-party measures”, R18 “Internal control, foreign affiliates and subsidiaries”, R26 “Regulation and financial institutions supervision”, R27 “Empowering of supervisory authorities” and R35 “Sanctions”), the countries got the following ratings:

Countries were able to demonstrate the best results in the part of compliance to R11, R13 and R14: only Australia didn’t conform to R13 among all the FATF countries-members.

The highest scores for all three recommendations were assigned to Armenia, Cuba, Honduras, Fiji, Macao, China, Spain and Trinidad and Tobago.

The low ratings for R1, R16 and R35 were obtained by almost all the countries. Spain was the only one country that was able to demonstrate that its legislation base properly fixes the responsibilities by risks assessment AML/CFT and application of risk-oriented approach. It is necessary to notice that R1 is “cross-cutting” recommendation: rating, which was obtained for R1 compliance, usually influences on the ratings for conformity to other FATF Recommendations. Rating for partly compliance to R1 was gotten by Australia, Austria, Armenia, Denmark, Norway, Serbia, Slovenia and the USA [1].

It is noticeable that ratings of compliance and significant compliance to R16 was obtained by Austria, Bahama, Barbados, Bhutan, Armenia, Costa Rica, Cuba, Ethiopia, Fiji, Jamaica, Macao, China, Malaysia, Nicaragua, Mongolia, Panama, Singapore, Trinidad and Tobago, Tunisia, Spain, Ukraine at the same time when Australia, Belgium, Denmark, Canada, Norway, Italy, Portugal, the USA, Switzerland and Sweden got the rating for partly compliance.

Most countries failed to demonstrate the sufficient conformity and restrictive kind of sanctions, which can be used to the people who don't meet the requirements of legislation (AML/CFT): the rating of compliance to R35 was obtained only by Austria, Macao, China, Slovenia and Spain.

According to summary results gotten by estimated countries, which present the level of FATF standards performance effectiveness, the lowest ratings were assigned for IO 3 (the financial sector and DNFBP sector supervision) and IO 4 (financial sector and DNFBP requirements to AML/CFT sector supervision). Hence, no country got the high-level rating, 6 countries got the rating of substantial effectiveness level of IO 3 (Ireland, Spain, Canada, Macao, China and Malaysia) and only Armenia got the rating for IO 4 of substantial efficient level [1].

Therefore, according to the Fifth Round Mutual Evaluation, Ukraine significantly improved the effectiveness of financial monitoring system at the global level. Hence, it should be emphasized that, according to the results of evaluation, MONEYVAL Committee approved the significant level of operational and institutional ability of national Financial Intelligence Unit – State Financial Monitoring Service – in all the rating parameters.

However, the number of problems still exists and needs the solution. Ukraine must report back to MONEYVAL at the first Plenary in 2019 about the implementation of its recommendations under enhanced follow-up procedures.

Thereby, State Financial Monitoring Service starts the process of the Action Plan preparation in order to continue the improving of financial monitoring system in Ukraine, according to the results of the MONEYVAL Fifth Round Mutual Evaluation.

However, drawing up the Action Plan it should be noticed that the population access increasing to financial services is still the priority for FATF and highly cautious approach to the prevention measures of AML/TF can cause the unwanted exclusion of legal business and the number of customers in official financial system.

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