

Conference Paper

An Analysis of the EU Experience in Constructing a System of Controller Relationships with MFIs in the Field of AML / CFT and its Application in the Russian Federation

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Abstract

The article deals with the experience of regulating the issues of countering the laundering (legalization) of proceeds from crime and financing of terrorism (hereinafter AML / CFT) in microfinance organizations (hereinafter referred to as MFIs) using the example of the EU. The downward trend in the MFI market in Russia is largely due to the violation of AML / CFT legislation. In this connection, there arises the problem of regulating MFIs in this field. A comparative analysis of the system of relations between MFIs and the regulator in the Russian Federation and the EU allows us to conclude that it is impossible to apply the EU experience in the RF system at the moment. The primary measure is to revise interest rates used by MFIs to approach the understanding of MFIs in the EU.

Keywords: microfinance organization, AML / CFT, EU experience, regulator.

The market of microfinance was originated in the 90s, but its rapid development has come since 2011. However, in recent years there has been a tendency to clean up the number of microfinance organizations. As shown in Figure 1, the number of MFIs excluded from the state register is steadily growing, and the growth rate of newly registered MFIs is negative since 2014. The data are taken from [1].

From the experience of arbitration cases, the most frequent reason for leaving microfinance organizations from the market is a violation of the requirements of the law. The reasons for this situation are, on the one hand, the insufficient qualification of the organization's employees in AML / CFT matters, and, on the other hand, the existence of a large volume of current and constantly updated legislative and

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Received: 11 December 2017

Accepted: 20 January 2018

Published: 13 February 2018

Publishing services provided by
Knowledge E

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Selection and Peer-review under the responsibility of the FinTech and RegTech: Possibilities, Threats and Risks of Financial Technologies Conference Committee.

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regulatory documents in the field of anti-legalization legislation and the lack of time for their study and reflection.

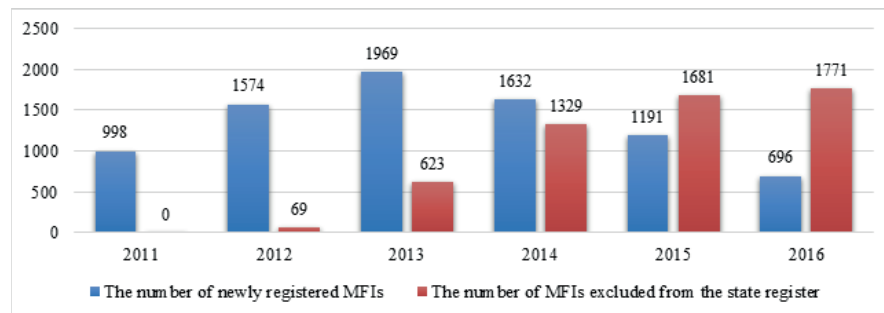


Figure 1: Dynamics of changes in the number of MFIs in the Russian Federation.

As the Europeans themselves admit [2] the area of microfinance and microcrediting is sufficiently developed. And, consequently, legislation should be sufficiently developed. In the EU, microfinance organizations serve to lend both individuals and individual entrepreneurs. In the Russian Federation, 75% of microfinance loans issued by MFIs are loans; "up to wages" and only 25% - microloans of small enterprises. On 31 December, 2016, the portfolio of MFIs amounted to 88.1 billion rubles, which is 25.3% higher than at the end of 2015 (70.3 billion rubles). The total number of MFI borrowers increased by 54.9%, to 5.1 million borrowers. The total amount of funds attracted by MFIs for 2016, compared with 2015, increased by 13.5%, to 60.5 billion rubles. In 2016, the Bank of Russia quarterly calculated and published average market values of the total cost of loans (PSK) for microfinance market entities. Also due to the continued growth of competition among MFIs in 2016, there was a decrease of 46.982 percentage points, to 613.177%, of the average market value of CPM in the category of unsecured loans for up to 1 month in the amount of up to 30 thousand rubles [3]. About a quarter of loans (23%) are given by microfinance to small and medium-sized businesses. Rates in this segment start from 8-10% per annum due to state support programs. More than half of all contracts are ordinary consumer loans, with or without collateral, where rates start from 30-35% per annum [4].

In the EU, the rates in microfinance organizations are quite humane, usually microfinance does not take more than 25,000 euros. According to statistics [5], the average loan amount for individuals is 2,136 euros at 15% per annum, and for business 9 960 euros and 10% per annum. However, in some countries, for example, in France or Belgium, the interest rate for business is 6%, and for individuals 3%, while there are restrictions on microloans of 10,000 and 3,000 euros, respectively. Next, Figure 2 shows the amount of borrowing in% of GNI per capita in 2014 and 2015 (the 3 largest

and 3 lowest values) [6]. For comparison, Figure 3 shows GNI per capita by the Atlas method at the current prices of the same countries according to the World Bank [7].

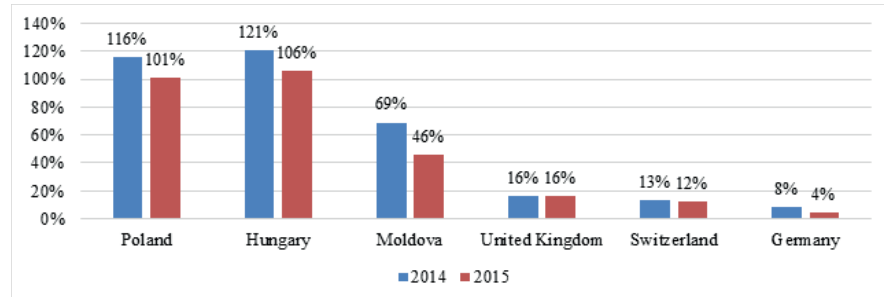


Figure 2: Ratio of the microloan to GNI per capita.

The fact that the dialogue with the authorities on behalf of microfinance organizations represents one consolidation of the EMN (European Microfinance network) - the European microfinance movement - is a definite plus for regulating this industry. This society ensures the rights of microfinance organizations in the political movements of society. This society lobbies the interests of microfinance organizations in politics, informing the current state of affairs in the industry and prompting the ruling bodies in which direction they are to move. In the society at the end of 2016 there are 85 member companies from 23 EU countries.

The regulation of non-lending financial institutions in the field of AML / CFT in the EU is carried out on the basis of Directive 4 of the European Union (DIRECTIVE (EU) N 2015/849), which is adopted by the European Parliament and the Council of the EU on the prevention of the use of the financial system for money laundering or terrorist financing. The Directive defines the main activities of financial organizations in the field of AML / CFT.

It should be noted that all the directives written in the EU are based on the recommendations of the FATF. The very first directive was adopted in 1991. It declared the fight against money laundering with regard to drug-related offenses and assigned obligations to the financial sector. The second directive expanded the scope of application. Radical changes were in 2005, because two years earlier, the FATF revised its Recommendations, including terrorism financing in them. In addition, a mechanism has been developed that allows to take increased control measures for situations with increased risk and, accordingly, to reduce measures if the risk is minimal, and a new requirement for verification and identification of the client has been developed.

The European Parliament adopted a fundamental document, but the main body overseeing the banking sector is the European System of Financial Supervision, which includes several committees: the European Committee for Systemic Risks; Banking

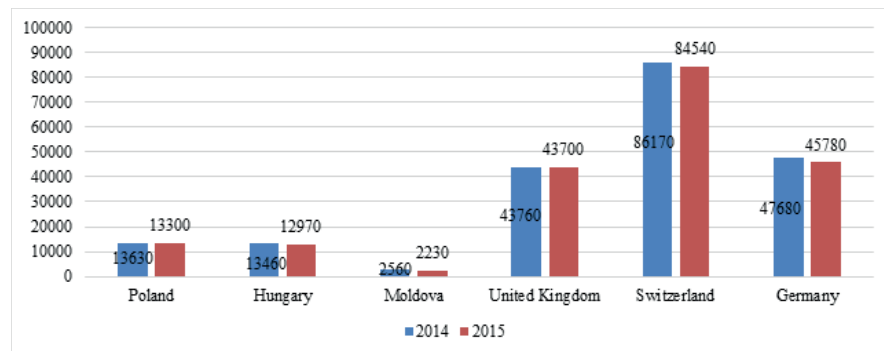


Figure 3: GNI per capita by the method of atlas (in current prices in dollars).

Supervision Authority; body on insurance supervision and supervision in the sphere of pensions; body for supervision of the securities market; Joint Committee of the European Supervisory Bodies and Competent or Supervisory Authorities in the Member States of the EU. As we can see, a good structure of supranational (allied) bodies has been created, but the directive declares that the EU alone does not have the strength to counter money laundering and terrorist financing, so one of the most important tasks is international experience and data exchange. In each country there should be a financial intelligence unit with which to exchange data and which analyzes received information to establish the connection between suspicious transactions. In the Russian practice, the functions of the European Financial Supervision System are performed by Rosfinmonitoring.

In the Russian legislation, a microfinance organization is understood as a legal entity that carries out microfinance activities and information about which has been included in the state register of microfinance organizations in the manner provided for this by the Federal Law [8].

Microfinance organizations can operate in the form of a microfinance company or a microcredit company.

The main requirement for microfinance organizations in the field of AML / CFT is that the microfinance organization has approved Internal Control Rules that are developed on the basis of regulatory legal acts posted on the CBR website [9].

Under the Bank of Russia Directive No. 3484-U of December 15, 2014 "On the procedure for the submission by non-credit financial organizations of information required by the Federal Law on Countering the Legalization (Laundering) of Criminally Obtained Incomes and the Financing of Terrorism", microfinance organizations should provide Rosfinmonitoring the following information [10]:

- On transactions with cash or other property subjected to mandatory control, as well as on transactions for which, when implementing internal control rules, there are suspicions about their implementation for the purpose of legalization (laundering) of proceeds from crime or financing of terrorism;
- On the measures taken to freeze (block) money or other property of organizations and individuals;
- On the results of checking the presence among their clients of organizations and individuals in respect of which measures to freeze (block) money or other property are applied or should be applied;
- On operations suspended in accordance with paragraph 10 of Article 7 of Federal Law No. 115-FZ (identification of customers and beneficiaries, acceptance for servicing, updating of information about the client);
- On cases of refusal on the grounds specified in Article 7 of Federal Law No. 115-FZ, on the execution of the client's order for the operation [11].

Violation of the MFO requirements of 115-FZ will cause the liability provided for in Art. 15.27 of the Code of Administrative Offenses of the Russian Federation, a fine of 50,000 to 1,000,000 rubles and suspension of activities up to 90 days, as well as a fine of 120,000 to 1,000,000 rubles, restriction of liberty to two years, in accordance with Art. 174 of the Criminal Code of the Russian Federation [12], [13].

According to the authors, fines in this industry are not the main risks that should be feared. The most influential risk is the reputation of the MFI. As for the reputation of the MFI market, it has generally suffered, but not in relation to the AML / CFT issue, but in principle. From the analyzed materials and facts mentioned in the article above, we propose the following ways of development of the sector:

First of all, we need to limit interest rates or to restart completely this sector, to abandon the current scheme of granting loans. At the moment, we see an effective rate on the border of 20-25% per annum for MFI loans. And from the point of view of the legislative framework, apply the requirements as to banks, but it is possible to mitigate them. The EU experience shows, based on the international principles of the FATF and using international information and dialogue, it is possible to achieve good development of the microcredit sector. It should be noted that the pioneer of the transition to the European concept of MFIs may be a subsidiary of the Savings Bank, the launch of this project was announced in the summer.

Secondly, the Central Bank is a mega-regulator in the Russian Federation, which, according to the authors, taking into account the analysis of EU practices, is not a positive aspect for performing effective control. As for foreign experience, the European Central Bank (ECB) does not seek to regulate all sectors, but has a European system of financial supervision. In this connection, the authors' proposal is not to increase the functions of the Central Bank to control small industries, but to create an accountable structure. The authority of the Central Bank of the Russian Federation should, according to the authors, include the production of basic documents (directives), and the accountable structure will adapt them for each sphere and be a layer of information.

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