

Conference Paper

FATF Guidance on Effective Oversight in the AML/CFT system

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Abstract

Fourth round of mutual evaluations of the FATF (financial action task force on money laundering, the Financial Action Task Force on Money Laundering, FATF) was held already in 38 countries around the world. In 2018 Russia will be checked.

One of the elements of anti-money laundering system is the oversight activities. FATF gives guidance on its effective building. It should be provided with the risk-oriented approach. On the one hand, in order to apply its limited resources to the most dangerous areas. On the other hand, does not interfere the development of legal entrepreneurs with redundant oversight actions.

The purpose of this article is to attract attention of specialists for financial monitoring to Guide FATF on the application of risk-oriented approach to oversight for AML/CFT purposes.

Keywords: Legalization, countering the financing of terrorism, supervision in the sphere of AML, risk-oriented approach

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1. Introduction

The international training and methodology Centre for financial monitoring (ITMCFM) is actively working on the translation of international standards on the subject of combating the legalization (laundering) of proceeds received by crime and the financing of terrorism (AML/CFT).

One of the documents prepared by the financial action force on money laundering (Financial Action Task Force on Money Laundering -FATF, FATF further), is "application guide the risk-oriented approach: effective oversight and enforcement bodies overseeing the financial sector AML/CFT, and law enforcement bodies" (Guidance for a risk-based approach: effective supervision and enforcement by AML/CFT supervisors of the financial sector and law enforcement, hereinafter referred to as the "FATF Guidance: effective supervision and enforcement) [1, 2].

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FATF presented in this guide:

1. Explanation of characteristics of an effective system of supervision and enforcement.
2. Examples of measures and tools that can use the relevant oversight bodies to fulfill the requirements of FATF recommendations concerning the approach to oversight activities.

2. Analytical part

The FATF does not prescribe to countries to use specific supervisory model. However, the FATF encourages members to identify effectively and mitigate risks of money laundering and terrorist financing through compliance with the essential requirements set out in the FATF recommendations "international standards on combating money laundering, financing of terrorism and the financing of proliferation of weapons of mass destruction" (hereinafter, the FATF recommendations) [3]. Below are some recommendations of FATF, having the greatest impact on oversight activities:

1. Recommendation 1. Risk assessment and application of risk-oriented approach.
2. Recommendation 2. cooperation and collaboration at the national level.
3. Recommendation 26. Regulation and supervision of financial institutions.
4. Recommendation 27. Powers of supervisory bodies.
5. Recommendation 34. Guidance.
6. Recommendation 35. sanctions.
7. Recommendation 40. international cooperation

FATF Guide: effective supervision and enforcement "of the importance of the inclusion of oversight for AML/CFT purposes in a broader system of prudential supervision and regulation of commercial activity. This can reinforce the synergies, enhance expertise and skills and contribute to a more rational use of resources. Supervision and monitoring of financial institutions and certain non-financial businesses and professions (DNFBPS) can be multiple oversight bodies. At the same time in different countries may have different models of oversight agencies. Best suits the Russian AML/CFT system is a functional approach (supervision will be determined by the particular activity

that carries out financial institution, irrespective of its legal status; for each activity/institutions may have their own supervisory authority).

In an effective supervisory regime the country lies a number of factors which determined the direct result of no. 3 "methodology for assessing compliance with the FATF recommendations and technical efficiency of the AML/CFT systems (further, the FATF Evaluation Methodology):

1. *How well the licensing, registration and other controls that apply oversight bodies or other authorities, prevent criminals and their accomplices in the implementation of the ownership or the beneficial ownership of a significant or supervisory involvement, or control functions in financial institutions?*
2. *How well detected breaches of such licensing or registration?*
3. *How well supervisors identify and support understanding of the risks in the area of money laundering and terrorist financing in the financial and other sectors as a whole, between different sectors and types of institutions and individual agencies?*
4. *How well supervisors, taking into account the risk factors and to reduce risks, supervise or monitor the compliance of financial institutions with the requirements of the AML/CFT sphere?*
5. *The extent to which corrective measures were applied in practice and/or effective, proportionate and deterrent sanctions?*
6. *The extent to which supervisory authorities can demonstrate that their actions affect compliance with the requirements of financial institutions?*
7. *How well supervisors contribute to the understanding of financial institutions with their obligations in the field of AML/CFT and risks in the field of money laundering and the financing of terrorism?*

It should be noted the importance of the FATF evaluation methodology. The forthcoming assessment of the National AML/CFT system will be carried out in accordance with this document. Familiarize yourself with the FATF Evaluation Methodology can be on the official site of the Eurasian Group on combating money laundering and financing of terrorism (EAG) [4].

These results are provided by the oversight and enforcement actions (measures) that can be grouped into several groups:

1. Preventive.

2. Corrective.
3. Sanctions.
4. Law enforcement.

Each group of supervisory action includes various functions, examples of which are in practices of various countries and are listed in the "Guide FATF: effective supervision and enforcement" and briefly described below.

1. Control at the beginning of the implementation of the activities of financial institutions, as well as in the appointment of new senior management is performed in order to prevent criminals take leadership positions or become owners of financial institutions.

Example 1. United States

The Office of United States currency control (OSS) checks on professional competence and integrity of candidates for senior positions in banks. Qualifications is a reason for rejection of the application. If an applicant has a criminal past, his application is rejected or also analyses whether a criminal record affect the follow-up work to the person's contact card. If the applicant does not specify information about criminal convictions, he could be subjected to civil or criminal liability.

OSS has developed special guidelines on the verification of personal data, as well as analysis and evaluation of changes in the leadership of the institutions.

Example 2. Canada

The notified body in the field of AML/CFT is financial transactions and Analysis Centre (FINTRAC) messages. Money transfer services providers are required to register with FINTRAC and provide information on its activities. The owners of such companies may not be persons with a criminal past for crimes in the field of money laundering, financing of terrorism and the financing of proliferation of weapons of mass destruction (hereinafter referred to as ml/TF/FROMU).

Cash services providers provide updated information in cases of change of owners or supervisors, as well as upon re-registration, which takes place once or twice a year.

FINTRAC has conducted activities to detect unregistered money services providers on the basis of information obtained from open sources, and in the process of visiting such institutions. It can also perform verification activities concerning to service

providers, whose registration is terminated, in order to make sure: reporting activity is no longer maintained.

Example 3. Mexico

For currency exchanges and remittance service providers the obligation of obtaining technical report on prevention of ML/FT. The report is valid for 3 years. It does not guarantee automatic registration/re-registration of these institutions.

There is a practice to visit newly organized enterprises for checking permission to engage in activity. Documentation is examined which identifies the participants and procedures on AML/CFT issues, risk matrix OD sent messages to an authorized body, the automated system for the identification and documentation of suspicious operations and other elements of the AML/CFT system.

2. Evaluation of the effectiveness of the supervisory authority organizations to identify and combat ML/TF. It can be run through various activities: cameral and field audits (and selective), questionnaires, special meetings and interview.

Example 4. France

Prudential management and resolution (ACPR) annually receives from each financial institution, which is the subject of AML/CFT responses to the questionnaire, which includes such topics on the Organization and implementation of AML/CFT. The answers also attached the annual report containing additional information to given answers.

3. Interaction between supervisory, law enforcement authorities.

Example 5. Netherlands

One of the mechanisms for cooperation is the regular tripartite summit financial supervisory authorities, tax information and Investigation Service, the Prosecutor General's Office. Violations are considered in AML/CFT legislation and decisions on the application of varying degrees of responsibility, including administrative measures, not punitive and corrective nature.

4. To influence AML/CFT supervisory bodies should have a broad set of tools that could be applied in proportion to the degree of violations.

Example 6. United Kingdom

Depending on the severity of the consequences of violations in the AML/CFT sphere, their possible implications, future action of the offending State taxes and duties (HRMC) apply measures:

- ✓ Counseling;
- ✓ A written warning;
- ✓ Monetary fines;
- ✓ Disqualification;
- ✓ Deprivation of registration;
- ✓ Criminal prosecution.

Example 7. Canada

Financial transactions and Analysis Centre (FINTRAC) messages also differentiates the action depending on the risks in each sector:

- ✓ Advocacy;
- ✓ Enquiries about the activities of individual agencies, interpretation of policy in the sphere of AML/CFT;
- ✓ Getting reports from agencies on the implementation of the mandatory requirements;
- ✓ Letters to AML/CFT participants with specific disadvantages;
- ✓ Getting confirmation of the activities of the reporting institutions;
- ✓ Monitoring the timeliness and quality of the messages received and reports;
- ✓ Meetings with representatives of the AML/CFT actors to discuss the implementation of the mandatory requirements of the AML/CFT sphere;
- ✓ Desk checks;
- ✓ Field audits;
- ✓ Administrative fines;
- ✓ Referral to law enforcement authorities.

3. Conclusion

The examples of "Guide FATF: effective supervision and enforcement" indicate that in other countries great importance is paid to compliance with the mandatory requirements of the AML/CFT sphere, provides a serious responsibility for their violation. For example, the Isle of Man, as well as in several other British territories, establishes criminal liability if a suspicious transaction report (activities) are not sent to the financial intelligence.

In addition, such examples help to identify new and improve existing forms of oversight bodies.

This article covered only certain aspects of the FATF Regulations. Encourage all employees and supervisory authorities in AML/CFT to read:

- ✓ the translation of this document on the website of the ITMCFM [5];
- ✓ and/or with the original on the FATF website [6].

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