



**Interpretative Note to
Special Recommendation II: Criminalising the financing of terrorism
and associated money laundering**

Objective

1. Special Recommendation II (SR II) was developed with the objective of ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism. Given the close connection between international terrorism and *inter alia* money laundering, another objective of SR II is to emphasise this link by obligating countries to include terrorist financing offences as predicate offences for money laundering. The basis for criminalising terrorist financing should be the United Nations International Convention for the Suppression of the Financing of Terrorism, 1999.¹

Definitions

2. For the purposes of SR II and this Interpretative Note, the following definitions apply:

- a) The term *funds* refers to assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
- b) The term *terrorist* refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.
- c) The term *terrorist act* includes:
 - (i) An act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and

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

- (ii) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.
- d) The term *terrorist financing* includes the financing of terrorist acts, and of terrorists and terrorist organisations.
- e) The term *terrorist organisation* refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Characteristics of the Terrorist Financing Offence

3. Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); (b) by a terrorist organisation; or (c) by an individual terrorist.
4. Criminalising terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.
5. Terrorist financing offences should extend to any funds whether from a legitimate or illegitimate source.
6. Terrorist financing offences should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).
7. It should also be an offence to attempt to commit the offence of terrorist financing.
8. It should also be an offence to engage in any of the following types of conduct:
 - a) Participating as an accomplice in an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
 - b) Organising or directing others to commit an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
 - c) Contributing to the commission of one or more offence(s) as set forth in paragraphs 3 or 7 of this Interpretative Note by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a terrorist financing offence; or (ii) be made in the knowledge of the intention of the group to commit a terrorist financing offence.
9. Terrorist financing offences should be predicate offences for money laundering.

10. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

11. The law should permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstances.

12. Criminal liability for terrorist financing should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.

13. Making legal persons subject to criminal liability for terrorist financing should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available.

14. Natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for terrorist financing.