



WHAT DOES THE FATF ASK TURKEY TO DO?

The Financial Action Task Force (FATF) decided to suspend Turkey's membership on 22 February 2013 unless Turkey complies with FATF standards for combating money laundering and terrorist financing. Also, Turkey might possibly face international sanctions for not taking necessary anti-terrorist financing measures. This could cause a serious damage on Turkey's banking and financial system and a negative impact on international investments towards the country. Yet, the possible consequences are not limited to the financial system. International organizations that recognize the FATF standards – the UN, OECD and the IMF among others – are waiting for Turkey to enact a legal framework that will authorize the freezing of terror-related assets and bank accounts without any court ruling. "The Draft Bill on the Prevention of Terrorist Financing" currently on the Parliament agenda, stipulates the establishment of an Asset Freezing Commission which shall be authorized to freeze assets associated with terrorist activities. The draft is criticized for this very reason, for it might allow arbitrary use of authority and give way to human rights violations.

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The critics about arbitrary use of authority are raised not only by the main opposition party¹ but also by the international news analyses. For example, in a piece on the issue, *Financial Times* says that Turkey was criticized vastly because of its notoriously broad definition of terrorism and that freezing financial assets allegedly associated with terrorist financing without a court order would raise concerns.²

As it appears here, the issue is intriguing and complicated. On the one side, Turkey accuses foreign countries of supporting terrorism and terrorist financing and on the other hand Turkey is accused by international organizations of not taking necessary measures to prevent terrorist financing. Again on the one side are standards set to fight against the exploitation of international financial system for terrorist financing while on the other are concerns that these standards, via arbitrary use may escalate human rights violations in Turkey. From this perspective, Turkey facing international sanctions for not enacting necessary legislation for anti-terrorist financing cannot be assessed solely for its possible financial consequences. The "Draft Bill on the Prevention of Terrorist Financing", which was added to the agenda again upon international notice, needs to be thoroughly examined and discussed. Yet, such assessment is off the scope of this evaluation note and shall be left to political scientists, lawyers and human rights associations. The objective of this note is to offer a better understanding as to why the FATF that fights against money laundering and terrorist financing has warned Turkey, threatening the country with suspending its membership. Since the FATF statements on Turkey play a major role in shaping the design of the "Draft Bill on the Prevention of Terrorist Financing", a better understanding of the FATF and the underlying reasons for their warning is important for Turkey's agenda.

Financial Action Task Force?

Financial Action Task Force (FATF) is an international organization. The objectives of the FATF are to set international standards for combating money laundering and terrorist financing, judge the compliance of countries to these standards and categorize methods of money laundering and terrorist financing in an effort to facilitate combating those methods.

The FATF comprises 36 member countries including Argentina, China, Denmark, United Kingdom, Netherlands, Sweden, Switzerland, United States and Turkey. There are a number of criteria for qualifying as a member country, key among which is having a

¹ "CHP'den Terörün Finansmanını Önleme Yasasına İtiraz" Habertürk, 21 October 2011 (in Turkish)

<http://www.haberturk.com/gundem/haber/690039-chpden-terorun-finansmanini-onleme-yasasina-itaraz>

² "Turkey under international pressure over anti-terrorist financing laws", *Financial Times* 22 October 2012,

<http://blogs.ft.com/beyond-brics/2012/10/22/turkey-under-international-pressure-over-anti-terrorist-financing-laws/#axzz2AZm3KnQz>

"Turkey's banking blacklist", *Financial Times* 16 October 2012, <http://blogs.ft.com/beyond-brics/2012/10/16/turkeys-banking-blacklist-risk/#axzz2AZm3KnQz>

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strategic position for fighting money laundering and terrorist financing. In this context, the country's level of effectiveness in combating money laundering and terrorist financing in its region is as important as its GDP and the size of its banking sector. Countries that are willing to become a member are expected to demonstrate the political commitment to conform to the FATF recommendations and put into effect the standards in a short span of time. Having become a member in 1991, Turkey has expressed the political commitment to combat money laundering and terrorist financing and undertaken to put into effect the international standards set by the FATF.

The FATF works in cooperation with other international organizations. The United Nations, OECD, the World Bank, the IMF, and the European Central Bank have observer status with the FATF.

The FATF determines methods used for money laundering and sets standards about the measures against these methods. FATF's definition of "money laundering" and its standards against it are accepted also by the OECD.³ Similarly, FATF identifies standard precautions against the exploitation of international financial system for terrorist financing purposes. However, it is important to note that FATF does not decide which persons or organizations shall be considered terrorist. FATF cooperates with the United Nations on that account. Terrorist financing is defined as per the United Nations International Convention for the Suppression of the Financing of Terrorism and annexed conventions. Hence, the FATF determines measures to prevent the financing of a person, organization or actions identified as terrorist by the United Nations, in line with the decisions of the United Nations Security Council.

In line with its objectives, the FATF releases country statements that enlist countries that did not enact necessary anti-money laundering and anti-terrorist financing legislations; cooperates with these countries for helping them fulfill the FATF standards; and in the case that efforts prove unfruitful, ensures coordination between member countries and international organizations in deciding the sanctions against risk-bearing countries.

Currently, Iran and North Korea are on top of the FATF's list of risky countries. Since 2009, the FATF has been issuing recommendations about the implementation and strengthening of financial sanctions against these countries. Iran and North Korea are in the group of risky countries mainly because they did not take the steps identified by the United Nations Security Council and the FATF to prevent terrorist financing.

As of October 2012, Turkey was declared together with Ethiopia, Myanmar, Ghana, Vietnam and Yemen among others on the list of high-risk countries. The list plays an important role in the assessment of international community about the financial systems of respective countries. For instance, the FATF's declaration that Turkey did not enact sufficient counter-measures to prevent money laundering and terrorist financing was

³ "Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors" OECD (2009)

<http://www.oecd.org/ctp/exchangeofinformation/43841099.pdf>

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addressed in the IMF's Financial System Stability Review on Turkey in 2012.⁴ In brief, being on the FATF's blacklist is not desirable for a country that is or that urges to be integrated into the international financial system. It is a country's own choice to become a member to the FATF and agree to implement the same measures with the strong countries in the international financial system. Yet, choosing not to abide by the FATF rules has real consequences such as the possibility of facing international financial sanctions.

What does the FATF ask Turkey to do?

FATF has been warning Turkey for long that the country did not adopt a appropriate legislation to combat terrorist financing in line with the international standards. The latest statement read: "The Financial Action Task Force (FATF), the international standard-setter for combating money laundering, the financing of terrorism and proliferation of weapons of mass destruction, is deeply concerned by Turkey's continued failure to take action to fully criminalize terrorist financing and establish an adequate legal framework for identifying and freezing terrorist assets consistent with the FATF Recommendations. [...] The FATF has decided to suspend Turkey's membership on 22 February 2013 unless the following conditions are met before that date: (1) Turkey adopts legislation to remedy deficiencies in its terrorist financing offence. (2) Turkey establishes a legal framework for identifying and freezing terrorist assets consistent with the FATF Recommendations."⁵ But what exactly does the FATF ask Turkey to do?

The Third Mutual Evaluation Report⁶ issued by the FATF in 2007 assessed Turkey's compliance with the FATF recommendations in its efforts to counter money laundering and terrorist financing. The report identified that Turkey has partially complied with 9 of the 16 main recommendations and one recommendation was not complied with. The report stated that Turkey had the partial compliance rating overall for anti-terrorist financing measures and listed several deficiencies in implementation. The report was predominantly critical about the measures for combating the financing of terrorism. For example, the report claimed that the scope of the offenses about terrorist financing was narrow and that relevant legislation was applicable only for a small group of actions. Moreover, the report argued, that the offense covered only actions that are related to Turkey and left the terrorist financing activities by international terrorist organizations out of its scope. In conclusion, the report and the following statements by the FATF decided that Turkey's action against money laundering and terrorist financing did not fully comply with the FATF standards. One deficiency the FATF puts special emphasis on is that Turkey does not have a legal framework in compliance with international standards for freezing terrorist assets and bank accounts. More precisely,

⁴"Turkey: Financial System Stability Assessment", IMF Country Report No. 12/261, September 2012, <http://www.imf.org/external/pubs/ft/scr/2012/cr12261.pdf>

⁵ "Outcomes of the Plenary meeting of the FATF, Paris, 17-19 October 2012", FATF, <http://www.fatf-gafi.org/countries/s-t/turkey/documents/outcomesoftheplenarymeetingofthefatfparis17-19october2012.html>

⁶ "Third Mutual Evaluation Report Anti-Money Laundering And Combating The Financing Of Terrorism", FATF, 2007, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Turkey%20full.pdf>

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the report argued that Turkey does not have a system for identifying and freezing terrorism-related funds and for ensuring relevant authorities to take necessary actions.

Also, it is important to note that the relevant legal framework for freezing terrorist assets shall be applicable to groups identified as terrorist not only by Turkey but also by the United Nations. Another key criticism stated in the 2007 report is that Turkey does not have a suitable mechanism to freeze the assets of other international terrorist groups.

Again we have to note that the mentioned report was prepared not independently by the FATF but in cooperation with Turkey. Having become a member to the FATF, Turkey has undertaken that it will comply with the FATF standards and thus will resolve the deficiencies declared in the report as earliest as possible. We therefore must read the call of the FATF released in October 2012 from this perspective. As a result, the FATF has warned Turkey because of its failure to accord to its recommendations in the 2007 report.

In a nutshell, the FATF calls Turkey to take the following actions to fight terrorist financing:⁷

- To criminalize terrorist financing; the financing of not only terrorist activities but also terrorist groups shall be criminalized (even if the said finances are not directly associated with a terrorist activity).
- To adopt financial sanctions consistent with the decisions of the United Nations Security Council for the prevention of terrorism and terrorist financing. To adopt a legal framework for immediate identification and freezing of funds and other assets used for financing terrorist persons or groups and to prevent their access to any funds or assets whatsoever.

Otherwise, Turkey's membership to the FATF will be suspended. This is where the "Draft Bill on the Prevention of Terrorist Financing" on the Parliament's agenda comes into play. The Draft was prepared in 2010, in line with the FATF recommendations in the 2007 report. Let's take a look at a brief history of the draft.

⁷ "International Standards On Combating Money Laundering And The Financing Of Terrorism & Proliferation: The FATF Recommendations", FATF, 2012, [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\[...\].pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF[...].pdf)

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A Brief History of the “Draft Bill on the Prevention of Terrorist Financing”⁸

- February 2007. The FATF states that Turkey does not have adequate regulations in compliance with international standards concerning the procedures of freezing terrorist assets.
- January 2010. Turkey submits an action plan to the FATF and commits to submit the relevant draft bill to the Parliament by June 2010 and enact the bill by the end of the year.
- June 2010. The draft is submitted to the Prime Ministry as promised. But it is realized that certain articles require legal and technical revision.
- December 2010. The revised draft bill is submitted to the Prime Ministry.
- February 2011. The draft is submitted to the Parliament.
- February-April 2011. The draft bill is not enacted as the Parliament went into recess for the elections in June.
- June 2011. With Turkey failing to fulfill its commitment, the FATF decides to issue a public statement.
- October 2011. The draft bill is re-sent to the Parliament.
- December 2011. The Commission for Internal Affairs releases a report on the draft bill.
- March 2012. The parliamentary question (No 7/32) on the draft bill is answered as follows by the Ministry of Justice:

“Turkey prepared an action plan to remedy its deficiencies concerning terrorist financing and submitted the action plan to the FATF by 18.01.2010. The draft bill written in the context of the action plan was submitted by the Prime Ministry to the Parliament on 01.02.2011. While the bill was being reviewed by the Justice Commission of the Parliament, the Parliament went into recess in April due to the general elections and the draft bill was not enacted.

With the start of the new legislative year in 1 October 2011, the aforementioned draft bill was re-submitted by the Prime Ministry to the Parliament on 21.10.2011.”⁹

- May 2012. On a visit to Turkey, FATF President warns that Turkey's membership will be put into question should necessary steps are not taken until October.

⁸ The brief history is based on relevant documents at MASAK (<http://www.masak.gov.tr/>) and FATF (<http://www.fatf-gafi.org/>) with MASAK 2011 Annual Report being the main source of reference. (All documents in Turkish) http://www.masak.gov.tr/media/portals/masak2/files/faalrap_2011.pdf

⁹ Quoted from the response of the Ministry of Justice to a parliamentary question dated 19.03.2012 and numbered 7/32.

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- September 2012. Referring to the FATF's call on Turkey in June, the IMF Financial System Stability Review warns Turkey.¹⁰
- October 2012. FATF releases a statement on Turkey warning the country that its membership will be suspended by February 2013 unless it takes necessary steps to remedy the deficiencies of its anti-terrorist financing system.
- October 2012. According to the Parliament's web page, the draft bill is pending for the decisions of Justice, Foreign Affairs and Planning and Budgetary Commissions.¹¹

Conclusion

In a nutshell, Turkey was warned for not adopting a legal framework to combat terrorist financing consistent with the FATF standards. Should Turkey fail to adopt such framework, not only will its membership to the FATF be suspended but it will probably face with international financial sanctions. The Financial Crimes Investigation Board of the Ministry of Finance, in its 2011 report¹² states that the Draft Bill on the Prevention of Terrorist Financing was prepared in the light of the FATF recommendations. The draft did not attract much public attention; however it must be reviewed and assessed with scrutiny by experts, given severe criticisms highlighted above. Chief among those is, if enacted, the bill will authorize the freezing of allegedly terror-related assets and bank accounts without any court ruling, which raises concerns about arbitrary use. With the FATF's recommendations and the Draft Bill on the Prevention of Terrorist Financing on the table, Turkey shall not forget that it has to comply with international standards on human rights and the freedom of press as well.

¹⁰ "Turkey: Financial System Stability Assessment", IMF Country Report No. 12/261, September 2012, <http://www.imf.org/external/pubs/ft/scr/2012/cr12261.pdf>

¹¹ http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=95757 (in Turkish)

¹² MASAK 2011 Annual Report: http://www.masak.gov.tr/media/portals/masak2/files/faalrap_2011.pdf (in Turkish)