



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 April 2009

8864/09

**JAI 223
ECOFIN 286
EF 57
RELEX 352
ENFOPOL 89
COTER 34**

NOTE

from : Counter-Terrorism Coordinator
to : COREPER

Subject : Implementation report of the revised Strategy on Terrorist Financing

The Revised Strategy on Terrorist Financing, which was endorsed by the Council on 24/25 July 2008¹, tasked the Counter-Terrorism Coordinator (hereafter "CTC"), in cooperation with the Commission, with ensuring the follow-up of the revised strategy on a cross-pillar basis. It required the CTC to report on a six-monthly basis to Coreper. This report, drawn up in cooperation with the Commission, outlines progress in achieving the goals mentioned in the recommendations of the revised strategy. Further reports on this subject will be included in the CTC's regular cycle of reporting to Coreper.

The fight against terrorist financing was highlighted as a key area in the fight against terrorism in the European CT Strategy adopted by the European Council on 15 December 2005². It also forms an integral part of the CT Action Plan agreed by Coreper on 13 February 2006³ where it features as part of the "Pursue" strand.

¹ 11778/1/08 REV 1

² 14469/4/05 REV 4

³ 5771/1/06 REV 1

Recommendation 1 - monitoring

The revised Strategy on Terrorist Financing mentions various important legal instruments, the effective implementation of which will be monitored. A very important one is Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (**3rd AML/CTF Directive**) which entered into force on 15 December 2005, which was to be transposed before 15 December 2007. To-date seven EU Member States have not yet finalised this transposition process (BE, ES, FR, IE, PL, FI and SE). During meetings of the Committee on the Prevention of Money Laundering and Terrorist Financing (CPMLTF), the Commission has constantly emphasised the importance of these Member States speeding up their transposition process, underlining that an infringement procedure will follow (to date procedures in the ECJ have been started against IE, BE, ES, FR, PL and SE). Furthermore, in spring 2010 the Commission is expected to publish a report on the application of the directive that will address substantive issues.

The Commission has established a working group on cash controls to support the Member States in implementing the **Regulation on cash controls** (1889/2005), thus providing a framework to ensure a harmonised approach at Community level. This Regulation is applicable as from June 2007. An evaluation report is envisaged for the end of 2009. Within the working group several project groups have been set up and one deals exclusively with improving the exchange of information between the relevant authorities competent for the cash control Regulation. Guidelines and practical tools for appropriate implementation of the Regulation are being developed in another project group called “Handbook of guidelines on cash control”, which will include best practice examples of information exchange between customs and FIUs at national level.

After almost 2 years of discussion, a global agreement on an amended FATF Methodology on FATF Special Recommendation IX on cash controls at borders was reached in the February 2009 meeting in Paris. This agreement acknowledges the specificity of the EU as one jurisdiction and the possibility for it to be compliant with SR IX without re(introducing) controls at Member States’ internal borders.

Since 15 September 2008, the Customs Files Identification Database (FIDE) has been in use by the customs authorities. With a view to being fully in compliance with the essential criteria mentioned in SR IX.15 (adopted in February 2009), the Commission will continue to develop the system with a view to extending the access to CIS/FIDE for the national authorities responsible for combating money laundering under article 21 of Directive 2005/60/EC (FIU's) through a secure internet connection. In addition, the CIS/FIDE databases will be configured in such way that only data related to cash will be made accessible for these national authorities.

The practical application of **Regulation (EC) No 1781/2006 (on information on the payer accompanying transfers of funds)** is improving over time. More and more transfers of funds from third countries reached the Community with full information on the payer and the situation is now stable. Its application has been recently facilitated by the common understanding of the obligations imposed by that regulation, which has been jointly prepared by three advisory committees to the Commission in the field of financial services: CEBS (Committee of European Banking Supervisors), CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors) and CESR (Committee of European Securities Regulators). This Common understanding, which expresses the expectations of the EU financial services supervisors, was made public in October 2008. The private sector (European Payments Council) has also prepared detailed guidance at EU level, also considering the Common understanding referred to above.

Council Decision 2007/845/JHA was adopted in December 2007. It requires Member States to set up or designate **national Asset Recovery Offices** which would promote, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime, including terrorism. The Decision should have been implemented by Member States by December 2008. So far less than half of the Member States have notified their designated authorities to Commission and the General Secretariat of the Council.

In November 2008 the Commission adopted a Communication on the proceeds of organised crime (COM(2008) 766), which proposes ten strategic priorities to strengthen the fight against organised crime by enhancing confiscation and asset recovery. The Communication reviews existing EU legislation and its implementation, and calls for its recasting in order to increase the effectiveness of confiscation. It foresees initiatives for increased cooperation among EU Asset Recovery Offices and for new tools related to the identification and tracing of assets. It also calls for the development of a common EU training programme for financial investigators to be implemented as a priority, as well as for the production of high quality comparable statistics.

Recommendation 2 - threat analysis

SitCen has continued to provide the Council and the Commission with regular analyses of developments in relation to the terrorist financing threats.

Europol has issued a Situation Report 2008 on Financing of Terrorism which has been distributed to EU Member States. This report is based on Member States contributions and is the first of its kind. Future reports will benefit from the comments made and Europol should be encouraged to provide this kind of situation report on a yearly basis. The conclusions of such reports might support the development of national strategies and actions at the EU level.

Cooperation between SitCen and Europol should be encouraged and might in the future lead to a joint threat analysis report.

Recommendation 3 - new developments

The conditions for licensing or registering of all money transmission or remittance offices are determined by the provisions of Title II of the **Payment Services Directive** (Directive 2007/64/EC) which is due to be implemented in national law before 1 November 2009. In the revised Strategy the Commission was invited to explore the need and possibility for drawing up practical guidelines for uniform implementation by Member States. The Commission has set up a “Payment Services Directive Transposition Group”, which is meeting regularly in order to compare approaches and choices made by Member States, highlight any implementation problem at an early stage and provide a better and consistent understanding of the Directive.

Member States are encouraged to implement the Directive in such a way that control over providers of money remittance services is strengthened and that their use by potential terrorist financiers is deterred.

Regarding the vulnerabilities of new payment methods to terrorist financing, the FATF agreed at its plenary meeting in February 2008 that further reflection work should be conducted on this issue. The typologies group of the FATF will produce an updated report. In addition, the Commission intends to assess whether there is the danger of a potential abuse of new and alternative payment systems, such as gift cards and other stored value cards but also payment methods used on the internet, for terrorist financing purposes.

Concerning regulatory developments, the Commission presented in 2008 a proposal for a new directive on e-money, which should establish a new prudential regime for e-money issuers (other than banks).

The FATF has started its preparation of the 4th round of evaluations. Discussions are concentrating on identification and definition of key issues that are worthy of review and the reasons that would justify changes to the existing standards. It is worth mentioning that one of the questions is whether tax crimes need to be included in the list of predicate offences for money laundering and terrorist financing. This question was also mentioned in the G20 Declaration of 15 November 2008 on financial markets and world economy. In this Declaration world leaders confirmed their determination to enhance cooperation and work together to restore global growth and achieve necessary reforms in the world's financial system. Particular attention is requested for the implementation of anti-money laundering legislation and for non-cooperative jurisdictions. New procedures may be considered to improve the way the FATF system responds to threats posed by high risk jurisdictions. At the G20 Summit in London on 2 April 2009 further measures have been announced regarding the strengthening of financial supervision and regulation as well as measures against the so-called tax havens and bank secrecy". Both the FATF and the EU will cooperate closely in this area.

In this context the Netherlands - the future President of the FATF - has launched a project proposal to assess the consequences of the financial crisis for the FATF, to identify concrete issues for discussion and further analysis, and to propose actions for further work. Possible progress on this exercise will be reported in future implementation reports.

Recommendation 4 - enhancing existing actions

Targeted sanctions

On 3 September the European Court of Justice delivered judgement in Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat International Foundation v Council and Commission. The appellants were designated by the UN in 2001 under UNSCR 1267 (Al Qaeda and Taliban list). The Court annulled the EC Regulation aimed at transposing the UN obligation in so far as it concerned the two appellants, on the ground that their procedural and fundamental rights had not been sufficiently respected. However, accepting that the freezing might in fact be justified, the Court maintained the effects of the freezing orders concerning the appellants until 3 December 2008. The Community has since complied with the requirements of the judgment by communicating the reasons for listing to the parties concerned and providing them with an opportunity to comment. Having considered the comments received, the Commission adopted Regulation (EC) No 1190/2008 listing Mr Kadi and the Al Barakaat International Foundation, which entered into force on 3 December 2008. The Commission has also invited those parties listed since the date of the judgment to contact it in order to receive the reasons for their listing.

On 23 October 2008 the Court of First Instance delivered judgment in Case T-256/07 in which the applicant, the People's Mojahedin Organisation of Iran (OMPI), had challenged two decisions of the Council continuing to include the applicant on the separate "autonomous" list of persons and entities subject to specific restrictive measures with a view to combating terrorism. The Court upheld Council Decision 2007/445/EC of 28 June 2007 but annulled Council Decision 2007/868/EC of 20 December 2007 insofar as OMPI was concerned.

The Court considered that, following the first OMPI judgment of 12 December 2006 (in Case T-228/02), the new procedure implemented by the Council had complied with its obligation to ensure the rights of defence of those included on the autonomous list. The Court also considered that the Council had reasonable grounds for the adoption of the June decision. However, the Court considered that in the December decision the Council had failed to provide proper and sufficient reasons for the continued freezing of the applicant's funds, and annulled the decision on that basis. On 15 July 2008 the Council had already replaced Decision 2007/868/EC by Council Decision 2008/583/EC. On 4 December 2008 the Court annulled this decision with respect to OMPI, on the ground that the applicant's rights of defence had not been respected (Case T-284/08). Following this judgment, the Council adopted Decision 2009/62/EC on 26 January 2009: OMPI was not included on the list annexed to this decision.

NPO-sector

Some important work has been undertaken as regards the abuse of the non-profit sector by financiers of terrorism. The Commission has finalised two studies: 1) *Study assessing the Extent of Abuse of Non Profit Organisations for Financial Criminal Purposes at EU level*, which was presented on 25 April 2008 and 2) *Study on Recent Public and Self-Regulatory initiatives improving Transparency and Accountability of Non Profit Organisations in the European Union*, which was presented on 12 February 2009. The results of the studies indicate, *inter alia*, that there could be a better exchange of information and best practices between relevant stakeholders and authorities, for example via a "Centre of Excellence", and that some guidance could be useful in order to assist NPOs to comply with existing obligations. Umbrella organisations of non-profit organisations which participated in the meetings of 25 April 2008 and 12 February 2009 were invited to comment on the studies and on a possible way forward. Based on these studies and the input received, the Commission will further examine the right way to reply to the threat of a potential abuse of non-profit organisations for terrorist financing purposes. The aim should be that all Member States are assessed as a "compliant" with regard to Special Recommendation VIII of the FATF.

Recommendation 5 - FIUs and FIU cooperation

The FIU.NET project is currently being co-financed by the Commission for a period of two years (until end 2009); funds have been earmarked for a second co-financing for an additional two years. NL is the contracting party and co-financing is provided by FI, DE, RO, UK, FR, EL and IT. Representatives of these 8 countries form the Board of Partners. The project is developing according to its goals. To-date 18 EU MS Financial Intelligence Units (FIUs) are connected to the FIU.NET and 4 are in the process of being connected. It is expected that before summer 2009, in total 22 FIUs will be connected. It was expected that in the course of 2009, 24 FIUs would have been connected. However, due to financial reasons two FIUs (LV and LT) were disconnected and therefore this goal will not be met. Only one EU MS (EE) has from the beginning indicated no interest in a connection to FIU.NET, and another EU MS (AT) has not reacted yet.

The Board of Partners have recently started a discussion on the future of the FIU.NET. The Dutch Ministry of Justice has hosted this project already for many years and it may be time to take a decision on a possibly more structural organisation. Some proposals are being considered and more detailed proposals with appropriate research on legal possibilities and obstacles will be discussed in a meeting with all heads of the EU FIU's in the second half of 2009. FIU.NET has added value in the exchange of information and now it is necessary for the Board to convince those FIUs that are not yet connected of this added value. Another important issue in this regard is to convince the responsible political authorities. Taking a decision on FIU cooperation also requires allocation of means and effective implementation. Member States are encouraged to assess their national situation and take action where necessary in order to achieve a fully functioning FIU.NET that will facilitate the exchange of information.

Work has continued within the informal FIU Platform that provide EU FIUs with a forum for discussing practical issues affecting their activities, with a view to the implementation of the 3rd AML/CTF Directive and to ensure uniform implementation. Within the Platform a Work Plan has been developed and the first 3 projects (information available and cooperation with other FIUs, feedback and data protection) have been finalised.

The Platform has continued with two other topics : international cooperation and information exchange and information in the reporting phase/content of STRs. The first project contains three parts, and the first part (sources for information exchange) and the second project are almost finalised and reports will be submitted to the Committee on the Prevention of Money Laundering and Terrorist Financing (CPMLTF) and posted on the Commission's website. A decision on how to take the recommendations further will be taken in the June 2009 meeting of the Platform.

Based on the results of the evaluation report of the Council Decision of 17 October 2000 concerning arrangements for cooperation between FIUs and replies to an additional questionnaire and the discussions in the MDG, the Commission has now started to elaborate operational guidelines for further implementation of the Council Decision. In a longer term perspective, consideration is also being given to a possible revision of the Council Decision. In this context, the Commission is also exploring to what extent other important legislative instruments, such as the Council Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, need to be taken into account. In this respect close contact with the Council Ad Hoc Group on Information Exchange is essential.

The final report of a study on feedback, mandated by the Commission will be presented to Member States and other relevant bodies by the end of April 2009. The aim of this study is to assess the vertical relations between FIUs and law enforcement authorities, AML/CTF reporting entities and supervisors.

Recommendation 6 - cooperation with the private sector

The role of the financial sector in combating terrorist financing is important and information on suspicious or unusual transactions needs to be exchanged without unnecessary obstacles between all relevant partners, nationally and internationally. Therefore, cooperation with the private sector is of key importance and its involvement in the development of new legislation and operational methods needs to be improved continuously. Feedback and cost-benefit analysis will contribute considerably to achieving this goal.

At its meeting of February 2009, the FATF agreed to the principle of including a short written statement, when presenting new policy initiatives, expressing the rationale underlying the policy and the key factors that had been taken into account in its formulation. Such a statement could include some basic criteria to determine cost-effectiveness keeping in mind the need to minimise the additional administrative burden in the standard setting process. A draft text to accommodate this will be discussed at the next FATF meeting in June 2009.

In the context of enhanced co-operation with the private sector, the initiatives taken with regard to the NPO-sector as referred to above are an important element.

Recommendation 7 - financial intelligence and investigations

Financial investigation as a law enforcement technique is vital for ensuring that law enforcement services have the appropriate knowledge, know-how and analytical and other skills to trace, analyse and ensure effective cooperation as regards criminal money and other asset trails moving across borders within the EU and beyond. This is needed both to facilitate confiscation of criminal proceeds as well as to provide additional opportunities for the investigation of serious crime, including terrorism. The Commission is working with Europol and a number of Member States on a project which consists of establishing a set of common minimum training standards for financial investigators (covering eight areas of knowledge and skill), an EU-wide accreditation system and of providing training in the Member States based on those standards. Some national centres of excellence are producing the relevant training packages. The first deliverables are expected in 2009.

Cross-border cooperation by national police forces in the fight against terrorist financing needs to be enhanced still further. Europol has indicated that more frequent and earlier use could be made of its services. The necessary instructions to police forces need to be issued at national level.

Within the MDG the preparations for the 5th round of mutual evaluations has started and the topic decided upon is financial crime and financial investigations. Future conclusions of this evaluation could provide a useful support to Member States to make financial investigations a fundamental component of all counter-terrorism investigations.

Recommendation 8 - International Cooperation

The Justice and Home Affairs Council in February 2009 decided to agree to a proposal from the Commission for a Council Decision concerning the signing, on behalf of the European Community, of Council of Europe Convention No 198 on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism. Member States which have not yet done so, are urged to ratify this Convention as well.

In the UN context, the EU has continued to promote ratification and implementation of the UN Terrorist Financing Convention. A number of countries in different parts of the world have still not ratified the Convention and others which have done so lack the means to implement it effectively. The EU should continue to target this aspect of terrorist financing in its relations with third countries. Coordination with the FATF, IMF, World Bank and UNODC should be strengthened.

This could be done in the broader context of the work which the EU has been doing to develop its already close working relationship with the UN Counter-Terrorism bodies, the UN CTED and CTITF, which has a specific working group on tackling the financing of terrorism (including the IMF, UNODC, World Bank, CTED, Interpol and the 1267 Monitoring Team). Ideas being looked at include participation by the Commission and/or Council Secretariat in **multi-agency** visits **led** by the UN CTED to help individual countries address issues with the implementation of UN CT measures. The Stability Instrument for 2009-11 contains for the first time a specific provision on Counter-Terrorism, part of which is to help the UN CTED in moving forward international implementation of the Global Counter-Terrorism Strategy.

The International Monetary Fund (IMF) will launch a donor-supported trust fund to finance technical assistance in Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT). The Multi-Donor Trust fund will start operations on May 1, 2009, and provide about US\$31 Million over five years to contribute to the strengthening of global AML/CFT regimes. A number of EU Member States are donors to this fund.

In its relations with key partners, the EU maintained its dialogue with the US, in particular regarding the implementation of the EU-US Declaration on Combating Terrorism of 26 June 2004. Terrorism financing was the subject of EU/US meetings under the French Presidency; an EU-US Troika took place on 8 December 2008 discussing the NPO-sector and promoting the UN counter-terrorism sanctions regime. On 20 November 2008 the EU-US Troika on terrorist financing took place in Washington. Views and ways for cooperation were exchanged on cash couriers, wire transfers, the NPO-sector and the judgement in the Kadi/al-Bakaraat case. Furthermore, policy guidance for the next EU-US terrorist financing Workshop for Practitioners was discussed. The previous workshop was organised under Slovenian Presidency (21-22 May 2008) and the next - the sixth - workshop will take place under the Czech Presidency on 27 - 28 May 2009. Besides the regular items on the agenda, this workshop will presumably dedicate sufficient time to the implementation of FATF Special Recommendation VIII - NPO-sector - and will touch upon new payment methods, financial investigations and threat assessments.

Regular workshops on terrorist financing take place with the Gulf Cooperation Council (GCC) and the 6th EU - GCC Workshop will take place on 4-5 May 2009 in Riyadh. Proposed topics for discussion are *inter alia* non-profit organisations, financial sanctions and the application of customer due diligence procedures in hawala.

Besides EU activities, EU Member States also take initiatives for their own regions to inform those countries of the international and European standards of implementing counter-terrorism sanctions regimes in the form of freezing of funds and economic resources. A seminar on this topic was organised by Romania and took place on 1 and 2 April 2009 in Bucharest.

At the initiative of the French Presidency a matrix has been established, maintained by the Council Secretariat, to help Member States inform each other of projects they are undertaking to support third countries in countering terrorism, including in the areas of money laundering and terrorist financing.
