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FOREIGN EXPERIENCE OF ORGANISING STATE FINANCIAL MONITORING¹

The purpose of the research is to provide foreign experiences in organising state financial monitoring according to the best practices of countries. It aims to analyse and compare the approaches taken by different countries, highlighting the key institutions, regulations, and achievements in their respective systems; to contribute to the understanding of effective practices and inspire improvements in organising state financial monitoring.

Methods. The methodological basis of the work is general scientific and unique methods and methods of scientific knowledge. In particular, the author used the methods of classification and grouping to classify and rank the investigated legal category “financial intelligence unit”. The comparative legal method became the basis in the context of analysing the researched issues in Ukraine and foreign countries. Structural and functional analysis methods were used to identify and characterise the powers of financial monitoring subjects.

Results. In the article, the author defined some general aspects to consider organising the procedure of financial monitoring: (1) legal and regulatory framework; (2) reporting and record-keeping; (3) customer due diligence (CDD); (4) risk-based approach; (5) technology and data analytics; (6) training and awareness; (7) collaboration and information sharing; (8) enforcement and penalties; (9) international cooperation; (10) regular assessments and updates. It was outlined that each country has unique considerations and requirements based on its legal and regulatory framework. It was noted that the Egmont Group envisages the existence of four possible models of financial intelligence units: (1) judicial; (2) law enforcement; (3) administrative; (4) hybrid. The author singled out the features of building national financial monitoring systems in foreign countries. In particular, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Japan, etc.

Key words: European Union, information sharing, financial intelligence unit, financial monitoring, foreign experience.

Introduction. In an increasingly interconnected global economy, adequate financial monitoring systems have become paramount for governments worldwide. The ability to detect and prevent financial crimes, such as money laundering, terrorist financing, and corruption, is crucial for maintaining the integrity of national economies and protecting the global financial system. This article aims to introduce the foreign experience of organising state financial monitoring. It explores foreign countries' approaches to establishing robust systems to track, analyse, and regulate financial transactions.

In such cases, by examining various international (foreign) models, one can be gained insights into best practices and adapt them into domestic legislation and practice to suit their unique needs and challenges.

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General aspects organising financial monitoring regardless of the country.

Effective financial monitoring plays a vital role in safeguarding the stability and transparency of a nation’s financial sector. It enables governments to combat illicit activities that threaten the integrity of the economy and national security. By implementing comprehensive monitoring mechanisms, states can identify and deter money laundering, the financing of terrorism, tax evasion, and other forms of financial crime. Organising financial monitoring is essential for ensuring transparency, accountability and preventing financial crimes such as money laundering and terrorist financing. Many countries have established systems and regulations to monitor financial activities effectively. It’s important to note that specific regulations and practices varies between countries.

According to the Egmont Group [1], which unites the so-called financial intelligence in different countries of the world, financial intelligence units (FIUs) are national centres to receive and analyse information on suspicious or unusual financial activities from subjects of the financial industry, and other authorities obliged to report (notify) suspicious transactions that may constitute a money-laundering procedure. It should also be noted that the Egmont Group foresees the existence of four possible models of financial intelligence units: (1) judicial; (2) law enforcement; (3) administrative; (4) hybrid.

It should be noted that some general aspects to consider in organising the procedure of financial monitoring can be listed as follows:

(1) legal and regulatory framework. Establish a clear legal and regulatory framework that outlines the requirements and obligations of financial institutions and other relevant entities. This framework should include laws and regulations related to anti-

money laundering (AML), counter-terrorist financing (CTF), and other financial crimes. According to the Financial Services Future Regulatory Framework Review [2], the framework should provide a clear and trusted long-term foundation for effective regulation;

(2) reporting and record-keeping. Define reporting obligations for financial institutions to report suspicious transactions, large cash transactions, and other relevant activities. Specify the types of records that need to be maintained and the duration for which they should be retained;

(3) customer due diligence (CDD). Implement robust CDD measures to verify the identity of customers, assess their risk profile, and monitor their transactions. This includes conducting enhanced due diligence for high-risk customers and politically exposed persons (PEPs). For example, the Money Laundering, Terrorist Financing and Transfer of Funds [3] outline the requirements that accountants must apply in respect of CDD. Accountants must be vigilant and practice good CDD;

(4) risk-based approach. Adopt a risk-based approach to prioritise resources and efforts based on the level of risk associated with different customers, transactions, and jurisdictions. This approach allows for more efficient allocation of resources to focus on higher-risk areas. The risk-based approach is central to the effective implementation of the FATF Recommendations. It means that countries, competent authorities, and banks identify, assess, and understand the money laundering and terrorist financing risk to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk [4];

(5) technology and data analytics. Leverage technological solutions and data analytics tools to enhance the effectiveness and efficiency of financial monitoring. Implement systems for transaction monitoring, data analysis, and pattern recognition to identify suspicious activities;

(6) training and awareness. Provide comprehensive training to relevant personnel, including staff at financial institutions and regulatory authorities, to enhance their knowledge and understanding of AML/CTF regulations, detection techniques, and reporting obligations;

(7) collaboration and information sharing. Foster collaboration and information sharing among regulatory authorities, law enforcement agencies, and financial institutions to facilitate the exchange of intelligence and enhance the detection and prevention of financial crimes;

(8) enforcement and penalties. Establish a system for enforcement and penalties to ensure compliance with financial monitoring regulations. Define appropriate penalties for non-compliance and establish mechanisms for monitoring and assessing compliance levels;

(9) international cooperation. Engage in international cooperation and exchange of information with other countries to combat cross-border financial crimes effectively. Participate in international initiatives, such as the Financial Action Task Force (FATF), to align with global standards and best practices;

(10) regular assessments and updates. Conduct periodic assessments and reviews of the financial monitoring framework to identify areas for improvement and adapt to evolving risks and challenges. Stay updated with emerging trends and technologies to ensure the effectiveness of financial monitoring measures.

These general aspects provide a foundation for organising financial monitoring, regardless of the specific country or jurisdiction. However, it's important to remember that each country may have unique considerations and requirements based on its legal and regulatory framework. To date, a significant variety of organisations have been created, dealing with corruption, terrorist financing, illegal withdrawal of funds offshore, etc. However, despite the considerable diversity of the organisation for combating illegal money laundering, not all countries cooperate with these institutions and take measures to counter the diminution of the economy. The main drawback of this three-level system (national, regional, and supranational level) is the absence of a single control body, the scope of which would extend to all the countries of the world without exception [6, p. 178].

Ukraine

In Ukraine, the State Financial Monitoring Service of Ukraine [5], the central body of executive power that directly implements the state policy in this area, is prominent in combating the legalisation of criminally obtained income. It operates as an independent state authority responsible for combating money laundering, terrorist financing, and other financial crimes. Analogous or similar organisations operate in over 100 countries and have the common name Financial Intelligence Units (FIU).

Ukraine imposes financial monitoring obligations on various entities, including financial institutions, lawyers, accountants, real estate agents, and precious metals and stone dealers. These

entities are required to implement customer due diligence measures, report suspicious transactions, and maintain records as per the regulations.

The United States of America

The highest level of the organisation of financial monitoring and the strictest terms of punishment for violating the law in the field of legalisation of income in the USA State executive bodies that control the activities of the financial sphere in the USA include:

- (1) United States Financial Crimes Enforcement Network – FinCEN;
- (2) Internal Revenue Service;
- (3) United States Customs and Border Protection;
- (4) United States Secret Service;
- (5) United States Department of the Treasury;
- (6) Office of the Comptroller of the Currency;
- (7) United States Department of Justice (DOJ, Justice Department);
- (8) Federal Bureau of Investigation and other authorised authorities.

FinCEN is responsible for collecting and analysing financial intelligence to combat money laundering and other financial crimes. It requires financial institutions to report certain transactions and maintain records to detect suspicious activities. It serves as the financial intelligence unit for the United States. It receives, analyses and disseminates financial intelligence obtained from various sources, including financial institutions, money services businesses, and other reporting entities, processes suspicious activity reports and supports investigations by providing valuable insights and information to law enforcement agencies.

The Office of Terrorism and Financial Intelligence (TFI) marshals the Treasury Department's policy, enforcement, regulatory, and intelligence functions to sever the lines of financial support to international terrorists, WMD proliferators, narcotics traffickers, money launderers, and other threats to our national security [7].

The United Kingdom of Great Britain and Northern Ireland

The UK Financial Intelligence Unit has national responsibility for receiving, analysing, and disseminating intelligence submitted through the Suspicious Activity Reports regime, to share with law enforcement agencies at home and internationally. The UK Financial Intelligence Unit sits at the heart of the regime, providing the gateway to reporters and a repository of data to inform law enforcement [8].

Part 7 of the Proceeds of Crime Act 2002 (POCA) [9] requires financial institutions and businesses in the regulated sector to report any suspicions about criminal property or money laundering to the UK Financial Intelligence Unit, which is part of the National Crime Agency. Even if a person is not in the regulated sector, they must report any suspicions if they come across any suspicious activity through their trade, business, or profession.

According to the final impact assessment, the UK Financial Intelligence Unit was assessed by the Financial Action Taskforce as only partially compliant in its ability to seek all information it requires from regulated businesses to perform its analytical functions. This was because the information order power has never been tested. Under the existing legislation, an information order can only be made if there is a pre-existing Suspicious Activity Report. The Government seeks to legislate to introduce new powers to allow an information order to be made without a pre-existing Suspicious Activity Reports, to enable the UK Financial Intelligence Unit to perform its analytical functions and align it with international standards [10].

Canada

In Canada, financial intelligence plays a crucial role in combating money laundering, terrorist financing, and other financial crimes. Financial intelligence involves collecting, analysing, and disseminating financial information to identify suspicious activities and support investigations.

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit responsible for collecting, analysing, and disclosing financial intelligence information. FINTRAC receives reports from various reporting entities, such as financial institutions, casinos, money services businesses, and real estate brokers, regarding certain types of financial transactions. Like other FIUs, FINTRAC acts as a clearinghouse for information on the activities of individuals and organizations under suspicion of breaching anti-money laundering and counter-terrorism financing laws and regulations [11]. FINTRAC plays a crucial role in safeguarding the integrity of Canada's financial system and protecting it from abuse by criminals and terrorists. Its work helps to maintain the transparency and security of financial transactions, contributing to national and international efforts to combat money laundering and terrorist financing.

Japan

Japan has its own financial intelligence unit (FIU) called the Japan Financial Intelli-

gence Centre (JAFIC), which operates under the oversight of the Financial Services Agency (FSA) JAFIC was established within the Organised Crime Department, the Criminal Investigation Bureau of the National Police Agency on 1st April 2007, when the Act on Prevention of Transfer of Criminal Proceeds came into force [12].

Japan Financial Intelligence Centre is in charge of the following tasks provided in the Act on Prevention of Transfer of Criminal Proceeds [13]:

- collection, arrangement, analysis, and dissemination of information on suspicious transactions to investigative authorities etc.;
- dissemination of information to foreign financial intelligence units;
- provision of information and complement of supervisory measures by administrative authorities to ensure that specified business operators take required measures.

It also plans and examines the legal system related to AML/CFT and various measures such as "the Guideline for Promotion of the Criminal Proceeds Control" etc. Japan Financial Intelligence Centre also participates in the discussion of international standards related to AML measures.

The Commonwealth of Australia

Australia's financial intelligence is overseen by the Australian Transaction Reports and Analysis Centre (AUSTRAC), which operates as the country's financial intelligence unit (FIU). It is responsible for combating money laundering and terrorism financing in Australia, requires reporting entities, including banks, casinos, and remittance services, to report suspicious transactions, large cash transactions, and international fund transfers. AUSTRAC also provides guidance and support to reporting entities to help them meet their obligations.

AUSTRAC performs a dual role as Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator and financial intelligence unit. This dual role helps to build resilience in the financial system and enables AUSTRAC to use financial intelligence and regulation to disrupt money laundering, terrorism financing and other serious crime [14].

French Republic

France is characterised by an administrative model of financial monitoring, defined by continental conservatism and a more liberal character. It has no legally established requirements for providing information on financial transactions if their amount exceeds a specific

limit, and the criteria for investigating suspicious transactions are motivated by suspicion regarding financial transactions that have signs of legalisation of income.

In France, the specialised unit of financial intelligence is TRACFIN. It is a service of the French Ministry of Finances. TRACFIN contributes to developing a healthy economy by fighting against clandestine financial circuits, money laundering and the financing of terrorism.

TRACFIN is both:

– the French Financial Intelligence Unit (FIU), within the meaning of the Financial Action Task Force (FATF), European directives and the Monetary and Financial Code (CMF). In this context, he is responsible for the fight against clandestine financial circuits, money laundering and the financing of terrorism (LCB-FT);

– one of the specialised intelligence services of the so-called 1st circle community is referred to in article R. 811-1 of the internal security code (CSI).

This dual identity is a strong specificity of the Service, giving it a broad area of expertise and significant powers of investigation and outsourcing [15].

Conclusions. Organising effective state financial monitoring is a critical undertaking for governments in combating financial crimes and ensuring the stability of their economies. Learning from foreign experiences and best practices can provide valuable insights to enhance existing systems or build new frameworks. By implementing robust financial monitoring systems, countries can bolster their ability to detect and deter illicit financial activities, contributing to the overall integrity of the global financial system.

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Уткіна М. С. Зарубіжний досвід організації фінансового моніторингу

Метою статті є аналізування зарубіжного досвіду організації державного фінансового моніторингу на основі передового досвіду країн. Зокрема, аналізування та порівняння підходів різних країн, висвітлюючи ключові інституції, нормативні акти та досягнення в їхніх відповідних системах; сприяння розумінню дієвих практик в контексті можливого подальшого вдосконалення організації державного фінансового моніторингу.

Методи. Методологічною основою статті є загальнонаукові та спеціальні методи і методи наукового пізнання. Зокрема, для класифікації та ранжування досліджуваної правової категорії «підрозділ фінансової розвідки» автор використав методи класифікації та групування. Порівняльно-правовий метод став основою в контексті аналізу досліджуваної проблематики в Україні та за кордоном. Для визначення та характеристики повноважень суб'єктів фінансового моніторингу використано методи структурно-функціонального аналізу.

Результати. У статті автор визначив загальні аспекти організації провадження фінансового моніторингу: (1) нормативно-правова база; (2) звітність та ведення обліку; (3) належна перевірка клієнта (CDD); (4) ризик-орієнтований підхід; (5) технології та аналітика даних; (6) навчання та обізнаність; (7) співпраця та обмін інформацією; (8) виконання та покарання; (9) міжнародна співпраця; (10) регулярні оцінки та оновлення. Було підкреслено, що кожна країна має унікальні міркування та вимоги, засновані на її законодавчій та нормативній базі. Зазначалося, що Егмонтська група передбачає існування чотирьох можливих моделей підрозділів фінансової розвідки: (1) судової; (2) правоохоронної; (3) адміністративної; (4) гібридної. Автор виокремив особливості побудови національних систем фінансового моніторингу в зарубіжних країнах. Зокрема, у Сполученому Королівстві Великої Британії та Північній Ірландії, Сполучених Штатах Америки, Японії тощо.

Ключові слова: Європейський Союз, обмін інформацією, підрозділ фінансової розвідки, фінансовий моніторинг, закордонний (зарубіжний) досвід.