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COUNTERACTION TO FINANCIAL CRIMES IN THE SYSTEM OF FIGHT AGAINST LEGALIZATION (LAUNDERING) OF CRIMINALLY OBTAINED FUNDS

Abstract. Counteraction to financial crimes in the system of fight against legalization (laundering) of criminally obtained funds in the context of globalization and European integration is one of the priority directions of public policy in the financial sphere. Crisis phenomena of financial and economic, as well as socio-political nature, which are present in Ukraine, increase the risks of committing financial crimes and legalization (laundering) of criminally obtained funds as a result of illegal activities. The growing trends of increasing financial crime necessitate effective counteraction to destabilizing factors and the development of an effective mechanism to combat this destructive phenomenon.

The article defines the essence of financial crimes and legalization (laundering) of criminally obtained funds, substantiates the relationship and interdependence of financial crime with the legalization (laundering) of criminal income. The economic and legal analysis of normative and legal support of counteraction to financial crime and legalization of economy is carried out. The research of the dynamics of the number of financial crimes committed in Ukraine, the amount of legalized (laundered) funds and property, as well as the amount of legalized (laundered) funds obtained as a result of tax evasion, is conducted. The peculiarities of assessing the risks of legalization (laundering) of criminally obtained funds, based on the use of risk-oriented approach, are analyzed, and the most significant risks of legalization (laundering) of illegal funds are identified. In order to improve and ensure effective counteraction to financial crimes in the system

of fight against legalization (laundering) of criminally obtained funds, the main measures of counteraction to financial crime in Ukraine are proposed, the implementation of which requires strengthening economic, legal and administrative cooperation of economic agents.

Keywords: financial crimes, financial system, legalization of funds, system of counteraction to funds laundering, predicate crimes, legal relations, law.

JEL Classification H26, K42, O-17

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ПРОТИДІЯ ФІНАНСОВИМ ЗЛОЧИНАМ У СИСТЕМІ БОРОТЬБИ З ЛЕГАЛІЗАЦІЄЮ (ВІДМИВАННЯМ) КОШТІВ, ОДЕРЖАНИХ ЗЛОЧИННИМ ШЛЯХОМ

Анотація. Протидія фінансовим злочинам у системі боротьби з легалізацією (відмиванням) коштів, одержаних злочинним шляхом, в умовах глобалізації та євроінтеграції є одним із пріоритетних напрямів реалізації державної політики у фінансовій сфері. Кризові явища фінансово-економічного і соціально-політичного характеру, які присутні в Україні, підвищують ризики вчинення фінансових злочинів і легалізації (відмивання) коштів, одержаних унаслідок протиправної діяльності. Зростаючі тенденції посилення фінансової злочинності зумовлюють необхідність ефективної протидії дестабілізувальним чинникам і розроблення ефективного механізму боротьби з цим деструктивним явищем.

Визначено сутність фінансових злочинів і легалізації (відмивання) коштів, одержаних злочинним шляхом, обґрунтовано взаємозв'язок і взаємообумовленість фінансової злочинності з легалізацією (відмиванням) злочинних доходів. Здійснено економіко-правовий аналіз нормативно-правового забезпечення протидії фінансовій злочинності та легалізації

економіки. Проведено дослідження динаміки кількості фінансових злочинів, учинених в Україні, обсягів легалізованих (відмитих) коштів і майна, а також обсягів легалізованих (відмитих) коштів, що були одержані внаслідок ухилення від сплати податків. Проаналізовано особливості проведення оцінювання ризиків легалізації (відмивання) коштів, одержаних злочинним шляхом, на основі використанням ризик-орієнтованого підходу, досліджено і виявлено найбільш вагомні ризики легалізації (відмивання) нелегальних коштів. З метою удосконалення та забезпечення ефективної протидії фінансовим злочинам у системі боротьби з легалізацією (відмиванням) коштів, одержаних злочинним шляхом, запропоновано основні заходи протидії фінансовій злочинності в Україні, реалізація яких потребує посилення економічної, правової та адміністративної взаємодії економічних агентів.

Ключові слова: фінансові злочини, фінансова система, легалізація коштів, система протидії відмиванню коштів, предикатні злочини, правовідносини, право.

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Introduction. The growing trends in globalization and European integration increase the risks of destabilizing processes and phenomena that affect the national economy. The formation of the global international financial system as a result of the transformation of national financial markets leads to a redistribution of spheres of influence, which intensifies the processes of shadow economic activities, international corruption and transnational economic crime. The accumulation of significant amounts of illegal capital requires legalization and involvement in the official economy, which, in turn, leads to the emergence and development of legalization (laundering) of funds.

Taking into account the threatening trends in legalization (laundering) of criminally obtained funds, the problem of effective counteraction to this destructive phenomenon and the necessity to deepen economic and legal research into the use of the financial system for criminal purposes, is becoming important.

Analysis of research and problem statement. The problematic aspects of counteraction to financial crimes in the system of fight against legalization (laundering) of criminally obtained funds, have long been in the spotlight of such scholars as V. Avdiiskiy, Z. Varnalii, V. Dubrovskiy, Ya. Zhalilo, M. Fleischuk and others. However, due to significant scientific developments in this area, this problem has not been solved yet.

The study of the main views on solving the problem of effective counteraction to financial crime in the context of the fight against legalization (laundering) of funds, allows to form some of their features, in particular, the fact that financial crime is mainly considered in the relationship with economic crime and not as a separate economic and legal category. In addition, the legislative regulation of financial crime is insufficiently justified, which leads to fairly loyal types of punishment for committing crimes in the financial sphere. At the same time, the financial crimes in criminal and legal interpretation are predicate funds legalization crimes, so their investigation is carried out taking into account the need to establish the amount of legalized funds.

It is becoming clear that scholars' views on the concept of «financial crimes» differ. V. Avdiiskiy [1, p. 6, 39—40] keeps to the point of view that financial crimes are intentional, systematic and illegal activities of economic agents that threaten the interests of the national economy, unbalance the financial system of the country, violate the legitimate interests of economic entities, have a negative impact on the socio-economic development and social security of the population and are carried out for personal enrichment of certain individuals. In this case, the researcher systematizes the main features that characterize financial crimes, including: 1) the presence of not less than two subjects of the crime; 2) the selfish motive and the character of crimes; 3) the long-term and systemic nature of committing such crimes; 4) leading to significant losses; 5) secrecy from society; 6) committing crimes in the course of professional activity.

Z. Varnalii, Ya. Zhalilo and M. Fleischuk [2, p. 96—111] associate the financial crimes with factors of the development of the illegal sector of the national economy, the shadowing of the

activities of economic entities and the spread of corruption. Scholars emphasize the transnational nature of financial crime and its close relationship with the global criminal groups.

Analyzing the provisions of the Criminal Code of Ukraine [3], we concluded that at the national legislative level the financial crimes are grouped according to certain classification criteria, namely: 1) property crimes in the financial and credit system: fraud with financial resources, embezzlement, stealing, waste of property, taking possession of it due to abuse of official position; 2) crimes involving embezzlement: misappropriation of budget funds and criminal seizure of property of an economic entity; 3) crimes in the monetary and credit sphere: criminal acts of falsification of money and securities, crimes with documents for transfer, payment cards, electronic money, legalization (laundering) of criminally obtained money; 4) crimes related to violation of the official powers: intentional violation of the law on prevention and counteraction to legalization of criminally obtained funds, insolvency of the enterprise and bankruptcy of a bank, falsification of financial documents and reports, manipulation of the stock market; 5) crimes in the sphere of official activity: abuse of power, official position and authority, excess of power and official authority by law enforcement workers, their inaction to prevent illegal activities in the organization or conduct of gambling and lotteries, official forgery and negligence, bribery, illicit enrichment, bribery of an official and abuse of influence.

The adoption of the Law of Ukraine «On the Bureau of Economic Security» [4] has become important in formation of the trends and methodological instruments of counteraction to financial crime. The Law provides for the establishment of a special state body, the competencies of which include the powers of investigation of financial crimes, the detection of risk zones in the sphere of economy, their assessment, the development of methods and ways to minimize and eliminate threats to economic security of the state, prevention, detection and investigation of criminal offences in the financial sphere, planning measures of counteraction to such offences.

O. Shevchuk [5] defines financial crime as a set of committed crimes that encroach on credit, budget, tax, customs and other kinds of financial activities and are related to the formation, distribution, redistribution and use of financial resources by economic agents.

It is becoming clear that financial crime is aimed at obtaining illicit profits, illegal enrichment and the accumulation of illegal financial resources. Moreover, the experience of Central and Eastern Europe would significantly help Ukraine to avoid significant mistakes and risks in this case [6, p. 3—6]. The results of the activities of criminal groups require further legalization (laundering) and involvement in the official economy. In view of this, the problem of research into the legalization (laundering) of criminally obtained funds, is becoming relevant.

M. Fleichuk [7, p. 218—219] understands the legalization of economy as the implementation of financial transactions of a criminal nature, associated with criminally obtained money, acquiring the form of legal assets.

L. Hula [8] associates the legalization (laundering) of criminally obtained funds with performing the system of acts, techniques, operations and methods of exercising the influence, related to the withdrawal of criminal profits and illegal financial resources from the shadow into the official sector of economy, as well as their allocation in the field of legal circulation through the use and realization of financial instruments and financial operations.

M. Blikhar, L. Savchenko, I. Komarnytska and M. Vinichuk [9, p. 105] studying the processes of legalization of funds, emphasize the existence of a dual structure of world economy and national economies — the legal and illegal sectors. The structural components of the latter are smuggling, illegal migration, industrial «espionage», human trafficking, legalization (laundering) of criminally obtained funds.

Thus, the comparative analysis of the main approaches to identifying the interaction of financial crime with the legalization (laundering) of criminally obtained funds, allows us to state the legalization (laundering) of funds as the need to launder «dirty» money obtained as a result of crimes in the financial sphere, which is manifested in concealing and masking the sources of illegal origin of such funds, their real owners, location, movement and illegal possession, their disposal and use.

The purpose of the article is to substantiate the theoretical and applied principles of counteraction to financial crimes in the system of fight against legalization (laundering) of criminally obtained funds.

Results of the research. The proved impact of financial crime on the global and national financial system, structural deformation and the emergence of significant destabilizing factors of socio-economic development of the country, necessitate deepening research in the field of preventing and counteracting financial crimes. In order to form an effective mechanism it is necessary to understand the real extent and scale of financial crime, which at the present stage is one of the most difficult tasks, due to the transnational character of financial crimes, imperfection of their legal qualification and lack of the appropriate statistics. At the same time, it should be noted that the competent authorities pay considerable attention to empirical research of financial crime in the context of legalization (laundering) of criminally obtained funds, in particular, the State Financial Monitoring Service of Ukraine, the Prosecutor General’s Office of Ukraine and the National Bank of Ukraine.

Comprehensive assessments of financial crime in Ukraine during 2016—2020 were conducted by the Prosecutor General’s Office of Ukraine [10—14], according to which (*Fig. 1*) the largest number of criminal financial crimes during the entire analyzed period is related to the tax and mandatory payments evasion. In addition, a positive upward trend is observed for such a financial crime as legalization (laundering) of criminally obtained property. In the conditions of 2020, the number of such crimes as fraud in the financial market increased significantly (by 86,84 % compared to 2019).

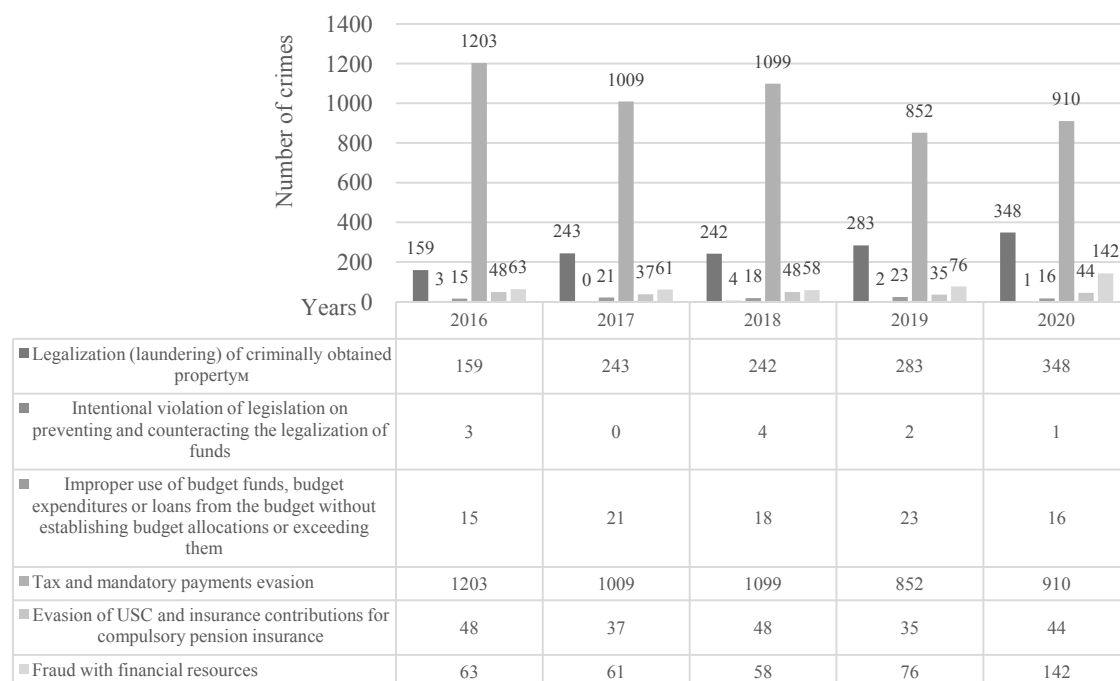


Fig. 1. Dynamics of the number of financial crimes committed in Ukraine in 2016—2020

Source: [10—14].

At the same time, the established amounts of legalized (laundered) illegal funds (*Fig. 2*) also indicate a significant level of financial crime. However, it should be noted that analyzed values are not final, but they represent only the share that could be identified and recorded in the course of investigations. In fact, the amount of legalized funds and property is much higher, which is confirmed by the estimates of the State Financial Monitoring Service of Ukraine [15, p. 45], according to which the amount of illegal funds exported outside the country annually is about 10 % of official GDP, and the total amount of laundered funds is more than \$ 113 billion.

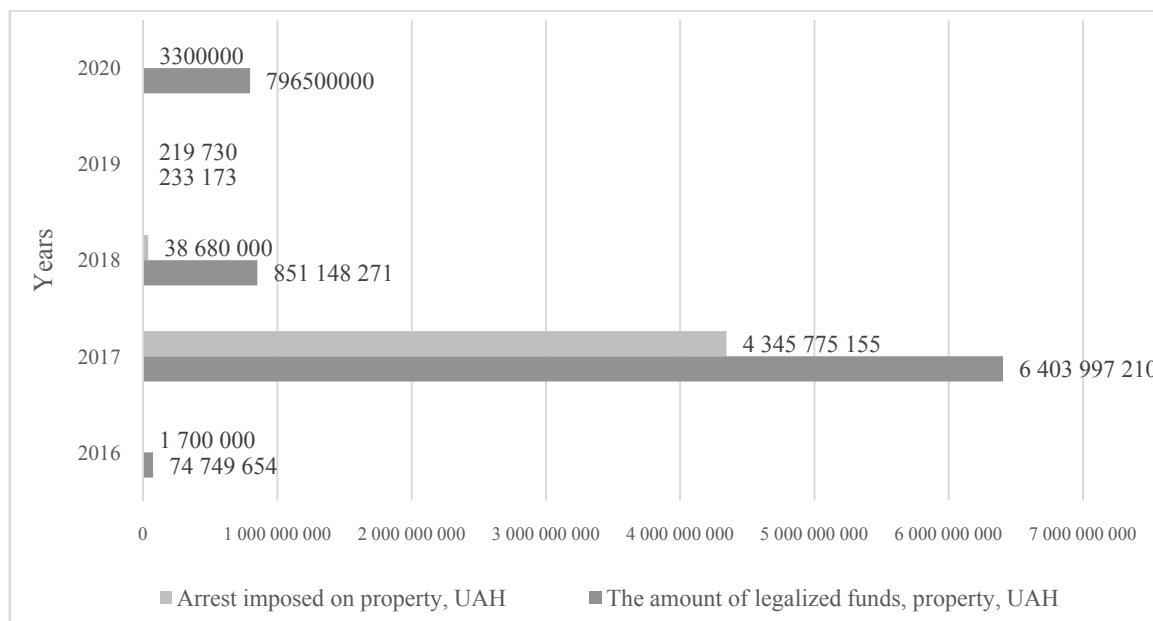


Fig. 2. Dynamics of the amounts of legalized (laundered) criminally obtained funds and property in Ukraine in 2016—2020

Source: [10—14].

Analysis of the structure of financial crime in Ukraine showed the highest share of crimes related to tax and mandatory payments evasion, so we consider it reasonable to deepen research concerning the amounts of legalized (laundered) funds obtained as a result of tax evasion (Fig. 3).

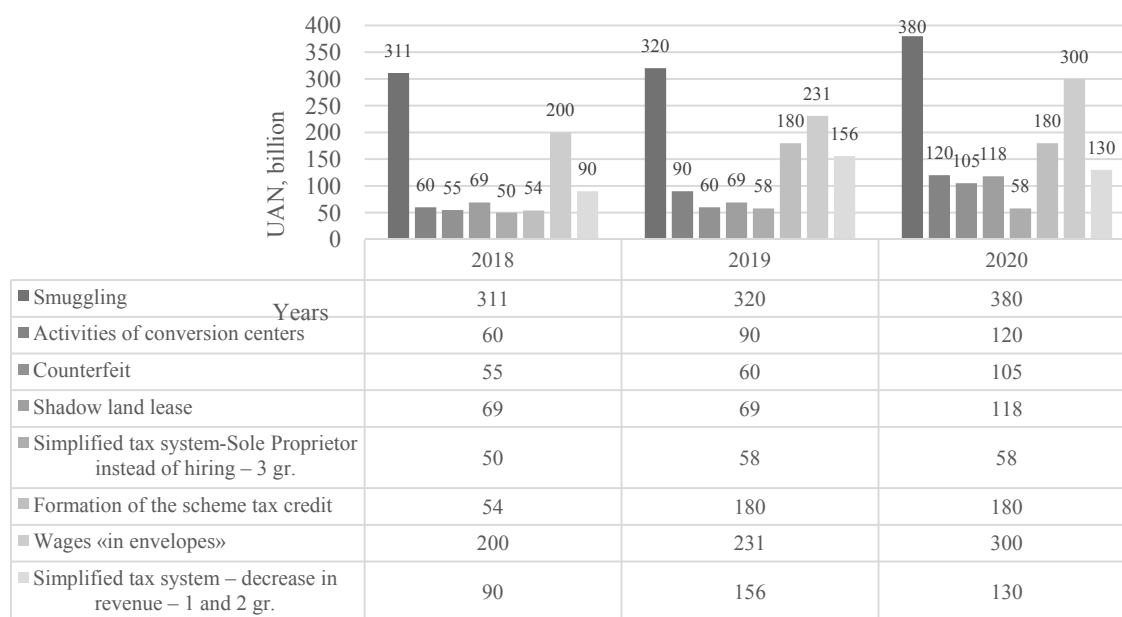


Fig. 3. Dynamics of the amounts of legalized (laundered) funds obtained as a result of tax evasion in Ukraine in 2018—2020, UAH billion

Source: [16, p. 43—44; 17, p. 43—44; 18, p. 54—55].

According to the results of research, the largest amounts of legalized (laundered) funds are funds detected as a result of smuggling. Moreover, during 2018—2020 there is a tendency of increasing this indicator from UAH 311 billion in 2018 to UAH 380 billion in 2020. The upward trend indicates the deepening of this problem and the ineffectiveness of the policy of counteraction to smuggling in Ukraine.

Slightly lower, but quite high, the rates of funds laundering have been set for the payment of wages «in envelopes», the amount of which in 2018 was UAH 200 billion, in 2019 — UAH 231 billion, and in 2020 increased to UAH 300 billion. If we analyze the general trends, it is necessary to note that it was 2020 when there was the intensification of illegal activities in the financial sector, which is proved by a significant increase in the values of almost all indicators and is explained by the deepening of the financial and economic as well as socio-political crisis in the country, and the impossibility of the economic entities to resist the challenges of the COVID-19 pandemic.

At the same time, considerable attention should be paid not only to the tendencies and dynamics of financial crime in Ukraine, but also to the risks of funds laundering, the study of which shows significant political and economic problems that directly lead to the formation of illegal capital and the need to legalize (launder) criminally obtained funds. In this context, it is about the predicate crimes which due to the National Risk Assessment in the sphere of preventing and counteracting the legalization (laundering) of criminally obtained funds and financing terrorism, are recognized as the main risks of the system of counteraction to criminally obtained funds. The most important among them are as follows: 1) high level of corruption; 2) shadowing and offshoring of the economy; 3) low level of trust in the financial system; 4) the growth of organized crime; 5) high cash flow; 6) outflow of financial capital outside the country; 7) low level of income of the population; 8) the use of virtual currencies; 9) ineffective investigations of crimes related to funds laundering and predicate crimes. According to the Typological research «Actual methods, ways, tools of legalization (laundering) of criminal funds and terrorism financing (separatism)» [19, p. 25] it is corruption that is called the most dangerous threat to the socio-economic as well as social and political development of Ukraine, which leads to the need to launder funds.

Assessment of the risks of legalization (laundering) of criminally obtained funds in Ukraine is carried out using a risk-oriented approach and involves the use of quantitative (statistical) and qualitative (expert) methods. In Fig. 4 we propose empirical studies of the risks of legalization (laundering) of criminally obtained funds.

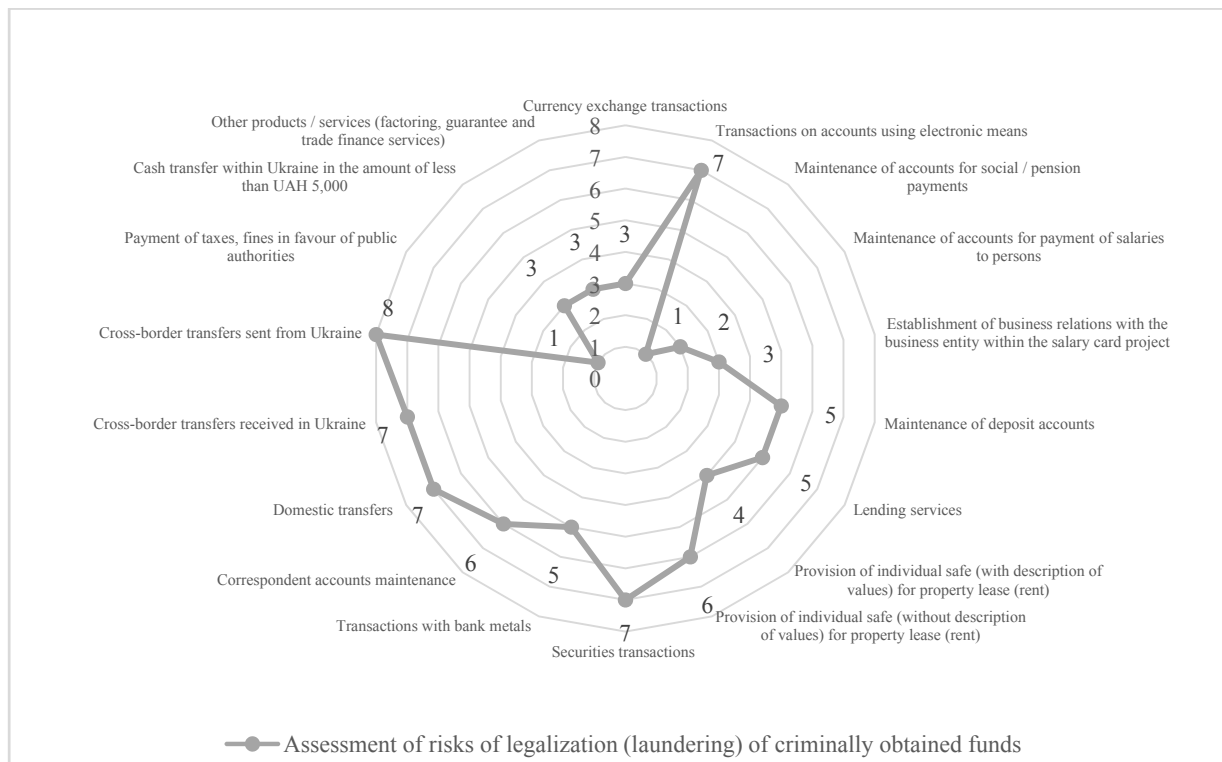


Fig. 4. Assessment of risks of legalization (laundering) of criminally obtained funds in Ukraine

Source: [15, p. 18—19].

However, we should note that O. Bekh [20, p. 216] emphasizes the need to improve a risk-oriented approach in the direction of expanding the criteria of risks of funds laundering in terms of sectors of the financial system, which we consider absolutely reasonable and appropriate.

The obtained results allow to state that the highest level of the risk of legalization (laundering) of criminally obtained funds has been recorded for cross-border transfers sent from Ukraine, which confirms the existence and severity of the problem of withdrawal of financial resources outside the country, including offshore zones.

An increased level of risk has been identified for cross-border transfers obtained in Ukraine, domestic transfers, securities transactions and electronic accounts.

The obtained data allow to state the transnational nature of committing financial crimes, their spread not only onto the national but also world economy, which necessitates the development of an effective mechanism for counteracting financial crime and legalization (laundering) of criminally obtained funds not only at the national level, but also taking into account international trends in the fight against financial crime.

We should note that the legalization (laundering) of criminally obtained funds has an indirect impact on all components of the financial system of the country, and the creation of an effective and efficient mechanism for overcoming the risks of funds laundering is a guarantee of stability and strengthening the financial security of the country [21, p. 293].

Taking into account the significant threat of increasing financial crime in Ukraine, the growth of the amount of legalized funds and the presence of a number of real risks of legalization (laundering) of criminally obtained funds, we propose to improve the main elements of the mechanism for counteracting financial crimes (*Fig. 5*), in particular, institutional, legal, economic, financial, organizational and informational.

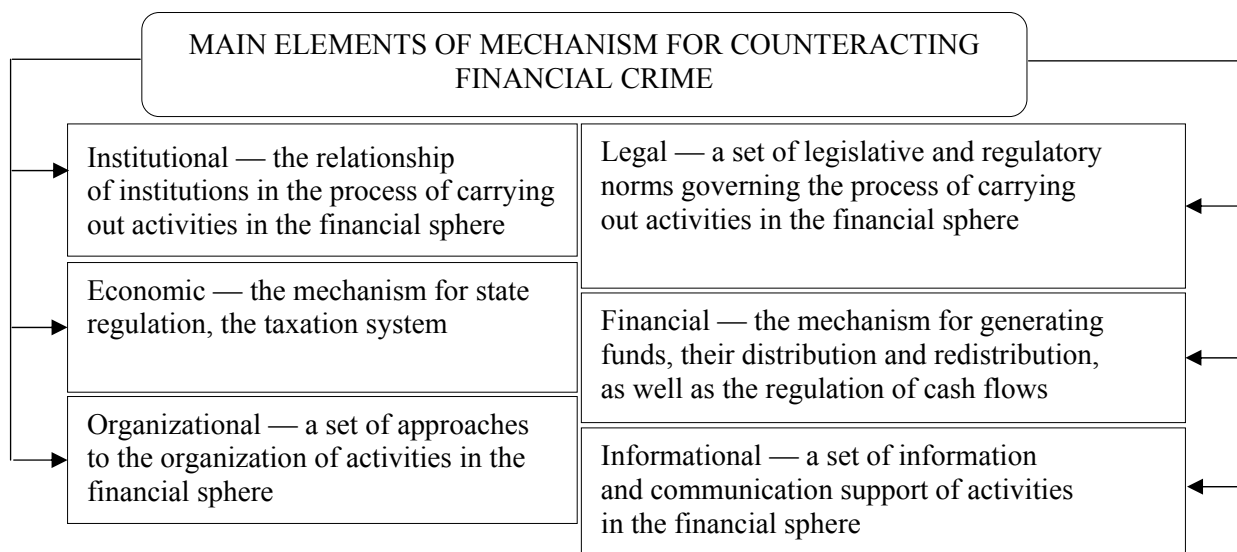


Fig. 5. The main elements of the mechanism for counteracting financial crime
 Source: author's development.

We should note that it is impossible to limit oneself to improving the elements of the mechanism for counteracting financial crime.

It is appropriate to make significant efforts to develop a set of direct measures to counteract financial crime, indicated in *Fig. 6*, the essence of which is to establish economic, legal and administrative interaction of entities, taking into account the innovative technologies and instruments used in committing crimes in the financial sphere.

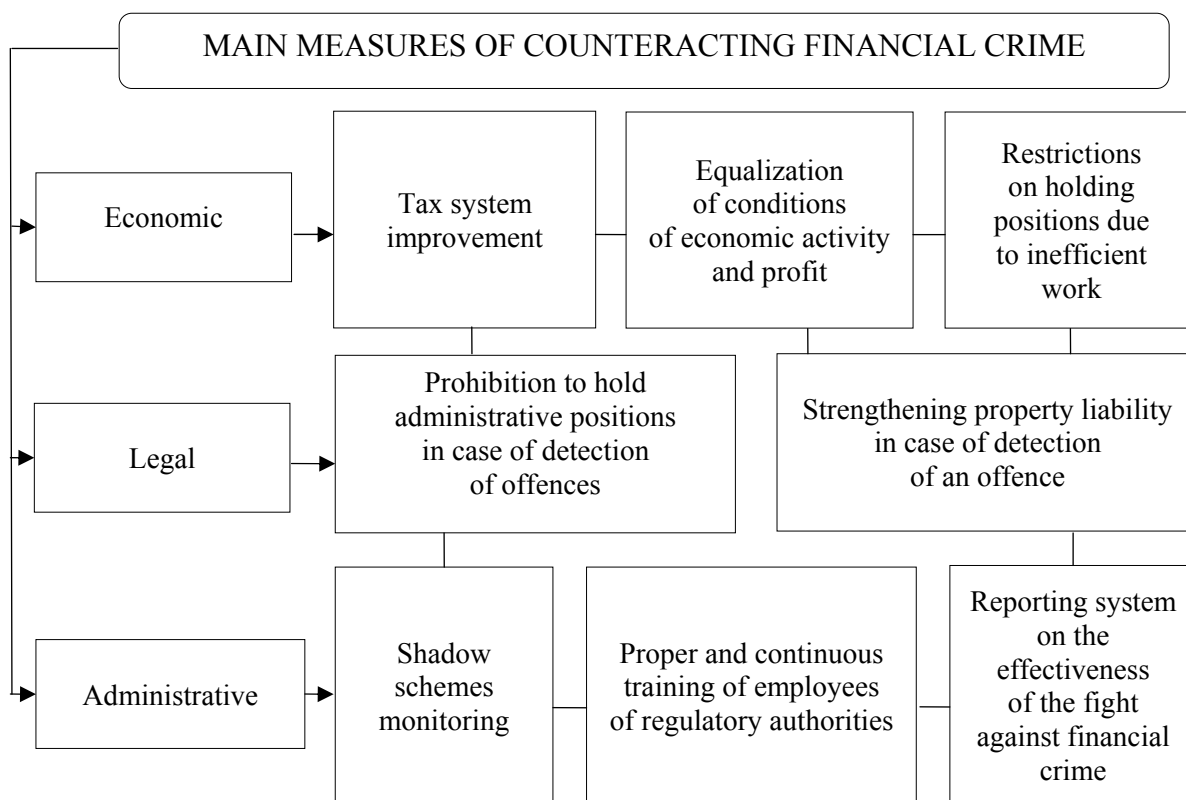


Fig. 6. The main measures of counteracting financial crime in Ukraine

Source: author's development.

Equally important is the strengthening of international interaction and cooperation in the fight against organized financial crime and legalization (laundering) of criminally obtained funds, in particular, with the US government organization in the sphere of counteracting financial crimes Financial Crimes, which specializes not only in detecting financial crimes, but also in establishing the channels for the movement of illegal financial resources.

Conclusions. Thus, the research of theoretical and applied principles of counteracting financial crimes in the system of the fight against legalization (laundering) of criminally obtained funds, allows to state the significant presence and dynamic growth of financial crime in Ukraine, its destructive impact on the national economy and financial system of the country. As the result of empirical calculations, it has been established that the largest share in the structure of financial crime includes crimes related to tax evasion and mandatory payments. At the same time, it has been found that the set of measures to counteract financial crimes in the system of the fight against legalization (laundering) of criminally obtained funds needs to be improved in terms of normative and legal support for combating certain financial crimes, and the organizational and legal mechanism for investigating predicate crimes, as well as strengthening the criminal liability for committing illegal acts in the financial sphere, need to be clarified.

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