

# Counteracting the financing of terrorism in the light of the legal regulations of the European Union

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**Received:** June 5, 2022 | **Revised:** June 22, 2022 | **Accepted:** June 30, 2022

**DOI:** 10.5281/zenodo.6823904

## *Abstract*

The purpose of this article is to define the methods of counteracting the financing of terrorism, as well as the obligations of public and private entities in this regard. The basis for the considerations will be the analysis of EU normative acts, and the leading research method will be the dogmatic method supported by the historical method.

**Key words:** security, terrorism, finance, resources.

## *Introduction*

One of the basic threats to public safety is terrorism, known as the plague of the 21st century. According to the doctrine, terrorism is ideologically motivated, planned and organized actions of individuals or groups as a result of which there is a violation of the existing legal order, undertaken in order to force the state authorities and society to perform certain behaviors and benefits, often violating the interests of outsiders. These activities are carried out by various means (physical violence, the use of weapons and explosives) in order to publicize them and intentionally create fear in society.

The threat of a terrorist attack persists, although the level of it varies across the EU. Therefore, you should constantly be on your guard and monitor the situation, regardless of the degree of this danger, so that it never happens. Terrorism, like any other human activity, requires appropriate resources, both personal and material. One of them is financial resources, including, of course, money. Without let it is impossible for even the most radicalized and ideological terrorists (fighters) to obtain weapons, ammunition, explosives, information, etc. necessary to carry out a terrorist attack.

This view is shared by P. Pomianowski and E. Maćkowiak, who claim that “The functioning of terrorist groups depends on their ability to obtain funds. Carrying out attacks directly is only a small part of the cost. Organizations must find money for propaganda activities which, in addition to achieving program goals, enable the acquisition of new members” (Pomianowski, Maćkowiak, 2012, p. 92).

Financial resources are therefore essential for terrorist activities, they increase the possibilities of their effective activity. Terrorism, as J. Vittori notices, cannot live solely on idealism. This author distinguishes three groups of factors needed by terrorists, and they are respectively: money; things of financial value; intangible goods that are difficult to assign a financial value (Vittori, 2011, p. 13). Cryptocurrencies, foreign exchange values and even works of art are also funds that can be used as forms of payment and support for terrorist activities. For this reason, in many countries, entities operating cryptocurrency exchanges are required not only to register transactions but also to identify people who make them, an example of which is one of the largest exchanges of this type, namely Binance (For more see, e.g., Brill, Keene, 2014, pp. 7-30; Gradzi, 2021, pp. 31-58).

Financing of terrorism, as correctly stated by C. Sońta and G. Szczuciński, is primarily fundraising and its transfer. Transfers are often made through commercial entities; they are the

keepers of information. Therefore, they were obliged to monitor and report those that may be related to terrorist financing to specialized state financial intelligence units (Sońta, Szczuciński, 2011, p. 43).

## ***Results and Discussion***

**2.1.** The leading EU legal regulations in this area are the following legal acts: Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities aimed at combating terrorism (Journal of L. 2001.344.70 of 2001.12.28); Regulation (EU) 2015/847 of the European parliament and of the council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ EU L.2015.141.1) of 2015.06.05); Directive (EU) 2015/849 of the European parliament and of the council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive of the European Parliament and 2005/60 / EC and Commission Directive 2006/70 / EC. They constitute the backbone of the system of counteracting the financing of terrorism in the EU.

As regards the oldest of them, it should be stated that it defines the key terms for effective counteracting the financing of terrorism. We are talking here about, for example, funds, other financial assets and economic resources, under the name of which should be understood assets of all types, both tangible and intangible, movable and immovable, regardless of how acquired, as well as legal documents and other documents in any form, including electronic or digital, title to or interest in such assets, but not limited to bank loans, traveler's checks, bank checks, money orders, shares, securities, bonds, drafts and letters of credit. It also defines what financial services are, recognizing that they are all services of a financial nature, including all insurance and insurance-related services and all banking and other financial services (excluding insurance).

This act also indicates what is the freezing of funds, other financial assets and economic resources, and it is to prevent any movement, transfer, change, use or transaction of funds in any way that would cause any change in their size, value, location, ownership, possession, nature, purpose or any other change that would enable the use of the funds, including portfolio management.

Above all, however, Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with the aim of combating terrorism grants the EU Council the power to establish, review and amend the list of persons, groups and entities to whom these restrictive measures will be applied. On this list, in accordance with Art. 2 clause 3 of the above regulation includes: natural persons committing or attempting to commit, participating in or facilitating the commission of any terrorist act; legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism; legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities specified in the first two points of the cited provision; or natural or legal persons, groups or entities acting on behalf or at the direction of one or more natural or legal persons, groups or entities specified in the first two points of the quoted provision.

Inclusion in the list has the effect that, in principle, all funds, other financial assets and economic resources belonging to and owned or owned by an individual or legal person, group or entity listed are frozen; funds, other financial assets and economic resources are not made available, directly or indirectly, to or for the benefit of, or for the benefit of, or for the benefit of, or for the benefit of, or for the benefit of a natural or legal person, group or entity, of a listed group or entity.

“Pursuant to Art. 4 sec. 1 of the analyzed regulation, banks, other financial institutions, insurance companies and other bodies and persons: provide immediately all information facilitating the application of the regulation to the competent authorities residing or located in the Member States, and the Commission, through these competent authorities, and they are also obliged to cooperate with the competent authorities in any verification of this information” (Chochowski, 2014, p. 29).

The regulation also prohibits the participation, knowingly and intentionally, in activities the effect of which is, directly or indirectly, to circumvent the restrictions imposed by listing. Member

States were also granted the power to be able to independently determine the sanctions in the event of violation of the provisions contained in the analyzed regulation, while stipulating that these sanctions should be effective, proportionate and dissuasive.

The territorial impact of the regulation in question is important. Well, on the basis of its Art. 10 they shall apply: within the territory of the Community, including its airspace, on board any aircraft or any vessel under the jurisdiction of a Member State, to any person who is a national of a Member State, irrespective of where he resides, to any legal person, group or entity incorporated or constituted under the law of a Member State, to any legal person, group or entity doing business within the Community.

As can be seen from the above comments, Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities aimed at combating terrorism is a specific foundation of EU legal regulations aimed at counteracting the financing of terrorism. in EU countries and is directly applicable. This means that it is not necessary to establish national legal regulations by means of which the above-mentioned provisions would be implemented into the domestic legal orders of individual EU Member States.

**2.2.** In order to increase the effectiveness of actions aimed at counteracting the financing of terrorism, the EU legislator issued Regulation (EU) 2015/847 of the European parliament and of the council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006. It deals with the information on payers and payees that accompanies transfers of funds, in any currency, for the purposes of preventing, detecting and investigating money laundering and terrorist financing when one or more service providers participating in the transfer of funds shall be established in the Union (For more see e.g. Jaczewska, 2019, pp. 385-403).

The regulation in question generally applies to transfers of funds in any currency sent or received by a payment service provider or an intermediary payment service provider established in the Union.

Interestingly , the regulation does not apply to transfers of funds made using a payment card, electronic money instrument or mobile phone or any other digital or IT device (in a subscription or prepaid system) with similar characteristics, where the following conditions are met: the card, instrument or device is used exclusively to pay for goods or services; and the number of that card, instrument or device accompanies all transfers resulting from a given transaction. It should be noted, however, that the regulation in question does apply when a payment card, electronic money instrument or mobile phone or any other digital or IT device (in a subscription or prepaid system) with similar characteristics are used to transfer funds between persons.

The EU legislator also provided for certain exemptions. Well , the regulation does not apply to transfers of funds: which involve the withdrawal of cash by the payer from his payment account; to public authorities as payment of taxes, fines or other charges in the Member State; where both the payer and the payee are self-employed payment service providers; which are made by means of the exchange of digital images of checks, including transformed checks into electronic form.

Article 3 of the Regulation contains a catalog of legal definitions, such as: terrorist financing, money laundering, payer, payee, payment service provider, intermediary payment service provider, payment account, funds, transfer of funds, bulk transfer, unique transaction identifier, or the transfer of funds between individuals. The main group of provisions of this regulation, however, deals with the obligations of the payment service provider of the payer and the payee.

When making money transfers, it is necessary to provide certain accompanying information by law. Pursuant to Art. 4 sec. 1 Regulation (EU) 2015/847 of the European parliament and of the council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by the following information about the payer: surname / name of the payer; the payer's payment account number; and the payer's address, official personal document number, customer identification number or date and place of birth. Moreover, under Art. 4 sec. 2 of the aforementioned Regulation, the payment service provider of the payer shall ensure that transfers of funds are

accompanied by the following information on the payee: name of the payee; and the payee's payment account number.

It is also necessary to mention the obligation of the payment service provider of the payer to verify the accuracy of the above-mentioned information, based on documents, data or information obtained from a reliable and independent source. This information makes it possible to identify both the transferor and the receiver of the transfer without any doubts, which is invaluable from the perspective of the activities of counter – terrorist services.

The EU legislator paid a lot of attention to the issue of detecting missing information on the payer or the payee. Well, in the light of Art. 7 sec. 1 of the Regulation, the payee's payment service provider is also required to implement an effective procedure to detect whether the fields related to the payer and payee information in the messaging system or the payment and settlement system used for the transfer of funds have been provided using characters or acceptable input data under the convention of this system.

It should also be emphasized that in the case of transfers of funds exceeding EUR 1 000, irrespective of whether the transfers are made as one or several transactions that appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payee's payment service provider verifies the accuracy of the information about the payee on the basis of documents, data or information obtained from a reliable and independent source, as indicated by the provision of art. 7 sec. 3 of the discussed regulation.

If there are transfers of funds not exceeding EUR 1,000 and which do not appear to be linked to other transfers of funds which, including the transfer in question, exceed EUR 1,000, then the payment service provider of the payee does not have to verify the accuracy information on the payee, unless the payee's payment service provider: makes a withdrawal of funds in cash or in anonymous electronic money; or has reasonable grounds to suspect money laundering or terrorist financing.

It is possible to imagine a situation where, in order to bypass the security net, terrorists or persons who support their terrorist activities make many small payments in order not to exceed the threshold of EUR 1,000. Therefore, granting the possibility to verify also such transactions should be clearly assessed positively.

The payment service provider of the payee has a legal obligation to implement effective risk-based procedures to determine whether to execute, reject or suspend a transfer of funds for which complete required information on the payer and payee is missing, and to undertake appropriate follow-up steps. If the payee's payment service provider, when receiving the money transfers, finds that information is missing or incomplete, or that that information has not been provided with characters or input data permitted under the convention of the messaging or payment and settlement system concerned, the payee's payment service provider rejects such a transfer or requests the required information on the payer and the payee, before or after the payee's payment account is credited or made available to him, taking into account the risk involved.

Where a payment service provider fails to provide any of the required information on the payer or payee repeatedly, the payee's PSP shall take steps which may initially be the issuing of alerts and deadlines, and then either rejecting any further transfers of funds from that service provider. payment service, or restricts or terminates its business relationship with that payment service provider.

The payment service provider of the payee shall inform the competent authority responsible for monitoring compliance with the provisions on anti-money laundering and anti-terrorist financing of the failure to provide the information and of the action taken.

The implementation of effective procedures for obtaining and verifying certain information by law, as the obligation of the payee's payment service providers, allows for faster and more effective work of the services in the area of competence which is responsible for counteracting and combating terrorism. It is one of the standards in force in the banking and financial systems of the EU countries.

In order to tighten the financial flow control network, the EU legislator extended the obligation to keep information about the payer and the payee together with the transfer of funds to intermediary payment service providers. Well, pursuant to Art. 10 of the Regulation, intermediary payment service providers are to ensure that all received information on the payer and the payee accompanying the transfer are kept together with the transfer of funds. To this end, the intermediary payment service provider shall implement effective procedures to detect whether the payer and payee information fields in the messaging system or the payment and settlement system used to execute the money transfer are provided with characters or input data permitted according to the convention of this system, as indicated by Art. 11 sec. 1 of the discussed regulation.

It should also be noted that pursuant to Art. 12 sec. 1 Regulation (EU) 2015/847 of the European parliament and of the council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, the intermediary payment service provider is required to establish effective risk-based procedures enabling you to determine whether to execute, reject or suspend a transfer of funds for which the required payer and payee information is missing and to take any appropriate follow-up steps. Moreover, if an intermediary payment service provider, when receiving transfers of funds, finds that the information is missing, or that the information has not been provided with characters or input data permitted under the convention of the messaging or payment and settlement system in question, it is under an obligation to decline such transfer, or to request the required information on the payer and the payee, before or after the transfer of funds, taking into account the risk involved.

Where repeated failures by a given payment service provider to provide the required information on the payer or payee, the intermediary payment service provider shall take steps which may initially consist of issuing alerts and time limits and then rejecting any further transfers of funds from that payment service provider. or restricts or terminates its business relationship with that payment service provider. The intermediary payment service provider shall then inform the competent authority responsible for monitoring compliance with anti-money laundering and anti-terrorist financing provisions about the failure to provide the information and the actions taken.

Penalties and administrative measures referred to in Art. 17 of the Regulation. On its basis, Member States shall adopt rules on penalties and administrative measures applicable to infringements of the provisions of this Regulation, and shall take all necessary measures to ensure that they are implemented. The penalties and measures provided for must be effective, proportionate and dissuasive and, moreover, consistent with the penalties laid down in accordance with Section 4 of Chapter VI of Directive (EU) 2015/849. Competent authorities shall exercise their powers to impose administrative sanctions and measures in accordance with this Regulation in any of the following ways: directly; in collaboration with other authorities; by delegation of powers to such other authorities, the competent authorities retaining responsibility for the performance of these tasks; by applying to the competent judicial authorities.

In exercising their powers to impose administrative sanctions and measures, competent authorities shall cooperate closely to ensure that those administrative sanctions or measures produce the desired results and coordinate their action in cases of a cross-border nature.

Regulation (EU) 2015/847 of the European parliament and of the council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 developed and supplemented the provisions of the Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures against certain persons and entities aimed at combating terrorism. It also densified the network intended to catch transfers of funds that may be used to finance terrorism, thus hindering the activities of terrorists. It also created certain standards common to all EU countries in this field. Noticing the transformation of terrorist financing methods by the EU legislator and providing an appropriate response in the form of the adoption of the regulation in question proves that in the area of public security, the EU bureaucratic machine is not always inefficient and sluggish. This regulation is a positive example of the evolution of legal regulations by means of which the level of security of both the state and the individual is increased.

**2.3.** Directive (EU) 2015/849 of the European parliament and of the council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive of the European Parliament and Council 2005/60 / EC and Commission Directive 2006/70 / EC define the methods and methods, as well as the rights and obligations of public and private entities, thanks to which the EU financial system will not be used for money laundering and terrorist financing. This is the primary objective of this Directive as stated *expressis verbis* in its Art. 1 clause Moreover, it provides that EU Member States ensure that money laundering and terrorist financing are prohibited. The regulations contained in the directive in question may, however, be extended by the Member States, because, as stipulated by the EU legislator in Art. 5, Member States may adopt or maintain in force more stringent provisions in the field covered by this Directive within the limits of Union law, to prevent money laundering and terrorist financing. We are therefore dealing with a necessary regulatory minimum, common to all Member States, but which may nevertheless be extended within the framework of national anti-money laundering and anti-terrorist financing systems.

The analyzed directive defines the principles and measures of customer due diligence, including simplified due diligence measures, as well as enhanced due diligence measures. As can be seen, then, depending on the given facts, due diligence measures will be simplified, ordinary or enhanced, which makes the operation of the EU financial system more flexible in the context of counteracting terrorist financing.

Art. 32 of the directive under discussion, as under this directive each EU Member State is obliged to establish a financial intelligence unit in order to prevent, detect and effectively combat money laundering and terrorist financing. Each such entity must be operationally independent and autonomous, which means that it must have the authority and capacity to perform its functions freely, including being able to make autonomous decisions about analyzing, requesting and disseminating certain information. As the National Central Unit, the FIU is responsible for receiving and analyzing suspicious transaction reports and other information regarding money laundering, related predicate offenses or terrorist financing. The FIU shall be responsible for disclosing the results of its analyzes and any other relevant information to the competent authorities when there are grounds for suspecting money laundering, related predicate offenses or terrorist financing. Must be able to obtain additional information from obliged entities. To operate efficiently, Member States shall make available to their FIUs adequate financial, human and technical resources to perform their tasks. Without them, no organization will function properly.

The EU legislator obligated the Member States to provide their FIUs with direct or indirect access, in a timely manner, to financial information, administrative information and information from law enforcement authorities necessary for the proper performance of their tasks. This is because FIUs need to be able to respond to requests for information from the competent authorities in their respective Member States when the requests are based on predicate money laundering offenses or issues related to terrorist financing. The decision to conduct an analysis or disseminate information is left to the FIU.

Member States are also required to provide FIUs with the power to take immediate or indirect immediate action when there is a suspicion that a given transaction is related to money laundering or terrorist financing, and to suspend or withhold consent to continue the transaction in order to analyze the transaction. transaction, confirmation of suspicions and disclosure of the results of the analysis to the competent authorities. The FIU should also be entitled to take such action, directly or indirectly, at the request of an FIU of another Member State, for the periods and under the conditions set out in the national law of the FIU that received the request.

It is worth paying attention to the Art. 32a, on the basis of which Member States shall establish centralized automatic mechanisms, such as central registries or central electronic data retrieval systems, which enable the timely identification of any natural or legal person holding or controlling payment accounts and bank accounts identified by IBAN as defined in Regulation (EU) No 260/2012

of the European Parliament and of the Council 99, as well as safe deposit boxes in a credit institution on their territory. Member States shall notify the Commission of the specificities of these national mechanisms. Information stored in the above-mentioned central mechanisms should be directly and immediately available to national financial intelligence units, maintaining its original form and content. This information must also be available to the competent national authorities for the purposes of carrying out their duties under this Directive.

In turn, art. 32b obliges Member States to provide FIUs and competent authorities with access to information that enables the timely identification of any natural or legal person that owns real estate, including through registers or electronic data retrieval systems where such registers or systems are available. This issue is one of the keys to the effective operation of the EU's anti-money laundering and anti-terrorist financing mechanism. Quick identification of the entity that is the sender or recipient of funds allows for the determination of possible connections between members of the terrorist network, and thus for counter – terrorist services' pre-emptive action.

In order to optimize efforts to eliminate terrorist financiers from the financial market, Member States shall require obliged entities, and where applicable their officers and employees, to cooperate fully by immediately informing the FIU, on the own initiative of the obliged entities, also in reporting, where the obliged entity knows, suspects or has reasonable grounds to suspect that certain funds, irrespective of the amount involved, are criminal income or are related to the financing of terrorism, and Responding promptly to requests from the FIU for additional information in such cases; and providing the FIU directly, at its request, with all necessary information. All suspicious transactions, including attempts to conduct such transactions, must be reported. Thus, as can be seen, the scope of disclosure obligations and those aimed at identifying participants in the EU financial market is quite extensive. Of course, in any structure, people play the most important role – it is no different with the FIU. These people may be intimidated and feel normal human fear of reporting suspicious transactions. Therefore, in order to increase their sense of security and certainty, pursuant to Art. 38 sec. 1 of the Directive, Member States shall ensure that natural persons – including employees and representatives of the obliged entity – who report suspicions of money laundering or terrorist financing either internally or to the FIU are legally protected against exposure to threats or retaliation or hostility. actions, in particular against negative actions or discrimination in the employment context.

Concluding considerations on Directive (EU) 2015/849 of the European parliament and of the council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC, the prohibition of disclosure should also be mentioned. It covers the obliged entities and members of their management staff and their employees, and is intended to prevent disclosure to the client concerned, as well as to third parties, of disclosing information at a given time, in the future or in the past, in accordance with Art. 33 or 34 of this Directive, nor the fact that there is or may be an analysis concerning money laundering or terrorist financing.

## ***Conclusions***

Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with the aim of combating terrorism (OJ EU L. 2001.344.70 of 2001.12.28); regulation (EU) 2015/847 of the European parliament and of the council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ EU L.2015.141.1) of 2015.06.05); DIRECTIVE (EU) 2015/849 of the European parliament and of the council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive of the European Parliament and Council 2005/60 / EC and Commission Directive 2006/70 / EC – this is a specific normative

foundation for counteracting money laundering and terrorist financing. Of course, these are not the only EU legal acts concerning counteracting and combating terrorism, but in the scope discussed in this article, they are of a fundamental nature (For more see e.g. Silva, 2019, pp. 57-67).

The European Union has created basic legal regulations on counteracting the financing of terrorism. They are binding on all EU Member States, so it can be concluded that they set minimum standards protecting the EU financial system from being used for activities supporting terrorism. The mechanisms created by the EU serve to ensure public security and directly translate into limiting the possibility of terrorist activities. Every activity, terrorist in particular, requires financial resources, and limiting the possibility of their flow improves the security of both the state and the individual. Public administration bodies and staff play a significant role in this respect, and public safety depends on their efficiency and integrity. (For more see e.g.: Chochowska, 2019, pp. 23-30). According to A. Maslow's theory, security is one of the basic human needs, and it can even be said that it is also a common good of society. Therefore, the normative system created in the EU, which protects the EU financial system from being used for money laundering, and in particular for financing terrorism, should be assessed positively. Of course, it must be flexible and adapt to the changing methods and forms of operation of both terrorists and their supporters in order for it to remain effective, which means that the EU legislator cannot lose sight of this issue. Failure to do so can literally cost a person's life.

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