

UDC 341.1/8

**KAZAKHSTAN AS A SUBJECT IN THE INTERNATIONAL SYSTEM OF ANTI-MONEY LAUNDERING**

**Kazykenova Benazir Toleukhankyzy**

[\*b.kazykenova@mail.ru\*](mailto:b.kazykenova@mail.ru)

Student of L.N. Gumilyov Eurasian National University, International Law Department  
Scientific advisor - PhD, acting associate professor Iskakova Zhanna Turkistanovna

The definition of Money Laundering was first used in the United States in relation to the proceeds of the drug business and refers to the process of converting illegally obtained money into legal one. [1, p.7]

According to the explanatory note to FATF Recommendation 3 (as amended in 2012), countries should consider Money Laundering as a crime under the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienna Convention) and the UN Convention against Transnational Organized Crime 2000 (Palermo Convention). [2, p.32]

Since its first appearance in the criminal legislation of Kazakhstan in 1997, the article for the crime of money laundering has undergone repeated modifications and additions, including the definition of money laundering and approaches to predicate offenses improve at the international level. The currently valid edition was entered into legal force on January 1, 2015 as part of the new edition of the Criminal Code of the Republic of Kazakhstan. [3, p.10]

Currently, the definitions of money laundering provided by the Vienna and Palermo Conventions are largely implemented in Article 218 of the Criminal Code of the Republic of Kazakhstan, according to which the legalization (laundering) of money and (or) other property obtained through criminal means refers to the involvement of money and (or) other property obtained by criminal means, through transactions in the form of conversion or transfer of property representing income from criminal offenses or concealment of its true nature, source, location, disposition, movement, rights to property, knowing that such property is the proceeds of criminal offenses, as well as the possession and use of the property or mediation in the legalization of money and (or) other property obtained by criminal means. [4, p.235]

The key task facing the organizer of money laundering is the concealment of an illegal source of their receipt and the creation of the appearance of a legal source. There are several basic schemes and methods of money laundering, which can be used both individually and together, and form the corresponding types of money laundering. The types of money laundering can be judged by the most common predicate offenses in the country, the proceeds of which can be laundered both domestically and abroad.

For Kazakhstan, as for most other countries of the post-Soviet space, types of money laundering are characteristic, in which proceeds of the corresponding crimes are laundered inside the country and used in the economy, including underground economy. [3, p.11]

Money laundering is a complex process, including many diverse operations performed by various methods that are constantly being improved. In the world there is no single approach to determining the stages and phases of money laundering.

In particular, individual experts present money laundering in the form of a two-phase model, according to which the main stages are money laundering itself and their return to economy circulation. At the first stage, criminal proceeds are pre-laundered by exchanging money for banknotes of another denomination or conducting exchange transactions. At the second stage, pre-laundered money is given the appearance of obtained from legal sources and is introduced into legal circulation. In this model, the main problem is the conversion of large amounts of cash or property into easily manageable financial instruments or other types of property.

UN experts present money laundering in the form of a four-phase model, according to which the first stage is the exemption from cash and transferring it to the accounts of nominees, including those having access to international banks. The second stage is the distribution of cash by performing various operations (currency exchange, purchase of securities, purchase of casino chips, etc.). At the third stage, the traces of the crime are masked in various ways (accounts are opened abroad, cross-border money transfers are carried out, informal money transfer systems are used). In the fourth stage, the integration of illegal proceeds by investing already legalized capital in highly profitable spheres and business sectors.

The most common among experts is the representation of money laundering in the form of a “classical” three-phase model, consisting of placement, separation, and integration. These three stages can be carried out simultaneously or partially overlap each other.

All of the above models are united by the fact that they were developed, first of all, on the basis of money laundering schemes for “classical” predicate crimes - drug trafficking and organized crime. In this connection, the examples used to describe them often contain illegal proceeds in the form of cash. However, illegal proceeds may not necessarily take cash, which does not prevent criminals from laundering such proceeds in non-cash form. [3, p.13]

Responsibility for the legalization of criminal income in Kazakhstan legislation is provided for by the Criminal Code of the Republic of Kazakhstan (Article 218 of the Criminal Code of the Republic of Kazakhstan, Article 258 of the Criminal Code of the Republic of Kazakhstan), the

Code of Administrative Offenses (Article 214 of the Code of Administrative Offenses of the Republic of Kazakhstan), as well as industry legislation (Laws of the Republic of Kazakhstan “On Banks and Banking Activities in the Republic of Kazakhstan”, “On insurance activities”, “On the securities market”), as well as international standards. [3, p.15]

The main reason for creating an AML/CFT system in the world was the fight against drug trafficking. The ineffectiveness of the physical impact on criminals forced society to pay attention to the financial means of combating drug trafficking.

One of the most important areas of international cooperation in anti-money laundering was the organization of a systemic counteraction to money laundering based on uniform international standards, which provides for a combination of criminal prosecution mechanisms for these acts and financial monitoring in order to identify related financial transactions.

The leading place in the system of universal international standards for anti-money laundering and improving its measures belongs to the United Nations and the Recommendations formulated in its documents.

The UN is helping to fight organized crime through initiatives such as the Global Program against Money Laundering, which is the main tool of the United Nations Office on Drugs and Crime. In many respects, thanks to Global Program against Money Laundering, the UN assists member countries in the implementation of legislation aimed at anti-money laundering, as well as in the development of mechanisms to actively fight such crimes.

The development of the international AML/CFT system is closely connected with the stages of formation and development of the Financial Action Task Force (FATF), which is currently an intergovernmental body that develops and promotes global anti-money laundering standards and other illegal financial activities.

FATF was created by the decision of the G7 countries in 1989. The FATF is an international institution engaged in the development, implementation and addition of international standards (FATF Recommendations) in the field of combating money laundering and terrorism, and is also constantly working to improve measures to combat such crimes.

The main objective of the FATF was the development of international AML/CFT standards, the development of reliable and efficient regional bodies organized according to the same principles as the FATF, and the expansion of cooperation with relevant international organizations.

The FATF has made significant changes to the traditional ways of carrying out the activities of financial organizations and enterprises around the world. It also contributed to changes in global laws governing AML. [3, 16]

The FATF Recommendations establish a comprehensive and coherent framework of measures that countries should apply to counter money laundering and terrorist financing, as well as financing the proliferation of weapons of mass destruction.

For the dissemination of international standards (FATF Recommendations) in various regions of the world and their strict observance, eight regional groups of the FATF type were created, in which the participating members are united on a geographical basis.

FATF-type regional groups are an important link in the chain of implementation of international mechanisms for combating money laundering and terrorist financing.

At the FATF plenary meeting in 2003, the Russian Federation initiated the need to create a Eurasian Group on Anti Money Laundering and the Financing of Terrorism (EAG), which subsequently received support from the Council of Foreign Ministers of the CIS member states, which recommended that interested countries hold a Constituent Conference on the creation of a regional group of FATF. [5, p.1]

In 2011, the EAG Agreement was signed, establishing the status of the Eurasian Group as an intergovernmental organization based on the principles of equal participation of member states in its activities. The parties to the Agreement were Belarus, India, Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Uzbekistan (ratified by the Law of the Republic of Kazakhstan on February 21, 2012 No. 569-V).

The main goal of the EAG is to ensure effective interaction and cooperation at the regional level and the integration of EAG member states into the international system of counteracting the legalization (laundering) of criminal proceeds and the financing of terrorism in accordance with the FATF Recommendations and anti-legalization (laundering) standards criminal proceeds and the financing of terrorism of other international organizations to which the EAG member states are members.

Thus, a mutual assessment of countries within the EAG in accordance with the FATF Recommendations is carried out for compliance with international standards to achieve a transparent financial system both domestically and abroad.

In 2011, the first round of mutual assessment was conducted on the compliance of the legislation of the Republic of Kazakhstan with international AML standards. The EAG assessment results showed that Kazakhstan needs to take significant measures to correct the non-compliance with the FATF Recommendations, only 30% of the legislation complies with international standards.

At the EAG plenary meeting in 2015, the Republic of Kazakhstan managed to eliminate significant shortcomings in key and basic recommendations by defending three progress reports.

In the same year, our country did not pass technical compliance according to FATF Recommendation 1, thereby receiving enhanced monitoring of the EAG. The application of enhanced monitoring to the country could lead to economic sanctions by the international community. [5, p.2]

Within one year, Kazakhstan eliminated the discrepancy with international standards, protecting the fourth progress report, which allowed us to withdraw from all monitoring procedures.

The Republic of Kazakhstan is at an active stage of preparation for the second round of mutual assessments of the FATF within the framework of the EAG, which is to be completed in 2021-2022.

As part of the second round of mutual assessments, it is necessary to demonstrate not only the country's compliance with the FATF Recommendations, but also the effectiveness of the state in countering the legalization (laundering) of proceeds from crime, and the financing of terrorism.

In preparation for the second round of mutual evaluations, a bill was developed that aims to:

- the adoption of freezing measures for persons included in United Nations Security Council resolutions on preventing, preventing and stopping the proliferation of weapons of mass destruction and its financing;
- determination of the state body that will exercise control over the subjects of financial monitoring in the field of AML/CFT;
- creation of a separate fund of confiscated property;
- countering the financing of terrorism in accordance with UN Security Council Resolutions.
- other issues of optimization and improvement of AML/CFT legislation.

Also, a sectoral assessment of the risks of legalization (laundering) of income and the financing of terrorism was carried out with the participation of state bodies, law enforcement and special state bodies, public organizations and financial monitoring entities. Based on the results of the risk assessment, measures have been developed aimed at significantly reducing the risks of legalization (laundering) of income, and the financing of terrorism.

The Republic of Kazakhstan, as a member of the international community, pursues numerous and long-term goals aimed at a transparent economy and financial progress, takes all necessary measures to ensure security, safety and stability within the country, as well as combating terrorism (extremism), their financing and other crimes undermining the economy and prestige of the state in the international arena. [5, p.3]

## **Literature**

1. S.Yu.Yarlykov, History and causes of the emergence of a new direction in banking: counteracting the legalization of criminal proceeds // 11(299), 2008, P.7

2. International standards on combating money laundering and the financing of terrorism and proliferation, The FATF Recommendations URL: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> P.32 Date accessed February 15, 2020
3. Certification program in the field of combating the legalization (laundering) of proceeds from crime and the financing of terrorism, OSCE, Almaty, 2015 URL: <https://www.osce.org/en/programme-office-in-astana/271941?download=true> P.10-16 Date accessed February 20, 2020
4. Criminal Code of the Republic of Kazakhstan // Article 218, P.235
5. On the preparation of Kazakhstan for the mutual assessment report, the Ministry of Finance of the Republic of Kazakhstan // June 27, 2019 // URL: [http://www.minfin.gov.kz/irj/go/km/docs/documents/Minfin\\_new/Events/News/en/e0227d8b-fb7a-3710-f998-a7fd5b4e7da2.xml](http://www.minfin.gov.kz/irj/go/km/docs/documents/Minfin_new/Events/News/en/e0227d8b-fb7a-3710-f998-a7fd5b4e7da2.xml) P. 1-5 Date accessed March 3, 2020