

September 2013

FINLAND

Act on the freezing of funds with a view to combating terrorism

Unofficial translation

Section 1 – Purpose and scope of application

This Act regulates the freezing of funds implemented to fulfil the obligations imposed on Member States of the United Nations (UN) in Resolution 1373 (2001) adopted by the UN Security Council on 28 September 2001.

This Act shall not apply funds of natural or legal persons whose funds are to be frozen pursuant to Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

This Act shall not apply to any funds while they are under seizure or a restraint order or frozen on the basis of the Coercive Measures Act (450/1987) or on account of a request for international legal assistance.

Section 2 – Definition

For the purpose of this Act *freezing of funds* means measures to prevent any move, transfer, alteration or use of or dealing with funds in any way that would result in any change in their amount, location, ownership, possession, character or destination, and measures to prevent any other change that would enable the funds to be used.

Section 3 – Freezing of funds

Funds belonging to the following shall be frozen in accordance with this Act:

- 1) a natural or legal person that is referred to in Article 1 of Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and is not covered by Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism;
- 2) a natural or legal person that is reasonably suspected, charged with or convicted of an act criminalised in Chapter 34a of the Criminal Code (39/1889);
- 3) a natural or legal person when a competent authority of another State has made an individualised and reasoned request for freezing the funds of this person, if authorities of that State have, on the basis of credible evidence, initiated pre-trial investigation concerning the natural or legal person in question or demanded punishment for the person for an act which, if committed in Finland, would obviously have the essential elements of an offence under Chapter 34a of the Criminal Code, or if a court of law in that State has convicted the person of an act referred to above;
- 4) a legal person when a natural person or legal person referred to in paragraphs 1–3 owns at least 50 per cent of it alone or together with other natural or legal persons of this kind;

5) a legal person in which a natural or legal person referred to in paragraphs 1–3 exercises the authority referred to in Chapter 1, section 5 of the Accounting Act (1336/1997) alone or together with other natural or legal persons of this kind; or

6) a partnership when a natural or legal person referred to in paragraphs 1–3 is responsible for its obligations in full, as for their own debt.

A police officer with the power of arrest or a prosecutor shall report any suspicion or conviction under subsection 1, paragraph 2 to the Financial Intelligence Unit situated within the National Bureau of Investigation, referred to in section 35 of the Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008).

Section 4 – *Decision to freeze funds*

Any decision to freeze funds shall be made by the National Bureau of Investigation.

The decision shall be published in the Official Gazette and communicated without delay to the object of the measure.

The decision shall be considered communicated to third parties at the latest on the day of publishing in the Official Gazette.

Section 5 – *Content of decisions to freeze funds*

The freezing of funds shall apply to all funds of the object of the decision. However, the freezing of funds shall not apply to funds needed for

- 1) covering foodstuff, housing and health care expenses or corresponding necessary expenses of a natural person who is the object of the decision or of the dependants of this person;
- 2) paying taxes, charges comparable to a tax, charges imposed by authorities or compulsory insurance premiums or expenses for managing the funds;
- 3) paying damages or fulfilling an obligation which arose before the decision to freeze funds, provided that the funds of the recipient of the payment have not been frozen.

The decision to freeze funds may stipulate which part of the funds shall not be frozen, if this is necessary for covering expenses referred to in subsection 1, for preventing the destruction of the funds, for maintaining their value, or for another important reason. On the same grounds the decision to freeze funds may be amended or supplemented with conditions.

Section 6 – *Prohibition to transfer or alter funds*

Frozen funds shall not be moved, transferred, altered, used or dealt with in any way that would result in any change in their amount, location, ownership, possession, character or destination.

Section 7 – *Prohibition to assign funds*

No one shall, directly or indirectly, assign funds to a natural or legal person whose funds have been frozen on the basis of this Act, unless the assignment, with the contribution of an authority, a credit institution or a financial institution, has been arranged so that the assigned funds are frozen.

The prohibition under subsection 1 does not apply to funds intended only for the personal use or consumption of the natural person who is the object of the decision to freeze funds or of his or her family.

The reporting on freezing of funds under section 3, subsection 2 and the handling of the reports shall be regulated by the Act on Preventing and Clearing Money Laundering and Terrorist Financing.

The National Bureau of Investigation shall maintain a public list of decisions to freeze funds.

Section 9 – *Information about decisions to freeze funds to international actors*

The National Bureau of Investigation shall inform the Ministry for Foreign Affairs about its decision to freeze funds, stating the reasons for the decision.

The Ministry for Foreign Affairs shall inform the competent working group or committee of the Council of the European Union and of the United Nations Security Council about a decision to freeze funds made under section 3, subsection 1, paragraphs 2 and 4–6, stating the reasons for the decision.

Section 10 – *Information about cessation of grounds for freezing funds*

A police officer with the power of arrest or a prosecutor shall immediately inform the National Bureau of Investigation when a ground for freezing funds under section 3, subsection 1, paragraph 2 ceases to exist.

Section 11 – *Reassessment of grounds for freezing funds*

The National Bureau of Investigation shall, every six months from the date of a decision to freeze funds, assess whether the grounds for freezing the funds under section 3, subsection 1 continue to exist.

Furthermore, the National Bureau of Investigation shall reassess the freezing of funds without delay

- 1) if the object of a decision made under section 3, subsection 1, paragraph 1 is removed from the list in the Annex of Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism;
- 2) if the pre-trial investigation of a suspected offence underlying a decision made under section 3, subsection 1, paragraph 2 is terminated, the prosecutor decides to waive charges for the suspected offence or the suspect is acquitted finally;
- 3) when a natural person who is the object of a decision made under section 3, subsection 1, paragraph 2 has served the punishment imposed on him or her for the offence underlying the decision;
- 4) if a competent authority of another State which has submitted a request underlying a decision made under section 3, subsection 1, paragraph 3 requests that the decision be annulled;
- 5) if a legal person which is the object of a decision made under section 3, subsection 1, paragraphs 4–6 is no longer owned or controlled by a person referred to in section 3, subsection 1, paragraphs 1–3;
- 6) if the funds of the object of a decision made under section 3, subsection 1 are frozen on the basis of a regulation of the Council of the European Union;
- 7) if the object of a decision dies or ceases to exist; or
- 8) if the object of a decision made under section 3, subsection 1, paragraphs 2–6 presents, or an authority otherwise becomes aware of, circumstances which warrant assuming that the object of the decision does not engage in terrorist activities.

Anyone whose funds have been frozen shall be given an opportunity to be heard in situations referred to in subsection 2, unless it is obvious that the decision to freeze the funds will be annulled.

Section 12 – *Annulling a decision to freeze funds*

A decision to freeze funds shall be annulled without delay, if the grounds for freezing the funds laid down in section 3 cease to exist or if a ground exists for annulling the decision under section 11, subsection 2, paragraphs 6–8.

An annulment decision shall be communicated as stipulated in sections 4 and 9.

Section 13 – *Disclosure of information to the Ombudsperson of the Security Council's 1267 Committee*

Notwithstanding secrecy obligations, the National Bureau of Investigation may provide the Ombudsperson of the Security Council's 1267 Committee with any documents and information which may be necessary for implementing the obligations imposed on States members of the United Nations in United Nations Security Council Resolution 1989 (2011).

The provisions on secrecy, non-disclosure, restrictions on the use of information, forwarding information and returning provided material which are laid down in the conditions set by the originator of the information shall apply to any provision to the Ombudsperson of information held by the National Bureau of Investigation and received from another State or an international body.

Section 14 – *Implementing a decision to freeze funds*

A decision to freeze funds shall be implemented by a bailiff in accordance with the provisions of Chapter 8, sections 1, 2, 5–10 and 12–15 of the Enforcement Code (705/2007). The expenses incurred in implementing the decision to freeze funds and depositing and managing the frozen funds shall be borne by the object of the decision.

A decision to freeze funds and a decision to annul such a decision shall be implemented immediately regardless of appeals.

Notwithstanding secrecy obligations, credit institutions, financial institutions, insurance companies and any other actors holding information about the funds of the object of the decision to freeze funds shall provide the information to the bailiff without delay if it is necessary for implementing the decision.

Section 15 – *Liability for damages in certain cases*

Anyone who has refused to transfer, alter or assign funds without an obligation to do so under section 6 or 7 shall be liable to compensate for the ensuing financial loss only if they have not acted as carefully as they, considering the circumstances, could be reasonably expected to act.

Section 16 – *State liability for compensation*

If funds have been frozen without cause, the State shall compensate for any damage caused to the object of the decision to freeze funds and for the related expenses.

An action for compensation for damages and expenses shall, under penalty of forfeiting the right of action, be brought within one year from the date of annulling the decision to freeze funds, or if an appeal against the decision is still pending at that date, from the date of the final adjudication of the matter.

Section 17 – *Rectification request*

Rectification of a decision made by the National Bureau of Investigation on the basis of this Act may be requested from the National Bureau of Investigation. The Administrative Procedure Act (434/2003) contains provisions on requesting rectification.

A decision made on a rectification request may be appealed against to the Helsinki Administrative Court in compliance with the Administrative Judicial Procedure Act (586/1996).

Section 18 – *Penal provision*

Punishments for violating the prohibitions under sections 6 and 7 are laid down in Chapter 46, sections 1–3 of the Criminal Code.

Section 19 – *Entry into force*

This Act shall enter into force on 1 June 2013.