



## **Interpretative Note to Special Recommendation III: Freezing and Confiscating Terrorist Assets**

### **Objectives**

1. FATF Special Recommendation III consists of two obligations. The first requires jurisdictions to implement measures that will freeze or, if appropriate, seize terrorist-related funds or other assets without delay in accordance with relevant United Nations resolutions. The second obligation of Special Recommendation III is to have measures in place that permit a jurisdiction to seize or confiscate terrorist funds or other assets on the basis of an order or mechanism issued by a competent authority or a court.
2. The objective of the first requirement is to freeze terrorist-related funds or other assets based on reasonable grounds, or a reasonable basis, to suspect or believe that such funds or other assets could be used to finance terrorist activity. The objective of the second requirement is to deprive terrorists of these funds or other assets if and when links have been adequately established between the funds or other assets and terrorists or terrorist activity. The intent of the first objective is preventative, while the intent of the second objective is mainly preventative and punitive. Both requirements are necessary to deprive terrorists and terrorist networks of the means to conduct future terrorist activity and maintain their infrastructure and operations.

### **Scope**

3. Special Recommendation III is intended, with regard to its first requirement, to complement the obligations in the context of the United Nations Security Council (UNSC) resolutions relating to the prevention and suppression of the financing of terrorist acts—S/RES/1267(1999) and its successor resolutions,<sup>1</sup> S/RES/1373(2001) and any prospective resolutions related to the freezing, or if appropriate seizure, of terrorist assets. It should be stressed that none of the obligations in Special Recommendation III is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding.<sup>2</sup> The focus of Special Recommendation III instead is on the preventative measures that are necessary and unique in the context of stopping the flow or use of funds or other assets to terrorist groups.
4. S/RES/1267(1999) and S/RES/1373(2001) differ in the persons and entities whose funds or other assets are to be frozen, the authorities responsible for making these designations, and the effect of these designations.

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<sup>1</sup> When issued, S/RES/1267(1999) had a time limit of one year. A series of resolutions have been issued by the United Nations Security Council (UNSC) to extend and further refine provisions of S/RES/1267(1999). By successor resolutions are meant those resolutions that extend and are directly related to the original resolution S/RES/1267(1999). At the time of issue of this Interpretative Note, these resolutions included S/RES/1333(2000), S/RES/1363(2001), S/RES/1390(2002) and S/RES/1455(2003). In this Interpretative Note, the term *S/RES/1267(1999)* refers to S/RES/1267(1999) and its successor resolutions.

<sup>2</sup> For instance, both the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)* and *UN Convention against Transnational Organised Crime (2000)* contain obligations regarding freezing, seizure and confiscation in the context of combating transnational crime. Those obligations exist separately and apart from obligations that are set forth in S/RES/1267(1999), S/RES/1373(2001) and Special Recommendation III.

5. S/RES/1267(1999) and its successor resolutions obligate jurisdictions to freeze without delay the funds or other assets owned or controlled by Al-Qaida, the Taliban, Usama bin Laden, or persons and entities associated with them as designated by the United Nations Al-Qaida and Taliban Sanctions Committee established pursuant to United Nations Security Council Resolution 1267 (the Al-Qaida and Taliban Sanctions Committee), including funds derived from funds or other assets owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds or other assets are made available, directly or indirectly, for such persons' benefit, by their nationals or by any person within their territory. The Al-Qaida and Taliban Sanctions Committee is the authority responsible for designating the persons and entities that should have their funds or other assets frozen under S/RES/1267(1999). All jurisdictions that are members of the United Nations are obligated by S/RES/1267(1999) to freeze the assets of persons and entities so designated by the Al-Qaida and Taliban Sanctions Committee.<sup>3</sup>

6. S/RES/1373(2001) obligates jurisdictions<sup>4</sup> to freeze without delay the funds or other assets 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. Each individual jurisdiction has the authority to designate the persons and entities that should have their funds or other assets frozen. Additionally, to ensure that effective co-operation is developed among jurisdictions, jurisdictions should examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. When (i) a specific notification or communication is sent and (ii) the jurisdiction receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee is a terrorist, one who finances terrorism or a terrorist organisation, the jurisdiction receiving the request must ensure that the funds or other assets of the designated person are frozen without delay.

## Definitions

7. For the purposes of Special Recommendation III and this Interpretive Note, the following definitions apply:

- a) The term *freeze* means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism. The frozen funds or other assets remain the property of the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the freezing and may continue to be administered by the financial institution or other arrangements designated by such person(s) or entity(ies) prior to the initiation of an action under a freezing mechanism.
- b) The term *seize* means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of an action initiated by a competent authority or a court under a freezing mechanism. However, unlike a freezing action, a seizure is effected by a mechanism that allows the competent authority or court to take control of specified funds or other assets. The seized funds or other assets remain the property of the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the seizure, although the competent authority or court will often take over possession, administration or management of the seized funds or other assets.

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<sup>3</sup> When the UNSC acts under Chapter VII of the UN Charter, the resolutions it issues are mandatory for all UN members.

<sup>4</sup> The UNSC was acting under Chapter VII of the UN Charter in issuing S/RES/1373(2001) (see previous footnote).

- c) The term *confiscate*, which includes forfeiture where applicable, means the permanent deprivation of funds or other assets by order of a competent authority or a court. Confiscation or forfeiture takes place through a judicial or administrative procedure that transfers the ownership of specified funds or other assets to be transferred to the State. In this case, the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the confiscation or forfeiture loses all rights, in principle, to the confiscated or forfeited funds or other assets.<sup>5</sup>
- d) The term *funds or other assets* means financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.
- e) The term *terrorist* refers to any natural person who: (i) commits, or attempts to commit, terrorist acts<sup>6</sup> by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts or terrorist financing; (iii) organises or directs others to commit terrorist acts or terrorist financing; or (iv) contributes to the commission of terrorist acts or terrorist financing by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or terrorist financing or with the knowledge of the intention of the group to commit a terrorist act or terrorist financing.
- f) The phrase *those who finance terrorism* refers to any person, group, undertaking or other entity that provides or collects, by any means, directly or indirectly, funds or other assets that may be used, in full or in part, to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of such persons, groups, undertakings or other entities. This includes those who provide or collect funds or other assets with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts.
- g) The term *terrorist organisation* refers to any legal person, group, undertaking or other entity owned or controlled directly or indirectly by a terrorist(s).
- h) The term *designated persons* refers to those persons or entities designated by the Al-Qaida and Taliban Sanctions Committee pursuant to S/RES/1267(1999) or those persons or entities designated and accepted, as appropriate, by jurisdictions pursuant to S/RES/1373(2001).

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<sup>5</sup> Confiscation or forfeiture orders are usually linked to a criminal conviction or a court decision whereby the confiscated or forfeited property is determined to have been derived from or intended for use in a violation of the law.

<sup>6</sup> A *terrorist act* includes an act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, International Convention against the Taking of Hostages, Convention on the Physical Protection of Nuclear Material, Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, International Convention for the Suppression of Terrorist Bombings, and the International Convention for the Suppression of the Financing of Terrorism (1999).

- i) The phrase *without delay*, for the purposes of S/RES/1267(1999), means, ideally, within a matter of hours of a designation by the Al-Qaida and Taliban Sanctions Committee. For the purposes of S/RES/1373(2001), the phrase *without delay* means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. The phrase *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of terrorist-linked funds or other assets, and the need for global, concerted action to interdict and disrupt their flow swiftly.

### **Freezing without delay terrorist-related funds or other assets**

8. In order to fulfil the preventive intent of Special Recommendation III, jurisdictions should establish the necessary authority and adopt the following standards and procedures to freeze the funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with both S/RES/1267(1999) and S/RES/1373(2001):

- a) ***Authority to freeze, unfreeze and prohibit dealing in funds or other assets of designated persons.*** Jurisdictions should prohibit by enforceable means the transfer, conversion, disposition or movement of funds or other assets. Options for providing the authority to freeze and unfreeze terrorist funds or other assets include:
  - (i) empowering or designating a competent authority or a court to issue, administer and enforce freezing and unfreezing actions under relevant mechanisms, or
  - (ii) enacting legislation that places responsibility for freezing the funds or other assets of designated persons publicly identified by a competent authority or a court on the person or entity holding the funds or other assets and subjecting them to sanctions for non-compliance.

The authority to freeze and unfreeze funds or other assets should also extend to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by such terrorists, those who finance terrorism, or terrorist organisations.

Whatever option is chosen there should be clearly identifiable competent authorities responsible for enforcing the measures.

The competent authorities shall ensure that their nationals or any persons and entities within their territories are prohibited from making any funds or other assets, economic resources or financial or other related services available, directly or indirectly, wholly or jointly, for the benefit of: designated persons, terrorists; those who finance terrorism; terrorist organisations; entities owned or controlled, directly or indirectly, by such persons or entities; and persons and entities acting on behalf of or at the direction of such persons or entities.

- b) ***Freezing procedures.*** Jurisdictions should develop and implement procedures to freeze the funds or other assets specified in paragraph (c) below without delay and without giving prior notice to the persons or entities concerned. Persons or entities holding such funds or other assets should be required by law to freeze them and should furthermore be subject to sanctions for non-compliance with this requirement. Any delay between the official receipt of information provided in support of a designation and the actual freezing of the funds or other assets of designated persons undermines the effectiveness of designation by affording designated persons time to remove funds or other assets from identifiable accounts and places. Consequently, these procedures must ensure (i) the prompt determination whether reasonable grounds or a reasonable basis exists to initiate an action under a freezing

mechanism and (ii) the subsequent freezing of funds or other assets without delay upon determination that such grounds or basis for freezing exist. Jurisdictions should develop efficient and effective systems for communicating actions taken under their freezing mechanisms to the financial sector immediately upon taking such action. As well, they should provide clear guidance, particularly financial institutions and other persons or entities that may be holding targeted funds or other assets on obligations in taking action under freezing mechanisms.

- c) ***Funds or other assets to be frozen or, if appropriate, seized.*** Under Special Recommendation III, funds or other assets to be frozen include those subject to freezing under S/RES/1267(1999) and S/RES/1373(2001). Such funds or other assets would also include those wholly or jointly owned or controlled, directly or indirectly, by designated persons. In accordance with their obligations under the United Nations International Convention for the Suppression of the Financing of Terrorism (1999) (the Terrorist Financing Convention (1999)), jurisdictions should be able to freeze or, if appropriate, seize any funds or other assets that they identify, detect, and verify, in accordance with applicable legal principles, as being used by, allocated for, or being made available to terrorists, those who finance terrorists or terrorist organisations. Freezing or seizing under the Terrorist Financing Convention (1999) may be conducted by freezing or seizing in the context of a criminal investigation or proceeding. Freezing action taken under Special Recommendation III shall be without prejudice to the rights of third parties acting in good faith.
- d) ***De-listing and unfreezing procedures.*** Jurisdictions should develop and implement publicly known procedures to consider de-listing requests upon satisfaction of certain criteria consistent with international obligations and applicable legal principles, and to unfreeze the funds or other assets of de-listed persons or entities in a timely manner. For persons and entities designated under S/RES/1267(1999), such procedures and criteria should be in accordance with procedures adopted by the Al-Qaida and Taliban Sanctions Committee under S/RES/1267(1999).
- e) ***Unfreezing upon verification of identity.*** For persons or entities with the same or similar name as designated persons, who are inadvertently affected by a freezing mechanism, jurisdictions should develop and implement publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner upon verification that the person or entity involved is not a designated person.
- f) ***Providing access to frozen funds or other assets in certain circumstances.*** Where jurisdictions have determined that funds or other assets, which are otherwise subject to freezing pursuant to the obligations under S/RES/1267(1999), are necessary for basic expenses; for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses,<sup>7</sup> jurisdictions should authorise access to such funds or other assets in accordance with the procedures set out in S/RES/1452(2002) and subject to approval of the Al-Qaida and Taliban Sanctions Committee. On the same grounds, jurisdictions may authorise access to funds or other assets, if freezing measures are applied pursuant to S/RES/1373(2001).
- g) ***Remedies.*** Jurisdictions should provide for a mechanism through which a person or an entity that is the target of a freezing mechanism in the context of terrorist financing can challenge that measure with a view to having it reviewed by a competent authority or a court.

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<sup>7</sup> See Article 1, S/RES/1452(2002) for the specific types of expenses that are covered.

- h) **Sanctions.** Jurisdictions should adopt appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations governing freezing mechanisms by financial institutions and other persons or entities that may be holding funds or other assets as indicated in paragraph 8(c) above. Failure to comply with such legislation, rules or regulations should be subject to civil, administrative or criminal sanctions.

### **Seizure and Confiscation**

9. Consistent with FATF Recommendation 3, jurisdictions should adopt measures similar to those set forth in Article V of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Articles 12 to 14 of the United Nations Convention on Transnational Organised Crime (2000), and Article 8 of the Terrorist Financing Convention (1999), including legislative measures, to enable their courts or competent authorities to seize and confiscate terrorist funds or other assets.