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**ACTIONS TO COMBAT THE FINANCING OF TERRORISM**

**COMMISSION STAFF WORKING PAPER**

**ON ACTIONS TO COMBAT THE FINANCING OF TERRORISM**

**1. INTRODUCTION**

The special European Council held in Tampere on 15 and 16 of October 1999 was devoted to the maintenance and the development of an area of freedom, security and justice in the European Union. Among the conclusions of the Tampere European Council was a call for improved co-operation against cross border crime through the use of joint investigation teams to combat, inter alia, terrorism and for special action against money laundering.

In the wake of the terrorist attacks in the USA on 11 September 2001, the Justice and Home Affairs Council met on 20 September and adopted a series of measures to combat terrorism, including in the areas of judicial and police co-operation and the financing of terrorism.

At the extraordinary European Council on 21 September 2001 it was decided that the fight against terrorism would be a priority objective of the European Union. The Council approved a plan of action dealing with enhanced police and judicial co-operation, developing international legal instruments against terrorism, preventing terrorist funding, strengthening air security and greater consistency between all the Union's policies. The regular updates of the "Terrorism Roadmap" concerning this plan of action, prepared by the Council in co-operation with the Commission services and approved by the General Affairs and External Relations Council, provide both an overview and the state of play of the measures implementing this plan of action on particular dates.

An informal meeting of the ECOFIN Council took place on 21 September 2001. It issued a statement on actions to combat the financing of terrorism. The statement outlined a number of initiatives in this regard. These were:

- Rapid adoption of the second money laundering Directive and a Framework Decision on the execution in the EU of orders freezing assets or evidence.
- Paying particular attention to activities linked to terrorism in the draft Directive on insider trading.
- Reinforcing exchange of information between Financial Intelligence Units (FIUs).
- Ensuring extension of the Financial Action Task Force (FATF) mandate to include terrorist financing and supporting the FATF's Non-Co-operative Countries and Territories (NCCT) exercise and review of its 40 Recommendations.
- Adopting a proactive and co-ordinated approach to such matters in international fora.
- Asking EU future members to be in line with EU standards.
- Ratification and implementation of relevant UN Resolutions and Conventions.

The statement called for a report on these initiatives to be submitted to the JAI/ECOFIN Council on 16 October 2001. That joint Council received the report of the Commission and the Presidency on actions taken to combat terrorism. The report covered the following matters.

- It indicated agreement on the terms of the second money laundering Directive (including a joint declaration that serious crimes include offences related to the financing of terrorism).
- It suggested extending the scope of the Framework Decision on freezing assets to include further offences.
- It sought early agreement on the draft Directive on Insider Trading and Market Abuse.
- It expressed a willingness to consider EU financing for a project on information exchange between FIU's.
- It committed the Commission to playing a full role in the work of the FATF.
- It recorded satisfactory progress in candidate countries in implementing anti-money laundering legislation.
- It outlined action by the EU in accordance with UN SC Resolutions 1333 and 1373.
- It outlined the recommendations of the Savona Report on transparency in the financial and corporate sectors.
- It outlined the need for greater customs controls on cash movements across the Community's external frontier.

Conclusion 18 of the JAI/ECOFIN Council stated "The Council took note of the reports from the Commission and the Presidency and of the interventions of the Member States on actions to combat the financing of terrorism. The Council urges the Commission and the Member States to work closely together in this field in order to produce a fully integrated report at regular intervals."The present working paper fulfils that mandate.

On 19 October 2001 the European Council declared that it is determined to combat terrorism in every form throughout the world. It also indicated that it would continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form. It called for particular attention to be given to approval of the European arrest warrant, the common definition of terrorist offences and the freezing of assets, increased co-operation between the operational services responsible for combating terrorism (Europol, Eurojust, the intelligence services, police forces and judicial authorities) and effective measures to combat the funding of terrorism by formal adoption of the second Money Laundering Directive and speedy ratification of the UN Convention for the Suppression of Terrorist Financing.

This working paper gives an overview of measures taken since October 2001 which either specifically target the financing of terrorism or are instrumental in combating the financing of terrorism and presents some ideas for future action.

## **2. ACTIONS TAKEN AT EU LEVEL**

Since October 2001 a number of actions have been taken by the EU aimed at countering terrorism as well as preventing the acquisition, retention and use of funds or assets by such organisations. Taken together with the earlier actions these constitute powerful measures in the Union's arsenal to fight terrorism.

### **2.1 Legislative Actions**

#### **2.1.1 Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2001/C 326/01) (OJ C 326 of 21 November 2001 p.1)**

This Act provides for the exchange of information between Member States concerning bank accounts held by any person who is the subject of criminal investigations.

#### **2.1.2 Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ L 344 of 28 December 2001, p. 76)**

The second money laundering Directive, amending the 1991 Directive, was adopted in December 2001. The main changes effected by the Directive concern the range of criminal activity which is covered and the professions which are subject to its provisions. The definition of criminal activity giving rise to money laundering is widened to include all organised crime and a wide range of serious crimes, including offences related to terrorism. The professions which are required to report money laundering suspicions now include accountants, lawyers, notaries, real estate agents, casinos and dealers in high value goods. This is in addition to the credit and financial and related institutions which are already covered by the 1991 Directive. Member States are obliged to comply with the Directive by 15 June 2003. The Directive also requires Member States, before 15 December 2004, to amend the definition of serious crimes as regards offences generating substantial proceeds to bring it into line with the definition of serious crime contained in Joint Action 98/699/JHA (Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime). It also and invites the Commission to present a proposal for an amending Directive for that purpose. Furthermore, within three years of the Directive coming into force, the Commission must carry out an examination of the implementation of certain aspects of the Directive (namely concerning the definition of serious crime, the treatment of lawyers and client identification in non-face to face transactions).

#### **2.1.3 Council Decision of 6 December 2001 extending Europol's mandate to deal with serious forms of international crime listed in the Annex to the Europol Convention (2001/C 362/01) (OJ C 362 of 18 December 2001, p.1)**

The effect of this Council Decision was to enable Europol to deal with the serious forms of international crime listed in the Annex to the Europol Convention, such as murder, grievous bodily injury, kidnapping, hostage-taking, organised robbery and

illicit arms trafficking. Europol's mandate now includes support for law enforcement against serious international organised crime, including terrorism.

**2.1.4 Council Common Position of 27 December 2001 on combating terrorism (2001/930/CFSP) (OJ L 344 of 28 December 2001, p. 90)**

The Common Position sets out a number of actions to be taken to combat terrorism. The principal measures contained in the Common Position are: criminalising the financing of terrorism within the EU, freezing of financial assets or economic resources of persons or entities involved in terrorism, prohibiting the giving of financial or other assistance to such persons or entities, requiring measures to be taken to suppress any form of support for those involved in terrorist acts, taking steps to prevent terrorist acts and denying safe haven to those involved in such acts. It also calls for Member States to afford one another (and third countries) assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, better border controls to prevent the movement of terrorists, information exchange and co-operation to prevent and suppress terrorist acts. Furthermore the Common Position contains a list of international conventions and protocols against terrorism to which member states should become parties.

**2.1.5 Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP) (OJ L 344 of 28 December 2001, p. 93)**

The Common Position establishes the primary list of persons, groups and entities involved in terrorist acts. It sets out the criteria to be used to decide who should be considered as terrorists for inclusion on the list and the actions which constitute terrorist acts. The names on the list are to be reviewed at least once every six months. Under the Common Position the European Community is empowered to order the freezing of the funds and other financial assets or economic resources of, and the prohibition on the provision of financial services to, the listed persons, groups and entities. Member States are required to afford each other assistance in preventing and combating terrorist acts. In accordance with Article 6, the Common Position is to be kept under constant review. The annex to the Common Position has been up-dated three times (Common Positions 2002/340/CFSP, 2002/462/CFSP and 2002/847/CFSP).

**2.1.6 Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344 of 28 December 2001, p. 70)**

The Regulation provides for the freezing of the funds, financial assets and economic resources of certain persons, groups and entities involved in terrorism, for a prohibition on the making available of funds, financial and economic resources to such persons, groups and entities and a prohibition on the provision of financial services to them. It authorises the Council to establish and maintain a list of persons, groups and entities involved in terrorism. Provision is also made for the granting of authority for the use of funds frozen in accordance with the Regulation to meet essential human needs and for certain other payments (e.g. taxes, utility bills etc.). Within one year of the Regulation entering into force the Commission must present a report on its impact and, if necessary, make proposals to amend it.

**2.1.7 Council Decision of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (2001/927/EC) (OJ L 344 of 28 December 2001, p. 83)**

This decision contains a list of persons, groups and entities against whom specific restrictive measures are to be applied in accordance with Council Regulation No 2580/2001. An up-dated list of persons, groups and entities to which the measures in the Regulation apply has been published three times (Council Decisions 202/334/EC, 2002/460/EC and 2002/848/EC).

**2.1.8 Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA) (OJ L 063 of 6 March 2002 p. 1)**

This Decision establishes Eurojust, to be composed of seconded prosecutors, judges or police officers from each Member State. The objectives of Eurojust are to stimulate and improve the co-ordination, between the competent authorities of the Member States, of investigations and prosecutions, to improve co-operation between the competent authorities of the Member States and to support the competent authorities of the Member States in order to render their investigations and prosecutions more effective. Any provisions in the laws of the Member States necessary for implementation of the Decision are to be put in place as soon as possible but in any event no later than 6 September 2003. The Decision also provides that Eurojust shall establish and maintain close co-operation with Europol, OLAF. It also permits Eurojust to conclude cooperation agreements with third States and international organisations and bodies. It may also establish contacts and exchange experiences of a non-operational nature with other bodies, in particular international organisations and conclude cooperation agreements with third States.

**2.1.9 Council Common Position of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP (2002/402/CFSP) (OJ L 139 of 29 May 2002, p. 4)**

It prohibits the supply of arms etc. to Usama bin Laden, members of the Al-Qaida organisation and the Taliban and associated persons or groups in accordance with UNSCR 1267(1999) and 1333(2000). It also provides for the freezing of their funds and economic resources and prohibits the making available to them of funds and economic resources. The Common Position is to be kept under constant review.

**2.1.10 Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ L 139 of 29 May 2002, p. 9)**

The Regulation freezes the funds and economic resources of, and prohibits the making available of funds and economic resources to, a large number of persons, groups and entities which are set out in an Annex. The Commission has amended the Annexes to the Regulation on eight occasions for the purpose of updating the list of persons, groups and entities which are subject to the restrictions set out in the Regulation (Commission Regulations (EC) No. 951/2002, 1580/2002, 1644/2002, 1754/2002, 1823/2002, 1893/2002, 1935/2002, 2083/2002, 145/2003, 215/2003, 244/2003, 350/2003, 370/2003 and 414/2003). Modification of the list is an on-going process.

**2.1.11 Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA) ( OJ L 162 of 20 June 2002, p. 1)**

The Framework Decision is intended to make the combating of international crime as effectively as possible. It considered it appropriate that a specific legally binding instrument on joint investigation teams should be adopted to apply to joint investigations into drugs/human trafficking and terrorism and that they should be set up, as a matter of priority, to combat offences committed by terrorists. The Framework Decision provides that two or more Member States may establish joint investigation teams for a specific purpose and for a limited period to carry out criminal investigations in one or more of the States establishing the team. Member States are required to comply with the Framework Decision by 1 January 2003. On the basis of information to be provided by Member States on their transposing legislation, the Commission will, by 1 July 2004, submit a report on its operation to the Council, which will assess Member States' compliance.

**2.1.12 Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA) (OJ L 164 of 22 June 2002, p. 3)**

The Framework Decision requires Member States to adopt a common definition of terrorist offence as set out in Article 1. It also obliges Member States to criminalise certain actions related to terrorist groups or terrorism, such as directing or participating in the activities of a terrorist group as well as inciting, aiding or abetting and attempting to commit a terrorist offence. Member States must comply with the Framework decision by 31 December 2002. By that date also they must have sent to the Council General Secretariat and the Commission the relevant transposing texts. On the basis of the information provided, the Commission will draw up a report on which the Council will assess, by 31 December 2003, if Member States have complied with the Framework decision.

**2.1.13 Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) (OJ L 190 of 18 July 2002, p. 1)**

The Framework Decision provides for the execution in any Member State of a judicial decision made in another Member State for the arrest and surrender of a person for the purpose of criminal proceedings or the execution of a custodial sentence. The offences covered by the Framework Decision include terrorism. The Framework Decision will, from 1 January 2004, replace corresponding provisions in a number of conventions applicable in the field of extradition in relations between Member States. After 1 January 2004 extradition between Member States will be governed by rules adopted pursuant to the Framework Decision. Member States are

required to take the necessary measures to comply with the Framework Decision by 31 December 2003. The Commission will report to the European Parliament and the Council by 31 December 2004 on the operation of the Framework Decision, accompanied, where necessary, by legislative proposals. In the second half of 2003 the Council will conduct a review of the provisions of the Framework Decision by the Member States as well the provisions of the Schengen Information System.

#### **2.1.14 Controls on cross-border cash movements**

On 25 June 2002 the Commission adopted a report together with a proposal for a European Parliament and Council Regulation to introduce controls on significant cash movements by persons entering or leaving the Community. The Council's initial request followed a report on a joint operation carried out by the Member States to monitor cross-border movements and examine whether the scale of such movements posed a threat to the controls applied by financial institutions to prevent money laundering. The results of the operation revealed the scale of these movements. It also disclosed that not all Member States apply controls to cash movements, and where controls do apply there are large variations. This lack of an EU wide arrangement reduces the effectiveness of controls applied under the 1991 Money Laundering Directive. The proposed Regulation will complement the Directive and will oblige persons entering or leaving the Community customs territory to declare any cash movements of €15.000 or more.

#### **2.1.15 Directive on Insider Trading and Market Manipulation (Market Abuse)**

The Insider Dealing and Market Manipulation (Market Abuse) Directive was adopted by the Council and the Parliament on 3 December 2002.

Terrorists may abuse financial markets in two ways: by financing activities through insider dealing or market manipulation (using clean money in a dirty way) or by laundering 'dirty' money on financial markets through insider dealing and market manipulation.

Loopholes existed so far in the EU framework. The Insider Dealing Directive (adopted more than a decade ago) is limited (to regulated secondary markets, to transferable securities, market manipulation not covered, legal persons not covered, etc.). The Market Abuse Directive will contribute to strengthen the fight against activities on financial markets.

All transactions (including OTC or off-market ones) in financial instruments admitted to regulated markets will be covered in the directive. All derivative instruments (on securities and on commodities) are covered. Market manipulation is prohibited.

Legal persons as well as individuals are now covered. There is a minimum list of powers for competent authorities for monitoring, detection, investigation and sanctioning and there is an improvement of cross-border investigations and co-operation between competent authorities, including a single competent authority for each Member State.

#### **2.1.16 Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance**



**with Article 4 of Common Position 2001/931/CFSP (2003/48/JHA) (OJ L 16 of 22 January 2003, p68)**

The Decision relates to access and collection of information concerning and resulting from criminal investigations and proceedings with respect to terrorist offences involving any of the persons, groups or entities listed in the Annex to Common Position 2001/931/CFSP with a view to its communication to Europol and Eurojust. The information in question concerns the identity of the person, group or entity, the acts under investigation or prosecution and links with related cases. Other information relates to the use of communications technologies, the threat posed by possession of weapons of mass destruction and the existence of mutual legal assistance requests. In cases involving any of the listed persons, groups or entities the Decision also calls for joint investigation teams in appropriate cases, urgent treatment of requests for mutual legal assistance and recognition and enforcement of judgements in connection with terrorist offences and sharing of information.

**2.1.17 Implementation of the Commission's Action Plan to prevent fraud and counterfeiting of non-cash payments**

The Commission adopted in February 2001 an Action Plan to prevent fraud and counterfeiting of non-cash payments with actions in the following areas: technological improvements; exchange of information; training, educational material and cooperation; other fraud prevention measures; relations with third countries. As the proceeds of fraud often serve to finance criminal activities, including terrorism, the implementation of these actions contributes to preventing the financing of terrorism. At the end of the period covered by the Plan (2001-2003) the Commission will issue a report on its implementation.

**2.1.18 Ratification of international conventions in accordance with UN SC Resolution 1373 (2001)**

In accordance with resolution 1373 (2001), Member States have accepted a political commitment, by means of Article 14 of Common Position 2001/930/CFSP to become parties to the UN Convention for the Suppression of the Financing of terrorism (New York, 9 December 1999) and 12 other conventions on Terrorism.

**2.1.19 Initiative of the Kingdom of Spain with a view to adopting a Council Decision on the implementation of specific measures for police and judicial co-operation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (OJ C 126 of 28 May 2002, p. 2)**

The initiative concerns action in relation to persons, groups and entities listed in the annex to Council Common Position 2001/931/CFSP. It proposes that each Member State will designate a specialised service within its police service that will have access to, and collect, relevant information concerning criminal investigations in relation to terrorist offences involving any of the listed persons, groups or entities and ensure its communication to Europol. Similar procedures should apply within the judiciary in relation to criminal proceedings in relation to terrorist offences and its communication to Eurojust. A cooperation agreement between Europol and Eurojust will contain provision for the exchange of this information. It also calls for full use of joint investigation teams and that requests for mutual legal assistance and recognition and enforcement of judgements concerning terrorist offences should be dealt with

urgently. Eurojust's competence covers those types of crime and offences for which Europol has competence, including money laundering and participation in a criminal organisation.

## **2.2 Institutional Measures**

### **2.2.1 Establishment of special anti-terrorism unit at Europol and relations with the USA**

The Justice and Home Affairs Council of 20 September 2001 decided to set up within Europol a team of counter terrorist specialists to collect in a timely manner all relevant information/intelligence on the current threat, to analyse it and undertake the necessary operational and strategic analysis and to draft a threat assessment document based on the information received (paragraph 10 of the conclusions of Council). The Task Force became operational on 15 November 2001. The Task Force produced the European Union Threat Assessment Document on Islamic Extremist Terrorism and the first European Union overview on security measures in relation to terrorism.

In December 2001 a co-operation agreement was signed with the USA to enhance strategic and technical co-operation between Europol and US law enforcement authorities in preventing, detecting, suppressing and investigating serious forms of international terrorism and organised crime. The agreement also provides for the exchange of liaison officers and in August 2002 Europol opened a Liaison Office in Washington D.C. with two Europol Liaison Officers assigned to it. Their main task will be to explore, develop and ensure that contacts between Europol and the USA operate to the best possible extent.

### **2.2.2 FIU.NET Project**

The joint ECOFIN/JAI Council of 16 October 2001 called on Member States to reinforce the existing system for co-operation between their Financial Intelligence Units and to examine whether to elaborate a system for the exchange of information by automatic means. It asked the Commission to explore the possibility of Community funding for such an automatic system. A pilot project had commenced in June 2000 with FIU's from France, Italy, Luxembourg, the Netherlands and the UK. The FIU.NET Project now also includes Belgium and Spain. The Commission has made this project a priority action for 2003.

### **2.2.3 Commission participation in the work of the Financial Action Task Force**

The European Commission and the Member States are members of the FATF and play an active part in its deliberations. The FATF is currently involved in a review of its 40 Recommendations to combat money laundering. It has published a substantial consultation document on the matter. This was discussed with representatives of the private sector at a Forum in the margins of the October 2002 Plenary. The outcome of this process will be carefully considered by the EU to see how it can assist it in its own efforts to prevent money laundering.

At an extraordinary Plenary meeting of the FATF in October 2001 the FATF expanded its mission beyond money laundering to include terrorist financing through the adoption of 8 Special Recommendations on the financing of terrorism. These

special recommendations call on members to ratify and implement various UN instruments against terrorism and terrorist financing, to criminalise terrorist financing, freeze and confiscate terrorist assets, to report suspicious transactions linked to terrorism, to provide assistance in terrorist financing investigations and to prevent the use of non-profit organisations to finance terrorism. The FATF recently established a special working group to develop guidance on implementation of the Eight Special Recommendations and to identify countries that require technical assistance in order to come into compliance with the Eight Special Recommendations. The EU strongly supports this action.

#### **2.2.4 Progress in candidate countries in implementing anti money laundering legislation**

In general terms, Candidates Countries have made important efforts to align their legislation with the *acquis*. The 1991 anti-money laundering Directive has, to a large extent, been implemented in all the applicant countries and some have even implemented parts of the 2001 Directive. In most cases, the Financial Intelligence Units need to be reinforced. The Commission holds individual ad hoc meetings with all the applicant countries on the subject of money laundering.

The following is a summary of the position in each of the candidate countries.

- The Czech Republic amended the Criminal Code to align it with the *acquis* and has enacted legislation abolishing bearer passbooks. The capacity of the FIU continues to improve. In April 2002 the Government adopted a National Action Plan to combat terrorism, including measures for suppressing the financing of terrorism.
- Hungary adopted in January 2002 a comprehensive anti-money laundering law intended to align fully with the *acquis*. It provides for the elimination of bearer passbooks, the licensing of all currency exchange outlets, the identification of the bearer in large cash transactions and for the identification of the beneficial owners of bank accounts. In June 2002, the FATF removed Hungary from its list of non-co-operative countries and territories. Hungary has ratified the Convention for the Suppression of the Financing of Terrorism (October 2002). In October 2001 it adopted an Action Plan on Terrorism, including measures on the suppression of the financing of terrorism,. The Action Plan was Reviewed in April 2002.
- Slovakia has made good progress. A new law adopted in April 2002 will eliminate anonymous passbooks/accounts from January 2004 with a prescription time until January 2007.
- Slovenia has adopted important legislative amendments which expand the range of professions covered to attorneys, notaries, auctioneers and art dealers and attribute some additional obligations to them.
- Poland has made little progress in aligning legislation with the *acquis* as efforts and attention are focused on an initiative which foresees not only registration but also reports of all transactions over 15,000 Euro, even if they are not suspect. These plans would have placed a huge administrative burden on the General Inspectorate for Financial Information and are under review. In the

negotiations Poland took the commitment to deploy additional efforts to ensure the effective transposition and implementation of the acquis concerning money laundering upon accession. Poland has passed new legislation against the financing of terrorism.

- Estonia has largely aligned its legislation with the acquis, although amendments to the Money Laundering Prevention Act still have to be adopted. The capacity of the Financial Intelligence Unit as well as the Estonian Financial Supervisory Authority also need to be enhanced.
- Latvia has made good progress, both in terms of legislative alignment and through strengthened administrative capacity. Specialised divisions dealing with money laundering have been established in the Economic Police Bureau and the Financial Police of the State Revenue Service. However, the provision of resources and adequate training for those involved in anti-money laundering still need to be addressed.
- Lithuania's Financial Crime Investigation Service commenced operations in April. Changes to the law on money laundering have ensured alignment with the acquis on the identification of the customers. The capacity of the Financial Crime Investigation Service needs to be reinforced, training programmes need to be developed and reporting levels from credit institutions to the FIU need to be increased.
- Cyprus' legislation is largely aligned with the acquis including the issue of accounts opened for non-identified beneficiaries. The Unit for Combating Money Laundering (MOKAS) is operational, although it needs to reinforce its capacity. A specific department dealing with terrorism financing is functioning inside MOKAS. Cyprus has ratified the Convention for the Suppression of the Financing of Terrorism.
- Malta has made efforts to enhance its legislation and move towards the lifting of its reservations to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime through amendments to its law. The Financial Intelligence Analysis Unit is in place but needs to be reinforced to become fully operational. Malta has ratified the Convention for the Suppression of the Financing of Terrorism.
- Bulgaria's legislation is in a relatively advanced state of alignment with the acquis, but more progress is needed. There are still organisational problems, which are detrimental to the efficiency of the inspections and investigations undertaken by the FIU. Major efforts are needed to improve co-operation between the unit and other law enforcement agencies. The number of criminal proceedings and convictions for money laundering until now remain disappointingly low. In January 2002 Bulgaria ratified the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. The amendments to the Penal Code introduced special rules on terrorism and the financing of terrorist activities. They criminalise the establishment of and participation in terrorist groups as well as the preparation of terrorist acts and establish rules on confiscation of property.

- Romania's legislation is relatively well aligned with the *acquis* but the actual implementation remains a weak point. Romania recently ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The number of criminal proceedings and convictions for money laundering until now remain disappointingly low. There are still problems in the overall context of fighting money laundering, related to certain regulatory loopholes and to the entire institutional network involved. Romania adopted an ordinance sanctioning certain terrorist acts and certain encroachments upon public order as well as an ordinance to prevent the financial and banking systems being used to finance terrorist acts. An Inter-Ministerial Council has been set up to supervise the implementation of UN Security Council Resolution 1373 (2001). In April 2002 the Supreme Defence Council (CSAT) adopted a National Strategy for Preventing and Fighting terrorism.
- Turkey has enacted legislation to align with Directive 91/308, including a requirement that account holders provide their personal identification and tax identification numbers. Turkey established a Financial Crimes Investigation Board, responsible for detecting money laundering, in 1997. The Turkish authorities are currently working on a draft law which will align with Directive 2001/97.

### **2.2.5 Reporting to Counter terrorism Committee established by UN SC Resolution 1373 (2001)**

The EU has reported on implementation of Common Position 2001/930/CFSP and UN Resolution 1373, and others, targeting international terrorism. The reports were made to the Counter Terrorism Committee of the Security Council of the United Nations, which is responsible for reviewing the implementation of Resolution 1373 (2001). The EU presented a first report in December 2001, which was prepared by the Council and the Commission, and a supplementary report in August 2002. Member States have made additional reports on their activities.

## **3. FUTURE ACTION**

It is clear that a number of elements are required to forge a single strategy to fight terrorism and one of the most effective is to target the financing of terrorism itself and associated money laundering. The EU has demonstrated its ability to act in this regard and is committed to taking further action to improve its capacity and that of the Member States against terrorism and associated financing.

The difficulties of preventing money laundering are not to be underestimated. Terrorism, because of its political character and trans-national networks, poses a particular problem that requires a committed effort from all concerned to ensure that it is prevented. The financing of terrorism is carried out under many guises, involving the laundering of significant amounts of money globally. However, according to the FATF, one of the core difficulties with regard to terrorism is that individual transactions often involve transfers of rather small amounts of money. To succeed in the fight against terrorism means detecting and preventing its financing and associated money laundering. Without financial resources its ability to continue to operate will be significantly curtailed.

But as new restrictions take effect, more sophisticated methods are being devised to circumvent them and weaknesses in the world's financial systems are exploited to the maximum extent. Some of these weaknesses arise because of inadequate controls by certain countries and this has led to international action, principally by the FATF, supported by the Commission and the Member States, to encourage greater control. Where such encouragement has failed, more stringent action has been taken, including the listing of countries and territories as non co-operative in the fight against money laundering. The Conclusions of the ECOFIN/JAI Council of 16 October 2001 stated that the Member States had decided to apply, in concert and concomitantly, the counter measures decided by the FATF and to make any necessary legislative changes required to achieve this by 1 January 2002. Counter measures against Nauru were subsequently applied. The EU continues to support these international efforts to improve anti money laundering.

Much has been achieved by the EU and its Member States to date across a range of areas to tackle the issue of terrorist financing. But constant vigilance is required to close off any opportunities likely to be exploited by terrorist organisations. In addition greater co-ordination between all those with a role to play in this endeavour is essential, such as the involvement of the intelligence services and the sharing of information, the initiation of parallel investigations of suspected terrorist activity and suspected money laundering.

The following list of actions would further improve the ability of the EU to detect and prevent the financing of terrorism and it is proposed that they be implemented in accordance with the timetable suggested below.

### **3.1 Legislative Actions**

#### **3.1.1 Council Framework Decision on the execution in the European Union of orders freezing property or evidence**

The Framework Decision will require each Member State to recognise and to enforce orders issued by judicial authorities in another Member State for the purpose of freezing evidence (for use in subsequent criminal proceedings) or assets (for the purpose of later confiscation). Execution of an order cannot be refused on dual criminality grounds for a list of offences, including terrorism, provided that the offence is punishable by a maximum penalty of at least three years imprisonment in the issuing Member State.

Political agreement has been reached on the Framework Decision, but it is still subject to a number of Parliamentary reservations. However, these are expected to be lifted soon.

Timeframe: Dependant on Member States approval.

#### **3.1.2 Proposal for a Framework Decision on a uniform EU-wide system to combat money laundering by natural or legal persons using large-scale cash payments to conceal the conversion of criminal proceeds**

The proposal aims to combat money laundering through the use of large cash payments. In the context of actions against organised crime and terrorism there is a need to address the potential misuse of such payments for money laundering purposes. This type of money laundering is not unknown in the purchase of luxury

items (jewellery, cars etc.) and property, either for quick resale or for longer term use. Accordingly, the Commission proposes to tackle the issue through a Framework decision.

Timeframe: Proposal expected to be presented to the Commission towards the end of 2003.

**3.1.3 Proposed Commission Communication on the fight against the financing of terrorism and Framework Decision with a view to the creation of a register for the collection and transmission of information concerning persons implicated in terrorist financing who are concerned in the establishment or management of businesses.**

The objective of these initiatives is to prevent the use of corporations or non-profit organisations to finance terrorism. A register would be established of persons implicated in the financing of terrorism who are involved in establishing or managing enterprises. Such a register would facilitate the seizure and confiscation of assets of such entities.

Timeframe: Proposal expected to be presented to the Commission in the middle of 2003.

**3.1.4 Directive amending Directives 91/308/EEC and 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering**

The second money laundering Directive was adopted on 4 December 2001. A third anti-money laundering directive is likely in due course. Issues to be taken into consideration include transparency, customer identification, internet banking and electronic payments. This future work also depends in part on the results of the work of the FATF.

Timeframe: Proposal to be presented before the end of 2003.

**3.1.5 Possible Legal Framework for the Single Payment Area in the Internal Market**

There is a general overhaul of existing and future EU legislation in the area of non-cash payments in the Internal Market, with the aim of presenting a comprehensive and coherent legal framework. This framework could also provide a possible vehicle for the implementation in the EU of the FATF Special Recommendations VI (alternative remittance) and VII (wire transfers).

Timeframe: Proposal for a legal act by the end of 2003.

**3.1.6 Action required following Review of the FATF 40 Recommendations and implementation of the 8 Special Recommendations**

The outcome of the review of the 40 Recommendations of the FATF, in which the Commission participates, will form a key element of the Commission's examination of further areas that require attention or further action that needs to be taken within the EU to combat terrorist financing. This will be particularly the case with regard to the principle of "know your customer" and beneficial ownership. These are areas which the Commission is also considering with a view to having in place the most effective measures to detect and prevent terrorist financing. Furthermore the

guidance on implementation of the Eight Special Recommendations which the FATF is preparing will be an important factor in ensuring their uniform implementation in Member States.

Timeframe: Dependent on the completion by the FATF of its review of the 40 Recommendations and the guidance notes, but expected to be mid 2003.

### **3.1.7 Recommendations of the Transcrime Report on Transparency and Money Laundering (Savona Report)**

The Transcrime Report on Transparency and Money Laundering (the Savona Report) contains a number of recommendations to improve the ability of the authorities to detect and prevent money laundering. It proposes action in both the financial and corporate sectors to improve anti-money laundering. The recommendations will require careful consideration, in particular to ensure that greater transparency would not involve major efficiency/economy costs, particularly concerning small and medium sized enterprises.

It is clear from the report that anti money laundering measures may be hindered by a number of factors which could be eliminated if action were taken on the recommendations. In general the main recommendations involve greater transparency in the international payments system, improving customer identification and record keeping, increased transparency in the corporate sector particularly with regard to the true beneficial ownership of companies and with regard to the creation and management of trusts. Finally, it recommended that a cost-benefit analysis be undertaken to determine the trade-off between increased transparency in the corporate sector and the costs associated with the reduction in the efficiency and flexibility of the financial system.

The Commission should set in motion the procedure for such an analysis with a view to deciding whether it is appropriate to bring forward proposals for implementation of the recommendations.

Timeframe: Study to be commenced by mid 2003 so as to benefit also from the outcome of the FATF review of the 40 Recommendations.

### **3.1.8 Action to improve regulation of non-profit organisations to prevent their use for terrorist financing**

The diversion of funds intended for charitable purposes to support terrorists or terrorist acts has come sharply into focus since the events of 11 September 2001. It is likely that such abuses have been carried out unknown to donors and sometimes even to the management of the charities concerned. Preventing such abuses is important, as much to stop terrorist funding as to protect the integrity of the organisations and of donor confidence. Any work in this area will involve consideration of the following matters: registration of charitable organisations, information about their objectives, management structure and the persons involved, requirements to submit annual statements and accounts and information about disbursements.

Timeframe: The FATF is currently considering the question of regulation in this area as part of its work on the preparation of guidance on implementation of the Eight



Special Recommendations. The consideration of any EU action should await the outcome of that process, expected to be mid 2003.