

CHAPTER 4

THE PHENOMENOLOGY OF MONEY LAUNDERING AND EFFECTIVENESS OF CRIMINAL PROSECUTION IN UKRAINE

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INTRODUCTION

Today in Ukraine, issues related to combating money laundering have become more relevant and are in the center of public attention.

Scientists and experts who have studied various aspects of overcoming this dangerous phenomenon for the state, paid attention to the study of spreading of this socially dangerous phenomenon and the implementation of mechanism to combat money laundering, and legislation effectiveness: Arkusha L.I., Benitskyi A.S., Butkevych S.A., Gaievskyi I.M., Hlushchenko O.O., Golovanov N.M., Yehorov O.M., Yehorova V.I., Klymenko A.O., Korzhenivskyi Ya.P., Kravchenko O.V., Nekrasov V.A., Perekyslov, V.Ye., Siurkalo B.I., Fadieiev V.O., Feshchenko O.Yu., Charychanskyi O.M., Cherniavskyi S.S. and others.

Ukraine faces money laundering risks. Corruption and illegal economic activities (including fictitious entrepreneurship, tax evasion and fraud) are the major ML threats. Organised criminality is rising and has a substantial impact on the overall ML risk situation. So-called conversions centres involving fictitious companies through which funds are siphoned from the real to the shadow economy are one of the prevalent ML typologies. Such centres are used to convert proceeds into cash and transfer proceeds out of Ukraine. Cash circulation is high and is considered to pose a significant threat to the financial system and economic security of the country. Turning to the risk of FT, since 2014, Ukraine has found itself as a transit country for those seeking to join ISIL fighters in Syria. The non-profit sector is considered by the authorities to be vulnerable to FT. The sector has been misused to channel funds to terrorists and terrorist organisations.

The Ukrainian financial sector is bank-centric and roughly holds 80% of the assets in financial sector. The banking services provided are generally traditional in nature and include deposits, loans, money transfers, foreign exchange and guarantees. High-risk products are either forbidden

or not generally provided. The shadow economy size in Ukraine, which is exacerbated by the widespread use of cash, constitutes a great ML vulnerability. Money remittances (through banks) play a significant role within Ukraine's economy. Most remittances are purportedly linked to Ukrainians working abroad sending money to their relatives in Ukraine. However, a huge portion of the remittances are conducted through informal channels.

However, problematic is primarily related not to the technical assessments of the national mechanism compliance with the FATF Standards, but with the actual achievements and practical results of countering money laundering¹, with the effectiveness of arraignment on criminal charge in this field, which in turn requires a systematic and in-depth macroeconomic and criminological analysis based on scientific knowledge of the «money laundering» phenomenon, its manifestation' factors and their spread in Ukraine are becoming relevant, and criminological analysis and settlement of the entire complex of law enforcement.

4.1. The phenomenology of money laundering in Ukraine

The economic growth of modern society is inextricably linked with the prevention of various threats that increase during the economic system reform. These are, first of all, such complex and dangerous for our state socio-economic phenomena as the shadow economy (especially its criminal component), organized crime, which permeates the system of economic relations, corruption at all levels of government, outflow of capital abroad in the presence of a shortage of investment resources. A special place among these phenomena is given to money laundering as a mechanism for ensuring the shadow economic functioning, as well as economic potential reproduction of organized crime².

Combating money laundering (hereinafter– AML) in Ukraine is determined by one of the important areas and is ensured by the international standards' implementation in the AML field, among which FATF recommendations occupy a central place. Since 2002, Ukraine has objectively formed the conditions and started systematic work on combating money laundering (AML). Improvement of international standards encourages the development of legal regulation in Ukraine and

¹ Masciandaro (2005), "False and reluctant friends? National money laundering regulation, international compliance and non-cooperative countries, *European Journal of Law and Economics*, Vol. 20 No. 1, pp. 17-30.

² Korystin, O. (Ed.). (2015). *Protydia vidmyvaniu koshtiv: mizhnarodni standarty, zarubizhnyi dosvid, administrativno-pravovi, kryminologichni, kryminalno-pravovi, kryminalistychni zasady ta systema finansovogo monitoryngu v Ukraini*. Kyiv: Skif [in Ukrainian].

the appropriate introduction of new approaches³ to the mechanism formation of AML, which, in its turn, requires an extremely adequate perception of the «money laundering» phenomenon in professional environment and productive institutional activities.

In our opinion, the methodological principles of analysis of money laundering in Ukraine as a socio-economic phenomenon is grounded in the application of phenomenology⁴ of money laundering, based on combination of the philosophical method of phenomenon cognition in reality on its nature essential characteristics, and criminology which is based on the crime doctrine.

The analysis of any negative socio-economic phenomenon using official statistics is quite understandable. At the same time, among the domestic law enforcement specialists, foreign experts of the EU Advisory mission, there is a well-established understanding of the inadequate mapping of the crime rate according to the Unified register of pre-trial investigation (URPTI), which does not allow to objectively assess illegal money laundering activities in Ukraine. Among other things, when assessing MONEYVAL regarding the technical compliance of the AML system in Ukraine, the «Statistics» indicator (*FATF recommendation 33: countries should keep comprehensive statistics on issues related to the effectiveness of the anti-money laundering system ...*) defined in such a way that only «partially meets» recommendations⁵.

In order to analyze the ML level in Ukraine and a set of related socio-economic factors, an expert survey was conducted among specialists in the field of law enforcement with a target professional direction to AML. Experts' survey is a fairly common method of obtaining information about the problem from specialists of the relevant profile. Among the respondents, three groups of experts working in law enforcement agencies, professionally engaged in detection and investigation of ML and possess a large amount of knowledge in comparison with the majority of non-specialists in the field of money laundering: operatives (547), investigators (245) and prosecutors (213). A total of 1005 respondents were interviewed and all the data are structured and systematized, which allows to conduct a more in-depth study and evaluation of the specific content characteristics of the «money laundering» phenomenon.

³ Paoli, L., & Greenfield, V. A. (2015). Starting from the end: a plea for focusing on the consequences of crime. *European Journal of Crime, Criminal Law and Criminal Justice*, 23(2), 87–100..

⁴ Vepryts'kyi R.S. (2013). Fenomenolohiya zlochynnosti yak haluz' kryminolohiyi / Forum prava 2013, № 3, S. 84-87. *Elektronniy resurs. – Rezhym dostupu: http://nbuv.gov.ua/j-pdf/FP_index.htm_2013_3_16.pdf* (In Ukrainian).

⁵ The fifth round mutual evaluation report on Ukraine was adopted by the MONEYVAL Committee at its 55th Plenary Session (Strasbourg, 5 – 7 December 2017), 217 c. *Elektronniy resurs. – Rezhym dostupu: <https://rm.coe.int/fifth-round-mutual-evaluation-report-on-ukraine/1680782396>*.

At the same time, a questionnaire developed in a single form for all experts was used. The questionnaire was developed by a task force of experts (5 persons)), who, using the «brainstorming» method identified a general set of indicators that systematically and variously characterize the «money laundering» phenomenon in Ukraine. Measurements of respondents' positions on each of the indicators were carried out on a four-point ordinal scale, where the lowest score characterizes the zero level, and the upper – the highest one (Table 1). In addition, in the future, in order to interpret the results we'll use the term «significant level», when grouping data of high and medium levels.

First of all, describing the overall level of money laundering in Ukraine, 55.7 % of respondents determine the high level of the money laundering phenomenon in Ukraine (Tab. 1).

Table 1

Results of the expert survey on indicators characterizing the money laundering phenomenon in Ukraine

№ z / p	Indicator name	Level of assessment			
		Highly (%)	Average (%)	Low (%)	Zero (%)
1.	Level of money laundering (LML) in Ukraine	55.7	28.8	14.1	1.0
2.	Level of vulnerability of economic sectors to LML:	X	X	X	X
2.1	credit and financial	41.1	40.9	15.2	1.3
2.2	agro-industrial complex (AIC)	29.9	45.8	20.4	1.4
2.3	construction	41.4	38.2	15.8	2.4
2.4	transport	31.2	42.7	21.2	2.4
2.5	PITCH	35.6	40.4	19.4	2.0
2.6	realty	35.0	39.1	20.7	2.4
3.	level of connectedness of the LML with:	X	X	X	X
3.1	corruption (demand of corrupt officials to the laundering of corruption assets)	50.6	34.8	11.6	1.3
3.2	corruption (corruption links are an important element in ensuring LML mechanisms)	48.7	34.8	13.4	1.2
3.3	organized crime (fixed assets demand for money laundering)	43.1	36.5	17.3	1.2
3.4	organized crime figure	29.8	38.7	25.9	2.9
3.5	capital flight abroad	45.9	33.7	16.9	1.8
3.6	provision of shady activities in their own business	42.5	36.9	16.8	1.9
3.7	need to legalize part of the shadow income of legal business	42.9	37.6	16.1	1.9
3.8	need to launder «dirty» assets and hide previous criminal activities	43.8	35.5	15.8	2.4

It is the fact that expert survey involved professionals directly and professionally engaged in professional activities in the AML field, it is impressive that the vast majority of them (84.5 % (55.7 % – high, 28.8 % – average) note the significant spread of this phenomenon in Ukraine.

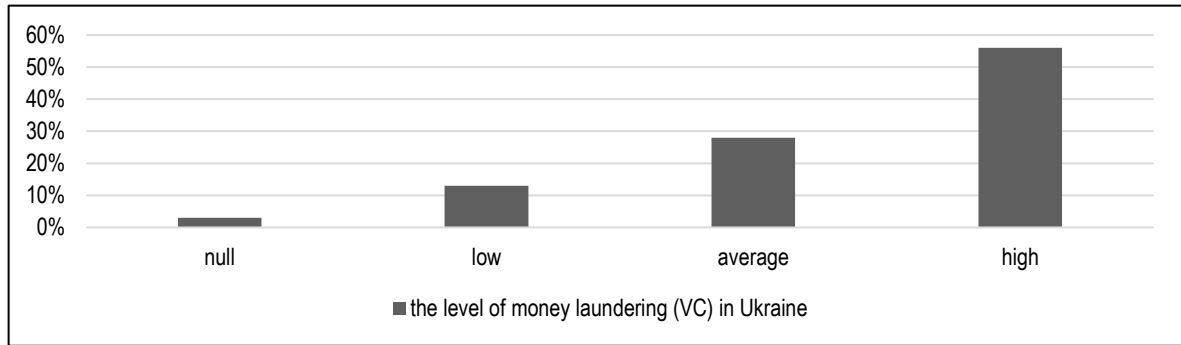


Fig. 1. Diagram of the level of ML in Ukraine (according to the expert survey)

The next group of indicators characterizes the spread of money laundering at the level of certain sectors of the economy in Ukraine (Fig.2), in particular, the credit and financial sector, agro-industrial and fuel and energy complexes, construction, transport and real estate market.

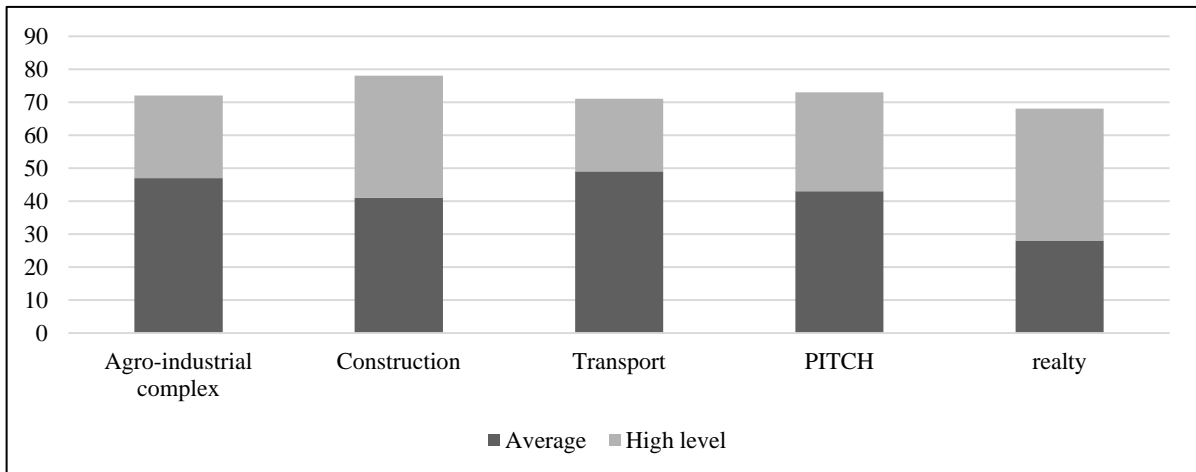


Fig. 2. Diagram of the vulnerability level of the economy sectors to money laundering in Ukraine (according to the expert survey)

The overall trend is also quite significant from 82.0 % to 73.9 % . At the same time, the most vulnerable to the spread of money laundering is the credit and financial sector (41.1%-high, 40.9 – medium).

A separate group of indicators focuses on the connection of the money laundering phenomenon with other negative socio-economic phenomena in Ukraine: shadow economy, corruption, organized crime and outflow of capital abroad (Fig. 3).

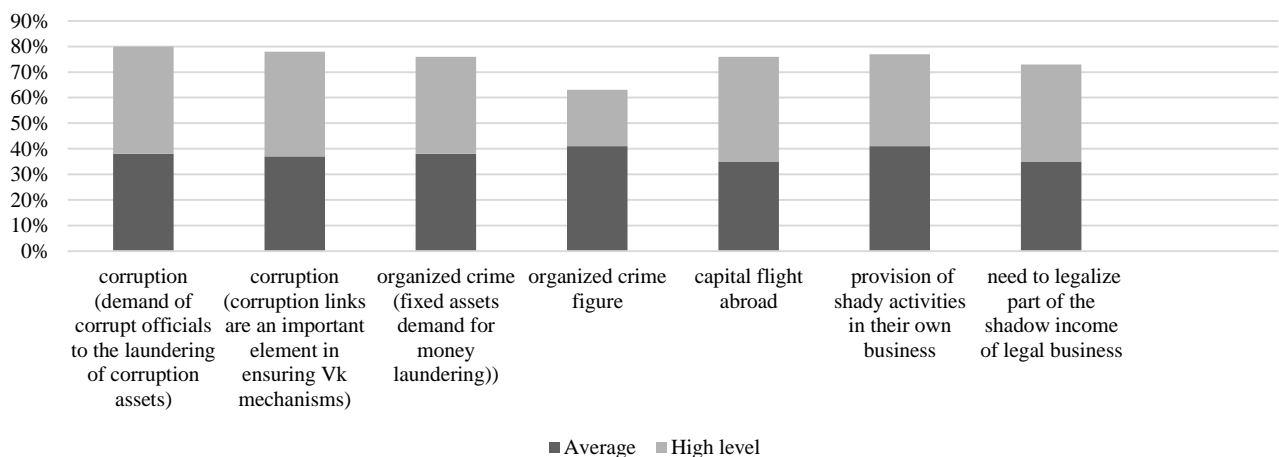


Fig. 3. The diagram of the connection of money laundering with other negative socio-economic phenomena (according to the expert survey)

First of all, it should be noted the extraordinary demand of corrupt officials laundering the proceeds of corruption (85,4 % of the respondents). At the same time, corruption ties are defined as important means of ensuring money-laundering mechanisms somewhat less (83.5%), but significant in general.

The problem of outflow of capital abroad is already familiar to Ukraine, 79.6 % of experts associated with money laundering.

Following the general trend of interviewed, laundering of funds associated with shadow economy, with the provision of informal economic activities (79,4 %), and the necessity of legalization of shadow income, and involvement in legal turnover (80,5 %).

In conclusion, experts surveyed determine the connection of money laundering with illegal activities, in particular, the most dangerous manifestations: organized crime-79.6 %, characterizing the demand of

organized criminal groups for money laundering, and the need to launder «dirty» assets and concealment of preliminary criminal activities (79.3 %).

4.2. The effectiveness of criminal prosecution of money laundering in Ukraine

Since the last evaluation, Ukraine has taken steps to improve the AML/CFT framework. Notably, a new AML/CFT law was adopted in 2014 which, inter alia, requires the authorities to conduct a national risk assessment (NRA) with a view to identifying ML/TF risks, as well as measures to prevent or mitigate such risks; defines measures to combat the financing of proliferation of weapons of mass destruction; introduces tax crimes as predicate offences to ML; provides for compulsory financial monitoring of financial transactions of national public officials and officials from other countries and international organizations; and improves existing procedure on the suspension of financial transactions. Amendments were also carried out to the Code of Criminal Procedure of Ukraine (CCP), which include modifications to the provisions related to jurisdictional issues in respect of Art. 209 (ML offence) of the Criminal Code (CC) and to pre-trial investigation in ML proceedings in certain cases. However, some deficiencies and uncertainties remain in Ukraine's technical compliance framework, particularly with respect to the FT offence and the TFS regime, supervision of DNFBPs and sanctions for non-compliance.

The Ukrainian authorities have demonstrated a substantial level of effectiveness in ML/FT risk understanding and domestic co-ordination to combat ML, FT and PF; as well as in using financial intelligence in ML, associated predicate offences and FT investigations. A moderate level of effectiveness has been achieved in the other areas covered by the FATF Standards, except for investigation and prosecution of ML.

Ukraine has undertaken a ML/FT NRA and published a NRA report. A suitable number of private sector representatives participated in the NRA process. Ukraine has demonstrated a reasonably understanding of its ML/FT risks although there are areas where understanding would be enhanced by taking further steps to identify and assess risk. Information sources should be increased, for example, by improving statistical framework and increasing focus on external threats, organized crime,

beneficial ownership and non-profit organizations (NPOs) and other facets of FT risk.

Ukraine has a substantial background in coordinating and setting five yearly strategies and annual plans to address ML/FT. It has comprehensive national coordination and policy making mechanisms, which include political commitment and which have a positive effect. These mechanisms include PF. National police and activities are coordinated well by the FIU, and also by the MoF in relation to legislation. Both bodies are proactive. Substantial initiatives have been, and are being, introduced at the national level to address the key and other ML/FT risks. AML/CFT measures are embraced within wider “whole of Government” initiatives, combatting corruption and ML arising from corruption is the highest priority. Examples include establishment of national anti-corruption strategy and the establishment of the National Anti-Corruption Bureau of Ukraine NABU and the National Corruption Prosecutors Office as bodies dedicating to fighting corruption and ML arising from corruption. There are also initiatives aimed at addressing fictitious entrepreneurship and the use of conversion centres, tax evasion and ML from tax evasion, shadow economy and organised crime.

The FIU produces good quality operational analysis. Effective mechanisms allow for proactive collection, risk-based prioritisation and analysis of financial intelligence originating from a broad range of sources, including the very high number of reports, mainly mandatory, filed by the obliged entities. Reporting appears to be in line with Ukraine’s risk profile and has resulted in a significant number of case referral to LEAs. Ukraine has nevertheless started to take steps to emphasise suspicion-based reporting with a view to diminishing the number of reports and alleviating analytical resource needs, as well as making sure that financial intelligence is as reflective as possible of constantly evolving risks. Strategic analysis produced by the FIU supports the annual update of the reporting criteria, as well as LEAs investigative efforts.

Spontaneous case referrals regularly trigger investigations into ML, associated predicate offences or FT by LEAs, which also seek intelligence from the FIU on regular basis to support their self-initiated investigative efforts. Cooperation among competent authorities is facilitated by a number of institutional mechanisms allowing confidential exchange of financial information and intelligence with the relevant authorities.

Since 2014, the FIU has been under a growing resource strain, with diminishing resources and increasing numbers of reports to be processed. In addition, the information technology (IT) equipment needs significant updating. Inadequate resources are likely to have a negative impact on the FIU's effective functioning if not urgently addressed.

ML was still seen by most interlocutors met onsite primarily as adjunct to predicate offence. While pre-trial investigations may be initiated for ML in certain circumstances without a conviction for the predicate offence, it was widely assumed that a conviction for the predicate offence is essential before a ML case can be taken to court. Some interlocutors considered that an acquittal for the predicate offence means that ML cannot go ahead. Art. 209 of the CC needs to be revised to establish beyond doubt that a conviction is not needed for the predicate offence in order to proceed with a ML case in court. Art. 209 should also clarify that in ML prosecution underlying predicate crime may also be inferred from facts and circumstances.

Before 2014 ML prosecutions rarely confronted Ukraine's highest AML risks (top level corruption and theft of state assets). Prosecutions generally involved local officials/mayors, where ML was added to indictments containing other counts (which attracted higher penalties). There remain many similar ML cases being prosecuted involving such "low hanging fruit".

The sentences for ML are almost always less than for predicate offences and generally need to be more dissuasive in practice. Some defendants serve no prison sentences at all for the basic offence under Art. 209-1 due to the operation of Art. 69 and 75 of the CC, aimed at reform of convicted persons. The impact of these provisions should be independently reviewed. Inappropriate ML sentences should automatically be appealed by the prosecution to counter any public perception that the more "notional" the defendant, the more lenient is the sentence.

Credit is given for the determined work that is now ongoing to restrain and confiscate funds in cases of top level corruption and theft of state assets, in line with national ML risks. There are now some very significant restraint orders in place in many of the cases involving high level officials of the former regime and their associates. These have necessitated complex (and far-reaching) asset tracing through accounts of numerous companies, both in Ukraine and abroad. In respect of pre-trial investigations of persons

believed to be connected to the former President, it was said that UAH 35 billion (~EUR 1.15 billion), EUR 1 billion, apartments, cars and even islands were under restraint. The Agency responsible for Asset Recovery, which has been created, is not yet operational, so these assets are not all under management. These investigations appear to have resulted in 2 court convictions so far, one of which was for ML in very significant amounts.

Nonetheless, it is difficult to assess systematically whether the new system is fully established in practice in all proceeds-generating cases. It is unclear how regularly the new provisions are being used by the judges and how many final special confiscation orders have been made as most information on this is anecdotal. Not all ML convictions result in confiscations.

There are issues that still need to be addressed by the prosecution and judiciary on the practical implementation of the new Special Confiscation provisions in the courts. A workable standard of proof in confiscation proceedings on the linkages of alleged proceeds to offences for which there are convictions needs to be established and consistently applied.

There also appear to be some problems in conducting financial investigations, and a lack of resources for them across the board. More financial investigations need to be undertaken to ascertain the direct and indirect profits in all major proceeds-generating crimes, and not just in the highest profile cases.

Some significant and positive initiatives have been undertaken by competent authorities. Examples include the NBU's very significant efforts to remove criminals from having control of banks and its development of themed onsite inspections on politically exposed persons (PEPs) risk; the high focus of the FIU on ML and in addressing risk (such as introduction of automated system for the prioritization of its analysis, successful development of complex ML cases and establishment of separate team to be responsible for ensuring the effectiveness of case referrals to LEAs); significant outreach by a number of the supervisory bodies such as the NBU and the FIU. However, there are also some areas where the objectives and activities of authorities need to be strengthened and aligned with ML/FT risks. These include pursuit by NABU of corruption-related cases systematically; more focus on investigation and prosecution of ML and on implementation of the confiscation framework; in relation to FT, extending the objectives and activities to cover parallel financial

investigations; and more focus outside the banking sector in particular on risk based approaches to supervision following statutory moratoria on onsite and offsite inspections.

At the same time, the results of the fifth round of mutual evaluation of Ukraine in the sphere of AML by the Committee of the Council of Europe MONEYVAL, which ended in December 2017, indicate the real state of the effectiveness of the AML in Ukraine, which is in this case a key component in assessing the country's compliance with FATF Standards. The efficiency assessment is aimed at⁶:

- increased attention to the results of the FATF;
- determination of the extent to which the national AML system has achieved the objectives of FATF standards;
- identifying systemic weaknesses;
- prioritization of measures to improve the loan system.

That is, according to the «Methodology for assessing compliance with the FATF recommendations and effectiveness of AML and combating the financing of terrorism»⁷ assessment of PCV effectiveness in the country not aimed at formal compliance with the FATF Standards, which is the subject of assessment of technical compliance and practical results in AML, what level of results of practical activities in the country of assessment and have been achieved the main purpose of the PCV in accordance with FATF Standards.

To assess the effectiveness of FATF adopted an approach based on a hierarchy of specific results (**Fig.4**).

⁶ FATF (2013-2018), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated November 2018 (additional revisions adopted during the October 2018 Plenary), FATF, Paris, France, 169 c. (n.d.). [www.fatf-gafi.org. Retrieved from http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html).

⁷ FATF (2013-2018), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated November 2018 (additional revisions adopted during the October 2018 Plenary), FATF, Paris, France, 169 c. (n.d.). [www.fatf-gafi.org. Retrieved from http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html).

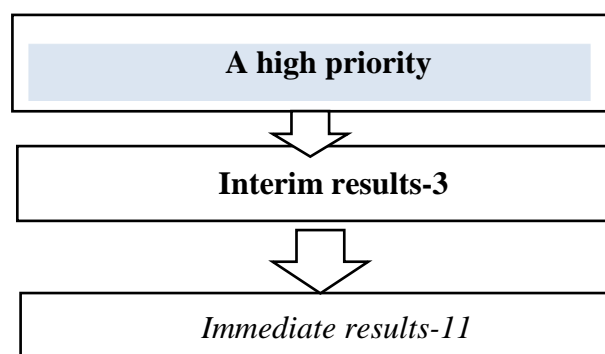


Fig. 4. Hierarchy of assessments of PCV effectiveness on FATF methodology

For the purpose of balanced general understanding of AML effectiveness of the system and detailed assessment of the level (in the form of a rating) of functioning of its components, the FATF effectiveness is based on 11 “immediate outcomes”. Each of these represents one of the key goals that an effective AML system must achieve. In turn, 11 “immediate outcomes” are grouped into three groups of “intermediate outcomes”, which are the main thematic objectives of the AML system⁸.

Thus, the fifth round of mutual evaluation of Ukraine in the AML sphere by the Committee of the Council of Europe MONEYVAL on the AML system effectiveness of the recorded results on certain 11 indicators, of which none received a “high” rating, 2 indicators received – “substantial”, 8 – “moderate”, and 1 – “low”.

So, the “*immediate outcome*” “*ML crimes are investigated, and criminals are prosecuted and subjected to effective sanctions*”, deserves priority attention as the level of effectiveness is rated as “low” and directly concerns law enforcement agencies.

The abovementioned, first of all, requires a substantial analysis of the situation, a study of those factors that cause the failure to effectively prosecute activities related to money laundering and etc. In addition, objectivity and validity of the research results requires an appropriate methodological basis, acceptability of the data used in the analysis, and the sources from which they come.

⁸ FATF (2013-2018), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated November 2018 (additional revisions adopted during the October 2018 Plenary), FATF, Paris, France, 169 c. (n.d.). [www.fatf-gafi.org. Retrieved from http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html).

But given the fairly wide range of research tasks, a step-by-step analysis of the problems is justified, highlighting the results in a number of scientific publications and further monographic synthesis. Therefore, the main analysis focuses on illustrating the effectiveness of the AML system for the seventh “*immediate outcome*”, which has a low rating.

Table 2

AML Effectiveness Ratings in Ukraine (according to MONEYVAL)

№ z / p	Intermediate result	№ z / p	The immediate results of the effectiveness of PCV	Level of efficiency
1.	Policy, coordination and cooperation reduce the risks of money laundering	1.	<i>LML risks are understood and, where necessary, actions are coordinated at the national level</i>	<i>significant</i>
		2.	<i>International cooperation provides relevant information and contributes to AML</i>	<i>moderate</i>
2.	The entry of criminal money and funds in support of terrorism into financial and other sectors has been prevented or identified and reported in these sectors	3.	<i>The Supervisory authorities shall exercise due supervision in accordance with the risks</i>	<i>moderate</i>
		4.	<i>Financial institutions adequately apply AML preventive measures in accordance with risks</i>	<i>moderate</i>
		5.	<i>Legal entities are protected from their use in the LML</i>	<i>moderate</i>
3.	Threats and money laundering are detected and eliminated, criminals are punished and deprived of illegal income ...	6.	<i>Financial and other data are used by the competent authorities for investigation</i>	<i>significant</i>
		7.	<i>Crimes are investigated, and criminals are prosecuted and subject to effective sanctions</i>	<i>low</i>
		8.	<i>Proceeds and proceeds of crime shall be confiscated</i>	<i>moderate</i>
		9.	<i>Crimes and activities to investigate the financing of terrorism are investigated</i>	<i>moderate</i>
		10.	<i>Terrorists and terrorist organizations do not have the ability to collect and use funds</i>	<i>moderate</i>
		11.	<i>Individuals and legal entities are prevented from collecting and using funds for the proliferation of weapons of mass destruction</i>	<i>moderate</i>

It is quite reasonable to conduct this analysis on the basis of statistical data comparison, the expert survey results and fixation, within the appropriate time frame of strategic targets of public policy in this sphere.

The real results and tendencies in law enforcement agencies' effectiveness in AML are sufficiently representative according to Unified Register of Pre-Trial Investigations. In particular, comparing the number of ML crimes (art. 209 of the Criminal Code of Ukraine) detected by law enforcement agencies with the number of acquisitive, economic, and corruption crimes (in particular, art. 191 of the Criminal Code of Ukraine, etc.), which in Ukraine (in particular, according to the SFMS typology) are often preceded by money laundering (are predicate crimes).

Table 3

Comparative analysis of detected crimes by law enforcement agencies on ML (Art. 209 of the Criminal Code of Ukraine) with the number of detected predicate crimes

	2013	2014	2015	2016	2017
In the sphere of economic activity	11104	8418	7631	6940	6297
Appropriation of property, 191	13193	10397	10211	9787	10756
Money laundering, 209	291	296	221	159	243
Specific weight	1,2 %	1,6 %	1,2 %	0,9 %	1,4 %

As a result, the proportion of detection of ML in the total number of predicate crimes for 2013–2017 is extremely low and does not change significantly and, therefore, the effectiveness of law enforcement agencies in AML behind the “Immediate outcome” “*ML offences are investigated and offenders are prosecuted and subject to effective and proportionate sanctions*” is behind the curve.

The task of increasing the effectiveness of law enforcement agencies in AML sphere is the subject of a number of regulatory acts, strategic documents and government plans in Ukraine. At the core of the implementation of state policy in AML sphere, in addition to the Basic law, an important place is occupied by the relevant AML Strategies on the basis of which annual plans are drawn up with the participation of a wide range of subjects – participants of the national AML system. Along with this, given the importance of evaluating the effectiveness of AML system, further comparison of AML practical results (based on statistical data

(Table 3)) for the relevant period of the Strategy (Table 4) is appropriate, in particular:

Table 4

Comparative analysis of the fixed goal analysis of public policy and practical results in AML

<p><i>Strategy for the development of system for prevention and counteraction of the legalization (laundering) of criminal proceeds or terrorism financing for the period up to 2015 (approved by the Cabinet of Ministers Ukraine as of March 9, 2011, No. 190-r)</i></p>	<p><i>Strategy for the development of system for prevention and counteraction of the legalization (laundering) of criminal proceeds, terrorism financing and financing of proliferation of weapons of mass destruction up to 2020 (approved by the Cabinet of Ministers of Ukraine as of December 30, 2015, No. 1407-r)</i></p>
Goal:	
<p>identification of measures ... aimed at <i>ensuring the stable and effective functioning of the national AML system</i></p>	<p>improving and <i>ensuring the stable functioning of the national AML system</i></p>
Objectives:	
<p>implementation of measures aimed at <i>identifying and preventing illegal activities of conversion centers and enterprises with signs of fictitiousness</i></p>	<p><i>detection and suppression of illegal activities of conversion centers and enterprises with signs of fictitiousness</i></p>
<p><i>improving the activities of law enforcement agencies and other government agencies in AML</i></p>	<p>ensuring <i>the effective functioning of the relevant law enforcement divisions</i></p>
<p><i>improving the efficiency of work on training and professional development of employees of special units of law enforcement agencies</i></p>	<p><i>improving the efficiency of work on training and professional development of employees of special units of law enforcement agencies</i></p>
Practical results during the Strategy implementation period (Table 3)	

Among other things, with certain objectives of AML strategies, which are almost identical, some expert survey indicators (Table 5) are quite correlated, in particular:

Table 5

**Results of the expert survey on indicators that correlate
with the objectives of the Strategy in AML**

No.	Indicator	Assessment level			
		High (%)	Medium (%)	Low (%)	Zero (%)
1.	The level of criminal services by type of “conversion center”	35,2	39,2	22,6	3,1
2.	The level of organizing crimes on ML	37,8	44,1	16,5	1,5
3.	The level of adaptability to changes, “creativity” of criminals in ML	32,9	42,6	22,3	2,2
4.	The level of innovative criminal schemes on ML	33,1	46,1	19,3	1,5
5.	The complexity of the methods on ML	30,1	47,8	19,9	2,2
6.	The level of effectiveness in identifying individuals who are “professionally” engaged in ML	6,8	38,7	46,9	7,6
7.	The level of application of measures for the elimination of criminal schemes for ML by law enforcement agencies	5,6	33,1	51,9	9,5
8.	The level of mandatory financial investigation during the pre-trial investigation of the predicate offense on the subject of ML (30,8 % - ...)	10,1	44,7	38,6	6,6
		7,0	31,0	26,7	34,6
9.	The level of investigation of laundered assets	5,2	28,5	51,7	14,5
10.	The level of professionalism of prosecutors, judges to investigate ML crimes	6,0	44,8	39,8	9,5
11.	The level of specialized trainings in AML	4,3	29,4	55,4	10,9

Thus, we have identified three main objectives of AML strategies regarding the effectiveness characteristics of AML system (within the subject defined by us). But, given that detailed analysis requires a sufficiently in-depth research of the survey data, within this article, expert comparison is permissible, evaluating the substantive essence of certain objectives of AML Strategy and the survey results.

In particular, the objective of AML Strategy “*detection and suppression of illegal activities of conversion centers and enterprises with signs of fictitiousness*” correlates with a group of survey indicators (paragraphs 1-7), which in turn is divided into two subgroups:

– for the first subgroup of indicators characterizing the level of criminal services by the type of “conversion center”, organization, “creativity”, “innovation” of criminals and the complexity of ML methods

(paragraphs 1-5), on average, 75-80% of respondents noted high and medium level problems, namely the significant distribution of this type and level of criminal activity;

– for the second one, which characterizes the effectiveness of criminal prosecution of criminals (paragraphs 6-7), more than half of the respondents noted low or zero levels of effectiveness in identifying persons who are “professionally” engaged in ML (54.5%) and application of measures to eliminate criminal schemes for money laundering by law enforcement agencies (61,4%).

Another objective of AML Strategies is “*effective functioning of the relevant units of law enforcement agencies*” correlates both with statistical data on financial investigations, within criminal proceedings on the predicate offenses, on the fact of money laundering and search of criminal proceeds (Table 2), and with the results of the survey.

The search level of laundered assets is defined as low and zero – 66.2% of experts, while the level of compulsory financial investigation during the pre-trial investigation of the predicate offense for ML – 30.8% of experts (law enforcement practitioners) could not be determined at all. In our opinion, 303 experts from among the respondents could not understand the meaning of the question precisely because of the “mandatory” financial investigation during the pre-trial investigation of the predicate offense for money laundering, which in turn forms the basis for taking into account the assessment of the specified group of respondents (303 people) zero rating. This, in turn, forms the basis for taking into account the assessment of the specified group of respondents (303 persons) in the zero rating. Thus, the level of compulsory financial investigation during the pretrial investigation of the predicate offense for ML is estimated as zero and low – 61.3%, but not – 45.2% of experts.

No less unambiguous are the assessment results of the objective of the AML Strategy “*increasing the effectiveness of trainings and professional development of employees of special law enforcement units*”, which correlates with Table 4 indicator at points 10-11. The level of prosecutors’ professionalism, judges on investigation of money laundering was determined by only 6.0% of respondents, and the lowest and the lowest – 49.3%. Logically, this is explained by another indicator – “*the level of specialized trainings in the AML sphere*”, according to which only 4.3% of

experts defined the level as high, as opposed to 66.3% of the assessment at the level of low and zero.

CONCLUSIONS

Conducted analysis, as noted, is not final. The problem requires a fairly in-depth research using a wider array of data and information, use of modern methods and analysis tools. Along with this, statistical data and expert survey data were used quite revealingly in the research, which ultimately correlated quite well with the FATF (MONEYVAL) proposals on the need for fundamental changes in the assessment of the “low” level of “immediate outcome” of the effectiveness of the national AML system.

SUMMARY

The article investigates the problems of the spread of complex socio – economic phenomenon – money laundering in Ukraine. This problem is relevant because of this phenomenon’s place among other socio-economic phenomena: shadow economy, capital outflow, criminalization of economic relations, etc. The attention is focused on the results of the fifth round of mutual evaluation of Ukraine in the sphere of AML by the Committee of the Council of Europe MONEYVAL and conclusions on the lack of effectiveness of the national mechanism of AML in Ukraine, in particular, on active detection of ML, confiscation of criminal assets and criminal prosecution of criminals. The necessity of monitoring and conducting appropriate macroeconomic and criminological analysis on the basis of scientific knowledge of the phenomenon of «money laundering», the factors of its manifestation and spread in Ukraine. As a methodology for the ML study in Ukraine as a socio-economic phenomenon, application of phenomenology based on the combination of the philosophical method of knowledge of the phenomenon in reality based on the essential characteristics of its nature, and criminology – the doctrine of crime. The results of specialists’ survey of the law enforcement system in the field of anti-money laundering are chosen as empirical basis. The analysis covers several groups of indicators, in particular, characterizing the spread of money laundering in the country as a whole, and the vulnerability of individual sectors of the economy. Attention is focused on the significant spread of money laundering phenomenon in Ukraine, as evidenced by 84.5% of respondents, and the most vulnerable is determined by the credit

and financial sector (82.0 %). Based on the use of special group of indicators, the analysis of connection of ML with other socially dangerous socio-economic phenomena: corruption, shadow economy, capital flight, organized crime and the like. The article focuses on the extreme demand of corrupt officials on laundering of corruption revenues, as noted by 85.4% of respondents. The factors that form the effectiveness basis of money laundering prosecution are highlighted. On the basis of their evaluation, conclusions were drawn regarding the priority and directions for improving the law enforcement agencies' activity in the area of anti-money laundering. The methodological principles of the FATF for assessing the effectiveness of national anti-money laundering system are analyzed. Attention is focused on evaluation results of the effectiveness of anti-money laundering system based on the results of recently completed round of evaluation of Ukraine MONEYVAL. It is concluded that it is necessary to introduce fundamental changes regarding the system of combating money laundering in Ukraine.

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