

## Section 2-1 Preventive measures under Security Council resolution 1373 (2001)

*This Sub-section establishes authority to freeze, with a few exceptions grounded on humanitarian reasons, the entire amount of funds belonging to persons and entities suspected of committing terrorist acts. It aims at implementing the specific preventive requirements of Security Council Resolution 1373 (para.1 (a)). It is thus a conceptually distinct regime from the one addressed in Section 2-2, which aims instead at the freezing [seizure] of funds necessary to preserve property which may eventually be the object of a forfeiture/confiscation order.*

### Article 30 Preventive measures

#### **(Option 1: Freezing regime applicable to all offences set forth in the [International treaties listed in the Definitions Part of these Model Provisions])**

The [competent authority] shall, either at its own initiative or at the request of the [public prosecutor's office/ other competent authority], order the freezing without delay of funds of persons in relation to whom there are reasonable grounds to believe that they are committing or attempting to commit, or participating in or facilitating the commission of any of the offences set forth in [these Model Provisions].

#### **(Option 2: Freezing regime only applicable to “terrorist acts” under Article 15)**

The [competent authority] shall, either at its own initiative or at the request of the [public prosecutor's office/ other competent authority], order the freezing without delay of funds of persons in relation to whom there are reasonable grounds to believe that they are committing or attempting to commit, or participating in or facilitating the commission of a terrorist act as defined in article 15.

*The proposed article provides the necessary authority to implement the freezing action envisaged by Security Council Resolution 1373. Such action should take place without delay and without prior notice to the designated persons involved.*

*Two alternative paragraphs are proposed, reflecting the fact that Resolution 1373 generically mentions individuals committing “terrorist acts” as the targets of its broad freezing obligation, without indicating exactly the meaning of “terrorist acts”.*

*Option 1 extends the scope of the freezing obligation to funds of persons that commit any of the offences set forth in the International treaties listed in the Definitions Part of these Model Provisions. Under this approach, the entire amount of funds belonging to individuals suspected of committing acts endangering civil aviation, maritime navigation, etc., as defined in the relevant parts of these Model Provisions, will be frozen.*

*Option 2 instead limits the extent of the “freezing action” under Resolution 1373 to funds belonging to individuals suspected of committing “terrorist acts” (as defined in Article 15 or in any other manner in which “terrorist acts” are defined at the national level).*

*It is for each State to decide whether they prefer to have a broad freezing regime encompassing all the treaty-based offences, even when such offences do not contain a “terrorist intention” as “dolus specialis”, or restrict the scope of the freezing action to acts committed with a specific “terrorist intention”.*

*In choosing between the two options, States are encouraged to consider the particularly severe consequences of the broad freezing regime enshrined in this resolution upon targeted individuals. Absent specific guidelines in Resolution 1373, Option 2 is the recommended choice for States wishing to limit the impact of the freezing regime to funds of individuals acting with a specific terrorist purpose.*

*The evidentiary threshold required to impose the order is not specified in Resolution 1373. This Model Provision adopts that of “reasonable grounds to believe”, but it is for each adopting States to set its own*

*threshold. Likewise, it is for each State to identify the authorities competent to implement the measure.*

*It is for the national authorities, also, to decide upon the adoption of procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed.*

### **Article 30-1 Additional funds subject to preventive measures**

The order set forth in para.1 extends to funds of:

- a) entities owned or controlled directly or indirectly by the persons mentioned in para.1);
  - b) persons and entities acting on behalf of, or at the direction of the persons mentioned in para.1), including funds derived or generated from property owned or controlled directly or indirectly by such persons and entities.
- 3) The provisions of this sub-section [Preventive measures under Security Council resolution 1373(2001)] are without prejudice to the obligations under Section 3 of this Chapter [Restrictive measures concerning listed individuals and entities under SC resolution 1267(1999) and following],

*As mentioned above, this Model Provision reflects the broad preventive approach taken by Security Council Resolution 1373. The scope of the freezing order envisaged in this article is particularly broad as it covers not only funds officially belonging to individuals reasonably believed of involvement in terrorist acts, but also funds of individuals and entities "linked" to the perpetrators by virtue of their acting under their control or on their behalf.*

### **Article 31 Revocation of preventive measures**

A freezing order under article 30 [Preventive measures] shall be revoked at any time by the [competent authority] at the request of the [public prosecutor's office/ other competent authority], or of any other person claiming to be affected by such measures, when the are no longer any reasonable grounds to believe that the persons or entities mentioned in articles 30 and 30-1 are committing or attempting to commit, or participating in or facilitating the commission of any of the offences mentioned in article 30.

*Since the duration of the freezing action based on SC resolution 1373 is undetermined, this article makes it dependent on the national authorities' assessment that targeted persons and entities continue to be involved in terrorist activities.*

### **Article 32 Automatic review clause**

A freezing order issued under article 30 [Preventive measures] shall be automatically reviewed every [indicate period], and shall be revoked when the are no longer any reasonable grounds to believe that the persons or entities mentioned in articles 30 and 30-1 are committing or attempting to commit, or participating in or facilitating the commission of any of the offences mentioned in article 30.

*This article complements the previous one by requiring that freezing measures be the subject of periodic review to determine if the conditions leading to their adoption have changed, and, if necessary, revoke*

them.

### **Article 33**

#### **Humanitarian exemptions within Security Council Resolution 1373 (2001)**

Upon the request of any person whose funds have been affected by a freezing order under article 30 [Preventive measures] the [competent authority] may allow any or more of the following out of the funds covered by the order:

- 1) funds necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurances premiums, and public utility charges;
- 2) funds intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
- 3) funds intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or frozen economic resources.

*This Model Provision is drafted after Security Council Resolution 1452 (2002), which is primarily applicable in the context of the Al Qaida/ Taleban sanctions regime (see Article 45 of these Model Provisions). Para. 5 of Resolution 1452 "Urges Member States to take full account of the considerations set out above in their implementation of resolution 1373 (2001)".*

*The implementation of this provision might require that the applicant fully disclose to the competent authority all of his or her financial situation.*