

**GUIDELINES REGARDING THE NECESSARY STEPS  
TO BE TAKEN FOR EFFECTIVE IMPLEMENTATION OF  
THE UN SECURITY COUNCIL RESOLUTIONS ON  
TERRORISM**

**Ljubljana, 25 April 2007**

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## 1. INTRODUCTION

On the proposal of the Council of Europe and within the framework of its Follow-up Project against Money Laundering and Terrorist Financing in Ukraine (MOLI-UA2) I have prepared the Practical Guidelines regarding the necessary steps to be taken by Ukrainian authorities for effective implementation of the UN Security Council Resolutions on terrorism (hereinafter referred as to the Guidelines). Due to several sanction regimes<sup>1</sup> contained in these resolutions I only have dealt with the freezing regimes, because they are related to the prevention of financing of terrorism.

The objective of this document is to shortly present all the relevant UN Resolutions and the relevant FATF Recommendations, as well as to provide some directives as to how these requirements shall be implemented. In the preparation of the guidelines the following international documents were used as reference:

- The FATF Special Recommendation III on freezing and confiscating terrorist assets (October 2004);
- The Interpretative Note to the FATF Special Recommendation III;
- The FATF International Best Practices on freezing of terrorist assets (October 2003);
- The UN Security Council Resolution 1267 (1999) as modified and adapted by resolutions 1333 (2000), 1363 (2001), 1390 (2001), 1452 (2002), 1455 (2003), 1456 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1730 (2006) and 1735 (2006) (hereinafter referred as to the UNSCR 1267 and its successor resolutions); and
- The UN Security Council Resolution 1373 (2001) (hereinafter referred as to the UNSCR 1373).

## 2. THE INTERNATIONAL REQUIREMENTS

### **FATF Special Recommendation III and related interpretative notes and best practices**

The FATF SR III requires all countries to implement measures to freeze or, if appropriate, seize without delay assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the relevant UN resolutions. Moreover, countries are also obliged to have measures in place, which would enable competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

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<sup>1</sup> The relevant UN Security Council resolutions require UN member states to take measures in relation to freezing of assets and to impose embargo on some chemical substances, arms embargo, travel bans etc.

The objective of the first obligation is to freeze terrorist-related assets based on a suspicion that such assets could be used to finance terrorist activity. This requirement is preventive in nature and intends to complement the UNSCR 1267 and its successor resolutions as well as the UNSCR 1373. The objective of the second obligation is preventive and punitive, since it requires countries to deprive terrorists of their assets if the links have been established between the assets and terrorists, terrorist organisation or terrorist activity. The FATF in its Interpretative Note to SR III emphasises that the SR III is not intended to replace other measures that countries already have in place for dealing with proceeds from crime and instrumentalities in the context of a criminal, civil or administrative proceeding. The FATF Interpretative Note furthermore provides definitions of several terms used by the UN and the FATF, including the terms *funds or other assets, freezing, seizing and confiscation*.

### **The UN Security Council resolutions related to terrorist**

Not all UN Security Council resolutions are binding. But when a resolution is adopted on the basis of Chapter VII of the United Nations Charter – because the situation is deemed a threat to international peace and security – the decisions reported in the resolution bind the member states. The following UNSC resolutions dealing with the sanctions regime related to terrorism are binding: 1267, 1333, 1373, 1452, 1390, 1455, 1526, 1566, 1617 and 1735.

#### ***UNSC Resolution 1267 and its successor resolutions***

- Resolution 1267 (1999) targets specific individuals, entities, undertakings or groups – among them Usama Bin Laden, Al-Quaida, and the Taliban – as designated by the United Nations Al-Quaida and Taliban Sanctions Committee (the 1267 Committee), and requires member states to freeze without delay the assets owned or controlled by them or by persons acting on their behalf or at their direction. Freezing must occur without prior notice to targets and member states shall ensure that no funds or financial resources are made available for such person's benefit, by their nationals or by any person within their territory. In addition, member states shall bring proceedings against those that violate the above mentioned measures and impose appropriate penalties.

- Resolution 1333 (2000) supplemented the previously mentioned resolution and expanded the air embargo and financial embargo, as well as imposed arms embargo and embargo on the chemical acetic anhydride.

- A Monitoring Group was established under resolution 1363 (2001) to monitor the implementation of the measures imposed by resolutions 1267 and 1333.

- Resolution 1390 (2002) modified the sanction regime originally imposed in previous resolutions by further expanding the freezing regime to include associates of Usama Bin Laden and Al-Quaida as designated by the 1267 Committee and imposed a travel ban on such targets. It also required member states to promulgate guidelines to facilitate the implementation of the

freezing regime and to make the lists of designated persons and entities publicly available through appropriate media.

- Resolution 1452 (2002) allowed certain exceptions for the release of funds under the freezing regime, such as funds that are necessary for basic expenses (payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, fees or service charges for routine holding or maintenance of frozen funds, etc), or for extraordinary expenses, provided that such determination has been approved by the 1267 Committee.

- Resolution 1455 (2003) further improved the implementation of measures under the freezing regime and required updated reporting from member states on the implementation of their freezing regime. It also determined the new reporting requirements for the Monitoring Group.

- Resolution 1526 (2004) called upon the member states to freeze the assets of designated persons, taking into account international codes ad standards for combating the financing of terrorism<sup>2</sup>. It also urged member states to establish internal reporting requirements on the trans-border movement of currency based on applicable thresholds. Moreover, it required member states to ensure that their legislative enactments or administrative measures permit the immediate implementation of the freezing regime in respect of persons and funds over which they have jurisdiction. Under this resolution also the Analytical Support and Sanctions Monitoring Team was appointed.

- Resolution 1566 (2004) requires member states to take action against persons, groups and entities engaged in terrorist activities that were not subject to the 1267 Committee's review. Furthermore, this resolution established the 1566 Working Group to recommend practical measures against such individuals and groups, as well as to explore the possibility of establishing an international fund to compensate victims of terrorist acts.

- Resolution 1617 (2005) reinforced the freezing and other measures adopted by previous resolutions and stressed the importance of international cooperation. It also urged member states to implement the FATF Forty Recommendations on money laundering and the FATF Nine Special Recommendations on financing of terrorism. Moreover, it provided a definition of "persons, groups or entities associated with" Usama Bin Laden, Al-Quaida or the Taliban and extended the mandate of the Analytical Support and Sanctions Monitoring Team.

- Resolution 1730 (2006) adopted the de-listing procedure and established the focal point (Security Council Subsidiary Organs Branch) to receive de-listing requests by member states or by individuals, groups or entities on the Sanctions Committee's lists.

- Resolution 1735 (2006) reinforced previously adopted freezing and other measures in respect of persons and entities from the Consolidated List, yet it explicitly pointed out that these measures are preventative in nature and should not be reliant upon criminal standards set out under national laws. It also provided a cover sheet for listing submissions in order to ensure clarity and consistency in requests for listing. The resolution adopted more clear rules regarding the listing and de-listing procedures and required member states to inform listed individual or entity on his/its designation.

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<sup>2</sup> This includes the FATF Special Recommendations.

### ***UNSC Resolution 1373 (2001)***

The UNSC resolution 1373<sup>3</sup> targets international terrorism in general and goes beyond the UNSCR 1267. It obliges member states to take *inter alia* the following measures:

- to criminalize the financing of terrorism;
- to freeze without delay the funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds or other assets derived or generated from property owned or controlled, directly or indirectly by such persons and associated persons and entities;
- prohibit their nationals or other persons and entities within their territories from making any funds or financial or other related services available for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

According to this resolution each member state has the authority to designate the persons and entities that should have their assets frozen. Designations are made by countries and not by the UN Security Council or his 1267 Committee. Additionally, to ensure the effective cooperation among countries, countries should examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other countries.

A Counter-Terrorism Committee was set up under this resolution, which is responsible for monitoring its implementation by the member states.

### **3. GUIDELINES**

#### **General**

It is clear from the above that every UN Member State has to comply with all the requirements contained in those UNSC resolutions that were issued on a basis of Chapter VII of the United Nations Charter. Generally speaking, the UNSC resolutions related to terrorism require countries to adopt and implement effective laws and procedures to freeze terrorist funds or other assets in three different situations:

- a) of persons designated by the United Nations Security Council under UNSCR 1267;
- b) of persons whose funds/other assets should be frozen in the context of UNSCR 1373; and

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<sup>3</sup> This resolution was adopted after the attacks of September 11, 2001.

- c) in other contexts (i.e. other than in relation to persons designated pursuant to UNSCR 1267 or UNSCR 1373).

While almost every country has legislation in place that allow for confiscation of proceeds from crime and for seizure and freezing of such funds in the context of criminal procedure, the UNSC resolutions 1267 and 1373 require to take preventative measures that should not be reliant upon criminal standards set out under national laws<sup>4</sup>. This means that countries should adopt special laws or/and regulations dealing with their obligations under these UNSC resolutions and the existing criminal laws could only be used as supplementary tools in this regard.

In addition, also the existing AML/CFT laws are not fully suitable to deal with the obligations under the UNSC resolutions, mainly because of the following reasons:

- The AML/CFT laws only require certain financial and non-financial entities and professions to report their suspicion on money laundering or terrorist financing to the FIU. On the other hand the UNSC resolution require countries to prohibit that any legal or natural persons under their jurisdiction enter or keep any business relationship or conduct any kind of transactions with designated persons and to report about existing relationships.

- The postponement/suspension of suspicious transactions, a measure that can be taken by many FIUs, shall afterwards be supplemented with the freezing or seizing order issued by a court or other competent authority on a basis of evidences needed to start and conduct a criminal procedure. The UNSC resolutions and consolidated list of designated persons do not include evidences of any kind which would be available during the criminal procedure.

- Whilst under the UNSC resolutions all funds and other assets of designated persons shall be frozen, the AML/CFT laws and criminal laws only allow to freeze/seize and confiscate certain funds or assets that are proceeds from crime, the instrumentalities or assets corresponding to the value of such proceeds or instrumentalities.

- While freezing of assets of designated persons under the relevant UNSC resolutions shall be in force until a person concerned is listed, the provisional measures taken on a basis of the AML/CFT laws or the criminal laws and criminal procedure laws are normally limited in time and can not last for ever.

In addition to the legislative measures countries should also take some other measures which, by nature, are more organisational and operational. Therefore the guidelines presented below are divided into two categories; those that need to be included in the legislation, and those that are of operational or organisational nature.

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<sup>4</sup> Freezing and seizing under the UN International Convention for the Suppression of the Financing of Terrorism may be conducted by freezing or seizing in the context of a criminal proceeding.

## Legislative guidelines

In order to fulfil their obligations under the relevant UNSC resolutions country's laws or/and regulations<sup>5</sup> shall deal with the following issues:

**1.** The law/regulation shall prohibit the nationals or any legal or natural person within the territory of the country concerned from making any funds or other assets, economic resources or financial or other related services available for the benefit of:

- designated persons,
- terrorists, terrorist organisations and those who finance terrorism,
- entities owned or controlled by such persons or entities, and
- persons and entities acting on behalf of or at the direction of such persons or entities.

**2.** The law/regulation shall determine the appropriate mechanism for publishing and updating the designated persons list.

**3.** The law/regulation shall provide the authority to freeze and unfreeze the funds or other assets of persons mentioned under point 1. There are basically two options for providing such authority, namely:

a) designating or authorising a competent state body<sup>6</sup> or a court to issue, administer and enforce freezing and unfreezing actions; or

b) placing responsibility for freezing and unfreezing the funds or other assets of such persons on the legal or natural person holding the funds or other assets and subjecting them to sanctions for non-compliance.

**4.** A procedure shall be developed to freeze the funds or other assets of designated persons and other persons mentioned under point 1 without delay and without giving prior notice to the legal or natural persons concerned. This procedure clearly depends on the solution taken in respect of the authority mentioned above. If the first option is chosen than the law/regulation shall firstly require the legal or natural persons holding the funds or other assets of designated persons and other persons mentioned under point 1 to report to designated state body about the existence of such funds or assets.

This procedure must ensure the prompt determination whether reasonable grounds exist to initiate an action under a freezing mechanism and the subsequent freezing of funds or other assets upon determination of such grounds. When assessing the grounds the authority shall first of all check if a person concerned is really a designated person and if the funds or other assets concerned may be subject of the freezing procedure.

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<sup>5</sup> Some countries (e.g. Slovenia and Croatia) adopted a special law dealing with all kind of repressive measures imposed by the UN or other relevant international organisations. On a basis of this law several regulations/by-laws were issued, including the regulation that provides a list of designated persons under UNSC resolutions related to terrorism.

<sup>6</sup> For example, according to the recent draft Law on the prevention of financing of terrorism of the Republic of Serbia, the Ministry of Interior was designated as the competent authority for freezing and unfreezing of funds of designated persons under the UNSC resolutions. Moreover, the administrative court is empowered to decide upon the appeal against the order issued by the Minister of Interior.

**5.** The law/regulation shall establish the de-listing and unfreezing procedures. For legal or natural persons designated under UNSC 1267 and its successor resolutions, such procedures and criteria should be in line with procedures adopted by the 1267 Committee. For persons designated by the country concerned or by other countries a separate de-listing and unfreezing procedure should be developed.

**6.** The law/regulation shall regulate the appealing procedure and allow for unfreezing of funds or other assets in cases where upon verification of identity of a person concerned it has been established that this is not a designated person. Similarly, the law/regulation shall provide for a mechanism through which a legal or natural person whose funds or other assets are frozen can challenge the freezing measure with a view to having it reviewed by a competent authority or a court.

**7.** Provisions protecting the rights of bona fide third parties shall be included in the law/regulation. The appropriate compensation for innocent third parties should come from the state budget or a special fund established for that purpose.

**8.** The law/regulation shall provide access to frozen funds or other assets in certain circumstances in accordance with the UNSCR 1452 (2002) and determine a procedure for getting the approval of the 1267 Committee, when this is required.

**9.** Civil, administrative or criminal sanctions shall be provided in the law/regulation for failing to comply with points 1 and 3 b) mentioned above and the supervisory authority or authorities shall be designated to monitor the compliance with the law/regulation.

### **Operational/organisational guidelines**

In addition to legislative measures countries shall establish effective operational or organisational procedures to deal with the requirements related to the UNSC resolutions. The following procedures could be mentioned in this connection<sup>7</sup>:

**1.** Establishing procedures to facilitate communication and co-operation among relevant governmental agencies during the designation process.

**2.** Ensuring that after becoming aware of the existence of funds or other assets of designated persons a follow-up investigation is conducted by law enforcement bodies, intelligence services, FIU or/and other competent authorities. Information reported by any legal or natural person should be fully exploited and all relevant authorities should be given access to the initial information as well as to the results of the follow-up investigations.

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<sup>7</sup> More operational and organisational best practices are provided in the FATF International Best Practices document related to freezing of terrorist assets.



**3.** Develop efficient and effective means of communicating terrorist financing-related information with the general public and in particular with financial institutions. Besides the publication of designated persons list such list shall be made user friendly by creating different entries for different spellings of names and provided in consolidated version in an electronic format.

**4.** Develop practical guidance to the private sector with respect to their obligations under the relevant domestic law/regulation. Identify and notify a point of contact to assist legal and natural persons, particularly financial institutions, in implementing their obligations.

**5.** Ensure that a timely feedback is provided to reporting entities and persons by competent authority/authorities.

**6.** Develop a system for communication and co-operation with foreign competent authorities and international organisations.

**7.** Ensure that supervisory authorities are aware of their obligations to monitor the compliance with the above mentioned law/regulation and that they co-operate with the competent law enforcement and other governmental bodies.