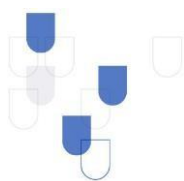


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Good practices on procedures and/or mechanisms for domestic designation or execution of third countries' requests in line with United Nations Security Council Resolution 1373.

July 2021





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ABBREVIATIONS AND ACRONYMS

DNFBP	Designated Non-Financial Business and Professions
UNSC	United Nations Security Council
CTED	United Nations Counter-Terrorism Committee Executive Directorate
TF	Terrorist Financing
FATF	Financial Action Task Force
GAFILAT	Financial Action Task Force of Latin America
GIZ	German Development Cooperation Agency - Deutsche Gesellschaft für Internationale Zusammenarbeit
Technical Guide	Technical Guide to the implementation of United Nations Security Council Resolution 1373 (2001) and other relevant resolutions
Joint Report	Joint Report of the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team on measures taken by Member States to counter terrorist financing S/2020/493
OFAC	United States Office of Foreign Assets Control
OFSI	Office of Financial Sanctions Implementation of the Treasury of Her Majesty's Treasury of the United Kingdom
UNSCR	United Nations Security Council Resolution
TFS RI EU	Targeted Financial Sanctions Reporting Institution
FIU	European Union Financial Intelligence Unit



EXECUTIVE SUMMARY

1. The United Nations Security Council (UNSC) adopted Resolution 1373 (2001) (UNSCR 1373), whereby it reaffirmed that any act of international terrorism constitutes a threat to international peace and security. In this Resolution, the UNSC defined certain requirements to be implemented by member States in order to prevent and suppress the financing of any act of terrorism.
2. For its part, the Financial Action Task Force (FATF) promotes the implementation of this UNSCR, and in particular the targeted financial sanctions (TFS) developed in its paragraphs 1 (c) and (d) in Recommendation 6 and its Interpretive Note. Thus, the FATF and FATF-style regional bodies, such as the Latin American Financial Action Task Force (GAFILAT), monitor the implementation of this UNSCR in great detail during the Mutual Evaluations processes.
3. Due to the importance of the application of targeted financial sanctions (TFS) in the area of terrorist financing (TF), with the support of the German Development Cooperation Agency (GIZ), this document presents some practices on procedures and/or mechanisms of GAFILAT member and observer countries, as well as the FATF Global Network, with respect to the domestic designation or execution of requests from third countries in line with UNSCR 1373. It also highlights the input provided by the United Nations Counter-Terrorism Committee Executive Directorate (CTED). It should be noted that these good practices also seek to provide guidance on the measures that are relevant for their strengthening and effective implementation.
4. In order to develop the object of this document, a three-stage methodology was implemented: (i) collection of information from GAFILAT delegations and other relevant countries and organizations of the FATF Global Network, (ii) analysis and processing of such inputs, and (iii) preparation of the good practices document.
5. As the main source of information, UNSCR 1373 was reviewed, as well as the successor Resolutions, which complement or reinforce the provisions of said resolution, in particular: UNSCR 1452 (2002), 2161 (2014), 2368 (2017), and particularly 2462 (2019). Additionally, the Technical Guide to the implementation of UNSCR 1373 and other relevant resolutions S/2019/998 (Technical Guide), prepared by CTED, was used.
6. For the purpose of presenting global trends, the Joint Report of CTED and the Analytical Support and Sanctions Monitoring Team on measures taken by UN Member States to counter the financing of terrorism S/2020/493 (Joint Report) was also used. This report was prepared on the basis of responses from 112 member states to a questionnaire requesting information on the implementation of the measures set out in UNSCR 1267 (1999) and 1373



(2001).

7. In order to present trends and examples from GAFILAT members, a survey was carried out, which was answered by a significant majority of member countries, 13 of the 17 delegations, representing a participation rate of 76%. In addition, some observers, and members of the FATF Global Network collaborated with some good practices that are presented here.

8. UNSCR 1373 is one of the most important international instruments in the fight against terrorism. Although this Resolution contemplates several aspects in the fight against terrorism, this document focuses mainly on paragraphs 1 (c) and 1 (d) of the Resolution, as well as on the elements included in FATF Recommendation 6.

9. Of the aspects contained in these paragraphs of UNSCR 1373, this document focuses on the procedure for domestic designation, international cooperation for domestic designation, measures for freezing funds and the prohibition to offer assets or services, the procedure for accessing such frozen funds, and finally highlights some challenges identified for the implementation of this Resolution.

10. This document also presents good practices for the implementation of each of the above aspects in order to provide guidelines so that countries can have tools to develop their own procedures.

Overview

11. Paragraphs 1 (c) and 1 (d) of UNSCR 1373 encourage member states to implement TFSs of those who have been designated domestically as terrorists by clearly stating that they shall: (i) freeze without delay the funds or other assets, and (ii) provide that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated domestically by virtue of UNSCR 1373.

12. The Technical Guide to the implementation of UNSCR 1373 and other relevant resolutions explains that the "obligation to freeze, without delay, funds and assets linked to terrorist organizations or individual terrorists is a key element of UNSCR 1373."¹

13. In Recommendation 6 of its Standards and its Interpretive Note, the FATF defined in more detail the elements that States must implement to comply with paragraphs 1 (c) and (d) of UNSCR 1373.

¹ United Nations Security Council (UNSC). 2019. "Technical Guide to the implementation of UNSCR 1373 (2001) and other relevant resolutions. (Technical Guide)." S/2019/998, para. 50.



14. It is important to note that the measures contained in these paragraphs of the UNSCR and FATF Recommendation 6 are intended to complement criminal proceedings against a designated person or entity, and may be adopted by a competent authority or court, but are not dependent on the existence of such proceedings. Instead, the focus of these measures is preventive in nature and seeks to stop the flow of funds or other assets to terrorist groups, and their use of funds or other assets.²

15. With regard to their implementation, the Joint Report identified that more than 60% of the 112 States responding to the questionnaire have established national sanctions mechanisms for the freezing of assets in accordance with UNSCR 1373.³

16. From the perspective of GAFILAT members, all of the countries participating in the survey

(13) responded that they have generally implemented UNSCR 1373 (100%), which attests to the commitment of the countries in the region to implement this UNSCR, as well as FATF Recommendation 6.

Identify and designate individuals and entities that finance or support terrorist activities

17. In order to freeze funds and other financial assets without delay, according to paragraph 1 (c) of UNSCR 1373, the first necessary element is for countries to have a mechanism for the identification and designation of natural or legal persons and/or entities or groups that finance or support terrorist activities.

18. In the survey conducted in GAFILAT countries, it was found that 85% of them have some procedure for listing at the domestic level in accordance with UNSCR 1373, and 15% responded that they have not yet developed this process domestically.

19. UNSCR 1373 also clearly defines in its paragraph 1 (c) the criteria to be considered in order to designate a natural or legal person or entity or group, and eventually freeze their assets.

20. It is important to mention that these criteria must be considered even if a terrorist attack has not been carried out, given that the objective of these financial sanctions or freezing without delay is to prevent terrorists and terrorist entities from accessing funds necessary for recruitment, training, travel, and the planning and commission of terrorist acts, including

² Ibid. Interpretive Note to Recommendation 6, para. 2

³ Ibid., para. 26



planning, training, financing, and logistical support.⁴

21. To identify and make the designation, the competent authority must apply an evidentiary standard to determine that there are “reasonable grounds” or a “reasonable basis” to suspect or believe that the criteria for designation as defined under UNSCR 1373 set forth above are satisfied.⁵ Such a proposed designation should not be conditioned on the existence of a criminal prosecution; therefore, the applicable evidentiary standard does not contemplate only the evidentiary standard necessary for a criminal investigation. The existence of a “reason” to “suspect” or “believe” should be sufficient.

22. The Interpretive Note to FATF Recommendation 6, in footnote 9, explains that the UNSCRs, and thus the FATF standard, do not require countries to develop a list identifying persons or entities, but rather to have the authority, procedures and effective mechanisms in place to do so.

23. From a global perspective, the Joint Report asked UN member States to indicate whether they had designated individuals or entities and frozen assets and whether they had published their freezing lists. This identified that more than 60% of the responding States have national sanctions mechanisms in place for the freezing of assets in accordance with UNSCR 1373. However, the majority of responding States had not designated any person or entity. Fifty-eight percent of all States responding to the questionnaire reported that they had not designated individuals or entities on their domestic lists, nor had they frozen any assets.⁶

24. This Joint Report also reflects that a number of States publish their asset freezing lists. In total, 57% of the responding States publish their freezing lists, and 32% do not do so. The remaining 11% of States did not respond to the question. Of the States with experience in freezing assets of designated entities, 84% publish their lists, and 16% do not publish them.⁷

25. As for GAFILAT member countries, it was identified that 85% of the countries that responded to the survey have developed a procedure for designating persons or entities according to the UNSCR 1373 designation criteria. In this regard, 31% confirmed that they have developed a list, while 69% have not had the need to use their procedure to list terrorists at the domestic level.

International cooperation in requesting the designation and freezing of terrorist assets

26. UNSCR 1373 contemplates the possibility of designations being made at the regional

⁴ UNSC, Technical Guide. 2019. para. 49.

⁵ Ibid. Interpretive Note to Recommendation 6, para. 4 (d)

⁶ UNSC. Joint Report. 2020. para. 25-26.

⁷ Ibid. para. 30.



level or at the request of a third country. This type of cooperation should not be considered as mutual legal assistance in criminal matters. Likewise, the evidentiary standard applicable to requests for designation and freezing from a third country can be the same standard applied for the designation process at the domestic level, and it should not be conditioned to a criminal process.

27. With respect to the implementation of international cooperation for designation under UNSCR 1373, the Joint Report reflects that States that have frozen assets indicated that international cooperation was essential. Seventy-six percent of States that had frozen assets have received or submitted requests from third countries (i.e., 25 percent of all States responding to the questionnaire).

28. From a Latin American regional perspective, of the countries responding to the survey, 85% have developed a procedure for international cooperation under UNSCR 1373 and 15% have not. Also, only 31% have received requests from a third party, 62% have not received requests, and 8% responded that they do not know or did not respond. Additionally, of the countries that participated, 85% confirmed that they have not made a request for designation and freezing of assets to a third country and 15% responded that they do not know or did not respond.

Targeted Financial Sanctions

29. Upon designation(s) or listing(s) of person(s) or entity(ies) that meet the designation criteria under UNSCR 1373, the following measures must be implemented, or the following sanctions set forth in its paragraphs 1 (c) and (d) must be implemented:

- Freezing without delay.
- Prohibition to offer funds or services.

Freezing without delay

30. The FATF glossary explains that the term freeze means to prohibit the transfer, conversion, disposition or movement of funds or other assets.⁸ This directive may arise from an administrative or judicial authority, but it must be done without delay and without relying on the criminal criteria established for implementing a provisional or precautionary measure on assets subject to criminal confiscation. It is important to highlight that the funds or other assets to be frozen cover assets or economic resources that do not have a specific connection with a terrorist act.

31. With respect to freezing, it is identified globally that, although many States have

⁸ FATF. FATF Standards. 2012 - 2020. Glossary.



complied with the requirements to develop freezing procedures, it has not been implemented. According to the Joint Report, it was identified that 58% of all responding States reported that they had not designated individuals or entities on their domestic lists, nor had they frozen assets; 33% reported that they had designated terrorist agents and frozen their assets; and 5% reported that they had designated terrorist agents, but had not frozen their assets. Four percent of the states did not respond to this question.

32. At the GAFILAT country level, it was identified that 69% of the countries participating in the questionnaire have not implemented freezing measures under UNSCR 1373. Sixteen percent commented that they have implemented freezing measures, and 15% responded that they do not know or did not respond.

33. The Interpretive Note to Recommendation 6 also states that under UNSCR 1373, countries should have appropriate legal authorities, procedures, or mechanisms in place to delist and unfreeze funds or other assets of persons and entities that no longer meet the criteria for designation. Likewise, countries should develop and implement publicly known procedures for unfreezing funds or other assets for persons or entities with the same or similar name as the designated persons or entities that are mistakenly affected by a freezing mechanism (i.e., a false positive).

Prohibition to offer funds or services

34. Paragraph 1 (d) of UNSCR 1373, as well as FATF Recommendation 6, calls countries to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets, or economic resources or financial or other related services available, directly or indirectly, for the benefit of designated persons or entities. This prohibition is a measure that complements the freezing.

Process for accessing basic and extraordinary expenses from frozen assets

35. In accordance with UNSCR 1452 (2002) and FATF Recommendation 6, countries are required to develop procedures for persons and entities designated under UNSCR 1373 to request from the State access to funds and resources to cover basic and extraordinary expenses.

36. From the global perspective, the Joint Report explains that all responding States that apply domestic designations have established mechanisms to allow access to frozen funds, in accordance with UNSCR 1373 (2001) and 1452 (2002). Forty-three percent of States that had designated individuals or entities and frozen assets had granted humanitarian exemptions, while 51% had not (i.e., 14% and 17% of all States responding to the questionnaire, respectively). Of those that had frozen assets, 5% did not indicate whether they had granted



humanitarian exemptions.

37. Of the GAFILAT member countries, 84% of the countries that participated in the survey confirmed that they have a procedure for granting access to frozen funds, 8% do not yet have one, and the other 8% responded that they do not know or did not respond.

Challenges

38. It is evident that there is a global and regional trend seeking to implement UNSCR 1373 and FATF Recommendation 6, however, countries have encountered some challenges such as:

- Inter-agency coordination
- Strengthening RI capacities
- Designation and implementation of the freezing measure
- Challenges in implementing the freezing measure without delay
- Challenges in applying the freezing measure without delay of virtual currencies and assets and new technologies.
- Judicial challenges to freezing decisions
- International Cooperation

Conclusion

39. It should be noted that for countries to be able to implement UNSCR 1373 and achieve significant results in the fight against terrorism, it is not enough to simply have an adequate legal framework. The successful implementation of these measures is only possible if there is close inter-agency cooperation that allows for very fluid internal communication, as well as agile coordination with the private sector, in particular with RIs, which makes it possible to implement the freezing of assets without delay, and dynamic international cooperation that promptly exchanges relevant information.

40. It is important not to lose sight of the fact that the purpose of these measures is to prevent or avoid that financial flows and other assets finance or enable the commission of terrorist acts or are used to support terrorist individuals or groups.

41. Now, considering that technological advances and virtuality are even more present, this increases the possibility that assets, e.g., financial resources, can be transferred very quickly. Therefore, the emphasis on the concept of "without delay" as applied to the measures set out in this document is becoming increasingly relevant and important in the fight against terrorism and its financing.



42. As presented in this document, there is no doubt that there is a broad commitment on the part of UN member states as well as GAFILAT delegations to the implementation of UNSCR 1373, although there are challenges to overcome in order to achieve its full implementation.

INTRODUCTION

43. One of the most effective ways to combat terrorism is to prevent terrorists and terrorist entities from gaining access to the funds necessary for the commission of terrorist acts, recruitment, training, travel, and planning, including planning, training, financing, and logistical support to perpetrate terrorist attacks.

44. The United Nations Security Council (UNSC), condemning the terrorist attacks of September 11, 2001, committed in the United States of America, developed Resolution 1373 (2001) (UNSCR 1373), whereby it reaffirmed that any of these acts, as well as any act of international terrorism, constitute a threat to international peace and security. In this Resolution, the UNSC defined certain requirements to be implemented by member States in order to prevent and suppress the financing of any act of terrorism.

45. The Financial Action Task Force (FATF) in its Recommendation 6 advocates the implementation of targeted financial sanctions (TFS) established under UNSCR 1373. Derived from the importance of the implementation of TFS in the field of Terrorist Financing (TF), the FATF has achieved progress in this area, particularly since the publication of the International Best Practices in 2013.

46. Likewise, within the framework of the Working Group on Terrorist Financing (GTFT) of the Financial Action Task Force of Latin America (GAFILAT), the importance of identifying success stories and/or good practices that may be useful for the region in this area has been stated. In addition, interest was shown in receiving guidance on how to determine whether there is a reasonable ground for designation and offer guidelines on how to determine these grounds in order to follow up on a request to freeze assets at the request of a third State.

47. Given the importance of the application of TFS in the area of TF, this document was prepared with the support of GIZ to support GAFILAT member countries by presenting success stories and/or best practices that may be useful for the region in this area, and that may be taken into account when implementing the mechanisms and procedures provided for in UNSCR 1373. In addition, the CTED of the United Nations provided valuable information for the implementation of this project in line with international standards on the subject.



48. To this end, this document presents the overview of UNSCR 1373 and develops the requirements established in FATF Recommendation 6, which promotes the implementation of paragraphs 1 (c) and 1 (d) of UNSCR 1373, relating to the freezing of assets related to terrorism without delay and the prohibition of making funds, financial or economic resources or financial or other related services available, directly or indirectly, to persons who commit or attempt to commit terrorist acts.

OBJECTIVE

49. The objective of this document is to present some practices on procedures and/or mechanisms of GAFILAT member and observer countries, as well as the FATF Global Network, with respect to the domestic designation or enforcement of third country requests in line with UNSCR 1373. This document also seeks to provide guidance on measures that are relevant to its strengthening and effective implementation.

50. It is important to mention that the information contained in this document is not intended to substitute the data expressed in the Mutual Evaluations carried out by GAFILAT, nor is the content of this document considered for the purposes of such evaluation processes.

51. Although UNSCR 1373 contemplates several aspects in the fight against terrorism, with the purpose of developing the established objective, this document focuses mainly on paragraphs 1 (c) and 1 (d) of the Resolution, as well as on the elements included in FATF Recommendation 6 on this regard. This document focuses on the procedure for domestic designation, international cooperation for domestic designation, measures for freezing funds and the prohibition to offer assets or services, the procedure for accessing such frozen funds, and finally highlights some challenges identified for the implementation of this Resolution.

METHODOLOGY

52. In order to develop the object of this document, a three-stage methodology was implemented: (i) Collect information, (ii) Analyse the information and (iii) Identify and develop the best practices document.

I. Collect information

53. At this stage, the importance of obtaining technical quality information from primary sources relevant to this particular topic, such as the implementation of UNSCR 1373, was



considered. The description of the sources of information can be found in the following section of this report.

54. In order to obtain the necessary information, three strategies were used. On the one hand, an inventory of publicly available UNSC and FATF information related to UNSCR 1373, and its implementation was made.

55. The second strategy involved the preparation of a questionnaire for all GAFILAT countries on the implementation and good practices related to UNSCR 1373. Finally, some delegations of the FATF Global Network were contacted and joined this project by sharing good practices, and interviews were conducted with key actors to identify trends, challenges, and good practices in the implementation of this Resolution.

II. Analysis of information and identification of best practices

56. The information obtained was qualitative and quantitative in nature. The qualitative data, in particular the information obtained from the UNSC and FATF documents, are the primary source used to prepare this document.

57. With respect to the quantitative data, an analysis was carried out to obtain conclusions at the GAFILAT member country level that could serve for comparison with the global level data reflected in the UNSC documents. This information was useful to support the analysis of the qualitative information.

III. Identification and preparation of the best practices document.

58. With the support of GIZ, this document was prepared to provide an overview of the requirements for developing procedures and/or mechanisms for the domestic designation or execution of third country requests in line with UNSCR 1373. In addition, it seeks to provide guidance on the measures that are relevant for strengthening these mechanisms and thus promote their effective implementation. It also presents examples and statistics of implementation by GAFILAT countries, the FATF Global Network and UN member States.

59. Based on the information analysed, and thanks to the extensive collaboration of GAFILAT member countries and some FATF Global Network delegations, good practices were identified that reflect the elements necessary for the implementation of UNSCR 1373, in compliance with FATF Recommendation 6.



Sources of information

60. To develop this document, use was made of the main source, UNSCR 1373, as well as the successor Resolutions, which complement or reinforce the provisions of [UNSCR 1373](#), in particular:

- UNSCR 1452 (2002)
- UNSCR 2161 (2014)
- UNSCR 2368 (2017)
- UNSCR 2462 (2019)

61. Additionally, the Technical Guide to the implementation of UNSCR 1373 and other relevant resolutions S/2019/998 (Technical Guide), prepared by CTED, was used. This guide has been conceived as a consultation tool that seeks to contribute to ensure a coherent analysis of the implementation activities of the measures established under UNSCR 1373 and other relevant resolutions, carried out by the United Nations Member States. In this regard, the Technical Guide in addition to referring to each of the paragraphs of resolutions 1373 (2001) and 1624 (2005), points out the key provisions of resolutions 2178 (2014) and 2396 (2017).

62. For the purpose of presenting some global trends on the implementation of UNSCR 1373, the Joint Report of CTED and the Analytical Support and Sanctions Monitoring Team on Measures Taken by UN Member States to counter the financing of terrorism S/2020/493 (Joint Report) was also used.

63. This report contains an analysis and conclusions based on the responses of UN Member States to the questionnaire developed by CTED and the Analytical Support and Sanctions Monitoring Team. With this questionnaire, information was requested on the implementation by UN Member States of the measures set out in resolutions 1267 (1999) and 1373 (2001).

64. The Joint Report provides, based on the responses of 112 UN member States, an overview of the measures, good practices, and problems that states have encountered in implementing international standards on combating TF. This information was useful for the preparation of this document, and some relevant findings related to UNSCR 1373 are included below.

65. In addition to the above, this document was also prepared using as a basis Recommendation 6 and its Interpretive Note of the International Standards on the Fight against Money Laundering and Terrorist Financing, and the Financing of the Proliferation of



Weapons of Mass Destruction, (the FATF Standards (2013-2020)), which promotes, among other aspects, the implementation of UNSCR 1373. Likewise, the document of International Best Practices: TFSs related to Terrorism and TF (Recommendation 6) elaborated and published by the FATF in 2013 was used.

66. In order to present some trends in the implementation of UNSCR 1373 at the level of GAFILAT member countries, as well as to share some examples on this regard, a survey was carried out, which was answered by a significant majority of member countries, 13 of the 17 delegations, representing a participation rate of 76%. In addition, as mentioned before, some observers and members of the FATF Global Network collaborated with some good practices that are presented here.

67. The results of the analysis, findings and good practices related to the elements for the implementation of paragraph 1 (c) and 1 (d) of UNSCR 1373 in compliance with FATF Recommendation 6 are presented below.

OVERVIEW

68. The UNSC, condemning the terrorist attacks in New York, Washington, D.C., and Pennsylvania on September 11, 2001, and expressing its determination to prevent all such acts, as well as recognizing the need for States to complement international cooperation by adopting further measures to prevent and suppress within their territories, by all lawful means, the financing and preparation of any act of terrorism, adopted UNSCR 1373, which seeks to prevent and suppress the financing of any act of terrorism.

69. UNSCR 1373, acting under Chapter VII of the Charter, provides in paragraphs 1 (c) and 1 (d) as follows:

70. *"1. Decides that all States shall: [...]*

c. Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

d. Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or



indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.”

71. The FATF, in its Recommendation 6 on TFSs related to Terrorism and TF refers to the implementation of a number of UNSCRs, including UNSCR 1373. This Recommendation sets forth that:

72. *“Countries should put financial sanctions regimes in place to comply with the United Nations Security Council Resolutions related to the prevention and repression of terrorism and its financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 1373 (2001).”*

73. From this reference, the FATF encourages countries to implement paragraphs 1 (c) and 1 (d) of UNSCR 1373 set out above, by clearly stating that they shall: (i) freeze without delay the funds or other assets, and (ii) provide that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by that country by virtue of UNSCR 1373.

74. The Technical Guide to the implementation of UNSCR 1373 and other relevant resolutions explains that the “obligation to freeze, without delay, funds and assets linked to terrorist organizations or individual terrorists is a key element of UNSCR 1373.”⁹

75. Similarly, the Technical Guide states that “a complementary requirement to the asset-freezing requirement is to prohibit anyone from making funds, financial assets or economic resources and other related services available to terrorist and terrorist entities, as set forth in paragraph 1 (d) of resolution 1373 (2001).”¹⁰ Thus, “paragraph 1 (d) should be treated, together with the asset-freezing requirement set forth in paragraph 1 (c), as a prohibition”¹¹ on the provision of funds or other assets, economic or financial resources or other related services.

76. The Technical Guide also establishes that “all elements of the provision set forth in paragraph 1 (c) of the UNSCR should be in place for the State to be able to freeze funds, other financial assets or economic resources without delay.”¹²

⁹ United Nations Security Council (UNSC). 2019. “Technical Guide to the implementation of UNSCR 1373 (2001) and other relevant resolutions. (Technical Guide).” S/2019/998, para. 50.

¹⁰ UNSC. Technical Guide, para. 52.

¹¹ Ibid., para. 52.

¹² Ibid., para. 50.



77. In general, the Technical Guide explains that in order to implement these aspects of UNSCR 1373, "States should have in place a legal provision that provides for the freezing of terrorist funds and assets pursuant to UNSCR 1373 (2001) and establish a designating mechanism with adequate due process consideration, as well as a dedicated mechanism to address foreign asset-freezing requests. The decisions to freeze funds and assets must be communicated to the private sector in order to identify and detect any funds or financial assets held by designated persons or entities."¹³

78. Moreover, the FATF in its Interpretive Note to Recommendation 6 and its Evaluation Methodology, details the following elements that countries are required to implement in compliance with this UNSCR:

- Identification and designation of individuals and entities that finance or support terrorist activities.
- Freezing and prohibition to handle funds or other assets of designated persons and entities.
- Removal from the list, unfreezing and granting access to funds or other frozen assets.

79. The elements described by the FATF on the implementation of UNSCR 1373, and in general its 40 Recommendation are standards acknowledged by the UNSC included in several of its resolutions.

80. In particular UNSCR 2462 (2019), which consolidates previous Council resolutions on combating TF, highlights the essential role of the FATF, and in its paragraph number 4 *"Strongly urges all States to implement the comprehensive international standards embodied in the revised Forty FATF Recommendations on Combating Money Laundering, and the Financing of Terrorism and Proliferation and its interpretive notes."*¹⁴ It can be concluded, thus, that criteria described in FATF Recommendation 6 on UNSCR 1373 explain in more detail the elements that States must implement to comply with paragraphs 1 (c) and (d) of said resolution.

81. In view of the above, the following is an overview of the implementation of UNSCR 1373 at the global level and in GAFILAT member countries, and offers some best practices for adopting the criteria established in FATF Recommendation 6 at the national level in compliance with UNSCR 1373.

¹³ Ibid., para. 51.

¹⁴ United Nations Security Council (UNSC). UNSCR 2462, 2019, S/RES/2462, para. 4



IMPLEMENTATION OF UNSCR 1373 (2001)

82. The CTED and the Analytical Support and Sanctions Monitoring Team for Resolutions 1526 (2004) and 2253 (2015) concerning the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh), Al-Qaida and the Taliban, and individuals, groups, companies and entities associated with them on measures taken by UN Member States to combat TF, submitted a report in June 2020 that provides an overview of measures, good practices and challenges identified by Member States in their implementation of international standards on combating TF.¹⁵

83. This report was prepared on the basis of responses from 112 member states to a questionnaire requesting information on the implementation of the measures set out in resolutions 1267 (1999) and 1373 (2001). The Joint Report concludes that "States' responses to the questionnaire reflect the deep commitment of the international community to support a broad array of legal and policy measures aimed at denying terrorist groups access to funding and financial services."¹⁶

84. Overall, the Joint Report reveals that there is a broad understanding on the part of UN Member States of "counter-financing of terrorism requirements, including the legal framework necessary for effective counter-financing of terrorism measures, as well as the asset-freezing and sanctions-designation measures set forth in Council resolutions 1267 (1999) and 1373 (2001) and successor resolutions."¹⁷

85. At the global level, the Joint Report identified that more than 60% of the 112 States responding to the questionnaire have established national sanctions mechanisms for the freezing of assets in accordance with UNSCR 1373 of the UNSC.¹⁸

86. From a regional perspective, all GAFILAT member countries were surveyed to identify good practices in the implementation of UNSCR 1373. To the question whether the country has implemented UNSCR 1373 in general terms, all the participating countries (13) answered in the affirmative (100%), which ratifies the commitment of the countries of the region in the implementation of this UNSCR, as well as FATF Recommendation 6.

¹⁵ United Nations Security Council (UNSC), "Joint report of the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning Islamic State in Iraq and the Levant (ISIL) (Da'esh), Al-Qaida and the Taliban and associated individuals and entities on actions taken by Member States to disrupt terrorist financing, prepared pursuant to paragraph 37 of Security Council resolution 2462 (2019)" (Joint Report). S/2020/493, p. 2.

¹⁶ UNSC. Joint Report, p. 2.

¹⁷ Ibid., p. 2-3.

¹⁸ Ibid., para. 26



Identification and designation of individuals and entities that finance or support terrorist activities.

87. In order to freeze without delay funds and other financial assets, according to paragraph 1 (c) of UNSCR 1373, the first necessary element is for countries to have a mechanism for the identification and designation of natural and/or legal persons and/or entities or groups that finance or support terrorist activities. To this end, the FATF in the Interpretive Note to Recommendation 6 and in its Evaluation Methodology establishes that:

88. "Countries need to have the authority, and effective procedures or mechanisms, to identify and initiate proposals for designations of persons and entities pursuant to S/RES/1373 (2001), consistent with the obligations set out in that Security Council resolution. Such authority and procedures or mechanisms are essential to identify persons and entities who meet the criteria identified in resolution 1373 (2001). [...]"

a) Countries should identify a competent authority or a court as having responsibility for: [...]
(iii) designating persons or entities that meet the specific criteria for designation, as set forth in resolution 1373 (2001), as put forward either on the country's own motion or, after examining and giving effect to, if appropriate, the request of another country, if the country 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 meets the criteria for designation in resolution 1373 (2001), as set forth in Section E."¹⁹

89. To implement this procedure, it is relevant that each country defines which authority decides on the designation and its procedures for identifying and designating or listing, and delisting (in the applicable cases) the persons or entities that meet the criteria of UNSCR 1373. The FATF in its document of International Best Practices on TFS on Terrorism and Terrorist Financing explains that the authority to initiate or make designations can be administrative or judicial.²⁰

90. In the survey conducted in the GAFILAT countries, it was found that 85% of the participating countries have some procedure for listing at the domestic level in accordance

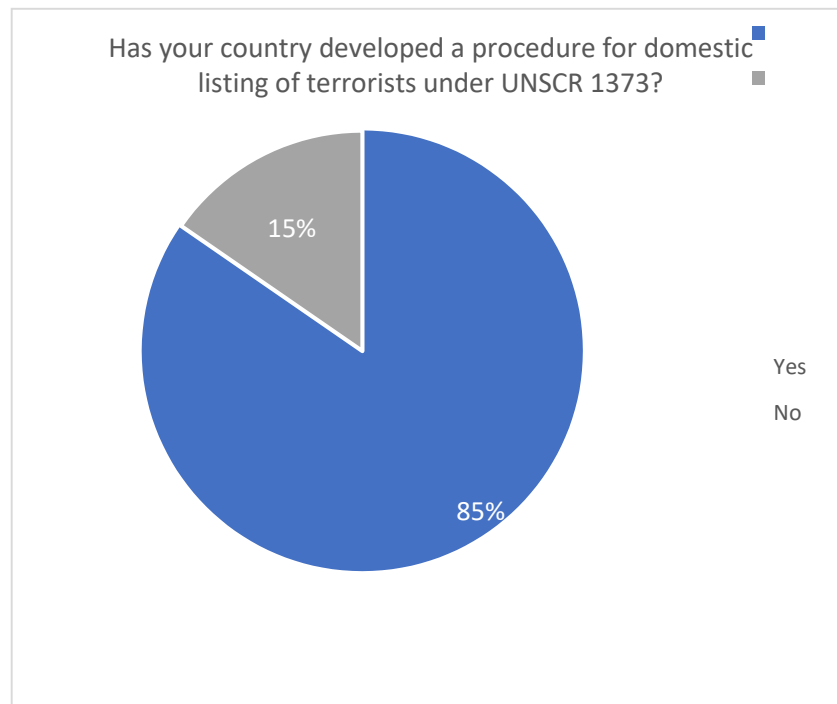
¹⁹ FATF. "International standards on the fight against money laundering and terrorist financing and the financing of the proliferation of weapons of mass destruction." (FATF Standards.) 2013-2020. Interpretive Note to Recommendation 6, para. B.

²⁰ FATF. "International Best Practices: Targeted Financial Sanctions related to Terrorism and Terrorist Financing (Recommendation 6)" (International Best Practices.) 2013. para. 7



with UNSCR 1373 and 15% responded that they have not yet developed this process domestically.

Graph 1: Listing procedure based on UNSCR 1373



91. The following are some examples of good practices in GAFILAT countries where the authority that decides on listing is of an administrative nature, but for their decision they rely on information from judicial authorities:

Dominican Republic

Pursuant to the provisions of Decree 407-17 of November 16, 2017, Regulation for the application of Law 155-17 on TF, Article 12 of said regulation provides for the domestic designation of natural and legal persons whose property or assets are susceptible to be frozen due to their link to terrorism and its financing. The National Anti-Terrorism Directorate, created by Law 267-08, on terrorism, will receive information from the Financial Analysis Unit or from the institutions in charge of the prosecution of criminal activities and



the exercise of criminal action, on natural or legal persons that allegedly meet the designation criteria established under UNSCR 1373 in order to analyze it and, if appropriate, approve the inclusion or exclusion in the domestic list.

Uruguay

Article 15 of Decree No. 136/019 on national designations establishes that the Coordinating Commission against Money Laundering and Terrorist Financing may propose to the Executive Branch, at the request of the Financial Information and Analysis Unit, the Ministry of Foreign Affairs or any other of its members, the incorporation of a natural person, legal entity or entity to the domestic list in accordance with the provisions of UNSCR 1373, provided that there are reasonable grounds to understand that it meets the conditions to be included in the domestic list. The incorporation must have the approval of the Executive Branch and must be based on the existence of a reasonable basis or grounds.

Panama

Executive Decree 324 of July 19, 2016, in its Chapter III Article 7, creates the Committee for the Prevention of Terrorism and its Financing, in the Executive Secretariat of the National Security Council which:

- a. Will develop the identification profile of natural or legal persons and their geographical location, who are related to indicators of terrorism and its financing in the national territory.
- b. It will study the intelligence indicators, complement its report with data collection and analysis of information of natural or legal persons, whether or not it meets the criteria of UNSCR 1373, for its recommendation to the Executive Secretary of the National Security Council. If necessary, it will make the request to the Counter-Terrorism Department, for its extension, and the latter will make a plan to search for information and respond immediately to it.
- c. It will analyse and issue the administrative act of designation to the domestic list.
- d. Once the administrative act is issued, it will be immediately communicated and forwarded through the Executive Secretary of the National Security Council to the Financial Analysis Unit, so that the funds or assets susceptible to be frozen due to the fact that the natural or legal person is related to terrorism and its financing.

The National Security Council has a Committee for the Prevention of Terrorism and its financing whose purpose is to identify, designate and exclude natural or legal persons from the domestic list based on the designation criteria under UNSCR 1373. According to Executive Decree No. 324 of June 19, 2016 (Article 9), the Committee is comprised of the following authorities:



- A General Coordinator to be appointed by the Executive Secretary of the National Security Council who will preside over it.
- The Head of the Anti-Terrorism Department.
- The Head of the Anti-Money Laundering Specialized Group.
- A Legal Advisor of the Executive Secretariat of the National Security Council.
- A Legal Advisor appointed by the Ministry of the Presidency.
- An analyst in matters of terrorist financing and a Legal Advisor of the Financial Analysis Unit.
- An Official from the Public Prosecutor's Office, empowered to investigate terrorism and its financing.

Nicaragua

The National Security System is responsible for designating national persons or entities suspected of committing or attempting to commit terrorist acts or actions, participating in them or facilitating their commission or financing, on reasonable grounds or bases verifying their alleged link to such acts, and promptly transmitting the designation to the relevant public institutions and competent authorities by physical and electronic means and to the Financial Analysis Unit, so that it is disseminated and the relevant measures are taken including the search for information and the preventive freezing of assets.

The procedures for freezing terrorist funds or assets of designated persons and entities in the context of UNSCR 1373 are found in Chapter III of Decree 17-2014 (Articles 10 to 14).

Article 10 of said Decree establishes that the National Democratic Security System, shall receive information from the Financial Analysis Unit, the National Council Against Organized Crime and the institutions in charge of prosecuting criminal activities and exercising criminal action, regarding persons or entities allegedly linked to terrorism or its financing, Such information shall be analysed and if appropriate, it shall designate the persons on the list taking different criteria based on the rights, guarantees and fundamental freedoms and subsequently, it shall notify such designation to the Public Prosecutor's Office and the Attorney General's Office of the Republic, so that they may initiate the necessary actions in accordance with the applicable domestic legislation.

Cuba

Cuba has the regulatory basis for the implementation of UNSCR 1373. As reflected in Resolution 12/2014 of the Ministry of Domestic Affairs (MININT), that agency coordinates



the processes of identification, designation, and exclusion, freezing and unfreezing without delay, of funds and other assets, according to the domestic list or the request of a foreign country, to prevent and repress conducts related to terrorism.

Designation criteria

92. UNSCR 1373 clearly defines in its paragraph 1 (c) the criteria to be considered in order to designate a natural or legal person or entity or group, and eventually freeze their assets. These criteria were collected by the FATF, in Section E of the Interpretive Note to Recommendation 6, which explain that the following should be designated:

- a. *"any person or entity that commits or attempts to commit terrorist acts, or that participates in them or enables their commission;*
- b. *any entity that belongs or is controlled by, directly or indirectly, any person or entity designated under 13 (c) of this item; or*
- c. *any person or entity that acts on behalf or under the instructions of any person or entity designated under item 13 (c) (i) herein."*²¹

93. It is important to mention that these criteria must be considered even if a terrorist attack has not been carried out, given that the objective of these financial sanctions or freezing without delay is to prevent terrorists and terrorist entities from accessing funds necessary for recruitment, training, travel, and the planning and commission of terrorist acts, including planning, training, financing, and logistical support.²²

94. The document on good international practices for the implementation of FATF Recommendation 6 states in paragraph 16 that the designation process should focus on those persons or entities that are key elements of terrorist support networks, in order to achieve maximum impact in preventing and suppressing terrorist acts.

95. The FATF standard in its Interpretive Note to Recommendation 6 also states that these designations or proposed designations should not be dependent on the existence of criminal proceedings.²³ Measures under Recommendation 6 may complement criminal proceedings against a designated person or entity, and may be adopted by a competent authority or a court, but are not dependent on the existence of such proceedings. Instead, the focus of Recommendation 6 is on preventive measures that are necessary and unique in the context of seeking to stop the flow of funds or other assets to terrorist groups, and the use of funds

²¹ FATF. FATF Standards. 2012 - 2020. Interpretive Note to Recommendation 6, Section E, para. C

²² UNSC, Technical Guide. 2019. para. 49.

²³ FATF. Standards. 2012 - 2020. Interpretive Note to Recommendation 6, para. 4 (d)



or other assets by terrorist groups.²⁴

96. In addition, the FATF standard states that the person or entity identified as a potential for listing should not be notified of its proposed designation. Countries should have procedures to be able to operate *ex parte* against a person or entity who has been identified and whose (proposal for) is being considered.²⁵

97. Below are some examples of how these elements have been implemented:

Costa Rica

A domestic designation may be performed pursuant to UNSCR 1373 in relation to any of the following subjects:

- a. Any person or entity that commits or attempts to commit terrorist acts, or that participates in them or enables their commission.
- b. Any entity that belongs or is controlled by, directly or indirectly, any person or entity designated under the previous item.
- c. Any person or entity that acts on behalf or under the instructions of any person or entity designated under the first item.

The cases mentioned above shall be subject to designation when there are final convictions by a competent judge, and at the administrative level, by the National Security Presidential Council with supporting evidence, reports of experts or technical experts from intelligence services, the police, judicial sources, other communication means, statements made by the subject, or any other required mechanism.

United States of America

As an example of criteria for designation, the United States of America pursuant to Executive Order, E.O. 13224, the Secretary of State is authorized to designate foreign persons who are determined to have "*committed or pose a significant risk of committing acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.*"

Moreover, the Secretary of the Treasury to designate as specially designated global terrorists (SDGT) to persons, including US nationals, that are determined to be owned or controlled by, or that act for or on behalf of, or are associated to those persons, as well as persons that are determined to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of acts of terrorism or terrorists and terrorist organizations designated under the Executive Order E.O. 13224

²⁴ Ibid. Interpretive Note to Recommendation 6, para. 2

²⁵ Ibid. Interpretive Note to Recommendation 6, para. 4 (h).



Mexico

There must be reasonable grounds or bases according to the National Legal System considering:

- a. Commission or attempted commission of terrorist acts, or participation in the financing, planning, facilitation, recruitment, preparation in the performance of a terrorist person or entity or in the performance of one more terrorist acts;
- b. Acting on behalf of, or at the direction of, a person, group or entity referred to in the preceding subsection; or
- c. It is an entity or group (other than a natural person) that is owned or effectively controlled, directly or indirectly, by a person or entity referred to in (a).

Evidentiary standard

98. To identify and make the designation, the competent authority must apply an evidentiary standard to determine that there are "reasonable grounds" or a "reasonable basis" to suspect or believe that the criteria for designation as defined under UNSCR 1373 set forth above are satisfied.²⁶ As mentioned above, such a proposed designation should not be conditioned on the existence of a criminal prosecution; therefore, the applicable evidentiary standard does not contemplate only the evidentiary standard necessary for a criminal investigation. The existence of a "reason" to "suspect" or "believe" should be sufficient.

99. Complementarily, the FATF standard in its Interpretive Note to Recommendation 6 and in its Assessment Methodology, states that the competent authority(ies) should have the appropriate legal capacity, procedures, or mechanisms in place to collect or request as much information as possible from all relevant sources to identify persons and entities that, on reasonable grounds or reasonable basis, are suspected or believed to meet the criteria for UNSCR 1373 designation.²⁷

100. As much information as possible includes all information necessary to clearly identify the person or entity, as well as the suspicion that the designation criteria are satisfied. The FATF standards are broad in allowing for all types of information that may be provided by national or relevant authorities on: the name of the proposed person or entity, sufficient identifying information to enable accurate and positive identification of persons and entities, and specific information that supports the determination that the person or entity meets the criteria for designation under UNSCR 1373.²⁸

²⁶ Ibid. Interpretive Note to Recommendation 6, para. 4 (d)

²⁷ Ibid. Interpretive Note to Recommendation 6, para. 4 (c).

²⁸ Ibid. Interpretive Note to Recommendation 6, para. 4 (g).



101. One of the sources of information that may be used for designation includes information obtained through intelligence processes. The International Best Practices document on the implementation of FATF Recommendation 6, paragraphs 17 and 18 explains that, considering the important role that intelligence plays against the terrorist threat, key information supporting the proposed designation of a person or entity may be produced by intelligence authorities.

102. States should consider strengthening the legal mechanisms that allow for the exchange of intelligence at the national and international level to support a proposed designation, for the review of a designation, or to provide sufficient evidence to the competent authority in the event that a designation is challenged.²⁹

103. The following are some examples of authorities usually involved in the exchange of information and the type of information that may be used to support a national designation under UNSCR 1373.

Argentina

Decree 489/2019 created the Public Registry of Persons and Entities Linked to Acts of Terrorism and its Financing (RePET), which operates within the Ministry of Justice and Human Rights. In the same, the following are registered:

- a. Any natural or legal person or entity that has been the subject of a judicial decision or of a decision of the Public Prosecutor's Office that charges or admits the formalization of an investigation for any of the crimes committed for the specific purpose of section 41 quinquies or any of the crimes of section 306 of the National Criminal Code, or those equivalent crimes in force prior to the enactment of Law 26.734.
- b. Any natural or legal person or entity included in the lists drawn up pursuant to UNSCR 1267 (1999) and successive and concordant lists of the United Nations Security Council.
- c. Any natural or legal person or entity on which the Financial Information Unit has ordered the administrative freezing of assets provided for in Section 6, last paragraph, of Law 26.734 and this Decree.

In addition, it must be considered that, in order to make a decision on the freezing, the FIU shall base its decision on the evidentiary standard as set forth in Decree 918/12, that is to say, the request's "reasonableness" analysis.

²⁹ FATF. International Best Practices. 2013. para. 17-18



Uruguay

Designations of natural or legal persons or entities are not conditioned on the existence of a criminal action, but on the existence of reasonable grounds to understand that the conditions for making a designation are met. Pursuant to the provisions of Article 15 of Decree No. 136/019, the incorporation must be approved by the Executive Branch and must be based on the existence of reasonable basis or grounds. Additionally, Article 1 of Decree No. 136/019 on definitions establishes what is meant by "basis" or "reasonable grounds" and provides: "They refer to the criteria used to decide on a designation, considering the provisions of United Nations Security Council Resolution S/RES/1373 (2001)."

Peru

The assessment made by the FIU for designations is based on tax investigations, or ongoing criminal proceedings and convictions; and, the correct identification of the person or entity pursuant to Article 8 of SBS Resolution No. 3862-2016. For the case of a tax investigation, it should be taken into account that this, according to the regulations (Art. 330.2 of the Criminal Procedural Code of 2004), is understood as a preliminary investigation which may be initiated, among others, based on intelligence information from the FIU as an indication. In this sense, the designations based on tax investigations are not conditioned to a criminal proceeding.

Costa Rica

Designation proposal at the administrative level:

The National Security Presidential Council shall request through the Ministry of Foreign Affairs and Worship the listing of natural or legal persons investigated in relation to the possible commission of the crimes of terrorism, terrorist financing and any direct or indirect link to activities related to the proliferation of weapons of mass destruction, to the focal point of the appropriate UNSC Committee.

The request must include a detailed report of the case which shall serve as the grounds or justification for the designation proposal to the UNSC list, including the following designation criteria:

- a. Conclusions and concrete grounds that prove that listing criteria are met;
- b. The nature of the justifying evidence (for instance, experts or technical experts reports from intelligence services, the police, judicial sources, other communication means, statements made by the subject, and any other required mechanism);
- c. Evidences or supporting documents;
- d. Details of any connection with persons or entities currently listed.

Nicaragua

Pursuant to Article 10 of Decree 17-2014, procedures are established for the domestic



designation of natural and legal persons whose funds or assets are susceptible to be frozen due to their link to terrorism and its financing, complying with the following specific procedures and requirements that must be met for such designation:

The National Democratic Security System will receive information from the Financial Analysis Unit, the National Council Against Organized Crime and the institutions in charge of prosecuting criminal activities and exercising criminal action, regarding persons or entities allegedly linked to terrorism or its financing in order to analyse it and, if appropriate, designate them, taking into account the following criteria based on fundamental rights guarantees and freedoms:

- a. Natural or legal persons who are the object of a judicial resolution issued in Nicaragua or abroad, which identifies them as perpetrators of or participants in the crime of terrorism or its financing or any of the behaviours indicated in paragraph 1 of Article 3 of this Decree.
- b. Natural or legal persons that both in Nicaragua or abroad are involved at any stage of the criminal proceedings for the crimes of terrorism or its financing or any of the behaviours indicated in paragraph 1 of article 3 of this Decree.
- c. Natural or legal persons that, according to information from police, financial, or judicial investigation, intelligence, or from counterpart organisms in other countries show the alleged link as author or participant of the crime of terrorism or its financing or any of the behaviours indicated in paragraph 1 of Article 3 of this Decree.
- d. Natural or legal persons who, according to information from police, judicial or intelligence investigations, or from counterpart agencies in other countries, are allegedly linked to acts of terrorism or its financing with natural or legal persons who are included in the assumptions of paragraphs (a), (b) and (c) of this article.

Honduras

The criteria for designation in the UN lists set forth in UNSCR 1267 (1999), and 1989 (2011) and successor resolutions, UNSCR 1988 (2011) and successor resolutions, UNSCR 1373 (2001) and successor resolutions, UNSCR 1718 (2006) and successor resolutions, and UNSCR 2231 (2015) and successor resolutions.

Added to the above:

- a. Natural or legal persons who are the object of a judicial resolution issued in the country or abroad, which identifies them as perpetrators of or participants in the crime of terrorism or its financing or any of the behaviours indicated in paragraph a of Article 3 of Resolution 001/2015.
- b. Natural or legal persons that both in the country or abroad are involved at any stage of the criminal proceedings for the crimes of terrorism or its financing or any of the behaviours indicated in paragraph (a) of article 3 of Resolution 001/2015.



- c. Natural or legal persons that, according to information from police, financial, or judicial investigation, intelligence, or from counterpart organisms in other countries show the alleged link as author or participant of the crime of terrorism or its financing or any of the behaviours indicated in paragraph (a) of Article 3 of Resolution 001/2015.
- d. Natural or legal persons who, according to information from police, judicial or intelligence investigations, or from counterpart agencies in other countries, are allegedly linked to acts of terrorism and that are included in the assumptions of paragraphs (a), (b) and (c) of this article.

United States of America

The legal standard for U.S. terrorism designations. It is an administrative standard that requires the designating agency to have a "reasonable basis" for concluding that the proposed designee meets the criteria for designation. Specifically, the conclusion must not be "arbitrary" or "unjustifiable" because there is "substantial evidence" to support the conclusion. While this standard can be difficult to define accurately because it depends on the context, the United States applied the following criteria to assess reasonableness:

Allegations of specific events establishing the criteria are met: The U.S. government must be able to identify specific actions or other events that establish that a proposed designation meets one or more of the criteria for designation. Accordingly, in applications submitted by third countries, it is very helpful to have specific information demonstrating how the proposed designees meet one or more of the criteria for designation in Executive Order E.O. 13224 and/or Section 219 of the Immigration and Nationality Act (e.g., specific actions that persons or entities have taken to engage in terrorist activities or terrorism, assist a terrorist group, or provide financial, material, or technological support, or financial or other services on behalf of or for a terrorist organization already designated by the U.S.).

Supporting Materials: Claims by a U.S. government agency or foreign government where it is identified that one or more of the criteria for designation are met must be substantiated with supporting materials, which should include as much information as possible about the sources, date, and reliability of the information. Designations are not made based solely on allegations against a potentially designated individual or entity.

Designations

104. The Interpretive Note to FATF Recommendation 6 explains that designations can be made at the national level or can also be made supranationally, referring, for example, to the case of the European Union (EU), where EU law applies to all member states. In the EU the



assets of designated persons and entities are frozen by EU regulations and their amendments. EU member states may have to take additional measures to implement the freeze, and all natural and legal persons within the EU have to respect the freeze and not make funds available to designated persons and entities at the EU level.

105. For its part, the Technical Guide states that States remain sovereign in their determination as to whether to incorporate other regional or other national asset-freezing lists domestically, should they meet their own designation criteria, and pursuant to their own legal and regulatory frameworks.

106. Additionally, it should be noted that the Interpretive Note to FATF Recommendation 6, in footnote 9, explains that the UNSCRs, and thus the FATF standard, do not require countries to develop a list identifying persons or entities, but rather to have the authority, procedures and effective mechanisms in place to do so.

107. In the event that a country has decided to implement a domestic terrorist list, the FATF Best Practices document suggests that periodic reviews of designations could be considered to verify whether individuals and entities that have been designated, and whose assets have been frozen, continue to pose a terrorist threat to the designating State.³⁰

Without delay

108. The process of analysis and decision to designate at the national level must be made "without delay." The FATF Glossary explains that in the context of UNSCR 1373, "without delay" means upon having a reasonable basis to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organization. It makes reference to the evidentiary standard mentioned before.

109. Additionally, FATF Glossary also explains that the phrase "without delay" should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organizations, those who finance terrorism, and to the need for global, concerted action to interdict and disrupt their flow swiftly.³¹ Therefore,

³⁰ FATF. International Best Practices. 2013. para. 31

³¹ The FATF glossary defines the term "without delay." The phrase *without delay* means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g., the 1267 Committee, the 1988 Committee, the 1718 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. In both cases, the phrase *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organizations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.



in this context, the designation process should be carried out with the utmost speed.

Publication

110. In the event that a list is developed at the national, regional, or supranational level, the international standard requires that it be published or distributed at the national level and, in particular, to the Reporting Institutions in order to implement the freeze without delay.

111. The UNSC, in its UNSCR 2462 in paragraph 11, calls on States to consider making publicly available their national asset freezing lists they have established pursuant to UNSCRs 1267 (1999), 1373 (2001), 1989 (2011) and 2253 (2015).³²

112. Like, Interpretive Note to FATF Recommendation 6, in paragraph 6 (c) sets forth that countries should have mechanisms for communicating designations to the financial sector and DNFBPs immediately upon taking such action, and providing clear guidance.³³

113. In addition, the Technical Guide sets forth that States should consider making publicly available their national or regional asset-freezing lists pursuant to UNSCR 1373. This provision is aimed at enhancing bilateral, regional, and international cooperation in countering the financing of terrorism and ensuring, in particular, the effectiveness of asset-freezing lists related to UNSCR 1373.³⁴

114. From a global perspective, the Joint Report of the CTED and the Analytical Support and Sanctions Monitoring Team asked UN member states to indicate whether they had designated individuals or entities and frozen assets and whether they had published their freezing lists. This identified that more than 60% of the responding States have established national sanctions mechanisms for the freezing of assets in accordance with UNSCR 1373. However, the majority of responding States had not designated any person or entity. Fifty-eight percent of all States responding to the questionnaire reported that they had not designated individuals or entities on their domestic lists, nor had they frozen any assets.³⁵

115. This Joint Report also reflects that a number of States publish their asset freezing lists. In total, 57% of the responding States publish their freezing lists, and 32% do not do so. The remaining 11% of the states did not respond to this question. Of the States with experience in freezing assets of designated entities, 84% publish their lists, and 16% do not publish them.³⁶

³² UNSC. UNSCR 2462. 2019. para. 11.

³³ FATF. FATF Standards. 2012-2020. Interpretive Note 6, para. 6 (c).

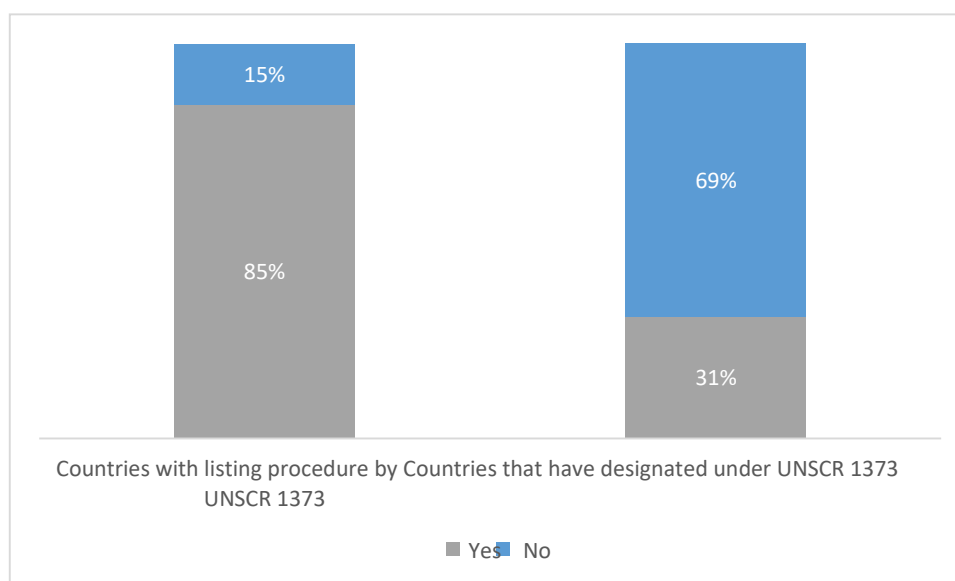
³⁴ UNSC. Technical Guide. 2019. para. 56.

³⁵ UNSC. Joint Report. 2020. para. 25-26.

³⁶ Ibid. para. 30.



Graph 2: Procedures and domestic designations in GAFILAT countries



116. As for GAFILAT member countries, it was identified that 85% of the countries that responded to the survey have developed a procedure for designating persons or entities according to the UNSCR 1373 designation criteria. In this regard, 31% confirmed that they have developed a list, while 69% have not had the need to use their procedure to list terrorists at the domestic level (refer to Graph 2).

117. The list of terrorists or terrorist entities can be disseminated using different means. In particular, there is a strong consensus that a very effective way to publish this list is to post it on a public website, preferably with wide reach and dissemination. Below are examples of jurisdictions that have published a listing under UNSCR 1373 and the respective links:

Argentina	https://repet.jus.gob.ar/
Colombia	https://id.presidencia.gov.co/Documents/200117-Acta-Consejo-Seguridad-Nacional.pdf
Panama	https://www.uaf.gob.pa/Lista-Nacional
European Union	https://www.consilium.europa.eu/es/policies/fight-against-terrorism/terrorist-list/



United States of America	Designations are publicly announced, along with identifying information about the designee. The designee's name and identifying information are disseminated to the public through multiple channels, including immediate addition to OFAC's public SDN List. The public can access the SDN List through OFAC's website at www.treasury.gov/sdn .
Paraguay	The Paraguayan State, within the framework of cooperation in the fight against terrorism in any of its forms, through Executive Decree No. 2307/19, has recognized Hezbollah and Hamas as international terrorist organizations.
United Kingdom	https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets

118. In addition to the above, there are different mechanisms for internal dissemination of the lists and of the obligations of natural and legal persons under the UNSCRs. Some of these examples contemplate dissemination by other means, such as by an alert system to notify changes or updates to the UNSC and/or national listings, as well as other communication mechanisms. Some examples are presented below.

Nicaragua

Nicaragua uses the Online Reporting System (SIREL) and/or the system of relevant institutions, which guarantees confidentiality and security, to disseminate the lists of UNSCRs to the RIs and relevant institutions, instructing them to proceed with the preventive freezing. Such dissemination is done by means of an external notice sent by SIREL, to which the heads of RIs and institutions have restricted access, and SMS messages are also sent to their mobile devices and e-mails. According to Article 12 of Decree 17-2014, the relevant RIs and institutions that preventively freeze funds or assets must communicate confidentially and expeditiously to the FAU the application of the measure so that the procedures provided in Article 6 of this Decree are executed in the same manner, as applicable. Likewise, the SIREL has the advantage of providing expeditious follow-up of the responses and times involved in the issuance of the responses and times involved in the issuance of the responses by the relevant RIs and institutions, in order to ensure compliance with Decree 17-2014.



Costa Rica

The FIU has an immediate electronic communication platform that connects all RIs. This platform allows for an immediate freezing order. This generates greater agility in the process and information security as it is 100% digital documents.

Argentina

The implementation of electronic notification to reporting institutions has been very successful. This has demonstrated great speed and efficiency both in the notification itself and in the freezing carried out by the reporting institutions themselves.

United States of America

In addition to publication of the list, dissemination takes place in the following manner:

- The Federal Reserve Bank of New York, upon each designation, forwards the designation in an electronic bulletin to the more than 10,000 institutions connected to its Fedwire system. OFAC sends a bulletin to member banks of the Clearing House Interbank Payment System (CHIPS).
- OFAC sends individual emails to multiple government stakeholders to inform them of OFAC information updates.
- OFAC maintains several e-mail notification lists, to which more than 70,000 individuals, government agencies, and private sector entities subscribe. Upon updating its website, an email is sent to each list subscriber notifying them that OFAC has updated their information.

United Kingdom

The Office of Financial Sanctions Implementation (OFSI) aims to notify the public of updates to the UN and UK targeted financial sanctions lists within one business day of them coming into effect to help reduce the risk of asset flights, and within three business days for all other modifications.

OFSI also issues updates on new additions and sends e-mail alerts to its subscriber base of more than 22,000 people.

International Cooperation

119. UNSCR 1373 contemplates the possibility of designations being made at the regional level or at the request of a third country. The Technical Guide in paragraph 51 explains that States should establish a dedicated mechanism to address foreign designation, and therefore asset-freezing, requests.



120. The Technical Guide also emphasizes that States remain sovereign in their determination as to whether to incorporate other regional or other national asset-freezing lists domestically, should they meet their own designation criteria, and pursuant to their own legal and regulatory frameworks.³⁷

121. For its part, the Interpretive Note to Recommendation 6 sets forth that the competent authority can designate persons or entities on the country's own motion or, after examining and giving effect to, if appropriate, the request of another country, if the country 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 meets the criteria for designation in resolution 1373.³⁸

122. In this sense, this type of cooperation by virtue of UNSCR 1373 should not be considered as mutual legal assistance in criminal matters. Likewise, the evidentiary standard applicable to requests for designation and freezing from a third country can be the same standard applied for the designation process at the domestic level, and it should not be conditioned to a criminal process. Likewise, the consideration of such a request by a third party must also be *ex parte* and the person or entity being considered for designation should not be notified of this fact.

123. The Joint Report corroborates the above by explaining that the use of mutual legal assistance mechanisms to respond to third party requests in the context of the asset freezing in relation to UNSCR 1373 is inconsistent with the rules and international practices. Third-party requests have a lower burden of proof than mutual legal assistance requests or prosecutions.³⁹

124. The process of analysing and deciding on the request to designate and freeze by a third party must also be taken "without delay." In this context, to ensure the development of effective cooperation between countries, States should ensure that, upon receipt of a request, they promptly determine whether or not they are satisfied, in accordance with applicable national principles, that the request is based on reasonable grounds or on a reasonable basis for suspecting or believing that the proposed designee meets the criteria for designation in UNSCR 1373.⁴⁰

125. The Interpretive Note to Recommendation 6 also explains that when requesting another country to analyse a designation proposal to request the freezing pursuant to resolution 1373, the initiating country should provide as much detail as possible to allow for

³⁷ UNSC. Technical Guide. 2019. para. 56.

³⁸ FATF. FATF Standards. 2012 - 2020. Interpretive Note 6, para. 4 (a) iii)

³⁹ UNSC. Joint Report. 2020. para. 37

⁴⁰ FATF. FATF Standards. 2012 - 2020. Interpretive Note 6, para. 4 (b)

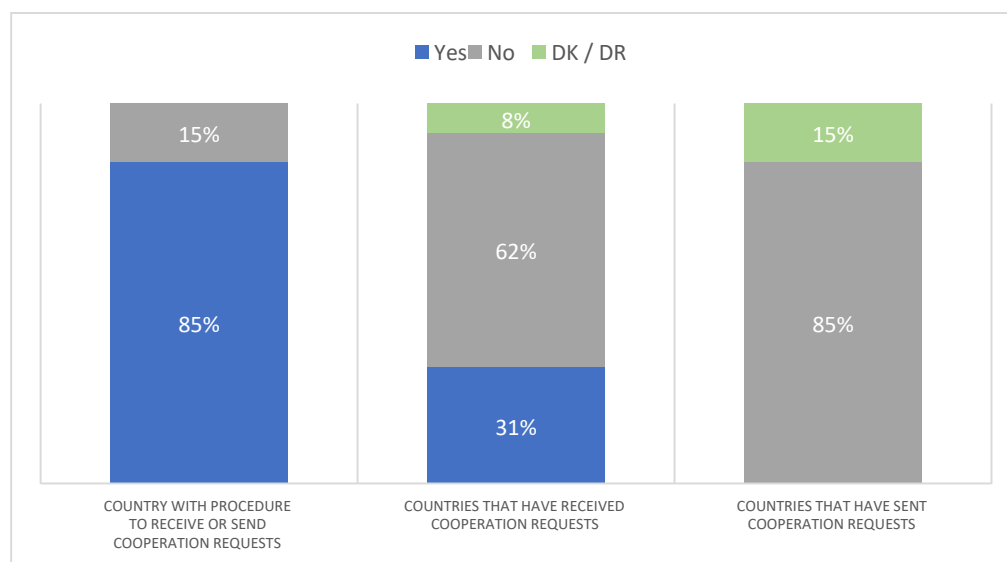


the accurate and positive identification of persons and entities; and specific information supporting a determination that the person or entity meets the relevant criteria for designation.⁴¹

126. In order to facilitate the processing of requests for designation and freezing of assets made by third parties under UNSCR 1373, the UN CTED has developed a database of relevant contacts. For its part, the FATF maintains a handbook indicating, for each country, the point of contact, procedures, legal tests, and evidentiary requirements for the implementation of the asset freezing. Likewise, GAFILAT has developed a Handbook on Asset Freezing Requests with the objective of facilitating international assistance in this matter, which has been updated at the end of 2020 and is available on the GAFILAT Secure Web for consultation by Member countries.

127. With respect to the implementation of international cooperation for designation under UNSCR 1373, the Joint Report reflects that States that have frozen assets indicated that international cooperation was essential. Seventy-six percent of States that had frozen assets have received or submitted requests from third countries (i.e., 25 percent of all States responding to the questionnaire).

Graph 3: International cooperation of GAFILAT countries under UNSCR 1373



128. From a regional perspective, of the countries responding to the survey, 85% have developed a procedure for international cooperation under UNSCR 1373 and 15% have not. Also, only 31% have received requests from a third party, 62% have not received requests and 8% responded that they do not know or did not respond. Additionally, of the countries that

⁴¹ Ibid. Interpretive Note 6, para. 4 (g)



participated, 85% confirmed that they have not made a request for designation and freezing of assets to a third country and 15% responded that they do not know or did not respond (refer to Graph 3).

129. The following are some examples of how the capabilities to cooperate internationally have been installed in the region, in order to receive or send requests for designation and freezing under UNSCR 1373:

Peru

The procedure is provided for in Article 12 of SBS Resolution No. 3862- 2016, according to which the FIU receives third-countries' freezing requests pursuant to UNSCR 1373, which must contain information that fully identifies the persons or entities, such as names corporate name, nationality, address and the grounds for the measure, all with supporting documentation. The information and documentation are analyzed by the FIU and, after analyzing the country's support under UNSCR 1373 (reasonable grounds or a reasonable basis to suspect or believe that the person or entity proposed for designation meets the criteria for designation under UNSCR 1373), it orders the freezing without delay and follows the procedures set forth in the SBS Resolution.

Honduras

The procedure for the application of freezing measures in relation to the UNSCR provides that: Requests from other countries on freezing of property or assets linked to terrorism or its financing under UNSCR 1373, shall be processed as follows:

Requests shall be received via the Secretariat of State in the Offices of Foreign Affairs provided that they come from other countries' competent authorities and shall be executed in accordance with the procedures provided for in Chapter III of this document.

The Secretariat of State in the Offices of Foreign Affairs shall forward the request to the competent authority for review and processing.

Colombia

Within the framework of the inter-administrative agreement signed between the Foreign Ministry, the Attorney General's Office, the Financial Superintendence and the Information and Financial Analysis Unit, the procedure is as follows:

The Ministry of Foreign Affairs receives the formal request from another State for the freezing of funds or assets of persons suspected of being terrorists, or of committing terrorist acts or financing them, and immediately sends it to the Attorney General's Office so that it can evaluate whether there are reasonable criteria to support the request.



If the request has reasonable grounds, the Attorney General's Office immediately informs the UIAF and the Superintendence about the request of the designating State.

The Financial Information and Analysis Unit will develop the financial intelligence activities with respect to the designated natural or legal persons, and the results will be reported to the appointed asset-forfeiture prosecutor.

The Financial Superintendence, on its part, informs financial entities about the designations made by the requesting State and instructs for the delivery of information of the listed natural or legal persons to the Deputy Attorney General of the Nation. Likewise, it instructs for the immediate compliance of precautionary measures ordered by the Attorney General's Office, if applicable.

The Vice Attorney General's Office, once it receives information from the Information and Financial Analysis Unit or financial entities on the existence of funds and/or assets of persons designated by the requesting State, will initiate the pertinent legal actions (Code of Asset Forfeiture), for which it will designate a prosecutor.

The Prosecutor in charge of the investigations will inform the Ministry of Foreign Affairs of the precautionary measures decreed, and the Ministry of Foreign Affairs will be responsible for informing the UNSC.

Procedure for requesting cooperation under UNSCR 1373: When the General Prosecutor had reasonable grounds to suspect that national or foreign citizens belong to a terrorist group or are terrorists or foreign terrorist fighters, or suspected that they have the capacity to commit or finance terrorist acts, and that designation criteria set forth in UNSCR 1373 are met, he shall request the Minister of Foreign Affairs to order corresponding States the freezing of assets or funds of designated natural or legal persons.

Dominican Republic

Pursuant to the provisions of Decree 407-17 of November 16, 2017, Regulation for the application of Law 155-17 in matters of TF:

Article 19. Requests from other countries on freezing of property or assets linked to terrorism or its financing under UNSCR 1373, shall be processed as follows:

Requests shall be received via Ministry of Foreign Affairs, provided that they come from other countries' competent authorities and shall be executed in accordance with the procedures provided for in Chapter III of the pertinent Regulation.

The Ministry of Foreign Affairs shall forward the request for cooperation to the Executive Director of the National Anti-Terrorist Directorate for review.



Article 20. The request for cooperation shall be reviewed by the Executive Director of the National Anti-Terrorist Directorate, who shall ensure that it complies with the following requirements:

Requests from other countries shall contain the data of the competent authority submitting the request, such as data of the official or institution that issued the measure in the country.

Rationale for the request, as well as the motivation and description of the measure requested.

Supporting documentation of the requested measure, such as: information on the identity, nationality, physical or electronic address of the person or entity, financial information that allows the correct and adequate identification of the person or entity involved, as well as any other information that supports the request with a view to the preventive freezing of property or assets.

Paragraph I. If the above elements are met, the Executive Director shall submit the request to the National Anti-Terrorist Directorate, which shall analyse such request and, if accepted, shall designate the person or entity within the Domestic List and the procedure described in articles 5 and following of these regulations shall apply.

Paragraph II. All communications to the requesting country will be channelled through the Ministry of Foreign Affairs.

Article 21. The National Anti-Terrorist Directorate may request the cooperation of a foreign country in freezing the assets of a person designated on the Domestic List through the Ministry of Foreign Affairs.

Nicaragua

Article 15 of Decree 17-2014 provides for the designation at the request of other countries which are received directly by the Financial Analysis Unit. These must contain as a minimum information of the competent authority that submits it; and as much information as possible to justify it, among others, data of the official or institution that issued the measure in the country; the motivation and description of the requested measure; remission of the supporting documentation of the requested measure; documentation and information on the identity, nationality, physical or electronic address of the person or entity; financial information that allows the correct and adequate identification of the person or entity involved; as well as any other information that supports the request with a view to the freezing of funds or assets.

Uruguay



The Coordinating Commission against ML/TF may request cooperation from a foreign country for the freezing of funds or other assets of a natural or legal person or entity designated on the national list through the MRE. (Art. 15, Decree 136/019). Such request shall be accompanied by the same information used to make designations on the domestic list.

Guatemala

At the time of receiving requests for cooperation to list persons or entities as terrorists they are received through our various diplomatic missions abroad, who forward it to the Ministry of Foreign Affairs for information and appropriate effects. In this regard, based on the Inter-Institutional Cooperation Agreement between the Ministry of Foreign Affairs, the Public Prosecutor's Office and the Special Verification Intendancy, signed on October 3, 2013, the Ministry of Foreign Affairs shares the request with the institutions that are part of said Agreement, as well as with the National Security Council for their analysis and consideration on how to proceed in this regard. Finally, it proceeds in accordance with the mandate of the Council.

Targeted Financial Sanctions

130. Based on the FATF glossary, "The term targeted financial sanctions means both assets freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities."⁴²

131. Upon designation(s) or listing(s) of person(s) or entity(ies) that meet the designation criteria under UNSCR 1373, the following measures must be implemented or the following sanctions set forth in its paragraphs 1 (c) and (d) must be implemented:

- Freezing without delay.
- Prohibition to offer funds or services.

132. Both measures are explained below.

Freezing without delay

133. Paragraph 1 (c) of UNSCR 1373 and, more explicitly, FATF Recommendation 6, set forth that all natural and legal persons within the country should *freeze without delay and without prior notice, the funds or other assets of designated persons or entities*. This obligation should extend to:

⁴² FATF. FATF Standards. 2012 - 2020. Glossary.



- a. All funds or other assets that are owned or controlled by the designated person or entity,
- b. Funds or other assets that belong to, or are totally or jointly, directly or indirectly, controlled by designated persons or entities; and
- c. Funds or other assets that belong to persons acting on behalf of, or under the direction of designated persons and organizations;
- d. Funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

134. The obligation to freeze assets related to persons or entities designated at the domestic level has the following elements:

Freezing

135. The FATF makes a clear distinction between this type of freezing under the UNSCR and any provisional measure in the framework of criminal proceedings. This is reiterated by the Council itself in its UNSCR 2161 (2006) in paragraph 31 where it emphasizes that freezing measures are preventive in nature and are not reliant upon criminal standards set out under national law.⁴³

136. Under the framework of UNSCR 1373, by freezing the FATF glossary explains that it means *to prohibit the transfer, conversion, disposition or movement of funds or other assets*.⁴⁴ This directive may arise from an administrative or judicial authority, but it must be done without delay and without relying on the criminal criteria established for implementing a provisional or precautionary measure on assets subject to criminal confiscation.

⁴³ UNSC. UNSCR 2162 (2006), para. 31.

⁴⁴ FATF. FATF Standards. 2012 - 2020. Glossary.



Graph 4: Designations and freezing measures at the global level

Designación de entidades y congelación de activos de conformidad con la resolución 1373 (2001) del Consejo de Seguridad



[TÍTULO DEL GRÁFICO: Designation of entities and freezing of assets under resolution 1373 (2001) of the Security Council]

[Countries that have not designated entities or frozen their assets

Countries that have designated entities and frozen their assets

Countries that have designated entities but not frozen their assets

No response]

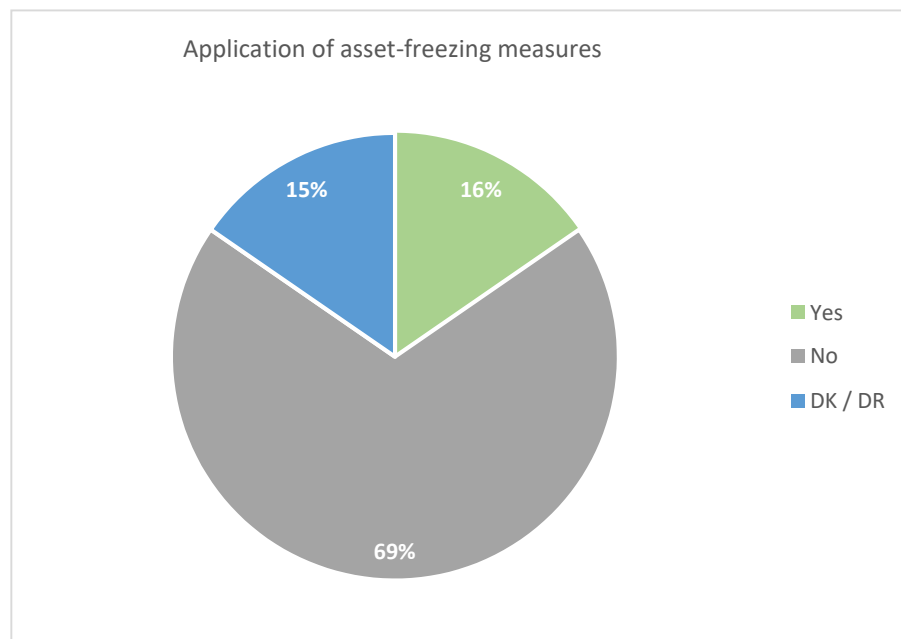
137. With respect to freezing, it is identified globally that, although many States have complied with the requirements to develop freezing procedures, it has not been implemented. According to the Joint Report, more than 60% of the responding States have established national sanctions mechanisms for the freezing of assets in accordance with UNSCR 1373. However, the majority of responding States had not designated any person or entity. Fifty-eight percent of all responding States reported that they had not designated individuals or entities on their domestic lists, nor had they frozen assets; 33% reported that they had designated terrorist agents and frozen their assets; and 5% reported that they had designated terrorist agents, but had not frozen their assets. Four percent of the states did not respond to this question⁴⁵ (refer to Graph 4).

⁴⁵ UNSC. Joint Report. 2020. para. 26



138. At the GAFILAT country level, as it is shown in Graph 5, it was identified that 69% of the countries participating in the questionnaire have not implemented freezing measures under UNSCR 1373. Sixteen percent commented that they have implemented freezing measures, and 15% responded that they do not know or did not respond.

Graph 5: Application of asset-freezing measures in GAFILAT countries



"Without delay" from the freezing perspective

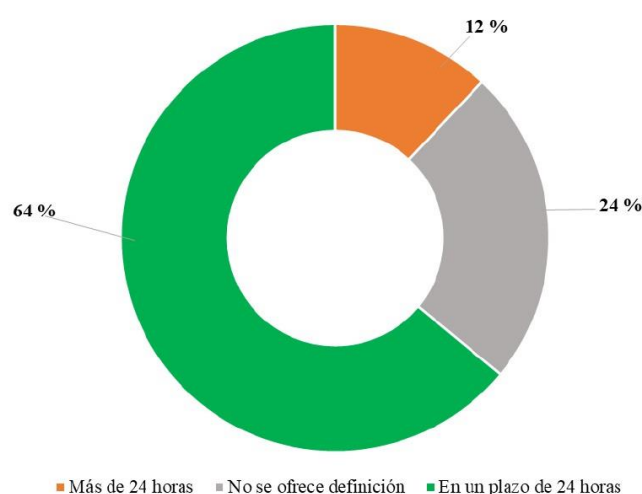
139. As discussed above, the objective of these measures is preventive in nature and must be interpreted in the context of the need to prevent the diversion or dissipation of funds or other assets that are linked to terrorists, terrorist organizations, or those who finance terrorism. Thus, the freezing measure must be implemented promptly, without delay, or within hours after a designation.



140. The UNSCRs do not provide a more precise definition of the application of the term “without delay.” However, in preparing the Joint Report, UN Member States were asked to communicate how that phrase was defined. As a result, the Joint Report explains that States provided varying interpretations, but most of them interpreted “without delay” to mean immediately or within no more than 24 hours⁴⁶ (refer to Graph 6). This is consistent with the scope of the term “without delay” that the FATF has given in its Glossary where it is defined as “*ideally, within a matter of hours of a designation.*”⁴⁷ It is important to note that this definition does not speak of days, only hours.

Graph 6: Application of “without delay”⁴⁸

Definición de aplicación “sin demora”



[Definition of application “without delay” More than 24 hours
No definition offered In a term of 24 hours]

⁴⁶ UNSC. Joint Report. 2020. para. 12.

⁴⁷ The FATF glossary defines the term “without delay.” The phrase *without delay* means, ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g., the 1267 Committee, the 1988 Committee, the 1718 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. In both cases, the phrase *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organizations, those who finance terrorism, and to the financing of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.

⁴⁸ Ibid. Figure II., p. 9



Without prior notice

141. As in the designation process described above, the FATF standard states that the freezing must be applied without the affected person or entity being notified. This requirement reiterates that the objective of this measure is to prevent the assets from achieving their intended purpose of financing or supporting terrorism.

142. It should be noted that the publication of the list may cause the affected person to move or transfer his/her assets before they are frozen, therefore, it is suggested as a good practice that before publishing the list, the authorities review in different databases, request information on possible financial, banking, or records of movable, real estate or corporate assets of those persons who have been designated. And, in case matches are found, implement the freezing measure, prior to the publication of the domestic list. Another good practice is to contact RIs that may have assets related to those designated persons to implement the freezing prior to the publication or update of the list.

Who implements the freeze

143. Although UNSCR 1373 requires countries to implement freezing measures, and these must be implemented by public entities, in practical terms, the relevant actors to implement these measures are the natural or legal persons of a State. The FATF standard in the Interpretive Note to Recommendation 6 states that countries should require all natural and legal persons within the country to implement the freezing. It is important to note that requiring only RIs (Financial Institutions and DNFBPs) is not sufficient to consider that all persons within a country have the duty to implement these freezing measures.

144. Of course, the decision or mandate to implement the freezing must arise from the State, but whoever finally implements it must extend to natural and legal persons in general. This requirement can be provided for by means of various legal measures. As a good practice, many countries have included this provision in laws and the details for its implementation in a decree or resolution that enforces such law.

145. It should be noted that this measure for freezing by RIs, and in general by all natural and legal persons in a country, must meet the "without delay" standard required by the UNSCR and FATF Recommendation 6, developed in the previous section on *freezing without delay*. Therefore, natural and legal persons of a country must execute the freeze ideally within hours, and no more than 24 hours from the time the person or entity has been designated.

146. Although all natural or legal persons in a country should implement the freeze, RIs should play a more active role, since they are more likely to encounter assets or funds subject to TFSs. Within the universe of RIs, financial institutions, due to their characteristics and the



type of services they offer, are the sector with the greatest responsibility when it comes to implementing freezing. Therefore, it is a good practice to raise awareness, train and provide guidance to RIs on how to implement TFSs.

147. Below are some good practices on guides or training tools for RIs and others who must implement these measures:

Panama

To communicate the procedures, a Procedural Manual on Targeted Financial Sanctions for terrorism, terrorist financing and the financing of the proliferation of weapons of mass destruction (preventive freezing) was established.

<https://www.uaf.gob.pa/tmp/file/218/Manual%20Congelamiento%20Preventivo.pdf>

Peru

The FIU, through the Prevention, Liaison and Cooperation Department; and, taking into account the TF risks in the international context, has designed a "Kit on Freezing in accordance with the UNSC resolutions on terrorism, its financing and the PFWMD (September 2020)" which is addressed, among others, to all RIs (financial sector and DNFBPs) and which is made up of the following theoretical-practical tools:

- Information leaflet.
- Guide on Freezing under the UNSCR.
- Simulation Exercise: Freezing Procedure - UNSCR.
- Video on Freezing - UNSC and its implementation in Peru.
- Video on the national procedure for ordering the freeze.

This kit presents in a simple and practical way the actions and procedures to be followed by the relevant stakeholders in the public and private sectors to freeze funds or other assets, in accordance with the UNSCR on terrorism, TF and the financing of proliferation of weapons of mass destruction and systematizes the Peruvian experience.

This Kit is available to all RIs through the SBS website - Prevention Portal at the following link: <https://www.sbs.gob.pe/prevencion-de-lavado-activos/listas-de-interes>.

It has also been disseminated through the following bulletins addressed, among others to the Compliance Officers of all RIs:

- FIU Bulletin No. 93 (October 2020).- Available at <https://www.sbs.gob.pe/prevencion-de-lavado-activos/boletines-informativos>
- SBS Weekly Bulletin No. 40 (November 4, 2020): "Asset Freezing under UN Security



Council Resolutions: What is it and how is it applied?", in which everything related to the Freezing Kit was disseminated and the link leading to the FIU-SBS ML/TF Prevention Web Portal was attached. Available at <https://www.sbs.gob.pe/boletin/detalleboletin/idbulletin/1134?title=Congelamiento%20de%20activos%20en%20el%20marco%20de%20las%20resoluciones%20del%20Consejo%20de%20Seguridad%20de%20la%20ONU>

United Kingdom

The following tools have been developed to disseminate information on sanctions regimes, including the one related to domestic terrorist lists:

- Web page containing all information on sanctions regimes and their implementation. Available at <https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation>
- Web page containing specific information on domestic terrorist sanctions. Available at: <https://www.gov.uk/government/collections/uk-counter-terrorism-sanctions>
- General Guidance: Up-to-date guidance covering the main functions (including licensing, compliance, and counter-terrorism designations) and key issues such as how we see the beneficial owner and controller of designated persons and reporting obligations. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952150/General_Guidance_-_UK_Financial_Sanctions.pdf

Funds or other assets

148. The concept of funds or assets that are subject to freezing measures is quite broad and includes all types of assets as well as economic resources. The FATF glossary explains that the term funds or other assets means:

"Any assets, including, but not limited to, financial assets, economic resources (including oil and other natural resources), 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, and any other assets which



*potentially may be used to obtain funds, goods or services.*⁴⁹

149. The concept of **funds or financial assets** includes, for example, the following:

- Cash, cheques, claims on money, drafts, money orders, bearer instruments, internet-based payment instruments such as virtual currencies and other payment instruments;
- Deposits with financial institutions or other entities and balances on accounts, including but not limited to: (1) fixed or term deposit accounts, (2) balances on share trading accounts with banks, brokerage firms or other investment trading accounts;
- Debts and debt obligations, including trade debts, other accounts receivable, notes receivable, and other claims of money on others;
- Equity and other financial interest in a sole trader or partnership;
- Publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, and derivatives contracts;
- Interest, dividends, or other income on or value accruing from or generated by assets;
- Credit, right of set-off, guarantees, performance bonds or other financial commitments;
- Letters of credit, bills of lading, bills of sale;
- Notes receivable and other documents evidencing an interest in funds or financial resources and any other instruments of export-financing;
- Insurance and reinsurance.

150. The concept of **other assets or economic resources** should be understood to include assets of every kind, whether tangible or intangible, movable or immovable, actual or potential, which potentially may be used to obtain funds, goods, or services, including, for example, the following:

- Land, buildings or other real estate;
- Equipment, including computers, computer software, tools, and machinery;
- Office furniture, fittings and fixtures and other items of a fixed nature;
- Vessels, aircraft, and motor vehicles;
- Inventories of goods;
- Works of art, cultural property, precious stones, jewellery or gold;
- Commodities, including oil, minerals, or timber;
- Arms and related materiel, including all items mentioned in the arms embargo of the UNSC;
- Raw materials and components that can be used to manufacture improvised explosive devices or unconventional weapons, including but not limited to chemical

⁴⁹ FATF. FATF Standards. 2012 - 2020. Glossary.



- components, detonating cord, or poisons;
- Patents, trademarks, copyrights, trade names, franchises, goodwill, and other forms of intellectual property;
- Internet hosting or related services;
- Any other assets.⁵⁰

151. It is also important to highlight that the funds or other assets to be frozen cover assets or economic resources that do not have a specific connection with a terrorist act. Paragraph 5 of UNSCR 2462 (2019) sets forth that for the purposes of these measures, funds, financial assets or economic resources or related services with the intention that the funds should be used, or in the knowledge that they are to be used for the benefit of terrorist organizations or individual terrorists for any purpose, including recruitment, training, or travel, even in the absence of a link to a specific terrorist act, are included.⁵¹

Procedure to lift or unfreeze funds

152. In principle funds or other assets should remain frozen until it is identified that the person or entity no longer meets the designation criteria and is consequently removed from the list. However, there should be procedures for unfreezing when there are persons affected by the measure, given different circumstances such as, for example, death, homonymity or persons with the same name, or bona fide third parties.

153. The Interpretive Note to Recommendation 6 also states that under UNSCR 1373, countries should have appropriate legal authorities, procedures, or mechanisms in place to delist and unfreeze funds or other assets of persons and entities that no longer meet the criteria for designation. Likewise, countries should develop and implement publicly known procedures for unfreezing funds or other assets for persons or entities with the same or similar name as the designated persons or entities that are mistakenly affected by a freezing mechanism (i.e., a false positive). Some examples on these procedures are presented below:

United States of America

There is no official format, template, or form for filing a delisting request, although the filing process and relevant content to include in a request for administrative reconsideration (which may lead to delisting) are described in OFAC regulations at 31 CFR § 501.807. Any such request must be made in writing and addressed to the Director of OFAC or the Secretary of State, and include evidence aimed at establishing that insufficiency

⁵⁰ UNSC "Asset freeze: explanation of terms," approved on February 24, 2015, by the Security Council Committee under resolutions 1267 (1999), 1989 (2011), and 2253 (2015) in relation to the Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and related persons, groups, companies, and entities. 2015. para. 17-18

⁵¹ UNSC. UNSCR 2462. 2019. para. 5.



basis exists for the designation or that the circumstances or behavior that resulted in the designation have changed. In addition, a designated person or entity may propose remedial steps that would negate the basis for designation.

For delisting requests, the U.S. Government strongly encourages listed individuals to send a letter to the Department of the Treasury (addressed to the Director of OFAC) and/or the Department of State (addressed to the Secretary of State), depending on which department designated the individual, requesting delisting consideration.

The Treasury Department and State Department delisting review processes may require additional information from the requesting party. If a delisting determination is made, the U.S. Government will take a series of administrative actions, including removal of the individual from the OFAC list.

Costa Rica

On an exceptional and duly motivated basis, the competent judge may authorize access to frozen or immobilized funds or other assets determined to be necessary for basic expenses, for the payment of certain types of fees, costs, and service charges, or for extraordinary expenses, in accordance with the procedures set forth in UNSCR 1452 and successor resolutions. For the same reasons, the competent judge must authorize access to funds or other assets if the freezing or immobilization measures apply to persons and entities designated in accordance with UNSCR 1373. Likewise, the competent judge shall authorize access to funds or other assets subject to freezing or immobilization if the conditions of exception stipulated in UNSCR 1718 and 1737 are met.

The same procedure of the preceding paragraph shall apply to bona fide third parties, who so request, provided that contracts, agreements, or obligations are involved.

United Kingdom

The designated person (other than a person designated under a UN list), or the person acting on his or her behalf, has the right to request a revocation or variation of such designation.

It is possible to request a revocation of designation, for example, if it is believed that the reasons for designation are incorrect, or a variation if, for instance, particular information associated with the designation, such as the date of birth, is incorrect. Other reasons for seeking a revocation could include if it is believed that the designation is inappropriate having regard to the purpose of the regime, or the likely significant effects of the designation, or the designation is incompatible with the Human Rights Act 1998.

Submitting a request

If a person has been designated or listed and wishes to request the revocation, variation



or review of the designation or the removal of the listing, he or she should complete a review request form.

By properly and fully completing the form, he or she will ensure that he or she meets the requirements for a valid request. This form can also be completed by another person or on behalf of the designated or listed person, if confirmation of authority is provided.⁵²

Prohibition to offer funds or services

154. Paragraph 1 (d) of UNSCR 1373, as well as FATF Recommendation 6, calls countries to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets, or economic resources or financial or other related services available, directly or indirectly, for the benefit of designated persons or entities.

155. This prohibition is a measure that complements the freezing. As established by the Technical Guide, paragraph 1 (d) should be treated, together with the asset-freezing requirement set forth in paragraph 1 (c), as a prohibition. Once an individual who, or an entity which, commits, or attempts to commit, a terrorist act has been designated, providing any funds, assets, economic resources, financial or other related services to those individuals or entities should be prohibited.⁵³

156. Additionally, UNSCR 2368 (2017) in paragraph 20 clarifies that the obligation in paragraph 1 (d) of UNSCR 1373 applies to making funds, financial assets, or economic resources or financial or other related services available, directly or indirectly, for the benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act.⁵⁴ Likewise, the definition of funds or other assets, as explained above, also applies to paragraph 1 (c).

157. As in the case of freezing, the prohibition should be implemented by any natural or legal person, including RIs (financial institutions and DNFBPs). However, the role of RIs at the moment of implementing these measures is quite relevant, due to the type of activities and services they offer.

158. In the case of the prohibition to offer goods or services, financial institutions continue to play a preponderant role. However, this prohibition is also very relevant for DNFBPs, given

⁵² OFSI. General Guidance for Financial Sanctions under the Sanctions and Anti-Money Laundering Act 2018 (General Guidance), 2020. p. 41.

⁵³ UNSC. Technical Guide. 2019. para. 52.

⁵⁴ UNSCR 2368. 2017. para. 20.



the characteristics of their business. In general terms, DNFBPs should not enter into a business relationship with a listed entity or person. For example, they should not offer advisory services for the purchase or sale of real estate, legal advice for the creation or management of companies, among other services.

Procedure for obtaining access to basic and extraordinary expenses

159. In accordance with UNSCR 1452 (2002) and FATF Recommendation 6, countries are required to develop procedures for persons and entities designated under UNSCR 1373 to request from the State access to funds and resources to cover basic and extraordinary expenses.

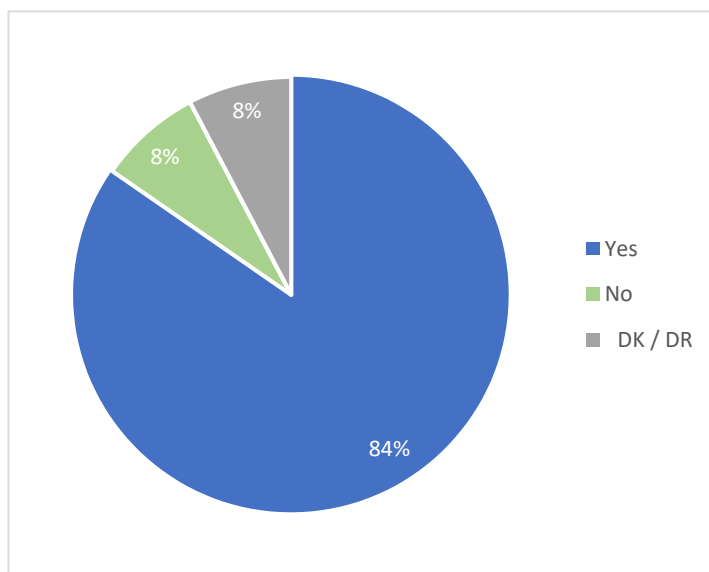
160. UNSCR 1452, paragraph 1 (a) sets forth that basic expenses are those funds necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premium and costs of water and electricity or exclusively for payment of reasonable professional fees and reimbursement of expenses associated with the delivery of legal services, or fees or service charges for maintenance of such frozen funds or other financial assets or economic resources. Extraordinary expenses would be those that do not meet the above definition.

161. From the global perspective, the Joint Report explains that all responding States that apply domestic designations have established mechanisms to allow access to frozen funds, in accordance with UNSCR 1373 (2001) and 1452 (2002). Forty-three percent of States that had designated individuals or entities and frozen assets had granted humanitarian exemptions, while 51% had not (i.e., 14% and 17% of all States responding to the questionnaire, respectively). Of those that had frozen assets, 5% did not indicate whether they had granted humanitarian exemptions.

162. Of the GAFILAT member countries, 84% of the countries that participated in the survey confirmed that they have a procedure for granting access to frozen funds, 8% do not yet have one, and the other 8% responded that they do not know or did not respond (refer to Graph 7).



Graph 7: Countries with procedures in place to access frozen funds



163. The following are some examples in the region where these measures have been implemented to access frozen funds to cover basic or extraordinary expenses.

Argentina

Article 17 in the last section of Decree 918/2012 sets for that "The federal judge intervening as regards the freezing ordered by the FIU may authorize, upon request of a party transactions where it could be proven that affected assets are necessary to defray basic or extraordinary expenses, among them the payment of food, rentals or mortgages medicines and medical treatments, taxes, insurance policies, and water and electricity expenses, or exclusively to pay reasonable professional fees or to refund expenses related to legal services, or fees or charges for possession or maintenance services on frozen funds or other financial assets or economic resources, pursuant to UNSC Resolutions 1452 (2002) and 1735 (2006) as amended."

Peru

Pursuant to the provisions of Article 19° SBS Resolution No. 3862-2016, the person or entity whose funds or other assets have been frozen, may request before the judge to have access to them, in order to settle basic or extraordinary expenses, in accordance with the provisions of the UNSC resolutions.

Mexico

It is possible to have access to part of the frozen assets, this in order not to affect the rights of third parties, such as for example the payment of the payroll of workers or the access to the payment of pensions, payment of child support, medical expenses, in accordance with international good practices and human rights to avoid damages to bona fide third



parties and incidental to the protection of fundamental rights.

In order to have access to such resources, an application will be required where sufficient evidence shall be required and evaluated to reveal the existing relationship between the applicant and the bona fide third party, as well as the character of the latter.

Panama

Executive Decree No. 587 of August 4, 2015, which, regulates the preventive freezing develops in its Chapter V the following articles related to requests for access to frozen funds:

Article 23. For requests for access to funds or other assets frozen under UNSCR 1373, the Ministry of Foreign Affairs will inform the Second Criminal Chamber of the Supreme Court of requests for access to frozen funds or assets by designated individuals and entities on the domestic list to meet basic or extraordinary expenses, evaluate the request and accompanying documents, and promptly coordinate the investigative and verification procedures required for approval.

Article 24. In the event that the requests of the previous article correspond to persons and entities listed based on third country requests, the Second Criminal Chamber of the Supreme Court will process the request for access through the Ministry of Foreign Affairs to that country, warning that it will be considered accepted if no response is received within two working days.

Article 25. Once the response to the request for access to the frozen funds or assets has been received or after two working days have elapsed and no response has been received the Second Criminal Chamber of the Supreme Court shall be informed of the approval or not of the requested access, so that it may proceed as established.

In cases of designation for national interest, the communication to the Second Criminal Chamber on the authorization or not for access to the frozen assets will be made once the process of evaluation and verification of the request has been concluded.

Dominican Republic

Pursuant to the provisions of Decree 407-17 of November 16, 2017, Regulation for the application of Law 155-17 in matters of TF:

Article 17. Granting access to frozen property or assets resulting from the designation of the National Anti-Terrorism Directorate. Access to frozen property or assets may be authorized for assets or property necessary to defray basic expenses which may include payment of food, rent or mortgage, medicine and medical treatment, taxes, insurance premiums, water and electricity costs, or payment of reasonable fees or service charges fees, or service charges for maintenance of assets.



Article 18. Procedure for granting access to frozen property or assets resulting from the designation of the National Anti-Terrorism Directorate. The request for granting access to frozen property or assets, resulting from the designation of the Anti-Terrorist Directorate must be based on the following guidelines:

- The request must be submitted by the interested person to the competent judicial authority, indicating the reasons for the request, the value and location of the property or assets.
- The competent judicial authority shall analyse the request, requesting the assistance of the National Anti-Terrorism Directorate and, if it considers that it complies with the requirements indicated in the previous paragraph, shall grant access to the funds or assets.
- Once the request is resolved by the judicial authority, it will be notified to the reporting institution by the Specialized Anti-Money Laundering and Terrorist Financing Prosecutor's Office.

Nicaragua

Article 14 of Decree 17/-2014 sets forth that access to frozen property or assets may be authorized for assets or property necessary to defray basic expenses which may include payment of food, rent or mortgage, medicine and medical treatment, taxes, insurance premiums, water and electricity costs, or payment of reasonable fees or service charges, fees, or service charges for maintenance of funds. For such purposes, the request must be submitted by the interested person to the competent judicial authority, indicating the reasons for the request, the value and location of the property or assets.

Uruguay

Article 8 of Decree 136/019. Access to funds. The Judiciary may authorize the access or disposal of funds or other assets, in accordance with UNSCR 1452 (2002) for: a) the execution of liens of any nature agreed prior to the date on which the person was the object of the designation that generated the preventive freeze or sanction; b) making payments to a third party not sanctioned for the execution of contracts prior to the date of the payer's designation; c) coverage of the basic needs of the designated person or his family members and fees for legal assistance; d) expenses caused by ordinary services of custody or maintenance of the funds or other immobilized assets.

United Kingdom

Specific exceptions and licensing powers are contained in the regulations on the implementation of sanctions. OFSI may issue licenses when the grounds for doing so are met.

A licence is a written permission from OFSI that permits the performance of an act that



would otherwise violate prohibitions imposed by financial sanctions.

Licences for the financial sanctions' regime against terrorism

Licences authorise certain activities or types of transaction that would otherwise be prohibited by sanctions legislation. In addition to issuing licences relating to a specific person, the Treasury may also issue general licences which authorise otherwise prohibited activity by a particular category of persons (who fall within the licence criteria).

The overall objective of the licensing system for terrorism designations is to strike an appropriate balance between minimising the risk of diversion of funds to terrorism and respecting the human rights of designated persons and other third parties.

The Treasury only grants licences where there is a legitimate need for such activities or transactions to proceed and where they can proceed without giving rise to any risk of terrorist finance. This helps to ensure that the sanctions regime remains effective, fair, and proportionate in its application.

Licence conditions

In order to license in a proportionate manner whilst mitigating the risk of terrorist financing, the Treasury may also attach conditions to licences. Licence conditions apply safeguards to ensure funds or economic resources can only be made available to designated persons in a way that protects against terrorist financing risks. This allows the granting of licences the Treasury might otherwise not be able to grant.

The conditions the Treasury applies to counter-terrorism regime licences reflect two broad policy objectives:

To ensure that designated persons do not have access to large amounts of cash, which can be more easily diverted to terrorist activity

To ensure that there is an audit trail to address terrorist finance risks and the Treasury can monitor compliance with the terms of the licence and identify if any breaches of the relevant legislation have occurred.

General Licences

In addition to issuing licences relating to a specific person, the Treasury may also issue general licences which authorise otherwise prohibited activity by a particular category of persons (who fall within the licence criteria). General licences can be used without making an application to OFSI, although a compulsory report should be filed to OFSI if they are used.⁵⁵

⁵⁵ OFSI. Counter-Terrorism Licensing Policy. <https://www.gov.uk/government/publications/counter-financing->



CHALLENGES

164. It is evident that there is a global and regional trend seeking to implement UNSCR 1373 and FATF Recommendation 6, however, countries have encountered some challenges such as:

165. **Inter-agency coordination:** Several countries highlighted that, despite having the regulatory framework, it is implemented with difficulty due to lack of inter-agency coordination and exchange of relevant information, as well as the lack of financial and human resources with developed skills to implement the freezing measures under UNSCR 1373.

166. **Strengthening RIs capacities:** RIs have a very relevant role in the implementation of these measures, since in many cases they are the ones who execute or carry them out. It is therefore vital to increase RIs awareness on their role in this process, so that they become involved and develop the appropriate legal and technical capacities to be able to implement this task in a timely and efficient manner.

167. **Designation and implementation of the freezing:** As demonstrated above, it is evident that countries have developed mechanisms to designate and freeze, however, this has not been fully implemented. Some of the reasons for this are related to the challenges mentioned above: inter-agency coordination and capacity building.

168. The Joint Report highlighted that UN Member States stated that they lack experience with domestic designations, and others face problems such as limited resources and difficulties in identifying parties to be listed.⁵⁶

169. **Challenges in implementing the freezing without delay.** Although there is an understanding that the freezing should be done without delay, within hours, some countries present obstacles to achieving this measure without delay. Some of these obstacles are legal and others are of an operational nature. It is important that countries get a sufficient legal basis to allow the freezing to be done under the terms defined by UNSCR 1373 and the FATF Standards (2012-2020).

170. **Challenges in applying the freezing without delay of virtual currencies and assets and new technologies.** It is a fact that the use of virtual currencies and virtual financial services has been increasing in the region and the world, and they are undoubtedly an

[of-terrorism-general-licenses](#) . Visited on February 3, 2021.

⁵⁶ UNSC. Joint Report. 2020. p. 13



important tool to promote financial inclusion and bankarization. However, this also presents new challenges when it comes to regulating and supervising these sectors. It is important that countries promote awareness and provide guidelines so that these sectors are not used to finance terrorism, and can apply a preventive freeze without delay.

171. **Judicial challenges to freezing decisions:** As indicated in the Joint Report, fifty-one per cent of those States that had frozen assets (i.e., 16 per cent of all responding States) had seen their freezing decisions challenged in court. Almost half of that 51 per cent had seen judicial challenges in the previous three years.⁵⁷

172. **International cooperation:** Although it is highlighted as a key element in the fight against terrorism, the Joint Report identified that some States expressed concern at the potential lack of effectiveness of international cooperation in inter-State implementation of national sanctions regimes, citing the perceived politicization of requests as potential factors.⁵⁸

173. The Joint Report highlights that most States noted challenges in receiving third-party designation requests, which often lacked identifying elements or failed to provide reasonable grounds for listing the individual or entity. Other challenges identified are the lack of uniform criteria regarding what constitutes "reasonable grounds" (e.g., incitement to commit a terrorist act might be considered sufficient grounds to act upon third-party requests in some jurisdictions, but not in others).⁵⁹

174. Some States indicated that they received information for the consideration of third-party requests through mutual legal assistance agreements or required the existence of such an agreement with the submitting State in order to consider the listing request. These elements are not consistent with the requirements under UNSCR 1373.⁶⁰

⁵⁷ Ibid., para. 27.

⁵⁸ Ibid., para. 29.

⁵⁹ Ibid., para. 37.

⁶⁰ Ibid., para. 37.



CONCLUSIONS

175. UNSCR 1373 of 2001 is one of the most important international instruments in the fight against terrorism. Its paragraphs 1 (c) and 1 (d) provide an opportunity for countries to develop and implement domestic and international cooperation mechanisms to address the terrorist threat and its financing expeditiously.

176. For its part, the FATF promotes the implementation of this UNSCR, and in particular included the development of its paragraphs 1 (c) and (d) in Recommendation 6 and its Interpretive Note. Thus, the FATF and FATF-style regional bodies, such as the GAFILAT, monitor the implementation of this UNSCR in great detail during the Mutual Evaluations processes.

177. As presented in this document, there is no doubt that there is a broad commitment on the part of UN member states as well as GAFILAT delegations to the implementation of UNSCR 1373.

178. However, despite the fact that it has been almost twenty years since the adoption of the UNSCR, the countries state that they still face challenges to achieve full and adequate implementation of this resolution.

179. Considering the above, and thanks to the support of GIZ, CTED, GAFILAT member countries and the FATF global network, this document provides an overview of the development of paragraphs 1 (c) and (d) of UNSCR 1373 at the global and regional levels, and describes the aspects that countries must develop to implement these paragraphs in compliance with FATF Recommendation 6, including procedures for:

- Identifying and designate individuals and entities that finance or support terrorist activities.
- International cooperation in requesting the designation and freezing of terrorist assets
- Freezing without delay
- Prohibiting the offer of funds or services
- Accessing basic and extraordinary expenses from frozen assets.

180. Additionally, good practices for the implementation of each of the above aspects were presented in order to provide guidelines so that countries can have tools to develop their own procedures.

181. It should be noted that for countries to be able to implement UNSCR 1373 and achieve



significant results in the fight against terrorism, it is not enough to simply have an adequate legal framework. The successful implementation of these measures is only possible if there is close inter-agency cooperation that allows for very fluid internal communication, as well as agile coordination with the private sector, in particular with RIs, which makes it possible to implement the freezing of assets without delay, and dynamic international cooperation that promptly exchanges relevant information.

182. It is important not to lose sight of the fact that the purpose of these measures is to prevent or avoid that financial flows and other assets finance or enable the commission of terrorist acts or are used to support terrorist individuals or groups.

183. Now, considering that technological advances and virtuality are even more present, this increases the possibility that assets, e.g., financial resources, can be transferred very quickly. Therefore, the emphasis on the concept of "without delay" as applied to the measures set out in this document is becoming increasingly relevant and important in the fight against terrorism and its financing.



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