



Financial Action Task Force

Groupe d'action financière

*FATF Standards*

# FATF IX Special Recommendations

*October 2001*

*(incorporating all subsequent amendments until February 2008)*

## **FATF Special Recommendations on Terrorist Financing**

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

### ***I. Ratification and implementation of UN instruments***

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

### ***II. Criminalising the financing of terrorism and associated money laundering***

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

### ***III. Freezing and confiscating terrorist assets***

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the 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.

### ***IV. Reporting suspicious transactions related to terrorism***

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

### ***V. International Co-operation***

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

## *VI. Alternative Remittance*

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

## *VII. Wire transfers*

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

## *VIII. Non-profit organisations*

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

## *IX. Cash Couriers*

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.

# *Interpretative Notes*

## **Interpretative Note to**

### **Special Recommendation II: Criminalising the financing of terrorism and associated money laundering**

#### **Objective**

1. Special Recommendation II (SR II) was developed with the objective of ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism. Given the close connection between international terrorism and inter alia money laundering, another objective of SR II is to emphasise this link by obligating countries to include terrorist financing offences as predicate offences for money laundering. The basis for criminalising terrorist financing should be the United Nations International Convention for the Suppression of the Financing of Terrorism, 1999.<sup>1</sup>

#### **Definitions**

2. For the purposes of SR II and this Interpretative Note, the following definitions apply:
- a) The term funds refers to assets 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 assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
  - b) The term terrorist refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts 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 with the knowledge of the intention of the group to commit a terrorist act.

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<sup>1</sup> Although the UN Convention had not yet come into force at the time that SR II was originally issued in October 2001 – and thus is not cited in the SR itself – the intent of the FATF has been from the issuance of SR II to reiterate and reinforce the criminalisation standard as set forth in the Convention (in particular, Article 2). The Convention came into force in April 2003.

- c) The term terrorist act includes:
- i) 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 (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), 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 (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and
  - ii) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.
- d) The term terrorist financing includes the financing of terrorist acts, and of terrorists and terrorist organisations.
- e) The term terrorist organisation refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts 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 with the knowledge of the intention of the group to commit a terrorist act.

### Characteristics of the Terrorist Financing Offence

3. Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); (b) by a terrorist organisation; or (c) by an individual terrorist.
4. Criminalising terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.
5. Terrorist financing offences should extend to any funds whether from a legitimate or illegitimate source.
6. Terrorist financing offences should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).
7. It should also be an offence to attempt to commit the offence of terrorist financing.

8. It should also be an offence to engage in any of the following types of conduct:
  - a) Participating as an accomplice in an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
  - b) Organising or directing others to commit an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
  - c) Contributing to the commission of one or more offence(s) as set forth in paragraphs 3 or 7 of this Interpretative Note by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a terrorist financing offence; or (ii) be made in the knowledge of the intention of the group to commit a terrorist financing offence.
9. Terrorist financing offences should be predicate offences for money laundering.
10. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.
11. The law should permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstances.
12. Criminal liability for terrorist financing should extend to legal persons. Where that is not possible (*i.e.* due to fundamental principles of domestic law), civil or administrative liability should apply.
13. Making legal persons subject to criminal liability for terrorist financing should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available.
14. Natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for terrorist financing.

## 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

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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.

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.

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

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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).



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.
- 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

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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).

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).
  - 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.

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.

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

## Interpretative Note to

### Special Recommendation VI: Alternative Remittance

#### General

1. Money or value transfer systems have shown themselves vulnerable to misuse for money laundering and terrorist financing purposes. The objective of Special Recommendation VI is to increase the transparency of payment flows by ensuring that jurisdictions impose consistent anti-money laundering and counter-terrorist financing measures on all forms of money/value transfer systems, particularly those traditionally operating outside the conventional financial sector and not currently subject to the FATF Recommendations. This Recommendation and Interpretative Note underscore the need to bring all money or value transfer services, whether formal or informal, within the ambit of certain minimum legal and regulatory requirements in accordance with the relevant FATF Recommendations.

2. Special Recommendation VI consists of three core elements:

- a) Jurisdictions should require licensing or registration of persons (natural or legal) that provide money/value transfer services, including through informal systems;
- b) Jurisdictions should ensure that money/value transmission services, including informal systems (as described in paragraph 5 below), are subject to applicable FATF Forty Recommendations (2003) (in particular, Recommendations 4-16 and 21-25)<sup>1</sup> and the Eight Special Recommendations (in particular SR VII); and
- c) Jurisdictions should be able to impose sanctions on money/value transfer services, including informal systems, that operate without a license or registration and that fail to comply with relevant FATF Recommendations.

#### Scope and Application

3. For the purposes of this Recommendation, the following definitions are used.

4. *Money or value transfer service* refers to a financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money/value transfer service belongs. Transactions performed by such services can involve one or more intermediaries and a third party final payment.

5. A money or value transfer service may be provided by persons (natural or legal) formally through the regulated financial system or informally through non-bank financial institutions or other

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<sup>1</sup> When this Interpretative Note was originally issued, these references were to the 1996 FATF Forty Recommendations. Subsequent to the publication of the revised FATF Forty Recommendations in June 2003, this text was updated accordingly. All references are now to the 2003 FATF Forty Recommendations.

business entities or any other mechanism either through the regulated financial system (for example, use of bank accounts) or through a network or mechanism that operates outside the regulated system. In some jurisdictions, informal systems are frequently referred to as *alternative remittance services* or underground (or parallel) banking systems. Often these systems have ties to particular geographic regions and are therefore described using a variety of specific terms. Some examples of these terms include *hawala*, *hundi*, *fei-chien*, and the *black market peso exchange*.<sup>2</sup>

6. Licensing means a requirement to obtain permission from a designated competent authority in order to operate a money/value transfer service legally.

7. Registration in this Recommendation means a requirement to register with or declare to a designated competent authority the existence of a money/value transfer service in order for the business to operate legally.

8. The obligation of licensing or registration applies to agents. At a minimum, the principal business must maintain a current list of agents which must be made available to the designated competent authority. An agent is any person who provides money or value transfer service under the direction of or by contract with a legally registered or licensed remitter (for example, licensees, franchisees, concessionaires).

### **Applicability of Special Recommendation VI**

9. Special Recommendation VI should apply to all persons (natural or legal), which conduct for or on behalf of another person (natural or legal) the types of activity described in paragraphs 4 and 5 above as a primary or substantial part of their business or when such activity is undertaken on a regular or recurring basis, including as an ancillary part of a separate business enterprise.

10. Jurisdictions need not impose a separate licensing / registration system or designate another competent authority in respect to persons (natural or legal) already licensed or registered as financial institutions (as defined by the FATF Forty Recommendations (2003)) within a particular jurisdiction, which under such license or registration are permitted to perform activities indicated in paragraphs 4 and 5 above and which are already subject to the full range of applicable obligations under the FATF Forty Recommendations (2003) (in particular, Recommendations 4-16 and 21-25) and the Eight Special Recommendations (in particular SR VII).

### **Licensing or Registration and Compliance**

11. Jurisdictions should designate an authority to grant licences and/or carry out registration and ensure that the requirement is observed. There should be an authority responsible for ensuring compliance by money/value transfer services with the FATF Recommendations (including the Eight Special Recommendations). There should also be effective systems in place for monitoring and ensuring such compliance. This interpretation of Special Recommendation VI (i.e., the need for designation of competent authorities) is consistent with FATF Recommendation 23.

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<sup>2</sup> The inclusion of these examples does not suggest that such systems are legal in any particular jurisdiction.

## Sanctions

12. Persons providing money/value transfer services without a license or registration should be subject to appropriate administrative, civil or criminal sanctions.<sup>3</sup> Licensed or registered money/value transfer services which fail to comply fully with the relevant measures called for in the FATF Forty Recommendations (2003) or the Eight Special Recommendations should also be subject to appropriate sanctions.

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<sup>3</sup> Jurisdictions may authorise temporary or provisional operation of money / value transfer services that are already in existence at the time of implementing this Special Recommendation to permit such services to obtain a license or to register.

## Revised<sup>1</sup> Interpretative Note to

### Special Recommendation VII: Wire Transfers<sup>2</sup>

#### Objective

1. Special Recommendation VII (SR VII) was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. Specifically, it aims to ensure that basic information on the originator of wire transfers is immediately available (1) to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists or other criminals, (2) to financial intelligence units for analysing suspicious or unusual activity and disseminating it as necessary, and (3) to beneficiary financial institutions to facilitate the identification and reporting of suspicious transactions. Due to the potential terrorist financing threat posed by small wire transfers, countries should aim for the ability to trace all wire transfers and should minimise thresholds taking into account the risk of driving transactions underground. It is not the intention of the FATF to impose rigid standards or to mandate a single operating process that would negatively affect the payment system. The FATF will continue to monitor the impact of Special Recommendation VII and conduct an assessment of its operation within three years of full implementation.

#### Definitions

2. For the purposes of this interpretative note, the following definitions apply.
- a) The terms *wire transfer* and *funds transfer* refer to any transaction carried out on behalf of an originator person (both natural and legal) through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution. The originator and the beneficiary may be the same person.
  - b) *Cross-border transfer* means any wire transfer where the originator and beneficiary institutions are located in different countries. This term also refers to any chain of wire transfers that has at least one cross-border element.
  - c) *Domestic transfer* means any wire transfer where the originator and beneficiary institutions are located in the same country. This term therefore refers to any chain of wire transfers that takes place entirely within the borders of a single country, even though the system used to

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<sup>1</sup> This revision of the Interpretative Note to Special Recommendation VII was issued on 29 February 2008.

<sup>2</sup> It is recognised that countries will need time to make relevant legislative or regulatory changes and to allow financial institutions to make necessary adaptations to their systems and procedures. This period should not extend beyond December 2006.



effect the wire transfer may be located in another country. The term also refers to any chain of wire transfers that takes place entirely within the borders of the European Union<sup>3</sup>.

- d) The term *financial institution* is as defined by the FATF Forty Recommendations (2003).<sup>4</sup> The term does not apply to any persons or entities that provide financial institutions solely with message or other support systems for transmitting funds<sup>5</sup>.
- e) The *originator* is the account holder, or where there is no account, the person (natural or legal) that places the order with the financial institution to perform the wire transfer.

## Scope

3. SR VII applies, under the conditions set out below, to cross-border and domestic transfers between financial institutions.

### Cross-border wire transfers

4. Cross-border wire transfers should be accompanied by accurate and meaningful originator information. However, countries may adopt a *de minimus* threshold (no higher than USD or EUR 1 000). For cross-border transfers below this threshold:

- a) Countries are not obligated to require ordering financial institutions to identify, verify record, or transmit originator information.
- b) Countries may nevertheless require that incoming cross-border wire transfers contain full and accurate originator information.

5. Information accompanying qualifying cross-border wire transfers<sup>6</sup> must always contain the name of the originator and where an account exists, the number of that account. In the absence of an account, a unique reference number must be included.

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<sup>3</sup> Having regard to the fact that:

The European Union constitutes an autonomous entity with its own sovereign rights and a legal order independent of the Member States, to which both the Member States themselves and their nationals are subject, within the European Union's areas of competence;

The European Union has enacted legislation binding upon its Member States, subject to control by a court of justice, which provides for the integration of payment services within an internal market in accordance with the principles of the free movement of capital and free provision of services; and

This legislation notably provides for the implementation of Special Recommendation VII as a single jurisdiction and requires that full information on the payer is made readily available, where appropriate upon request, to the beneficiary financial institution and relevant competent authorities. It is further noted that the European internal market and corresponding legal framework is extended to the members of the European Economic Area.

<sup>4</sup> When this Interpretative Note was originally issued, these references were to the 1996 FATF Forty Recommendations. Subsequent to the publication of the revised FATF Forty Recommendations in June 2003, this text was updated accordingly. All references are now to the 2003 FATF Forty Recommendations.

<sup>5</sup> However, these systems do have a role in providing the necessary means for the financial institutions to fulfil their obligations under SR VII and, in particular, in preserving the integrity of the information transmitted with a wire transfer.

6. Information accompanying qualifying wire transfers should also contain the address of the originator. However, countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth.

7. Where several individual transfers from a single originator are bundled in a batch file for transmission to beneficiaries in another country, they shall be exempted from including full originator information, provided they include the originator's account number or unique reference number (as described in paragraph 8), and the batch file contains full originator information that is fully traceable within the recipient country.

### **Domestic wire transfers**

8. Information accompanying domestic wire transfers must also include originator information as indicated for cross-border wire transfers, unless full originator information can be made available to the beneficiary financial institution and appropriate authorities by other means. In this latter case, financial institutions need only include the account number or a unique identifier provided that this number or identifier will permit the transaction to be traced back to the originator.

9. The information must be made available by the ordering financial institution within three business days of receiving the request either from the beneficiary financial institution or from appropriate authorities. Law enforcement authorities should be able to compel immediate production of such information.

### **Exemptions from SR VII**

10. SR VII is not intended to cover the following types of payments:

- a) Any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction. However, when credit or debit cards are used as a payment system to effect a money transfer, they are covered by SR VII, and the necessary information should be included in the message.
- b) Financial institution-to-financial institution transfers and settlements where both the originator person and the beneficiary person are financial institutions acting on their own behalf.

### **Role of ordering, intermediary and beneficiary financial institutions**

#### *Ordering financial institution*

11. The ordering financial institution must ensure that qualifying wire transfers contain complete originator information. The ordering financial institution must also verify this information for accuracy and maintain this information in accordance with the standards set out in the FATF Forty Recommendations (2003)<sup>7</sup>.

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<sup>6</sup> Throughout this Interpretative Note, the phrase “qualifying cross-border wire transfers” means those cross-border wire transfers above any applicable threshold as described in paragraph 4.

<sup>7</sup> See note 4.

*Intermediary financial institution*

12. For both cross-border and domestic wire transfers, financial institutions processing an intermediary element of such chains of wire transfers must ensure that all originator information that accompanies a wire transfer is retained with the transfer.

13. Where technical limitations prevent the full originator information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer (during the necessary time to adapt payment systems), a record must be kept for five years by the receiving intermediary financial institution of all the information received from the ordering financial institution.

*Beneficiary financial institution*

14. Beneficiary financial institutions should have effective risk-based procedures in place to identify wire transfers lacking complete originator information. The lack of complete originator information may be considered as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to the financial intelligence unit or other competent authorities. In some cases, the beneficiary financial institution should consider restricting or even terminating its business relationship with financial institutions that fail to meet SRVII standards.

**Enforcement mechanisms for financial institutions that do not comply with wire transfer rules and regulations**

15. Countries should adopt appropriate measures to monitor effectively the compliance of financial institutions with rules and regulations governing wire transfers. Financial institutions that fail to comply with such rules and regulations should be subject to civil, administrative or criminal sanctions.

## Interpretative Note to

### Special Recommendation VIII: Non-Profit Organisations

#### Introduction

1. Non-profit organisations (NPOs) play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. The ongoing international campaign against terrorist financing has unfortunately demonstrated however that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations. This misuse not only facilitates terrorist activity but also undermines donor confidence and jeopardises the very integrity of NPOs. Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs.

2. NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. Depending on the legal form of the NPO and the country, NPOs may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees). Terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for or support terrorist activity.

#### Objectives and General Principles

3. The objective of Special Recommendation VIII (SR VIII) is to ensure that NPOs are not misused by terrorist organisations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes but diverted for terrorist purposes. In this Interpretative Note, the approach taken to achieve this objective is based on the following general principles:

- a) Past and ongoing abuse of the NPO sector by terrorists and terrorist organisations requires countries to adopt measures both: (i) to protect the sector against such abuse, and (ii) to identify and take effective action against those NPOs that either are exploited by or actively support terrorists or terrorist organizations.
- b) Measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community and

with the general public that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of transparency, integrity and public confidence in the management and functioning of all NPOs are integral to ensuring the sector cannot be misused for terrorist financing.

- c) Measures adopted by countries to identify and take effective action against NPOs that either are exploited by or actively support terrorists or terrorist organisations should aim to prevent and prosecute as appropriate terrorist financing and other forms of terrorist support. Where NPOs suspected of or implicated in terrorist financing or other forms of terrorist support are identified, the first priority of countries must be to investigate and halt such terrorist financing or support. Actions taken for this purpose should to the extent reasonably possible avoid any negative impact on innocent and legitimate beneficiaries of charitable activity. However, this interest cannot excuse the need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NPOs.
- d) Developing co-operative relationships among the public, private and NPO sector is critical to raising awareness and fostering capabilities to combat terrorist abuse within the sector. Countries should encourage the development of academic research on and information sharing in the NPO sector to address terrorist financing related issues.
- e) A targeted approach in dealing with the terrorist threat to the NPO sector is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to misuse by terrorists, the need to ensure that legitimate charitable activity continues to flourish and the limited resources and authorities available to combat terrorist financing in each jurisdiction.
- f) Flexibility in developing a national response to terrorist financing in the NPO sector is also essential in order to allow it to evolve over time as it faces the changing nature of the terrorist financing threat.

## Definitions

4. For the purposes of SR VIII and this interpretative note, the following definitions apply:
  - a) The term *non-profit organisation* or *NPO* refers to a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.
  - b) The terms *FIU*, *legal arrangement* and *legal person* are as defined by the FATF Forty Recommendations (2003) (*the FATF Recommendations*).
  - c) The term *funds* is as defined by the Interpretative Note to FATF Special Recommendation II.
  - d) The terms *freezing*, *terrorist* and *terrorist organisation* are as defined by the Interpretative Note to FATF Special Recommendation III.
  - e) The term *appropriate authorities* refers to competent authorities, self-regulatory bodies, accrediting institutions and other administrative authorities.

- f) The term *beneficiaries* refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.

## Measures

5. Countries should undertake domestic reviews of their NPO sector or have the capacity to obtain timely information on its activities, size and other relevant features. In undertaking these assessments, countries should use all available sources of information in order to identify features and types of NPOs, which by virtue of their activities or characteristics, are at risk of being misused for terrorist financing.<sup>1</sup> Countries should also periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

6. There is a diverse range of approaches in identifying, preventing and combating terrorist misuse of NPOs. An effective approach, however, is one that involves all four of the following elements: (a) Outreach to the sector, (b) Supervision or monitoring, (c) Effective investigation and information gathering and (d) Effective mechanisms for international co-operation. The following measures represent specific actions that countries should take with respect to each of these elements in order to protect their NPO sector from terrorist financing abuse.

### *a. Outreach to the NPO sector concerning terrorist financing issues*

(i) Countries should have clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs.

(ii) Countries should encourage or undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.

(iii) Countries should work with the NPO sector to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect the sector from terrorist abuse.<sup>2</sup>

(iv) Countries should encourage NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.

### *b. Supervision or monitoring of the NPO sector*

Countries should take steps to promote effective supervision or monitoring of their NPO sector. In practice, countries should be able to demonstrate that the following standards apply to NPOs which account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities.

(i) NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities.

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<sup>1</sup> For example, such information could be provided by regulators, tax authorities, FIUs, donor organisations or law enforcement and intelligence authorities.

<sup>2</sup> The FATF's *Combating the Abuse of Non-Profit Organisations: International Best Practices* provides a useful reference document for such exercises.

- (ii) NPOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures.
- (iii) NPOs should be licensed or registered. This information should be available to competent authorities.<sup>3</sup>
- (iv) NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.
- (v) NPOs should follow a "know your beneficiaries and associate NPOs"<sup>4</sup> rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. NPOs should also undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.
- (vi) NPOs should maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. This also applies to information mentioned in paragraphs (i) and (ii) above.
- (vii) Appropriate authorities should monitor the compliance of NPOs with applicable rules and regulations.<sup>5</sup> Appropriate authorities should be able to properly sanction relevant violations by NPOs or persons acting on behalf of these NPOs.<sup>6</sup>

*c. Effective information gathering and investigation*

- (i) Countries should ensure effective co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.
- (ii) Countries should have investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.
- (iii) Countries should ensure that full access to information on the administration and management of a particular NPO (including financial and programmatic information) may be obtained during the course of an investigation.

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<sup>3</sup> Specific licensing or registration requirements for counter terrorist financing purposes are not necessary. For example, in some countries, NPOs are already registered with tax authorities and monitored in the context of qualifying for favourable tax treatment (such as tax credits or tax exemptions).

<sup>4</sup> The term *associate NPOs* includes foreign branches of international NPOs.

<sup>5</sup> In this context, rules and regulations may include rules and standards applied by self regulatory bodies and accrediting institutions.

<sup>6</sup> The range of such sanctions might include freezing of accounts, removal of trustees, fines, de-certification, de-licensing and de-registration. This should not preclude parallel civil, administrative or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.

(iv) Countries should establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with all relevant competent authorities in order to take preventative or investigative action.

*d. Effective capacity to respond to international requests for information about an NPO of concern*

Consistent with Special Recommendation V, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support.



## Interpretative Note to

### Special Recommendation IX: Cash Couriers

#### Objectives

1. FATF Special Recommendation IX was developed with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through the physical cross-border transportation of currency and bearer negotiable instruments. Specifically, it aims to ensure that countries have measures 1) to detect the physical cross-border transportation of currency and bearer negotiable instruments, 2) to stop or restrain currency and bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, 3) to stop or restrain currency or bearer negotiable instruments that are falsely declared or disclosed, 4) to apply appropriate sanctions for making a false declaration or disclosure, and 5) to enable confiscation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering. Countries should implement Special Recommendation IX subject to strict safeguards to ensure proper use of information and without restricting either: (i) trade payments between countries for goods and services; or (ii) the freedom of capital movements in any way.

#### Definitions

2. For the purposes of Special Recommendation IX and this Interpretative Note, the following definitions apply.

3. The term *bearer negotiable instruments* includes monetary instruments in bearer form such as: travellers cheques; negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted.<sup>1</sup>

4. The term *currency* refers to banknotes and coins that are in circulation as a medium of exchange.

5. The term *physical cross-border transportation* refers to any in-bound or out-bound physical transportation of currency or bearer negotiable instruments from one country to another country. The term includes the following modes of transportation: (1) physical transportation by a natural person,

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<sup>1</sup> For the purposes of this Interpretative Note, gold, precious metals and precious stones are not included despite their high liquidity and use in certain situations as a means of exchange or transmitting value. These items may be otherwise covered under customs laws and regulations. If a country discovers an unusual cross-border movement of gold, precious metals or precious stones, it should consider notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined, and should co-operate with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action.

or in that person's accompanying luggage or vehicle; (2) shipment of currency through containerised cargo or (3) the mailing of currency or bearer negotiable instruments by a natural or legal person.

6. The term *false declaration* refers to a misrepresentation of the value of currency or bearer negotiable instruments being transported, or a misrepresentation of other relevant data which is asked for in the declaration or otherwise requested by the authorities. This includes failing to make a declaration as required.

7. The term *false disclosure* refers to a misrepresentation of the value of currency or bearer negotiable instruments being transported, or a misrepresentation of other relevant data which is asked for in the disclosure or otherwise requested by the authorities. This includes failing to make a disclosure as required.

8. When the term *related to terrorist financing or money laundering* is used to describe currency or bearer negotiable instruments, it refers to currency or bearer negotiable instruments that are: (i) the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations; or (ii) laundered, proceeds from money laundering or predicate offences, or instrumentalities used in or intended for use in the commission of these offences.

### **The types of systems that may be implemented to address the issue of cash couriers**

9. Countries may meet their obligations under Special Recommendation IX and this Interpretative Note by implementing one of the following types of systems; however, countries do not have to use the same type of system for incoming and outgoing cross-border transportation of currency or bearer negotiable instruments:

- a) Declaration system: The key characteristics of a declaration system are as follows. All persons making a physical cross-border transportation of currency or bearer negotiable instruments, which are of a value exceeding a pre-set, maximum threshold of EUR/USD 15,000, are required to submit a truthful declaration to the designated competent authorities. Countries that implement a declaration system should ensure that the pre-set threshold is sufficiently low to meet the objectives of Special Recommendation IX.
- b) Disclosure system: The key characteristics of a disclosure system are as follows. All persons making a physical cross-border transportation of currency or bearer negotiable instruments are required to make a truthful disclosure to the designated competent authorities upon request. Countries that implement a disclosure system should ensure that the designated competent authorities can make their inquiries on a targeted basis, based on intelligence or suspicion, or on a random basis.

### **Additional elements applicable to both systems**

10. Whichever system is implemented, countries should ensure that their system incorporates the following elements:

- a) The declaration/disclosure system should apply to both incoming and outgoing transportation of currency and bearer negotiable instruments.
- b) Upon discovery of a false declaration/disclosure of currency or bearer negotiable instruments or a failure to declare/disclose them, designated competent authorities should have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use.

- c) Information obtained through the declaration/disclosure process should be available to the financial intelligence unit (FIU) either through a system whereby the FIU is notified about suspicious cross-border transportation incidents or by making the declaration/disclosure information directly available to the FIU in some other way.
- d) At the domestic level, countries should ensure that there is adequate co-ordination among customs, immigration and other related authorities on issues related to the implementation of Special Recommendation IX.
- e) In the following two cases, competent authorities should be able to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found: (i) where there is a suspicion of money laundering or terrorist financing; or (ii) where there is a false declaration or false disclosure.
- f) The declaration/disclosure system should allow for the greatest possible measure of international co-operation and assistance in accordance with Special Recommendation V and Recommendations 35 to 40. To facilitate such co-operation, in instances when: (i) a declaration or disclosure which exceeds the maximum threshold of EUR/USD 15,000 is made, or (ii) where there is a false declaration or false disclosure, or (iii) where there is a suspicion of money laundering or terrorist financing, this information shall be retained for use by the appropriate authorities. At a minimum, this information will cover: (i) the amount of currency or bearer negotiable instruments declared / disclosed or otherwise detected; and (ii) the identification data of the bearer(s).

## Sanctions

11. Persons who make a false declaration or disclosure should be subject to effective, proportionate and dissuasive sanctions, whether criminal civil or administrative. Persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering should also be subject to effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, and should be subject to measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or bearer negotiable instruments.