



The potential inclusion of the Russian Federation in the 'FATF Blacklist' and the recognition of the Russian Federation as a state sponsoring terrorism by the Government of the United States of America

PART I

INTRODUCTION

This series of articles are expected to provide a brief overview of the grounds, the procedures, and the direct legal consequences of the inclusion of the Russian Federation in the FATF Blacklist (hereinafter, unless otherwise stated - "**the Blacklist**") and recognition of the Russian Federation (hereinafter referred to as "**the RF**") as a state sponsor of terrorism (hereinafter, unless otherwise stated - "**the Sponsor of Terrorism**") (hereinafter, unless otherwise stated, with the inclusion of the country in the Blacklist - "**the Instruments of Influence**") by the Government of the United States of America (hereinafter, unless otherwise stated - "**the US Government**") due to the unprovoked and unjustified military aggression of the Russian Federation against Ukraine and its people (hereinafter, unless otherwise stated - "**the Military Aggression**") and are prepared to provide a high-level summary of the grounds, procedures, and the direct possible legal consequences of the application of the Instruments of Influence to the Russian Federation in connection with the Military Aggression.

The following issues, which we considered through the prism of FATF recommendations and best practices, played a key role in the focus of this and subsequent articles on this topic:

- 1) FATF: status, purpose of activity, participants;
- 2) Recognition of a country as a sponsor of terrorism by the US Government: procedure and legal consequences;
- 3) The FATF Blacklist: general aspects and blacklisted countries;
- 4) Criteria and grounds for including a country in the Blacklist, as well as legal consequences; and
- 5) procedure and consequences of including a country in the Blacklist and the direct legal consequences of such inclusion.

SECTION I

FATF: STATUS, PURPOSE OF ACTIVITY, PARTICIPANTS

The FATF is an international governmental organization founded in 1989, which includes all countries of the so-called "Big Seven", as well as international organizations such as the European Commission and the Gulf Cooperation Council. Leading international law enforcement agencies, international and regional financial organizations, as well as specialized UN agencies have the observer status in the FATF.

The purpose of the FATF is to develop best practices and standards in the field of combating money laundering and financing of terrorism, as well as the introduction of such standards in law-making and law enforcement practice of states.

The RF has been a permanent member of the FATF since 2003. Although Ukraine is not a full member of the FATF, it actively participates in the so-called FATF mutual evaluations¹ and reports on the implementation of the FATF recommendations² based on the results of such evaluations.

¹ <https://www.fatf-gafi.org/countries/u-z/ukraine/documents/mutualevaluationofukraine.html>

² <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur2-ukraine-2020.html>; <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-ukraine-2019.html>

SECTION II

RECOGNITION OF A COUNTRY AS A SPONSOR OF TERRORISM BY THE US GOVERNMENT

Subsection 2.1. Grounds and procedure for recognition of a country as a sponsor of terrorism by the US Government

Countries recognized by the US Department of State as having repeatedly supported acts of international terrorism are identified under three laws: section 1754(c) of the National Defense Authorization Act for Fiscal Year 2019, section 40 of the Arms Export Control Act and section 620A of the Foreign Assistance Act (1961). In general, the four main categories of sanctions that this recognition entails include restrictions on the US foreign assistance; ban on the export and sale of defense products; certain control over the export of dual-use goods; as well as various financial and other restrictions.

Granting the status of a state sponsor of terrorism in accordance with the three above-mentioned laws also entails imposing liability on countries and persons engaged in trade with such states. Currently, four states have been granted the status of sponsors of terrorism in accordance with the above laws: Cuba, the Democratic People's Republic of Korea (North Korea), Iran and Syria.

Subsection 2.2. Legal consequences of recognizing a country as one that finances terrorism

Recognition of a country as a Sponsor of Terrorism can have significant and immediate legal consequences for such a country and its agents. Thus, in the case of such recognition, the following four main categories of sanctions are applied based on the status of the sponsor country:

01

ban on foreign assistance from the United States

02

ban on the export and sale of defense goods

03

certain export control measures for dual-use goods

04

various other restrictions of financial and other nature

In addition to the measures listed above, other sanction restrictions may be imposed on the sponsor country. In order to examine in more detail, the possible practical measures taken by the US Government against the countries that have been recognized as sponsors of terrorism, case studies may be held, for example, on Iran or the DPRK.

In terms of the length of time a country is on the list of countries that sponsor terrorism, we have not identified any clear time limits. For example, the US Government recognized Iran as a country that finances terrorism in 1984, and Iran has been on the list of sponsors of terrorism for almost 40 years³.

³ <https://www.state.gov/reports/country-reports-on-terrorism-2020/>

SECTION III

THE FATF BLACKLIST: GENERAL ASPECTS AND BLACKLISTED COUNTRIES

In its practice, the FATF uses a differentiated approach to determining the degree of threat that potentially comes from a country. In certain circumstances, the FATF may refer a country to either the so-called FATF Blacklist or the FATF Greylist.

As noted in the Introduction to this Report, for the purposes of the current analysis, we have not considered the grounds, procedure, and legal implications of including a country in the FATF Greylist. At the same time, if necessary, we will be happy to cover this issue as well.

The Blacklist includes the countries that the FATF believes have "significant strategic flaws" in their anti-money laundering and anti-financing of terrorism regulatory environment. The blacklisted countries pose significant criminal risks to financial systems. Potentially, the blacklisted countries may be involved in various illegal activities including the proliferation of weapons of mass destruction. Also, such countries may evade implementing measures to combat financing of terrorism and money laundering provided for in the FATF Action Plan.

With this in mind, the FATF encourages its members to introduce more intensive compliance practices with regard to the blacklisted countries compared to those on the Greylist. Such measures may include, inter alia, an in-depth analysis of any relevant financial and other transactions.

As of April 2022, the following countries are on the Blacklist:

- 1) Iran⁴; and
- 2) Democratic People's Republic of Korea (**North Korea**)⁵.

In the context of comparing the two Instruments of Influence (inclusion in the Blacklist and recognition of the country as a Sponsor of Terrorism by the US Government), it should be noted that any such comparison is rather analytical, based on abstract categories and has limited practical value. Given that the use of one of the Instruments of Influence is not a prerequisite for the use of another Instrument of Influence, does not exclude the possibility of simultaneous or separate use of such Instruments of Influence, there are reasons to believe that these Instruments of Influence are not different vectors within the same plane but are independent and self-sufficient means that can be used cumulatively. At the same time, they are significantly related to the purpose and the desired consequences of their application.

Interim conclusion

In view of the above, we tend to believe that the inclusion of a country in the Blacklist and the recognition of a country as a sponsor of terrorism by the US Government are autonomous and independent tools that can be used both individually and jointly, both simultaneously and at different times. Moreover, there are cases of simultaneous application of these two Instruments of Influence to one country. For example, Iran and the DPRK are recognized as sponsors of terrorism⁶ and included in the Blacklist at the same time⁷. However, a number of other countries (Syria and Cuba) are recognized as sponsors of terrorism but are not included in the Blacklist⁸.

The procedure, criteria, and potential impact of the potential inclusion of the Russian Federation in the 'FATF Blacklist' and the recognition of the Russian Federation as a state sponsoring terrorism by the Government of the United States of America on the Russia's aggressive war against Ukraine will be in the spotlight of the second article.

⁴ <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html>

⁵ <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html>

⁶ <https://www.state.gov/state-sponsors-of-terrorism/>

⁷ <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html>

⁸ <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html>

EXECUTIVE SUMMARY

Ukraine has been cooperating with the FATF for many years and is actively involved in a large number of the FATF initiatives. To the greatest extent possible, Ukrainian legislation is in line with the FATF best practices, and the body authorized to represent Ukraine at the FATF is the State Financial Monitoring Service of Ukraine.

The national legislation of the United States of America provides for a number of instruments of direct and indirect influence on the countries that, in the opinion of the US Government, finance terrorism. Among them is the country's recognition as a sponsor of terrorism. The main consequences of such recognition are: ban on foreign assistance from the United States; ban on the export and sale of defense goods; certain export control measures for dual-use goods; and various other restrictions of the financial and other nature. In a way, such recognition is an instrument of direct action that can be reinforced by broader sanctions. A specific of this instrument is that the RF, as well as its satellites, do not have direct political influence on the US Government's decision, i.e., the US Government may adopt it in isolation from the political influence of other countries. In addition, this instrument cannot be considered an "extraordinary" measure, as the US has been using it successfully for almost 40 years at least (for instance, Iran), and there is an active public debate about it now. That is, any possible RF's accusations of the US Government of hostile and aggressive actions have to be rejected.

The next article in a series covering the prospects and potential legal consequences of the inclusion of the Russian Federation in the FATF Blacklist and recognition of the Russian Federation as a state sponsor of terrorism by the Government of the USA, will be dealing with the grounds for, and potential legal consequences of, such reaction from the side of the FATF and the Government of the USA to the aggressive and unjustified war of the Russian Federation against Ukraine.

If you would like to get more information on this and other legal matters, please follow the [Kinstellar website](#) and social media or reach out to our experts directly.



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