



Brussels, 30 July 2014  
(OR. en)

12243/14

LIMITE

JAI 624  
ECOFIN 766  
EF 207  
RELEX 645  
ENFOPOL 236  
COTER 60

## NOTE

---

From:	EU Counter-Terrorism Coordinator
To:	Permanent Representatives Committee/Council
No. prev. doc.:	15062/11 JAI 702 ECOFIN 656 EF 132 RELEX 991, ENFOPOL 336 COTER 78
Subject:	Report on the implementation of the revised Strategy on Terrorist Financing

---

## Introduction

The Revised Strategy on Terrorist Financing, which was endorsed by the Council on 24/25 July 2008<sup>1</sup>, tasked the Counter-Terrorism Coordinator (CTC), in cooperation with the Commission, with ensuring the follow-up of the revised strategy.

This report, drawn up in cooperation with the Commission, therefore outlines progress in achieving the goals mentioned in the revised strategy. The previous report was presented in a joint meeting of the Terrorism Working Party (TWP) and COTER on 20 October 2011 and to the Council (3135<sup>th</sup> meeting) on 13 and 14 December 2011<sup>2</sup>.

---

<sup>1</sup> 11778/1/08 REV 1

<sup>2</sup> 15062/11

The fight against terrorist financing was highlighted as a key area in the fight against terrorism in the European Union Counter-Terrorism Strategy adopted by the European Council on 15 December 2005<sup>3</sup>. It also forms an integral part of the EU Action Plan on combating terrorism agreed by COREPER on 13 February 2006<sup>4</sup> where it features as part of the "Pursue" strand.

Overall it is important to closely assess the effectiveness of the different measures taken to counter the financing of terrorism. It can be concluded that some of the steps taken have resulted in considerably reducing the opportunities for terrorism being financed through known channels. The continuous efforts in the Member States, within the EU bodies, the collaboration with international partners and in international fora are striving to cover the known problem areas. However, in an ever-changing world with many volatile and active crisis spots, situations either accompanied or fuelled by terrorist activity will continue to develop. One of the strategies in contributing to deter or disrupt terrorist activities is to deprive the instigators from their financial means.

This report will continue to discuss in more detail the activities undertaken and achievements made under the recommendations of the Revised Strategy on Terrorist Financing. The report gives an overview focussing on the period ranging from the publication of the last report in 2011 to July 2014.

## **Situational and threat analysis - Recommendation 2**

*This recommendation aims at giving up to date information and analyses on changing threats, trends and methods in order to be able to align and target EU efforts and actions accordingly.*

The EU Intelligence Analysis Centre (INTCEN) has continued to provide the Council and the Commission with regular analyses of developments in relation to terrorist financing threats. Furthermore, INTCEN and Europol continue to cooperate, and Europol contributes to requests from INTCEN on a regular basis.

---

<sup>3</sup> 14469/4/05 REV 4

<sup>4</sup> 5771/1/06 REV 1

As Europol has clearly emphasized in its EU Terrorism Situation and Trend Report (TE-SAT) 2014, terrorists have developed a pragmatic approach to fundraising. This is reflected in the myriad of methods employed, including criminal activities of various kinds and legitimate (e.g. the sale of publications and paraphernalia) or ‘semi-legal’ activities (e.g. ‘taxes’ collected from specific communities or the misuse of charitable donations) by terrorist groups across the spectrum. Tried and tested methodologies that provide profitable returns, such as social benefit fraud, credit card misuse, loan applications and defaults, continue to be exploited by terrorists. Fundraising through extortion, especially within immigrant communities, also persists.

Kidnapping for ransom outside the EU remains a significantly effective tactic for some terrorist groups to raise funds. UN Member States are required, under UN Security Council resolution 1904 (2009), to prevent ransom payments, directly or indirectly, to terrorists under the UN al-Qaeda sanctions regime. In January 2014 another UN Security Council resolution 2133 (2014) was adopted calling to ban such payments to all terrorist entities. In addition, the Foreign Affairs Council of 23 June 2014 has for the first time adopted Council Conclusions on Kidnapping for Ransom<sup>5</sup>, which affirm EU commitment to tackling this issue in line with UN Security Council resolution 2133.

Europol also reports in its TE-SAT 2014 that funds are collected under the cover of donations or charitable donations as well as through a form of illegal taxation. Several investigations in EU Member States have concerned the misuse of charities and non-profit organisations in order to collect funds for terrorist entities. In most cases, calls for donations were published on Internet sites and forums. In one counter-terrorism investigation, it was noted that supposed humanitarian aid activities were promoted via Facebook. Furthermore, some non-profit organisations are also suspected of serving as fronts for disseminating terrorist propaganda and financing the recruitment of young persons for the conflict in Syria.

Raised funds are moved by various means, including money remittance companies, hawala traders, and/or the use of anonymous (‘bearer’) or preloaded value cards. The sale of prepaid phone cards has also been observed in the financing of terrorist entities. A standard method for money movements in support of terrorism involves the use of cash couriers.

---

<sup>5</sup> 11234/14

In its TE-SAT 2014 Europol upheld the position that although the goals of terrorist and organised crime groups (OCGs) were different, pragmatic and/or opportunistic contacts between organised crime groups and terrorist organisations have been observed on occasion. Cooperation may take the form of pragmatic, short- or long-term relationships with the aim of providing not only funding, but all kinds of goods or services that terrorist groups cannot procure themselves or that cannot be obtained legally. Such services may include the supply of forged identity documents, weapons, transportation and contacts. Although bonds between criminal and terrorist groups constitute a potential security threat, Europol reports that for various reasons they are not currently considered to be a significant phenomenon in the EU.

### **Monitoring, legislation and new developments - Recommendations 1 and 3**

*These recommendations aim to identify new developments and monitor the implementation of a series of legal instruments relevant for the fight against terrorist financing with a view to identifying possible shortcomings and scope for improvement and establishing where appropriate fora to exchange best practices.*

Terrorism financing often uses the same or similar methods as are being used for committing other types of (financial) crimes. Therefore legislation that was designed primarily to deal with for example anti-money laundering or asset recovery equally applies when dealing with terrorism financing.

## *The 4<sup>th</sup> Anti-Money Laundering and Terrorist Financing Directive*

In 2012, the Commission contributed to the update of international standards<sup>6</sup> set out by the Financial Action Task Force (FATF). The Commission issued a report on the application of the 3<sup>rd</sup> Anti-Money Laundering and Terrorist Financing Directive, concluding that the existing framework worked relatively well, and that no fundamental shortcomings had been identified. However, in order to keep up with relevant international developments, the Directive should be revised in order to update it in line with the revised FATF Recommendations.<sup>7</sup> Moreover, as a founding member of the FATF, the EU naturally intended to integrate promptly the new recommendations of the organisation into EU law.

The Commission issued two important legislative proposals in February 2013, currently in negotiations in the European Parliament and in the Council.<sup>8</sup>

A major instrument consists in an update of the last preventive directive (3<sup>rd</sup> AML/CTF Directive)<sup>9</sup>, also called 4<sup>th</sup> AML/CTF Directive<sup>10</sup>, which reinforces the risk-based component in the anti money-laundering approach. In practice, in the past certain entities (mainly the financial sector) had the obligation to report transactions suspected of being related to money laundering or terrorist financing on the basis of pre-established and fixed criteria. In the future, on the basis of the 4<sup>th</sup> AML/CTF Directive, certain entities will have to adapt their diligence to the actual risks, based among other things on national risk assessments as well as supra-national risk assessments. The directive also reinforces transparency of the beneficial owner of a company or a trust and vigilance towards Politically Exposed Persons (PEPs); in addition, it strengthens administrative sanctions and ensures more convergence of the sanctions across the EU.

---

<sup>6</sup> The FATF new recommendations (February 2012): <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>

<sup>7</sup> See Report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, of 4 April 2012, COM(2012) 168 final.

<sup>8</sup> COM (2013) 45/3 and COM (2013) 44/2

<sup>9</sup> Directive 2005/60/EC, OJ L 309, 25.11.2005, p. 15

<sup>10</sup> COM(2013)45 final: proposal of directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

The second instrument proposed in 2013 updates the regulation on information accompanying transfer of funds, providing for better traceability of transfers<sup>11</sup>.

The proposed amendment aligns EU law to the revised FATF standards (in particular Recommendation 16 and the requirement to include information about the beneficiary in wire transfers, as well as an explicit obligation to take freezing action with respect to UN Resolutions) and ensures that basic information on the payer and payee of transfers of funds is immediately available to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating or prosecuting terrorists or other criminals and to assist them in tracing the assets of terrorists.

### *Cash Control Regulation*

The 3<sup>rd</sup> AML/CTF Directive is complemented by Regulation (EC) No 1889/2005 on controls of cash entering or leaving the EU (Cash Control Regulation)<sup>12</sup>. The Commission and the Member States are monitoring the application of this regulation in the Cash Control Working Group. Among other things the successful EU awareness raising campaigns on the obligation to declare cash was produced by this group. The EU has been recognised as a supra-national authority in the context of FATF 'Recommendation 32 on cash controls at the borders'.

The Commission continues to develop and promote the use of the available appropriate data exchange systems by Member States such as: the Customs Files Identification Database (FIDE) and the Common Customs Risk Management System (CRMS) – Risk Information Form (RIF) with a view to being fully in compliance with the essential criteria on information exchange and also on risk analysis as mentioned in FATF Recommendation 32. The Commission has ensured that access to FIDE is extended to the Financial Intelligence Units (FIU) through a secure internet connection. Moreover, the model for the Customs Information System (CIS) for gathering data on cash detained, seized or confiscated is ready and is promoted.

---

<sup>11</sup> COM(2013)44 final: Proposal for regulation on information accompanying transfers of funds

<sup>12</sup> OJ L 309, 25.11.2005, p. 9

The Commission and Member States ensure continuous analysis/development of the EU and Member States' cash controls legal framework linked to and in support of the analysis/development of the FATF framework on recommendation 32 on cash couriers.

#### *Asset Recovery*

Council Decision 2007/845/JHA<sup>13</sup> was adopted in December 2007. It requires Member States to set up or designate National Asset Recovery Offices (AROs) which would promote, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime, including terrorism.

The importance of enhanced cooperation between AROs was reiterated in the Stockholm Programme that calls upon Member States and the Commission to facilitate the exchange of best practice in prevention and law enforcement within the framework of the Asset Recovery Office Network.

The Commission organised eight meetings of this informal Platform (respectively on 29-30 January, 11-12 May and 9-10 November 2009 and on 25-26 March and 3-4 May 2010 and 23-24 April 2012, 18-19 June and 4-5 December 2013), and five High Level Conferences on Asset Recovery Offices (6-7 March 2008, 6-7 December 2010, 7-8 March, 24-25 October 2011 and 22-24 October 2012) to discuss issues related to the identification and tracing of criminal assets and to Member States' practices on confiscation.

In the period between the previous report in 2011 and June 2014, the Commission organised three meetings of the informal AROs Platform (23-24 April 2012, 18-19 June and 4-5 December 2013), and one High Level Conferences on Asset Recovery Offices (22-24 October 2012) to discuss issues related to the identification and tracing of criminal assets and to Member States' practices on confiscation.

---

<sup>13</sup> OJ L 332, 18.12.2007, p. 103

While there are still differences in the AROs' structure, powers and access to information, the cross-border requests for asset tracing have substantially increased. For example, the requests sent by these Offices through the Europol SIENA system have increased from 475 in 2012 to over 2000 last year. The response times to such requests are also increasingly faster. As part of the efforts made at EU level to better trace and confiscate the proceeds of crime, a new Directive on confiscation has been adopted in March 2014<sup>14</sup>. It will give more far-reaching powers to the police and judicial authorities, while fully respecting fundamental rights. For example, the Directive strengthens the existing provisions on extended confiscation and third-party confiscation and allows confiscation if the suspect is permanently ill or has fled. It ensures that competent authorities can temporarily freeze assets that risk disappearing if no action is taken, subject to confirmation by a court. It also allows financial investigations on a person's assets to be continued after a criminal conviction, where confiscation orders could not be fully executed.

#### *Payment services*

Directive 2007/64/EC<sup>15</sup> on payment services in the internal market (*"the Payment Services Directive, PSD"*) was to be transposed by 1 November 2009. All Member States have now transposed the Directive.

The Commission services have supported Member States in their transposition process through transposition workshops ("the PSD Transposition Group") and other activities to ensure the transposition of the PSD. The oral information given during these workshops and the written information received afterwards have helped the Commission services to update the information publicly available, including a list of questions and answers providing practical guidelines for uniform interpretation of most of the PSD provisions, on the Commission's website<sup>16</sup>.

---

<sup>14</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127, 29.4.2014, p. 39

<sup>15</sup> OJ L 319, 5.12.2007, p.1

<sup>16</sup> [http://ec.europa.eu/internal\\_market/payments/framework/transposition\\_en.htm](http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm)



The legal assessment of the conformity of domestic law of Member States implementing the PSD has been done in 2011. In line with Article 87 PSD the Commission has reviewed the impact and the functioning of the PSD in 2012. As a summary, it can be said that overall the results of implementation are significant in terms of the promotion at Community level of a modern and coherent legal framework for payment services, taking due account of consumers' rights and other important interests involved, such as an effective stance against money laundering and terrorist financing. At the same time, feedback received suggests some regulatory adjustments to the PSD so that it can better serve the needs of an effective European payments market and fully contribute to a payment environment, which nurtures competition, innovation and security. This also has become clear from a public consultation on a Green Paper on card, internet and mobile payments and a public hearing which was carried out in 2012.

On 24 July 2013, the Commission therefore adopted a legislative package<sup>17</sup>, comprising of a proposal for a revised Directive on Payment Services (PSD2) and a proposal for a Regulation for interchange fees for card based payments. The package constitutes an evolution of the original payments framework. Major innovations are the inclusion of “third party service providers” (TPPs) who initiate payments for payers in the context of online banking. Furthermore, the PSD2 steps up the security requirements for online payment transactions to better protect consumers that shop online. It also addresses the issues raised with regard to the cooperation between Member States in the supervision and monitoring of "passporting" payment services to another country in the context of the free provision of services.

The proposal also provides for a better cooperation between Member States in the context of the PSD and AML requirements regarding supervision and reporting, which has been discussed by the European financial supervisors' Joint Committee's Anti-Money Laundering Task Force. This issue has also been discussed by the Committee on the Prevention of Money Laundering and Terrorist Financing (CPMLTF), by the EU FIU Platform and in the Payment Committee to clarify a certain number of issues with respect to the supervision of and reporting by payment institutions in cross-border situations (branches and agents).

---

<sup>17</sup> PSD2 Directive - 12990/13 + ADD 1-4, Regulation for interchange fees for card-based payment transactions 12991/1/13 REV 1 + ADD 1-4

It is emphasised that Member States are encouraged to implement and apply the Directive in such a way that control over providers of money remittance services is strengthened and potential terrorist financiers are deterred from using them.

Over the course of 2012-2013, the FATF Working Group on Terrorist Financing and Money Laundering (WGTM) carried forward work on a guidance paper for a risk-based approach to prepaid cards, mobile payments and internet-based payment services, which was adopted by the plenary in June 2013.

### *Electronic money*

The new Electronic Money Directive 2009/110/EC<sup>18</sup> ("the new EMD") entered into force on 30 October 2009, and has replaced as from that date the previous Directive adopted in 2000. The new EMD should have been transposed into domestic law of Member States by 30 April 2011, but several Member States only transposed the Directive in the course of 2012 and the last two Member States transposed in 2013.

The new EMD clarifies its scope and provides clear definitions and a more appropriate prudential framework, while ensuring a level playing field between all providers and a high level of consumer protection. Based on the experience with the transposition of the PSD, an EMD Transposition Group (EMDTG) had also been set up and met several times until the date of implementation.

Due to the late transposition of the new EMD by Member States, the legal assessment of the conformity of domestic law of Member States implementing the EMD could only be completed in May 2013. The review of the impact of the new EMD is planned to be completed in autumn 2014.

---

<sup>18</sup> OJ L 267, 10.10.2009, p.7

Similarly to the PSD, work on the interaction between the EMD and AML requirements regarding supervision and reporting has been conducted by the European financial supervisors' Joint Committee's Anti-Money Laundering Committee (AMLC) concerning the allocation of competences in some specific situations of cross-border provision of payment services (e.g. e-money services provided through agents and distributors). This issue has also been discussed by the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) and in the Payments Committee to clarify a certain number of issues with respect to the supervision of and reporting by payment institutions in cross-border situations (branches, agents and distributors). The AMLC published its report in December 2012<sup>19</sup>.

#### **Enhancing existing actions - Recommendation 4**

*This recommendation aims to ensure the effectiveness and effective application of existing measures in particular with regards the targeted sanctions regime.*

#### **TARGETED SANCTIONS ("UN LIST")**

*Council Regulation (EC) No 881/2002 and Council Regulation (EU) No 1286/2009*

In accordance with a number of UNSC Resolutions, the members of the UN must adopt certain restrictive measures against persons or entities associated with the Al-Qaeda network. In order to implement those Resolutions within the EU, the Council adopted Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network under which more than 300 persons, groups or entities, are subjected to the freezing of funds in the European Union.

---

<sup>19</sup> <https://www.eba.europa.eu/documents/10180/16148/JC-2012-086--E-Money-Report---December-2012.pdf>

Following the judgment of the Court of Justice of the European Communities of 3 September 2008 in Joined Cases C-402/05 P and C-415/05 P Kadi & Al Barakaat v. Council and Commission, the Commission made a proposal for an amendment of Regulation (EC) No 881/2002 [COM(2009)187] on 22 April 2009 and the Council adopted was amended by Council Regulation (EU) No 1286/2009 on 22 December 2009. The revised procedure provides that the listed person, entity, body or group should be provided with the reasons for listing as notified by the UN Sanctions Committee, so as to give the listed person, entity, body or group an opportunity to express his, her or its views on those reasons while at the same time allowing for the funds and economic resources of persons, entities, bodies and groups included in the Al-Qaida and Taliban list drawn up by the UN to be frozen ‘without delay’ as provided for by the relevant UN Security Council Resolutions.

On 30 September 2010, the General Court handed down its judgment in Case T-85/09, which concerns Mr Kadi's action against Commission Regulation (EC) No 1190/2008 which re-listed Mr Kadi after the judgment of 3 September 2008. By its judgment of 18 July 2013 in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, the Court of Justice dismissed the appeals brought by the Commission, the Council and the United Kingdom against the judgment of the General Court. The Court of Justice confirmed that there is no immunity from judicial review for EU measures implementing UN Security Council Resolutions and consolidated the case-law on the extent of the rights of the defence and the right to effective judicial protection of persons subject to EU restrictive measures. The Court of Justice held in particular that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons that are deemed sufficient to support that decision, are substantiated and that it is the task of the competent EU authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded.<sup>20</sup> In this case the Commission was unable to do so as it had not received any other information than the statement of reasons provided by the UNSC Sanctions Committee.

---

<sup>20</sup> Judgement of 18 July 2014 in joined cases C-584/10 P, C-593/10 P and C-595/10 P, paragraphs 119 and 121.

The Court concluded that none of the allegations presented against Mr Kadi in the statement of reasons were such as to justify the adoption, at EU level, of restrictive measures against him, either because the statement of reasons was insufficient, or because information or evidence which might have substantiated the reasons concerned, were lacking. The UNSC Sanctions Committee had already removed Mr Kadi from the UN Al Qaida list in October 2012.<sup>21</sup> At the moment of writing the EU is working to address the issues identified in the case on Mr Kadi, such as sufficient access to information that substantiates the statement of reasons.<sup>22</sup>

In its judgments of 28 May 2013 (in Case C-239/12 P, *Abdulrahim*) and 6 June 2013 (in Case C-183/12 P, *Ayadi*) the Court of Justice ruled that, even after the delisting of the applicants, they continued to have an interest in the proceedings for the purpose of seeking annulment of the contested listings and of securing their rehabilitation and, thus, some form of reparation of the non-material harm suffered by them. The Court of Justice therefore set aside the orders of the General Court and referred the cases back to the General Court for a ruling on the applicants' actions for annulment (T-527/09 RENV and T-127/09 RENV). In February 2014, a hearing took place in Case T-127/09 RENV.

By judgment of 21 March 2014, the General Court ruled in Case T-306/10 that the Commission had failed to fulfil its obligations under the TFEU and Regulation (EC) No 881/2002, by not remedying the procedural deficiencies and substantive irregularities affecting the freezing of the funds of Mr Yusef. Other cases brought by listed persons are pending before the Union courts. In the most recent case (T-248/13), brought by Mr. Al-Ghabra, the Council applied for leave to intervene in support of the Commission.

---

<sup>21</sup> Commission Implementing Regulation (EU) No 933/2012 (OJ L 278, 12.10.2012, p.11).

<sup>22</sup> A draft for the new rules of procedure for the General Court has been submitted for approval of the Council in March 2014 - 7795/14.

The adoption of Security Council Resolution 1904 (2009) on 17 December 2009 has introduced significant improvements to the sanctions regime against Al-Qaida and the Taliban and associated individuals and entities, including new elements relating to the procedures for the listing and delisting of individuals and entities, most notably the introduction of an independent and impartial ombudsperson to look into requests for delisting of such individuals and entities. The EU declaration on the adoption of Security Council Resolution 1904 (2009) welcomed it as a significant step forward in the continued efforts of the Security Council to ensure that fair and clear procedures exist for placing individuals and entities on the list created pursuant to Security Council Resolution 1267 (1999) and for removing them as only procedural guarantees for the individual and entities involved will strengthen the effectiveness and contribute to the credibility of this and other sanctions regimes.

On 17 June 2011, the Security Council of the United Nations adopted Resolution 1988 (2011) and Resolution 1989 (2011) which divide the sanctions regime against Al-Qaida and the Taliban into two separate regimes. Moreover, the Ombudsperson's mandate has been extended, and the rules governing the office have been further improved and elaborated in Security Council Resolutions 1989 (2011) and 2083 (2012).

On 17 June 2014 the UN Security Council extended the sanctions regime against Al Qaida and the Ombudsperson's mandate (Resolution 2161 (2014)) and the sanctions regime against the Taliban (Resolution 2160 (2014)).

The EU Counter Terrorism Coordinator has also explicitly referred to the need to use existing administrative tools at our disposal to tackle the specific problem of foreign fighters. In the most recent note on the problem of foreign fighters and returnees, which was sent to the Council in June 2014<sup>23</sup>, the CTC encourages Member States to make effective use of the UN sanctions regime established under UNSR 1267 and subsequent resolutions and to push for UN listing, next to national listing, of individuals who facilitate and organise travel of foreign fighters.

---

<sup>23</sup> 9280/14

## TARGETED SANCTIONS ("AUTONOMOUS LIST")

*Council Common Position 2001/931/CFSP and Council Regulation (EC) No 2580/2001*

Pursuant to UNSC Resolution 1373(2001) adopted on 21 September 2001, the Council adopted, on 27 December 2001, Common Position n°2001/931/CFSP *on the application of specific measures to combat terrorism* and Regulation (EC) No 2580/2001 *on specific restrictive measures directed against certain persons and entities with a view to combating terrorism*. Terrorists (individuals and entities) are listed by the Council on the basis of precise information or material in the relevant file which indicate that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned. Regulation (EC) No 2580/2001 provides for the freezing of all funds, other financial assets and economic resources belonging to, owned or held, by a natural or legal person, group or entity, which are considered by the Council, within the meaning of Common Position n°2001/931/CFSP, to be involved in terrorist acts.

The lists of persons, groups or entities subjected to the freezing of their assets pursuant to Common Position n°2001/931/CFSP are reviewed at least once every six months. On 22 July 2014, by means of Decision 11080/14/CFSP and Implementing Regulation (EU) 11082/14, the Council renewed the measures on the freezing of assets for 10 individuals and 25 groups and entities and removed one individual from the list.

In July 2014, 4 cases lodged by 3 entities, which are challenging Council acts listing them, are pending before the EU General Court. In three of these cases, brought by LTTE (T-508/11) and Hamas (T-400/10), the hearings before the General Court took place in February 2014. The fourth case (T-316/14), brought by PKK, was notified to the Council in June 2014. Furthermore, a request for a preliminary ruling on the interpretation and validity of Common Position 2001/931/CFSP and Regulation (EC) No 2580/2001 and of several successive Council acts which designated LTTE is pending before the Court of Justice in Case C-158/14.

## **IMPLICATIONS OF THE LISBON TREATY**

Before the adoption of the Lisbon Treaty there were, at EU level, no measures in place that would allow for the freezing of assets and funds of persons, groups and entities involved in terrorist acts where there is no link to a third country, while this possibility exists for individuals, groups and entities involved in terrorist acts in third countries.

This changed with the Lisbon Treaty, Article 75 of TFEU allowing for the establishment of “internal” administrative freezing measures against persons, groups and entities without links to third countries.

The Commission assessed the options for an EU system and in particular how significantly it would contribute to the overall efforts in preventing and combatting terrorist financing in the EU. In its assessment the Commission took mainly into account how terrorism financing is pursued in reality, the volume of transactions concerned, the fact that a large variety of means used to that end that would remain uncovered and the challenges that such a system would create in terms of safeguards and in terms of coexistence with the current “external” system. This approach led to the Commission's decision not to put forward a proposal for this framework at this time.

### **Financial Intelligence Units (FIUs) and FIU cooperation - Recommendation 5**

*This recommendation aims to facilitate access to and exchange of information with and between national FIUs and other competent bodies, stressing at the same time the importance of appropriate feedback to financial institutions.*

Improving the possibilities of cooperation between Member States' Financial Intelligence Units (FIUs), to which suspicious transactions are reported, continues to be a crucial factor in fighting money laundering and terrorist financing. Therefore, the EU supports their enhanced cooperation by stimulating the FIU platform and funding the FIU.Net project.



### *FIU.net*

FIU.Net is a decentralised network allowing for exchange of information among the Member States FIUs, to which all the Member States FIUs are connected. With the funding of the EU, this project has developed an advanced IT technology (MA3TCH) which allows for more automated and systematic exchanges of information between the EU FIUs.

FIU.Net is hosted in Europol premises and should be embedded into the European law enforcement agency in the near future. The two parties signed a Common Understanding which entered into force on the 3<sup>rd</sup> October 2013 and are currently in a technical transition period towards embedment by the end of 2015. This process should allow for enhanced cross-border law enforcement and judicial cooperation within the EU on money laundering and terrorist financing cases.

### *FIU Platform*

The FIU Platform is an informal get-together of Member States FIU representatives and COM services' representatives which gathers regularly in order to enhance cooperation among the FIUs as well as to reflect on their role in the European anti-money laundering /terrorist financing system. Recently, the dynamic of the group has increased in such a way that it currently gathers regularly 3 to 4 times a year, and as often as necessary on an ad hoc basis. In the near future, the Commission intends to register this informal platform as an official expert group, its main objective remaining to provide advice and expertise to the Commission on cooperation among the Member States FIUs as well as on FIU's related operational issues. The group assists the Commission in the preparation of legislation or in policy definition as well as in the coordination with Member States and allow for exchange of views on money laundering and terrorist financing related issues.

## **Cooperation with the private sector - Recommendation 6**

*This recommendation aims to enhance dialogue and cooperation with the private sector both at EU and national level.*

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 continues to be of key importance and its involvement in the development of new legislation and operational methods needs to be continuously ensured. During preparations for the Commission's proposal to amend the 3rd Anti-Money Laundering Directive over the course of 2011-2012, the Commission organised a series of consultations with the private sector at sectoral level. The feedback was incorporated into the Commission's Impact Assessment accompanying its proposal.

Since the adoption of the Commission's proposal, there have been continued contacts with private sector representatives, principally on a bilateral basis. In March 2014, the Commission hosted a one-day international seminar on data protection and AML, organised by the Financial Action Task Force, and attended by public sector AML and data protection representatives together with and AML/CTF private sector experts. The purpose was to exchange views, map commonalities, including on existing good practices, and to foster a dialogue between all relevant experts at national, supranational and international level.

## **Financial intelligence and investigations - Recommendation 7**

*This recommendation aims to enhance the collection and sharing of financial intelligence and information on investigations.*

Financial investigations are 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 and to provide additional opportunities for the investigation of serious crime, including terrorism.

## *EU-US TFTP Agreement*

On 1 August 2010 the EU-US Agreement on the Terrorist Finance Tracking Programme entered into force. The Agreement allows the transfer to the US Treasury - under strict data protection conditions - of certain categories of data concerning bank operations stored in the territory of the European Union by a designated provider of financial payment messaging services. Each US request has to be verified by Europol as to its necessity for fighting terrorism. The data transferred to the US Treasury can be accessed only for counter-terrorism purposes. Extraction from the TFTP database has to be justified by evidence of a terrorist nexus. Independent overseers, two of whom are appointed by the EU, have direct on-the-spot oversight of the data searches within the TFTP database and monitor compliance with privacy provisions under the Agreement. EU citizens have access to administrative and judicial redress. Following a first joint review in February 2011 and the second joint review in October 2012<sup>24</sup>, a third review was conducted in April 2014, the results of which will be published in due course. On 27 November 2013 the Commission adopted the Communication on the Joint Report from the Commission and the U.S. Treasury Department regarding the value of TFTP Provided Data pursuant to Article 6 (6) of the Agreement<sup>25</sup>.

Throughout 2014 Europol's designated TFTP Single point of contact (SPOC), continues to provide proactive support for EU Member States in their counter-terrorism investigations and prosecutions. Europol's TFTP Unit since the inception of the TFTP in August 2010 has to date 24th June 2014, received approximately 5226 intelligence leads in relation to Art 9 and Art 10 TFTP requests. These intelligence leads have been disseminated to EU Member States and Third States.

The TFTP will reach its four year anniversary on 1 August 2014; the program has thus far generated 209 Art 10 TFTP requests generated by Member States, Europol or Eurojust.

During this evolving TFTP process, on-going TFTP development has occurred with regular training delivered by the designated Provider to the TFTP SPOC at Europol. This training ensures that Europol's TFTP unit remains fully aware of new developments regarding message types and categories researched and subject to TFTP scrutiny.

---

<sup>24</sup> Cf. SWD(2012) 454 final

<sup>25</sup> Cf. COM(2013) 844 final and attached SEC(2013) 630 final

With the enlargement of the EU community TFTP awareness and training has been delivered to Croatia in December 2013, and a TFTP awareness session was requested and delivered to Spanish authorities in Madrid in June 2014.

In order to continually support, refine and promote the usage of TFTP by Member States counter-terrorism competent authorities a two day TFTP practitioners meeting was held at Europol on 17th and 18th of June 2014. This was the second such TFTP practitioners event, the previous meeting being held in 2012. This TFTP practitioners meeting also included a presentation from the designated provider and a presentation and input from two US Treasury colleagues.

This is the first time that US Treasury officials have attended a Europol/EU Member States TFTP meeting and their presence and engagement proved of immense value in facilitating direct, concise and frank answers to questions posed by EU Member States TFTP practitioners. The US Treasury's presence at the TFTP meeting ensured that the commitment, cooperation and transparency endorsed by all parties connected to the TFTP agreement were reinforced. All EU Member States present at the meeting expressed their thanks for the dialogue and best practice examples and operational case studies examined during the meeting. EU Member States TFTP practitioners highlighted and discussed at length their usage of the TFTP and its usage regarding the Syria conflict and other conflict zones. Europol's TFTP unit highlighted that currently the Syrian conflict with its recognised and evidenced "blowback" for EU communities is the current number one use of TFTP related enquiries in support of EU Member States counter-terrorism investigations.

The TFTP plays a vital role in the support of EU and third states counter-terrorism investigations. The promotion and uptake of the program is continually promoted by Europol's TFTP unit and is for the first time is currently reinforced by a TFTP case example referenced within Europol's 2014 Terrorism Situation and Trend Report (TE-SAT).

### *European Terrorist Finance Tracking System (EU TFTS)*

Responding to the call from the European Parliament and the Council of the European Union at the time of the conclusion of the EU-US TFTP Agreement, the Commission has assessed the main options for establishing an EU TFTS<sup>26</sup>. The options have been evaluated, in particular, in terms of their necessity, proportionality, impact on fundamental rights and cost-effectiveness. In its Communication of 27 November 2013 the Commission concluded that the case to present a proposal was not clearly demonstrated and invited the views of the European Parliament and the Council on its assessment<sup>27</sup>.

### *Cash courier intervention operations*

As to cash courier intervention operations, in 2012, under the Danish Presidency, Europol supported Joint Customs and Police Operation (JCPO) ATHENA III from 16 to 22 October. A Joint Customs and Police Operation with an extended investigative element at both national and EU level. The operation included criminal investigations in cases where EU and Member States' law on declaration and transportation of large amounts of cash had been violated Europol conducted a pre-operational risk analysis and contributed to a thorough analysis of the results of the operation at the EU level, as well as deploying the mobile office during the operational phase.

Meanwhile, Joint Customs Operation (JCO) ATHENA IV, which builds upon experiences from previous operations, was carried out from 16 to 22 June 2014. JCO ATHENA IV also focussed on cash couriership and was led by the Latvian Authorities and OLAF. Europol assisted in cross checking data in a Virtual Operational Centre, establishing several hits with criminal data and other sources in total over 300 records were checked resulting in 8 positive matches. In addition, Europol made an on-site visit to Frankfurt airport during the operation to be present with operational teams on the ground.

---

<sup>26</sup> Report - 17064/13 + ADD 1

<sup>27</sup> COM communication - 17063/13 + ADD 1 + ADD 2

### *Fifth Round of mutual evaluations: financial crime and financial investigations*

In 2012, a report<sup>28</sup> was presented to Council with the results of the fifth round of mutual evaluations (organised by the Working Party on General Matters including Evaluation - GENVAL) which reviewed the national systems of the Member States in relation to "financial crime and financial investigations". One of the key recommendations was that "financial investigations should be carried out in all serious and organised crime cases (which include terrorism)" as they are "an important tool to detect money laundering, terrorist financing and other serious crimes" and "can also contribute to a jurisdiction's national risk assessment as it provides knowledge on crime patterns [and] expose gaps in anti-money laundering/combating financing of terrorism compliance". Overall, the working principles and legal framework of the systems appeared to be robust and functional and the various actors know their roles and responsibilities. The key challenges that were identified were 1) case management, 2) complicated and different legal rules and traditions, nationally and at the EU level, coupled with a sometimes weak implementation, 3) evidence and the issue of electronic data, and 4) time and resources.

In general, it was found that "there is a need for enhancing a common approach to the fight against financial crime and to financial investigations; to promote cooperation between all relevant actors, including non-law enforcement agencies, and - fundamentally - to make all relevant agencies and bodies talk to one another."

As a follow-up to this report, a Manual of Best Practices was drawn up under the auspices of COSI, setting out a collection of good examples of well-developed systems in the Member States to fight financial crime<sup>29</sup>.

### **International cooperation - Recommendation 8**

*This recommendation aims to ensure the full implementation of international conventions and obligations as well as close cooperation with the FATF. The recommendation also aims to highlight and support capacity building in key third countries and the organisation of a continuous dialogue with the US and the Gulf Cooperation Council (GCC).*

---

<sup>28</sup> 12657/1/12 REV 1

<sup>29</sup> 9741/13

## *Financial Action Task Force*

With regard to the achievements that have been made at international level the revision of the standards of the Financial Action Task Force (FATF), adopted in February 2012, as well as the revision of the evaluation methodology in February 2013 should be particularly highlighted.

The Special Recommendations (SR) dealing with terrorist financing have been incorporated into the FATF standards and the terrorist financing offence, the former SR II, has been rephrased by moving existing text to the main wording of the Recommendation. By this more emphasis is given to the fact that countries are required to criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Furthermore, countries are now also compelled to ensure that such offences are designated as money laundering predicate offences.

The new methodology relies not only on an assessment of the technical compliance but also of whether and how the AML/CTF system is effective and producing the expected results.

In 2014, the third round of evaluations (initiated in 2004) was concluded having contributed to the establishment of a more comprehensive legal framework combating money laundering and terrorist financing as well as enhanced powers and capabilities of financial supervisory authorities and financial intelligence units.

In 2014, the FATF launched the fourth round of evaluations based on the revised standards as well as a revised evaluation methodology, with Spain and Belgium the first EU Member States to be evaluated (reports are expected for October 2014 and February 2015 respectively), to be followed by Italy in 2015.

Within the FATF financial sanctions experts met in June 2014 to discuss inter alia ways to improve collaboration, coordination and sharing of information between the relevant bodies and ways to address deficiencies in the implementation of targeted financial sanctions. At the same time the FATF adopted international best practices on targeted sanctions related to terrorism and terrorist financing (Recommendation 6) to help countries in their implementation of sanctions in accordance with United Nations Council resolutions.

The work conducted in the FATF (of which 12 Member States and the EU Commission are a member) and, in the case of those EU Member States that are not FATF members, the FATF-style regional bodies (the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL) deserves the highest credit. Their efforts and their all-embracing approach are covering and addressing many aspects and angles of this continuing threat.

In the reporting covered by this report the FATF has issued a number of papers, typology reports and best practices that have proved useful in furthering the work to counter the financing of terrorism. Among these documents are the best practices on combating the abuse of non-profit organisations (June 2013), a report on terrorist financing in West Africa (November 2013), a report on the role of hawala and other similar services providers in money laundering and terrorist financing (December 2013), a typology report on the risk or terrorist financing abuse of the non-profit sector (June 2014) and a report on virtual currencies providing a preliminary assessment of the potential AML/CTF risks meant to be the basis for further policy development in this area (June 2014).

All these efforts should, however, not distract from the fact that aspects of terrorist financing continue to exist, which will always require further illumination and analysis. In some cases the specificities of regional accessibility and the degree of organisational prerequisites are underdeveloped which makes it difficult to achieve a better insight into relevant aspects of terrorist financing and developing measures to address these aspects. An intensified targeted approach could probably lead to results that would allow a more stringent response, as for instance in the Sahel region and at the Horn of Africa.

### *Council of Europe*

Cooperation with the Council of Europe (CoE) has a multitude of aspects and also relates to work aimed at countering terrorist financing. On 1 September 2010 the EU Delegation to the Council of Europe has taken up its work, thereby greatly facilitating the regular exchange of information, the use of CoE monitoring systems and the organisation of joint activities. Cooperation is based on the principles of complementarity and coherence as laid down in the 'EU Priorities for cooperation with the CoE for the period 2014-2015'.



While on a more general level the Committee of Experts on Terrorism (CODEXTER) offers a valuable platform for an exchange of views on the implementation of the CoE's Convention on the Prevention of Terrorism and the adoption of effective legal provisions in the member countries as well as for discussions on the effective application of these provisions. Furthermore, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) plays a vital role in implementing the FATF standards in those Member States that are not FATF members. The fact that the EU Commission and the General Secretariat of the Council are actively participating in an observer role underlines MONEYVAL's importance for cooperation with the Council of Europe member states and beyond. Research Reports on related topics like 'Criminal money flows on the Internet' and 'The use of online gambling for money laundering and the financing of terrorism purposes' provide valuable expertise and a sound foundation for future actions.

The Council of Europe Convention (CETS No. 198) on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism ('The Warsaw Convention') was signed by the EU on 2 April 2009 but could not yet be ratified. 23 of the 28 EU Member States have signed the Convention and 15 have ratified it. Member States which have not yet done so are urged to sign and ratify this Convention as well. The Convention provides for a monitoring mechanism through a "Conference of the Parties" to ensure that its provisions are being applied.

#### *United Nations*

In the UN context, the EU has continued to promote ratification and implementation of the UN Terrorist Financing Convention in its relations with third countries. A number of countries in different parts of the world have still not ratified the Convention and others that have done so lack the means to implement it effectively.

On 27 January 2014, the UN Security Council unanimously adopted Resolution 2133 (2014) on kidnapping for ransom by terrorists which was submitted (inter alia) by UK, France and Lithuania.

In parallel to this, the mandate of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) was renewed with regard to the growing issue of kidnappings for ransom.

Coordination with the IMF, World Bank and UNODC is pursued by the EU.

Full and effective implementation of UNSCR 1267 is another topic routinely raised in political dialogues with third countries. There is a constant exchange between EEAS and FPI units responsible for sanctions and listings and the 1267 Monitoring Team.

#### *EU-US Cooperation*

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.

In December 2013 an EU-US workshop on terrorism financing, hosted by the Lithuanian Presidency of the EU, was organised. The workshop had a special focus on the issue of kidnapping for ransom. In May 2014 an EU-US workshop on terrorism financing, hosted by the Hellenic Presidency of the EU, was organised. The workshop had a special focus on the financial flows towards terrorist groups operating in Syria.

#### *Gulf Cooperation Council*

In continuation of earlier efforts, the dialogue with the countries of the Gulf Cooperation Council (GCC) was further developed. During several country visits to the region and high-level meetings like the EU-GCC Joint Cooperation Council on 1 April 2014 or the EU-GCC Ministerial Meeting 23 July 2014, issues such as money transfer systems and the setting up of mechanisms to trace transfers of funds were discussed. The financing of Foreign Fighters in Syria and related questions were addressed. Another EU-GCC workshop on terrorist financing is planned in the near future.