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Problem aspects of interaction of law enforcement authorities in the field of countering money laundering

Проблемні аспекти взаємодії правоохоронних органів у сфері протидії легалізації доходів

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Abstract

One of the biggest obstacles to maintaining an effective international financial system is money laundering. Money laundering is also extremely difficult to investigate and prosecute. The latter task is entrusted to law enforcement agencies. The purpose of the article is to characterize the problematic aspects of law enforcement cooperation in the field of combating money laundering in Ukraine and finding optimal ways to solve them. During the study, the authors used the following methods: dialectal, terminological analysis and operationalization of concepts, analysis and refinement, analysis, and synthesis, sociological and statistical. The article emphasizes that the normative sources of ways of interaction between law enforcement agencies in the field of combating money laundering are set out in a rather fragmentary manner, without any

Анотація

Однією з найбільших перешкод для підтримки ефективно діючої міжнародної фінансової системи є відмивання грошей. Боротьба з відмиванням грошей зараз розглядається як пріоритетний напрямок протидії організованій злочинності в більшості країн світу. Крім того, відмивання грошей також надзвичайно важко розслідувати та переслідувати. Виконання останнього завдання покладається на правоохоронні органи. Хотіли б наголосити, що інституційна побудова системи правоохоронних органів знаходиться в стані перманентного становлення, на фоні якого створюються інституції, призначенням яких є запобігання легалізації доходів. Метою статті є характеристика проблемних аспектів взаємодії правоохоронних органів у сфері протидії легалізації кримінальних доходів в Україні та пошуку оптимальних шляхів їх вирішення. Під

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specifics regarding the specific boundaries, scope of cooperation. This situation inevitably leads to various kinds of abuse and conflict. In our opinion, given the importance of the task of combating money laundering, the main task is to clearly regulate the ways and methods of cooperation between law enforcement agencies in this area and the introduction of administrative liability for failure to take measures or evasion of such cooperation.

Key words: legalization, money laundering, criminal income, law enforcement agencies, interaction.

Introduction

The pace of economic growth, globalization processes, institutional financial changes in the international arena, the transformation of banking and financial services leads to increasing the role of finance in society. Under these conditions, money laundering is a particularly detrimental phenomenon for the stability of the financial and economic system (Cherniei, Cherniavskiy, Dzhuzha, & Babanina, 2021).

Achim, M. V., Văidean, V. L., Borlea, S.N. and Florescu, D.R. after analyzing the economic indicators of the 27 members of the European Union for 2005–2020 concluded that the high level of sustainable and economic development of the country is due to low levels of corruption, shadow economy and cybercrime (Achim, Văidean, Borlea, & Florescu, 2021). Money laundering is a criminally illegal act of a mixed nature, as it poses a threat not only to the economic sphere, but also to the sphere of justice, public administration, and property management (Reznik, & Bondarenko, 2020). In 2018, according to the International Monetary Fund, the current volume of money laundering operations in the world ranged from 620 billion to 1.6 trillion dollars, which was approximately 2-5% of world GDP (Walid and Hassan, 2018). Countering the legalization of criminal proceeds requires concerted efforts from law enforcement agencies. In our opinion, the current level of interaction is not perfect. Wanting to prove this thesis in practice, we initiated a sociological

study. The purpose of this study was to identify existing problems of law enforcement cooperation in order to combat money laundering and find effective, adequate measures and ways to interact.

час дослідження автори використовували наступні методи: діалектний, термінологічного аналізу та операціоналізації понять, аналізу та уточнення, аналізу та синтезу, соціологічний та статистичний. У статті наголошено, що у нормативних джерелах способи взаємодії правоохоронних органів між собою у сфері протидії легалізації злочинних доходів викладені досить фрагментарно, без будь-якої конкретики відносно конкретних меж, обсягів та ступеня співпраці. Означена ситуація неминуче веде до різного роду зловживань та конфліктів. На нашу думку, враховуючи важливість завдання з протидії легалізації злочинних доходів, принциповим завданням є чітке нормативне закріплення способів та методів співпраці правоохоронних органів між собою у цій сфері та запровадження адміністративної відповідальності за невжиття заходів або ухилення від подібної співпраці.

Ключові слова: легалізація, легалізація доходів, злочинні доходи, правоохоронні органи, взаємодія.

Theoretical framework

A. Basilyuk notes that "laundering" is a form of conversion of money earned by dishonest methods (through price manipulation, violation of real barter ratios, use of promissory notes, securities, property relations, various forms of criminal transactions, etc.), and their conversion (cash legalization) to provide a version of legal origin (Basilyuk, 2002).

V. Popovych draws a line between the concepts of money laundering and their legalization. By the first he means the commission of any actions by the owners of "real funds of illegal origin" or "fictitious (" stolen) funds "obtained through the issuance of fictitious funds, as well as actions or inaction of employees of credit and financial institutions and other entities financial and economic institutions, notary bodies, registration and other organizations aimed at concealing the sources of capital, or the initiators and accomplices of their acquisition, accumulation, "alluvium", "laundering", legalization. Instead, legalization is defined as the process of introducing shadow capital into the legal sphere of economic activity for the purpose of their

legitimate accumulation, ie obtaining "purified income" or "reproduced-additional fictitious income" (Popovych, 2001).

R. Baranov proposes to understand the laundering of proceeds from crime: a negative socio-economic phenomenon, which is based on actions aimed at concealing the illegal origin of income, including sources of their origin, location, movement, and property rights, as well as their introduction into lawful form in official financial circulation (Baranov, 2018).

While L. Dolya interprets the legalization of money and other property obtained by criminal means, as the implementation of various economically significant actions with the proceeds of crime money and other property (Dolya, 2002).

William R. Schroeder think that money laundering is the process by which the existence, illicit source or illicit use of income is concealed in order to legitimize it (Schroeder, 2001)

Judy Fendo says legalization of proceeds of crime" are somewhat different, still common is that this phenomenon is negative and is manifested in the transformation of proceeds from crime into legal means (Fendo, 1999).

Summarizing the above, we would like to note that money laundering is a criminally illegal transnational act that has a negative impact on the economic stability of the state.

Methodology

The study of the current state of cooperation between law enforcement agencies in the field of combating money laundering, identifying the shortcomings of such cooperation will be carried out using general scientific methods of cognition. This will allow us to objectively analyze and conduct research, as well as achieve the goal of the study. In particular, the dialectical method will be used to outline the methodological foundations of the study of existing ways of cooperation between law enforcement agencies

in the field of combating money laundering. This method will be used in combination with the method of terminological analysis and operationalization of concepts. To analyze and clarify the general theoretical provisions that reveal the essential nature, the peculiarities of the views of the scientific community on the definition of "legalization of criminal proceeds". The method of analysis and synthesis in their systemic combination, as well as the ascent from the abstract to the concrete will be used to determine the impact of money laundering on the financial and economic security of Ukraine. In turn, the statistical method includes the collection and generalization of official information on cases of money laundering. To describe the changes in such a process over time, the method of discrete-continuous modeling will be used. Also, this method will be used to identify the main shortcomings of cooperation between law enforcement agencies in the field of combating money laundering and ways to eliminate them. The method of sociological research will be used to conduct a sociological survey to identify shortcomings of law enforcement cooperation in combating money laundering, as well as sociological research among focus groups to develop methods for establishing such cooperation.

Results and discussion

The negative impact of criminal proceeds on the financial and economic stability of the state is highly appreciated by the representatives of law enforcement and judicial authorities; representatives of financial institutions and representatives of the public sector, scientists, as evidenced by a survey conducted by the Center for Social Research of Sumy State University during July-August 2021. Thus, answering the question on assessing the level of impact of money laundering on the financial and economic stability of the state, a third of respondents (29.7%) consider such a threat as high as possible and another 21.8% of respondents say that criminal income indirectly affects financial and economic stability of the state (Figure 1).

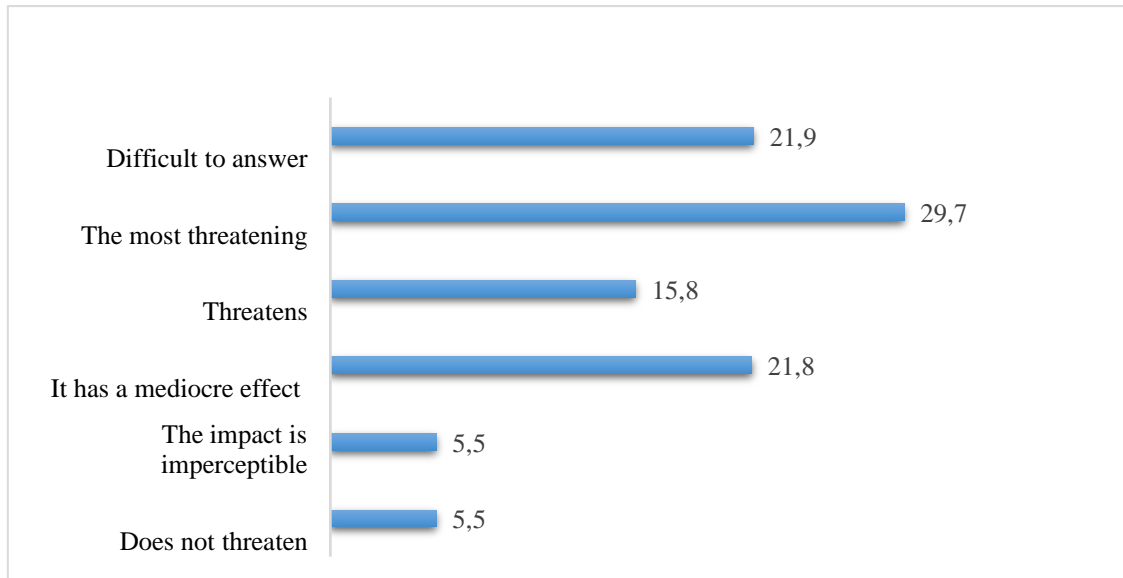


Figure 1. Assessment of the level of impact of money laundering on the financial and economic stability of the state (bondarenko o.)

Indeed, money laundering is a financial criminal offense that often involves a complex series of transactions involving a few financial institutions under the jurisdiction of different states (Buchanan, 2004). Ronald F. Pol also notes that the successful implementation of money laundering contributes to the commission of other crimes (Pol, 2020). For Vitvitskiy S.S., Kurakin O.N., Pokataev P.S., Skriabin O.M. and Sanakoiev DB The consequences of increasing the level of money laundering for Ukraine are deficit of state budget revenues, reduction of the level of financing of the social sphere, reduction of the living standards of the population. Therefore, there is a need for a comprehensive approach to solving the problem of money laundering, which will include continuous training of financial audit specialists, the creation of special units to investigate money laundering, consolidating the classification of such crimes and establishing criminal liability for their commission (Vitivitskiy, Kurakin, Pokataev, Skriabin, & Sanakoiev, 2021). Accordingly, the fight against money laundering is a priority for law enforcement agencies.

The fight against money laundering obtained by criminal activity is entrusted to a number of law enforcement agencies of Ukraine: 1) bodies of the National Police, which carry out pre-trial

investigation of criminal offenses, except for those under the jurisdiction of other entities; 2) The National Anti-Corruption Bureau of Ukraine is authorized to investigate criminal offenses, the responsibility for which is provided by Art. 209 of the Criminal Code of Ukraine; 3) Specialized anti-corruption prosecutor's office and bodies of the prosecutor's office which are tasked with supervising compliance with the law during operational and investigative activities, pre-trial investigation of criminal offenses; 4) State Bureau of Investigation, which investigates crimes committed by senior officials, officials of the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office (Law of Ukraine № 4651-VI, 2012).

Respondents consider the number of law enforcement agencies tasked with counteracting and combating money laundering to be optimal, as 49.1% of respondents believe that all law enforcement agencies should be authorized to carry out such a task within their competence. Although there are respondents who believe that this task should be performed only by the National Anti-Corruption Bureau of Ukraine (30.9%), the Bureau of Economic Security of Ukraine (24.2%) (Figure 2).

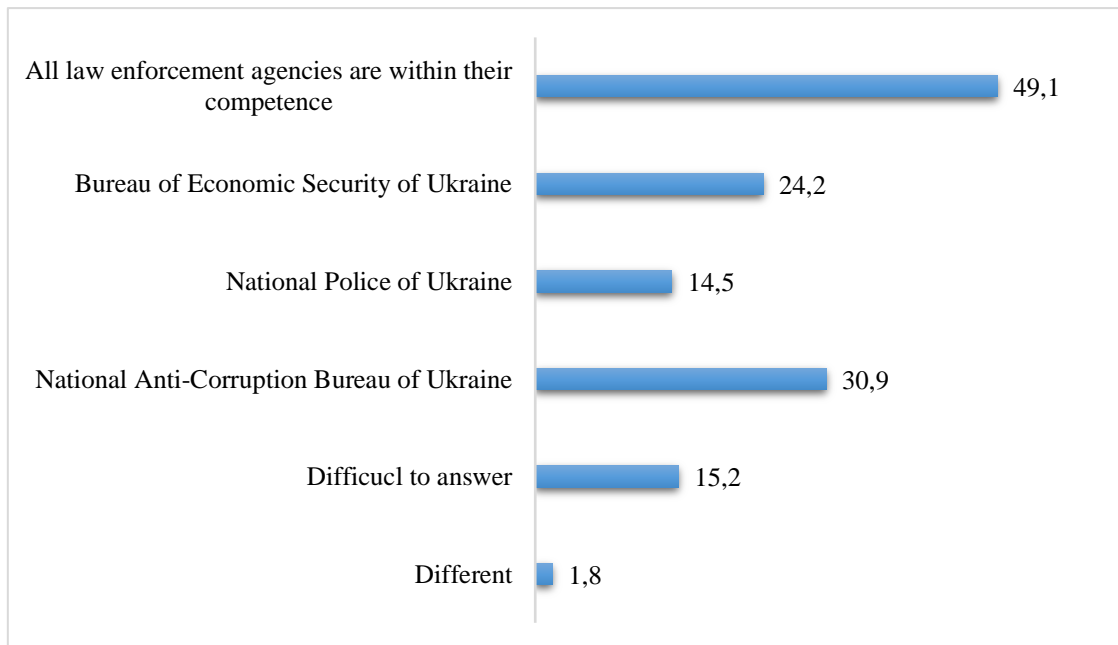


Figure 2. Assessment of the level of impact of money laundering on the financial and economic stability of the state (reznik o.)

According to, M. Ivanets, despite the existing number of law enforcement agencies tasked with counteracting and combating money laundering, their system is still in a state of permanent formation, accordingly, new institutions are emerging which also rely on it. task (Ivanets, 2018). In addition, it should be noted that their activities in the field of combating money

laundering obtained as a crime are assessed as the most effective by only 4.8% of respondents. The largest number of respondents (27.3%) assess the effectiveness of law enforcement agencies in combating money laundering as mediocre, 19.4% as ineffective, and 18.8% believe that the effectiveness of such activities is questionable (Figure 3).

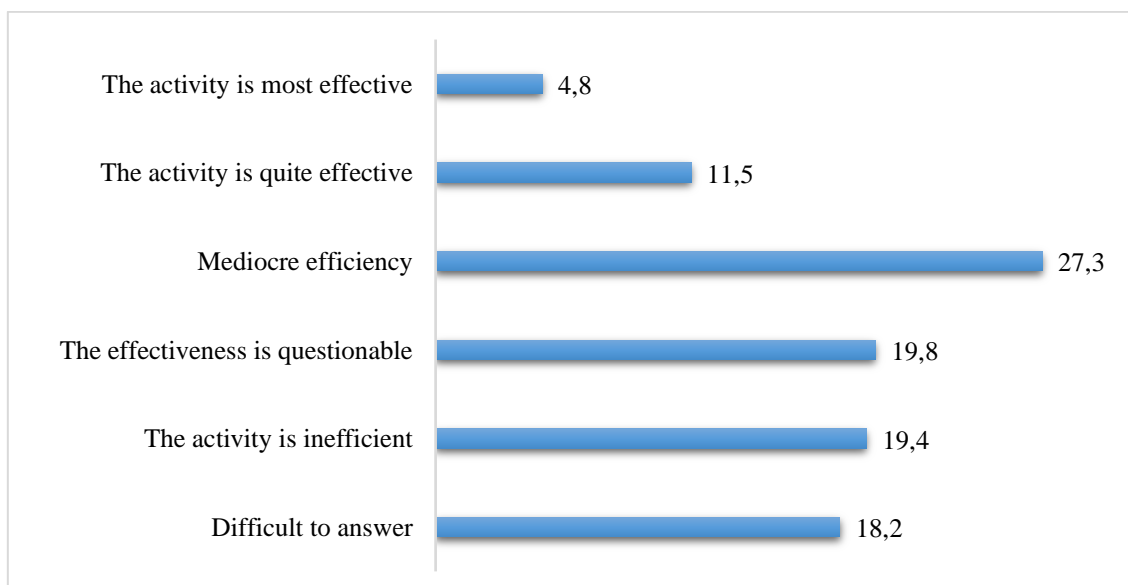


Figure 3. The effectiveness of law enforcement agencies in combating and combating money laundering over the past 5 years (n. horobets)

It should be noted that the effectiveness of law enforcement agencies in combating money

laundering also depends on the interaction of the latter with public authorities, local governments,

enterprises, institutions and organizations, banks, and other financial institutions (Reznik, & Bertsyuk, 2020). Pontes, R., Lewis, N., McFarlane, P., Craig, P. considering the problem of money laundering in the UK, note that to stimulate a collective response of money laundering requires enhanced cooperation between institutions and sectors, better the use of innovative technologies and a sustainable plan for financing such activities (Pontes, Lewis, McFarlane, & Craig, 2021)

G. Mulyar and O. Khovpun draw attention to the fact that the interaction of law enforcement agencies during the consideration of criminal proceedings is important for the further conduct of a full, prompt, comprehensive and impartial pre-trial investigation; collection of evidence (preserving their legal properties), their proper consolidation and bringing the perpetrators to justice for the offense (Mulyar, & Hovpun, 2019). In addition, the interaction between law enforcement agencies should only be improved since new tools for money laundering are emerging, which allow to get the best results from such criminal activities with minimal costs (Ghafoor, Hamid, & Soheil, 2016). That is why, according to Bazarova D., the definition of procedural and legal competence of law enforcement agencies, improving their interaction with financial institutions and several other issues continues to be the focus of international institutions and scholars (Bazarova, 2019).

According to G. Matusovsky, interaction is a coordinated activity of law enforcement, regulatory and other government agencies, aimed at achieving a common goal with minimal effort, resources and time (Matusovsky, 2001). Although S. Tishchenko notes that the nature of interaction may be different, depending on whether the direct participants are guided by common interests or different ones. The main thing is that as a result the goal set for the system in which these subjects interact was achieved (Tishchenko, 2014). R. Stepanyuk and D. Zayats also draw attention to such a feature of interaction as a legal basis for the possibility of its application (Stepanyuk, & Zayats, 2014). Despite the different approaches, we are convinced that the common goal of law enforcement agencies in the field of combating money laundering is to minimize this negative phenomenon. Accordingly, the achievement of this goal necessitates the search for specific forms and methods of cooperation between law enforcement agencies and the construction of a

unified strategy to combat and combat money laundering.

The generalization of the provisions of regulatory sources allows us to identify several forms of cooperation between law enforcement agencies in the field of combating money laundering.

The first form of law enforcement cooperation that needs to be identified is the exchange of information, including operational. To identify the facts of legalization of funds of criminal origin, the operational capabilities of various law enforcement agencies, methods of economic analysis, data from automated information retrieval systems, and operational support of certain sectors of the national economy are used. The use of this direction allows establishing the fact of committing a predicate crime by detecting the legalization of funds of criminal origin. At the same time, often carried out operational and investigative measures are not enough to establish the circumstances of a predicate crime, i.e. formally all available signs indicate the legalization of funds of criminal origin, but to establish the circumstances of criminal receipt of such income is impossible (Lysenko, 2019). Therefore, the exchange of information is extremely important.

The next form of cooperation of law enforcement agencies in the field of combating money laundering between themselves and with financial institutions is a joint analysis of the dynamics of criminal activity and forecasting its further trends. The volume of committed financial and economic crimes is consistently at a high level, respectively, a joint study of the dynamics of the main elements of economic crime makes it possible to assess the strongest changes (Reznik, & Bondarenko, 2020). Such studies are important to draw conclusions about the most rapidly growing areas, methods, and specific examples of criminally illegal acts, as well as to identify dangerous trends in economic crime and predict future possible bursts of money laundering (Rubtsov, 2009).

Important forms of cooperation in the investigation of the legalization of funds of criminal origin traditionally include the activities of investigators and operational units at the beginning of criminal proceedings. It consists in carrying out joint activities after receiving information about a possible criminal offense and joint analysis of available materials. In general, in the formation of general principles and the creation of methods for investigating

economic crimes, the role of this form of non-procedural interaction of the investigator with the staff of operational units, scientists consider particularly important (Bezrukov, 2016). After all, it avoids delaying the pre-trial investigation and facilitates the prompt investigation and search for the perpetrators.

It should be emphasized that the activities of the law enforcement agency provide procedural, tactical, and methodological features of functioning. Some of these elements may be more effective. Accordingly, joint coordination meetings as a form of law enforcement cooperation allow sharing experiences to prevent recurrence of shortcomings in the activities of the law enforcement agency that has already

admitted them, and other law enforcement agencies responsible for combating money laundering.

Most respondents (30.9%) interviewed by the Center for Social Research of Sumy State University in July-August 2021, emphasize that the implementation of joint measures in obtaining information about possible criminal offenses and joint analysis of available materials of criminal proceedings for money laundering should be a priority form of law enforcement cooperation. Another 23.6% consider it as priority to jointly consider and improve practical activities to detect, detect, investigate, and prevent criminal acts related to the legalization of criminal proceeds (Figure 4).

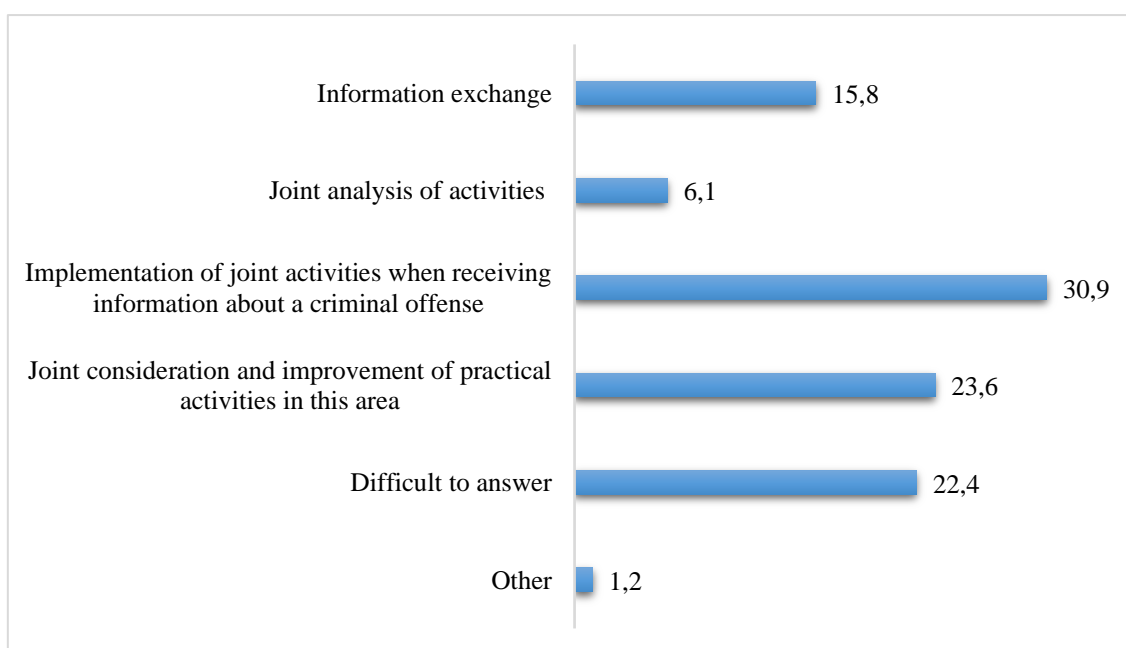


Figure 4. Agencies among themselves, with financial institutions, other legal entities in the field of counteraction and fight against legalization of criminal proceeds (m. nazarov)

An important role in the interaction of law enforcement agencies is also played by the joint study of international practice in combating and combating money laundering and the development of new proposals in this area. In general, the organization of an effective system for combating money laundering in the country and abroad significantly reduces the motivation to receive such income, helps to identify and destroy the sources of their origin and reduces the number of cases of money laundering. In this context, combating money laundering is one of the most important tasks for each country and the international community. This is confirmed by foreign experience, the generalization of which allows to identify priority areas for combating

money laundering: development of a system of specialization and coordination of government to develop and implement a strategy to combat cross-border organized crime; formation of a legal framework for the interaction of law enforcement agencies of each country with specialized international organizations; development of new mechanisms for monitoring and identification of persons associated with organized criminal groups; strengthening control over foreign exchange transactions; improving the mechanisms of interaction between banking institutions, law enforcement agencies and specialized international institutions (Baranov, 2018). The generalization of the experience of foreign countries allows to determine the most

optimal forms and methods of counteracting and combating money laundering and to develop recommendations for the legislator to improve the legal basis for cooperation between law enforcement agencies in this area.

However, the current state of law enforcement cooperation in counteracting and combating money laundering, analysis of memoranda of cooperation, joint orders of these bodies clearly demonstrate: the lack of systematic coordinated cooperation in all necessary areas and in fact the lack of prerequisites and mutually beneficial cooperation (Demyanchuk, 2018). Respondents interviewed by the Center for Social Research of Sumy State University in July-August 2021 also assess the effectiveness of various mechanisms of law enforcement interaction with each other and with other entities in the field of prevention and investigation of money laundering indirectly and negatively (Figure 5).

In particular, the total number of negative assessments (the sum of assessments "1" and "2") gained such mechanisms of interaction as:
1) joint analysis of the dynamics of criminal

activity, forecasting its further trends (32.7%);
2) joint analysis of available materials of criminal proceedings on legalization of criminal proceeds (30.4%).

The presence of individual cases of practical work is confirmed by indirect assessments (score "3") of the following mechanisms of interaction (30.9% of respondents chose each position):

- 1) joint consideration and improvement of practical activities to detect, detect, investigate, prevent criminal acts.
- 2) Joint work of law enforcement agencies to study the international practice of combating money laundering and developing new proposals in this area.

Against the background of negative and mediocre assessments, the mechanism of implementation of joint measures during the receipt of information on a possible criminal offense received the most positive assessments (the sum of assessments "4" and "5") (20% of respondents chose).

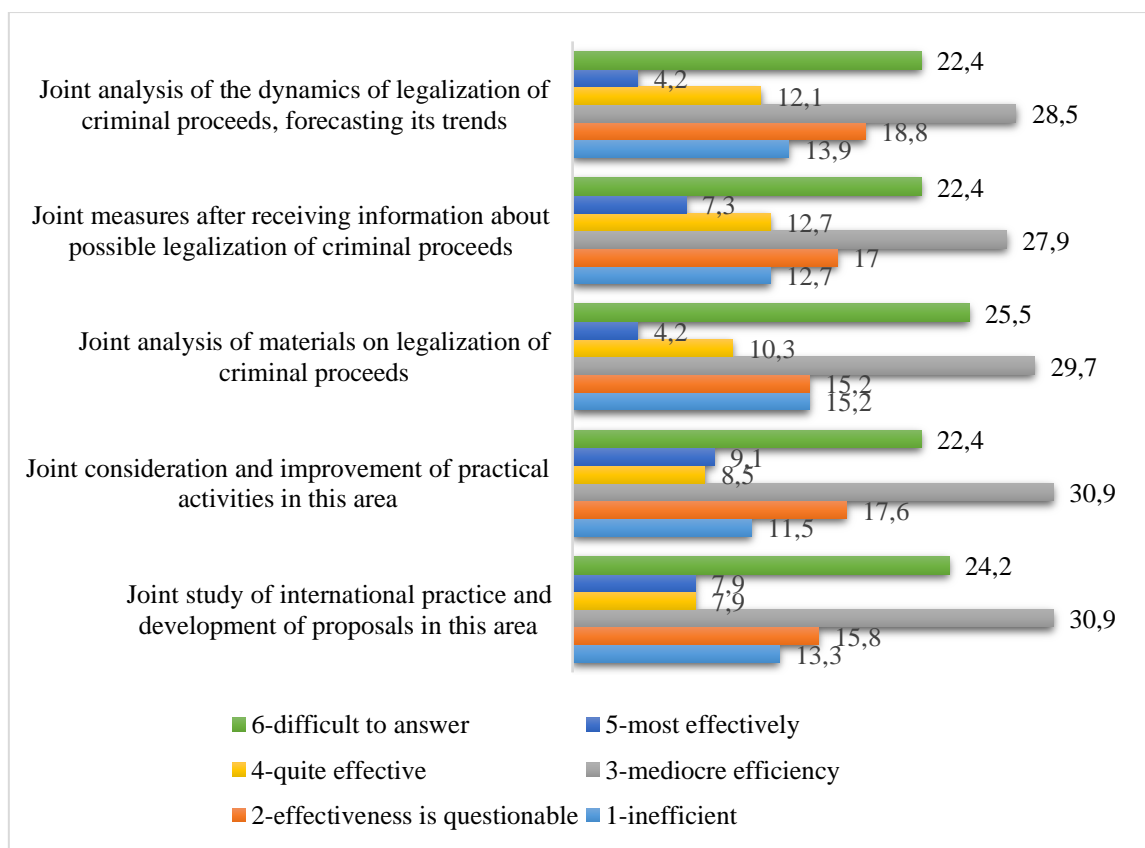


Figure 5. Effectiveness of application of forms of interaction of law enforcement agencies among themselves, with financial institutions, other legal entities during counteraction and fight against legalization of criminal proceeds (a. kostenko)

Effectiveness of application of forms of interaction of law enforcement agencies among themselves, with financial institutions, other legal entities during counteraction and fight against legalization of criminal proceeds the results of the survey indicate an insufficient level or even lack of such interaction between law enforcement agencies and other entities in the field of combating and combating money laundering. Figure 5 shows the lack of interaction between law enforcement agencies, financial institutions, and other legal entities in the direction of analytical work.

Conclusions

Thus, we have identified the main problematic aspects of the interaction of law enforcement agencies in order to combat money laundering. The urgency of the above-mentioned problematic aspects is confirmed by the data of a sociological survey. The results of a survey conducted by the Center for Social Research of Sumy State University in July-August 2021 show that representatives of law enforcement, judicial authorities, financial institutions, the public sector, and scientists believe that the ineffectiveness of some forms of law enforcement interaction with financial institutions, other entities in the field of counteracting and combating money laundering is due to several problems, including:

- 1) Problems associated with the lack of a defined algorithm of actions, prescribed functions and boundaries of interaction between these entities.
- 2) Problems related to communication (difficult exchange of operational information between entities; lack of communication and mistrust; low level of information exchange; classification of information as having limited access);
- 3) Problems related to the legal regulation of their activities (failure to regulate at the legislative level the process of information exchange between structures; imperfect legal framework, and therefore the existence of the possibility of avoiding liability for illegal acts).
- 4) Corruption (lack of communication, different goals, and attitudes to the problem, because some people have a purpose for their own benefit in this regard).

In view of the above, in the normative sources the methods of interaction between law enforcement agencies in the field of combating the legalization of criminal proceeds are set out in a

rather fragmentary manner, without any specifics regarding its specific boundaries. This situation inevitably leads to all sorts of abuses and conflicts. In our opinion, given the importance of the task of combating money laundering, the main task is to clearly regulate the forms

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