

# East-West: legal practice of countering financial “terrorism” by states

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**Abstract.** The article deals with topical financial-legal, criminal-legal, international legal problems of countering financial "terrorism" in Western countries and the states of the Eurasian space. The scientific approaches of scientists on the legal qualification of concepts related to countering: "financing of terrorism", "organized crime in the financial sector as financial terrorism", "information and financial terrorism", "terrorism in the financial markets" are analyzed. The author considers legal measures to counter financial "terrorism" as measures to enforce international and domestic responsibility of organized criminal groups and individuals for committing transnational financial crimes, fraudulent, corrupt and other deliberate socially dangerous acts in the financial sector. In international practice, there is no clear legal definition of organized transnational financial crime in the context of its understanding as financial "terrorism". However, financial "terrorism" is manifested in the forcible involvement of participants in banking, payment, and currency systems in illegal financial transactions. Practical approaches to the application of measures of international responsibility for acts of financial "terrorism" look like international UN measures to counter illegal operations of manipulating financial resources, markets, systems for the purpose of illicit enrichment, financing of terrorism, which caused damage and destabilization of the banking and financial systems of states, crisis phenomena in world and national markets. Financial "terrorism" is prevented both by international, criminal, administrative legal measures of coercion and preventive measures of "soft" coercion to responsible behavior in financial markets.

**Keywords:** legal practice, combating financial terrorism, protection financial information

## 1 Introduction

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## 1.1 Substantiation of the relevance and novelty of the study

The relevance and novelty of the topic is due to the need for a conceptual and scientific definition of the content of concepts related to the legal aspects of combating financial crime, extremism and terrorism, which are prohibited by law as international socially dangerous acts. Financial "terrorism" is illegal financial operations of the "shadow" banking, financial sector and other crimes of illegal enrichment using the financial sector. It is a financial crime with elements of terror (pressure) on the state and citizens, just like criminal terrorism. Financial "terrorism" poses a threat to the destruction of financial systems and markets [1].

The novelty of the study is due to modern approaches to the study of the legal practice of the Eurasian states and Western countries to prevent financial "terrorism". The study is conducted based on the practice of applying interrelated principles of protecting state sovereignty, combating financial crime and financing terrorism. International responsibility for criminal acts in the financial sector is based on the principles of the UN, FATF, IMF to prevent the negative consequences of dishonest behavior of financial market participants, states that finance terrorism, as well as those that do not counteract financial terrorism. The anti-terrorist functions of the United Nations Office on Drugs and Crime (UNODC) are considered aimed at combating drug trafficking, weapons, organized crime, human trafficking and international terrorism in the context of their connection with organized financial crime [2].

To achieve the main goal of the work, international conventions concerning the impact of terrorism on the financial sector, studies of Eurasian and European scientists, which emphasize the obligation of states to pursue a responsible financial policy, are analyzed. The basics of modern international liability law developed by British scientists D. Crawford, A. Pellet, S. Ollsen, Russian scientists Yu.M. Kolosov, I.I. Lukashuk are studied and others [3-5]. According to the European scientific doctrine of sanctions in international law, the external activity of states implies freedom of action (including the financial services sector) and mandatory compliance with restrictions within the framework of the global legal order [6]. German analysts of terrorism problems note that the anti-terrorist policy of states should be implemented taking into account international standards for combating financial crime and terrorism, while observing the rules of good faith behavior that does not harm the banking and financial systems of other states [7].

The paper defines the scientific state of the problems of legal measures to counter financial "terrorism" in the EU member states, the EAEU based on an analysis of the scientific works of scientists from these countries. Representatives of the Russian school of European law classify the methods of harmonization at the integration level of legal measures to combat the financing of terrorism in the EU [8]. German scientists see the prospects of the EU integration mechanisms in the fight against various forms of terrorism, by strengthening the harmonization of political, legal, instituti9]. The Czech scientific school justifies the concept of a constant and complex evolution of the sources and methods of financing terrorism and financial crime. The dangerous impact of terrorist financing on the destabilization of the banking sector and the financial system of the EU as a whole is emphasized. The danger of organized financial crime and the need to strengthen control over private financial institutions and their activities outside the EU are noted [1].

The novelty of the topic is due to the special attention of foreign science to the application of the general principles of bringing perpetrators to international legal criminal and financial liability for financial crimes [10]. Such crimes have signs of group financial fraud, financing of terrorism, drug terrorism and others. According to the FATF standards, the criminal banking activities of transnational illegal "shadow banking" groups and the legalization of proceeds from crime have signs of financial "terrorism". This also includes credit and settlement transactions for the financing of international terrorism, digital

payment transactions, theft of public and private financial resources, misappropriation of public and private funds using financial "pyramids", illegal export of corrupt capital, the use of payment, banking, and currency systems of states for criminal purposes and international systems, tax evasion on an especially large scale, and others [11]. The study is based on the provisions of the 2003 UN Convention on the Fight against Corruption and other UN conventions, the positions of the courts of states that have established that one of the main signs of a terrorist act is its focus on destabilizing the activities of state bodies and causing harm to citizens [12].

## 1.2 Questions and structure of the study, hypothesis, goals, objectives

*Research question 1:* To determine the types of the most dangerous criminally punishable financial crimes in the law of the states of the East and West, which have signs of financial "terrorism".

*Research question 2:* Highlight the legal measures of the countries of the East-West to counter the threats of financial "terrorism" and cybercrime for information banking systems

*Research question 3:* Show trends in the definition of the content of financial "terrorism".

*Research Question 4:* Identify practical approaches to the application of measures of international and domestic responsibility for acts of financial "terrorism".

The purpose of the work is to substantiate the legal measures of international and domestic responsibility to counter the criminal behavior of financial market participants, the transnational circulation of currencies and capital, the scale of threats from which is comparable to financial "terrorism". The goal is achieved by studying the international practice and practice of the East-West states on the introduction of anti-terrorist, anti-corruption financial and legal measures, the study of scientific views, concepts, and judicial decisions on countering financial "terrorism". The tasks are determined by the set research questions. The hypothesis is related to the use of financial and other coercion to account for malicious violations with signs of financial "terrorism", which entailed threats to the safety of citizens and financial security. The hypothesis of the study is expressed by the search for a legal model for counteracting financial "terrorism" in the East-West countries. The article includes 5 sections: 1) introduction, 2) materials and methods, 3) research results, 4) discussions and conclusions; 5) conclusion. They include a hypothesis, goals and objectives of the study, methods for analyzing current problems, and concepts of interaction between scientific results, discussions and practical recommendations.

## 2 Materials and methods

The method of comparative analysis explored the possibilities of concretizing the concept of financial "terrorism" on the basis of the criminal and financial legislation of the East-West states, the UN Conventions against transnational organized crime of 2000, the UN Convention against corruption of 2003 and other acts providing for liability for financial crimes related to terrorism and threatening global financial security and stability.

By the method of analyzing the judicial practice of the East-West countries, it is concluded that the courts are expanding the use of anti-terrorist, financial, criminal procedure principles and standards of the UN, FATF, IMF, and SPS on liability for financial crimes when they are harmonized with the national legislation of states on protection from financial crime and combating terrorism.

The method of comparing legal measures to combat financial crime and terrorism in the countries of the East and West reveals the strengthening of international and national measures of control, supervision, and criminal liability for financial "terrorism".

The method of informational analysis of anti-terrorist measures in the financial sector of different countries made it possible to identify a growing connection between practical measures for the introduction of international liability for financial crimes and the norms of international liability for terrorism.

### 3 Results

*In the study of "question 1"* on determining the types of the most dangerous financial offenses that fall under criminal liability for organized financial crimes with signs of terrorism. In international practice and legislation of most East-West states, it is determined that terrorism and financial crime are often associated with the "shadow" financial sector and are criminal and socially dangerous acts. They include the legalization of proceeds from crime, the use of "shadow banking" credit and settlement systems for criminal purposes to finance terrorist acts. These include also illegal issuance of digital currencies, which undermines the stability of national currencies and "hacker" attacks on international payment systems, state budget-information and payment systems of the Ministry of Finance of the Russian Federation, the Bank of Russia, and central banks of other states. Criminally dangerous is the illegal use of personal data for illegal obtaining of loans, as well as systemic destabilization and undermining of the financial markets of developing countries by the unscrupulous behavior of transnational financial corporations with the use of "aggressive" taxation measures. These crimes are contrary to the principles of the UN, IMF, WTO, SPS, since they are aimed at financial and economic damage to states and financial institutions [13]. This is confirmed by the Resolution of the Supreme Court of the Russian Federation of June 10, 2010 N 12 on the judicial practice of criminal cases on the organization of criminal groups, including in the financial sector, by the Resolution of the Supreme Court of the Russian Federation of November 26, 2019. No. 48 on tax and related financial crimes. East-West states rely on the conclusions of the practice of countering the financing of terrorism of the United Nations Office on Drugs of Crime (UNODC) [12].

*In the study of "question 2"* on examples of combating financial crime, cybercrime in information banking systems, the study is based on the scientific and practical findings of international financial organizations. They show that the scale of risks and threats posed by financial crime, cybercrime in information banking systems, allow us to consider it as a global threat to financial security and stability. This entails the destruction of the financial, economic and social foundations of the world order [14, 15]. The UN anti-terrorist organizations assess acts of terrorism as "contributing" to global financial crises, since they are associated with the financing of terrorism, with illegal operations in the financial markets. Terrorism usually includes elements of financial and economic "terrorism" [16].

The practice of developing the states of the East shows that many states, through no fault of their own, but because of their weakness, became victims of economic terrorism provoked by organized crime associated with the "shadow" economy, the "shadow" financial and banking sector and other factors. Such countries are Iraq, Pakistan, Afghanistan, Yemen, Somalia, Nigeria, Sudan, South Sudan, the Republic of the Congo, Lebanon, Libya, Colombia and others, which were ruined by the terrorists of the internationalized underworld, destroying their financial systems [13].

*In the study of "question 3"*, within the framework of the working hypothesis, the FATF documents on combating financial crimes related to money laundering, tax evasion, and defrauding consumers of financial services were considered. According to the International Organization for the Protection of the Rights of Consumers of Financial Services (FinCoNet), the abuse of the banking system to provide "fictitious" services to consumers destroys banks and the economy of states [17]. The problem of assessing the danger of financial "terrorism" is associated with the spread in the media,

telecommunications networks of deliberately false advertising and financial information about the financial services of "imaginary" credit and other organizations that steal money from citizens [18]. The scale of the theft of citizens' funds through financial "pyramids", "fictitious" microfinance organizations; other "imaginary" financial structures can be so great that they have signs of terrorism (violence) against the population [19].

The fight against financial "terrorism" goes along with the fight against financial and economic crime with measures to combat financial fraud. Analysts refer to the financial crisis of 2008 as an example of financial "terrorism". in the US when the Lehman Brothers default on September 15, 2008 was the largest act of financial collapse. It had a devastating effect on the US economy as a financial blow when the US government had to make up trillions of dollars in losses due to the depreciation of "non-standard" financial assets that were at the center of a major predatory Wall Street credit fraud [20]. Since then, practical measures to counter financial "terrorism" in the United States have been strengthening control over global systemically important financial institutions and stabilizing financial asset standards by adopting in 2010 Dodd-Frank Wall Street Reform Act [21].

*In the study of "question 4"*, responsibility for the consequences of transnational financial crimes is considered as one of the international legal measures to counter financial terrorism. Financial "terrorism" in the article is considered as a complex of organized and interconnected especially dangerous financial crimes aimed at undermining the financing and lending to the needs of the state, citizens, and the development of society [22]. Signs of the danger of organized financial crime are defined by the UN Convention against Transnational Organized Crime of November 15. 2000 and are similar to financial "terrorism" [23].

Against financial "terrorism" there are coordinated international and national measures to identify and seize the accounts, assets, income and other property of transnational criminal financial groups [24, 25]. The UN General Assembly in its resolutions points to responsibility for dangerous acts that caused damage to international and state financial systems, sovereign funds. The damage was caused by the "catastrophic" depreciation of national currencies and monetary assets by the crises of 1998, 2008, 2019. Now such a threat comes from the global debt crisis, inflation, illegal emission of cryptocurrencies, and other dangerous factors of financial instability [26].

## 4 Discussion

The issues of assessing the degree of danger of the destructive consequences of the "ill-conceived" financial and credit policy of corporations, states, groups of persons that "do not comply with the strict requirements" of combating international financial crime, grossly violating the standards of financial stability and security, are debatable in the study of liability for financial offenses. Particularly acute issues of enforcement of responsibility arose in connection with the negative consequences of the use of cryptocurrency in international settlements. The use of cryptocurrency in international payments is becoming dangerous due to the lack of control over its issue and significant differences in regulation in East-West countries. While some states encourage the digitalization of currencies (Australia, Germany, the Netherlands, New Zealand, Singapore), others impose significant restrictions on them. (Indonesia, China, Russia). Japan recognizes cryptocurrency as a financial asset, but does not consider it legal tender. In Canada, digital wages are paid, and income from turnover is subject to income tax. Researchers from different countries are already calling cryptocurrency an "innovation of the economy of terror", noting that in the global economy of the 21st century, digital innovations in the financial sector are becoming more significant and competitive than other factors [27, 28]. However, central bank oversight of cryptocurrencies is significantly weaker than that of other currencies.

The criteria for applying "soft" and "hard" international liability measures in the financial sector are controversial, given the hidden forms of "shadow" banking, "shadow" digital platforms, unscrupulous financial practices of foreign exchange and digital payments. In this regard, Richard Feinberg's concept of responsibility in global financial management is relevant. He notes that the interaction of the IMF and the World Bank to create a mechanism for responsible financing of the IMF and lending to the World Bank is effective, provided that each state acquires a certain responsibility for a wide range of policy instruments [29]. In world practice, economic liability is used as a "soft" measure of coercion in order to compensate for damage from financial offenses. Preventive and compensatory measures for the settlement of financial conflicts Jeff Madura considers the regulatory procedures of international arbitration in the global management of world finances, which resolve financial and economic conflicts by applying measures of "soft" coercion when reconciling interests [30].

## 5 Conclusion

Based on the results of the analysis of scientific sources and regulatory material, the main conclusions should be drawn:

1) Financial "terrorism" uses the information and communication systems of the central banks of states, state and international payment and financial, credit and settlement systems. It is generated by the criminalization of sectors of national and global financial markets, "stimulated" by corruption, "laundering" of criminal proceeds, illegal export of capital and other illegal activities of organized financial crime and terrorist financing.

2) The legal practice of countering financial "terrorism" is ensured in the countries of the East-West by strengthening legislative, judicial, administrative and preventive measures, measures of "soft" coercion, criminal law measures in accordance with international prohibitive, warning, currency-restrictive, compensatory, criminal norms of counteraction transnational financial crime.

3) International measures of financial and legal responsibility are implemented through compensation for material damage, compensatory measures under international agreements, sanctions for violation of international financial obligations, liquidation of criminal financial centers for managing financial "terrorism"

4) The criminal, financial law of different countries and judicial practice consider counteraction to acts of financial "terrorism" as the fight against the financing of terrorism, financial fraud, and financial pyramid schemes in the external and internal markets, financial information and economic terrorism.

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