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**COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

**ON THE PREVENTION OF AND FIGHT AGAINST ORGANISED CRIME  
IN THE FINANCIAL SECTOR**

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## EXECUTIVE SUMMARY

- The aims of this Communication are to provide an overview of action taken in the prevention of and fight against organised crime in the financial sector (“organised financial crime”) and to discuss policy action which could strengthen the fight against this type of crime. For the purposes of this Communication, organised financial crime is taken to mean activities of organised crime groups which abuse financial or payment systems with a view to financial gain, a definition which is wide enough to embrace certain recent scandals in the corporate sector.
- The importance of the fight against organised financial crime goes beyond the specific crime itself since, if successful, it attacks the very foundations of organised crime networks, namely the maximisation of profit by illicit means. Depriving organised criminals of the ability to launder money or to finance criminal activity significantly impedes their motivation and ability to function.
- Since the terrorist attacks of 11<sup>th</sup> September 2001, it has become increasingly apparent that terrorist networks use organised crime methods to acquire, move and launder assets. Accordingly, this Communication is also relevant to the fight against terrorist financing. Issues specific to terrorist financing are further developed in the Commission’s Communication on Terrorism and other serious crime.<sup>1</sup>
- Investigations of organised financial crime generally require a multi-disciplinary approach, including accounting, auditing, legal, fiscal and banking expertise. Co-operation between private and public sectors based on a common objective of reducing the harm of organised financial crime could facilitate access to relevant expertise and promote mutual confidence in each other’s ability and willingness to investigate and reduce the incidence of such crime.
- Law enforcement authorities should be encouraged as a routine matter to undertake **financial investigations** which are not limited to the specific crime but investigate more broadly the surrounding criminal networks including the identification of proceeds of crime, gather intelligence regarding the behaviour of suspects in conformity with data protection provisions, and attempt to identify the ultimate beneficiaries of organised financial crime. This will also help ensure an **intelligence led** approach to investigations.
- Complex money laundering arrangements taking advantage of the ease of incorporating legal entities, the use of nominees and employing a range of devices to cloud identification of the true beneficial owner facilitate the carrying out of organised financial crime. The issue of transparency, including the use of financial havens and special purpose vehicles, as illustrated most recently by the Parmalat scandal, should therefore be addressed as an important aspect of the fight against organised financial crime.

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<sup>1</sup> Commission Communication on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information, adopted by the Commission on 29.3.2004 - COM(2004)221

- Measuring organised financial crime, evaluating the effectiveness of policy, assessing trends and possible threats require implementation of **a coherent statistical apparatus** to allow production of reliable and comparable statistics on organised financial crime. In addition, systems to allow **tracing of the law enforcement process and other follow up of data** provided to Financial Intelligence Units under anti-money laundering rules should be enhanced to help monitor the impact of anti-money laundering rules.
- Profit is the main goal of organised crime groups. It follows that removing the proceeds and instrumentalities of crime is probably the most effective way of tackling organised crime. There is a clear need for effective asset seizure and confiscation systems. Use of duly empowered **asset recovery bodies** possibly, as exemplified by certain Member States, with the ability to use civil remedies towards asset recovery in appropriate cases, merits further consideration in this context.
- Whilst acknowledging that far-reaching anti-money laundering measures are already in place, the Commission considers that evaluation of organised financial crime is crucial to identifying best practices and the need for legislative or other initiatives in this field. A full evaluation of organised financial crime policy and measures in the EU should therefore take place in 2005.

## 1. PROBLEM SCOPING

This Communication addresses the problem of organised crime in the financial sector. The focus is therefore on non-violent crime generally involving abuse of financial and/or payment systems and resulting in illicit financial gain. For the purposes of this Communication, organised crime in the financial sector (“organised financial crime”) covers a range of illegal activities, including money laundering, financial fraud and counterfeiting of the Euro when committed by criminal organisations. The latter are defined in the Joint Action of 21<sup>st</sup> December 1998.<sup>2</sup>

Focusing on measures taken since the Tampere European Council of 1999, which reinforced the commitment to the fight against organised crime at EU level, the purpose of this Communication is twofold:

- first, to provide an overview of action taken to date, either specifically targeting organised financial crime or contributing to the global fight against this form of criminality, and
- second, on the basis of this overview, to identify those areas where new initiatives may be needed to strengthen the fight against organised financial crime.

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<sup>2</sup> Article 1 of the Joint Action of 21 December 1998 (98/733/JHA) states “Within the meaning of this Joint Action, a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities”.

Financial crime is often wrongly perceived as a “victimless” crime. While organised financial crime may not always impact directly on individuals (though many examples exist where individuals suffer direct harm), the reality is that its broader societal impact is considerable in terms of lost revenues, loss of reputation and degradation of public standards. High levels of such crime can discourage the creation of new enterprises, deter potential investors and distort competition.

Against this background, the fight against organised financial crime draws its importance not only from the criminal act as such. Where such an act provides the basis for committing other, possibly even more serious forms of crime, its financial investigation becomes a central element of the European Union’s strategy against organised crime, because organised crime cannot survive without access to money or other financial assets. While tackling crime in itself has an impact on the activities of criminal organisations, tackling its core objective, profit, can be equally, or more, effective in putting it out of business.

In this context, the following considerations merit special attention:

- So far no attempt has been made at EU level to define precisely the term “financial crime”, which is made up of a significant number of specific types or sub categories of crime. If organised financial crime is to be effectively tackled at EU and international levels, there may be important benefits in working towards a common definition in this area. This could lead to a converging policy approach and understanding of how best to prevent and fight against organised financial crime.
- Civil law and administrative rules, procedures and sanctions must become integral components of an effective crime prevention and investigation strategy, complementary to criminal law provisions, in particular in cases where the effective prosecution of criminal or civil offences is impossible or hindered by ineffective means of judicial co-operation. Full and effective administrative co-operation and exchange of information between relevant regulatory and supervisory authorities can play an important role in preventing and addressing financial crime. **For the effectiveness of the fight against organised financial crime, comprehensive policies must be elaborated at EU level comprising substantial criminal law and civil law provisions and regulatory dialogue in an integrated approach towards crime prevention and law enforcement.**

## **2. OVERVIEW OF MEASURES TAKEN AND POSSIBLE FUTURE ACTION IN THE FIGHT AGAINST ORGANISED FINANCIAL CRIME**

### **2.1. Money Laundering**

The fight against money laundering has been a top political priority of the European Union for a number of years, based on the need to protect the financial system from contamination and misuse, and to aid efforts to combat organised crime in the financial sector. The European Council stated in the conclusions of the Tampere Summit that money laundering is at the very heart of organised crime and that it

should be rooted out wherever it occurs and concrete steps must be taken to trace, seize, freeze and confiscate the proceeds of crime<sup>3</sup>.

Since the September 11, 2001 terrorist attacks in the USA money laundering defences have been expanded to cover a wide range of serious crime, including terrorist financing<sup>4</sup>.

Criminal money, besides being a threat to social and political stability, also puts at risk the reputation and stability of financial institutions and the banking and financial system in general. This is why the Commission has taken firm action to protect the financial system from misuse by money launderers. The Commission is determined to continue this work and to develop anti-money laundering legislation in the context of an ever more sophisticated international financial system. In order to be as effective as possible it is important that these Community initiatives are completed by measures taken within the framework of co-operation among the Member States.

## **2.2. Existing Community Anti-Money Laundering Legislation – The First and Second Money Laundering Directives**

The need to protect the financial system from misuse and the fear that the application of radically different measures in this area could prejudice the proper functioning of the Internal Market provided the European Commission with the legal basis under the Treaty for proposing Community legislation. Two Community directives have been adopted in this area, the first in 1991 and the second in 2001.

The 1991 Money Laundering Directive<sup>5</sup> is the key instrument in combating money laundering. It gave the force of European law to those of the 40 FATF<sup>6</sup> Recommendations dealing specifically with the financial sector. The 40 FATF Recommendations are considered to be the *de facto* world standard in the fight against money laundering. On one major point, however, the Directive moved ahead of the FATF. While the original 40 Recommendations made the reporting of money laundering an option, the Directive already made this an obligation. Essentially, the Directive requires financial institutions to identify and know their customers, to keep appropriate records, and establish anti-money laundering training programmes. Under the Directive banking secrecy rules have to be suspended where necessary and any suspicion of money laundering has to be reported.

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<sup>3</sup> Conclusion 51 of the Tampere European Council, 15 and 16 October 1999

<sup>4</sup> In a joint declaration of the Council and Commission modifying the minute to the 2386<sup>th</sup> session of the General Affairs Council of 19<sup>th</sup> November 2001, it was stated that offences connected to the financing of terrorism constitute serious crime for purposes of Directive 91/308/EEC.

<sup>5</sup> Council Directive 91/308/EEC of 10<sup>th</sup> June 1991 on prevention of the use of the financial system for the purpose of money laundering. The Directive sets out a framework for credit and financial institutions to tackle money laundering. The first Directive was based on the original Forty Recommendation adopted by the Financial Action Task Force. The Directive also set up the Contact Committee (under the aegis of the Commission) to facilitate co-ordinated implementation of the Directive and consultation between Member States.

<sup>6</sup> The FATF (Financial Action Task Force on Money Laundering), an inter-governmental body established by the G-7 Summit in 1989, is the foremost international body devoted to the combating of money laundering and terrorist financing. The Task Force is a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. Over the years the FATF has achieved real practical successes and has acquired considerable international standing. The Commission is a full member of FATF alongside all the Member States. For further information see: <http://www.fatf-gafi.org>.

The Directive also requires entities subject to reporting obligations to adopt a **risk based approach** and to examine with special attention any transaction which they regard as likely, by its nature, to be related to money laundering. These entities are encouraged to detect vulnerable areas of their operations, within the framework of their legal obligations and to prioritise their anti-money laundering efforts accordingly.

The **2001 Money laundering Directive**<sup>7</sup>, which Member States should have transposed into national law by 15 June 2003<sup>8</sup>, extends the concept of criminality covered by the Directive to a wider range of serious crime and extends the anti-money laundering obligations to a wider range of professions and activities than covered by the first Directive. **In addition to the financial sector, it embraces auditors, external accountants, notaries and lawyers, casinos and estate agents.** The legal professions are included only in respect of certain high-risk lines of business (financial, property and corporate). The Commission is aware that the application of anti-money laundering defences to some extent generated a shift from traditional laundering methods to new forms, including the use of cash payments. Given its anonymous character, this form of money laundering has grown in importance. **The use of large-scale cash payments** is therefore also considered in the Directive and Member States must extend the obligations laid down in the Directive to **certain dealers in high-value goods**, whenever payment is made in cash and in an amount of EUR 15 000 or more. **Whether the existing Directives should be modified to provide more extensive anti-money laundering defences in respect of the use of large-scale cash payments is currently being explored.**

The issues of **adequate feedback** and the sharing of money laundering related data between the public and private sectors are also covered in the Directive, which provides that Member States must ensure that the institutions and persons subject to the Directive have access to up-to-date information from the public authorities on the practices of money laundering and on indications leading to the recognition of suspicious transactions. **The Commission will consider whether further measures need to be taken in this area. In order to maintain the vigilance and commitment of the private sector players, they must be able to see that the costs imposed are generating worthwhile results.**

### **2.3. The Third Money Laundering Directive and other possible policy actions**

Most Member States and the European Commission took the view that it was necessary to await the results of negotiations on the revised 40 FATF Recommendations before pursuing new legislative measures in this area. The revised Recommendations were adopted at the FATF Plenary Meeting in June 2003.<sup>9</sup>

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<sup>7</sup> Directive 97/200/EC of the European Parliament and of the Council of 4 December 2001 on prevention of the use of the financial system for the purpose of money laundering.

<sup>8</sup> As of end January 2004 only nine Member States had transposed the Second Money Laundering Directive into national law. These Member States are Denmark, Germany, Netherlands, Ireland, the United Kingdom, Spain, Belgium, Austria and Finland.

<sup>9</sup> The new FATF 40 Recommendations are available at [www.fatf-gafi.org](http://www.fatf-gafi.org). The most recent revision of the Forty FATF Recommendations considerably reinforces the "know your customer" principle, extends the criminal coverage of money laundering and encourages enhanced international cooperation in the fight against money laundering. In addition the revised 40 Recommendations considerably

The 2001 Directive anticipates a third directive covering the concept of predicate offences. **The Commission has now announced its intention of tabling a proposal for a 3<sup>rd</sup> directive by June 2004. On this point the Commission favours full alignment on the definition of serious offences laid down in Joint Action 98//699/JHA<sup>10</sup>. In addition, the Member States are committed to implementing the revised 40 FATF Recommendations. The proposal for a third directive should determine the changes to be made to the existing Directive to ensure that the EU standard never falls below the international standard set by the FATF notably in the area of customer due diligence, which, in view of the recent Parmalat scandal, should continue to be addressed as an important instrument in the fight against money laundering.**

**The Commission is considering whether the prohibition of money laundering in the Second Directive should be extended specifically to cover financing of terrorism as well.** This would mean that the money laundering reporting and other obligations under the Directive would be extended to cover any transaction which might be an indication of terrorist financing. The current definition of money laundering does not adequately deal with the case where legitimate money or property is intended for or diverted to terrorist financing purposes.

**The Commission is also considering the introduction in the directive proposal of the general principle that employees in credit and financial institutions making suspicious transaction reports (STRs) should receive appropriate protection.** The Commission is concerned that threats to employees of financial institutions could have a counter-productive effect in the fight against money laundering.

The FATF adopted on 14 February 2003 interpretative notes on two of the Eight Special Recommendations<sup>11</sup> on Terrorist Financing (Special Recommendation VI on "alternative remittance systems" and Special Recommendation VII on "wire transfers"), which both deal with payment issues<sup>12</sup>. The Commission envisages the establishment of a single payments area for all kind of payments and favours integrating these requirements into Community law.<sup>13</sup> Operators in the payments sector are calling for fully EU harmonised rules on these aspects in order to ensure a

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expand the list of the persons and institutions required to participate actively in the fight against money laundering.

<sup>10</sup> Offences punishable by a deprivation of liberty of a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, offences punishable by deprivation of liberty for a minimum of more than six months. Now replaced by Council Framework Decision 2001/500/JHA.

<sup>11</sup> The Eight Special Recommendations, which were agreed and adopted by the FATF in October 2003, are the new international standard to combat terrorist financing. Implementing these Special Recommendations should deny terrorists and their supporters access to the international financial system.

<sup>12</sup> The objective of SR VI is to increase the transparency of payment flows by ensuring that jurisdictions impose consistent anti-money laundering and counter-terrorist financing measures on all forms of money/value transfer systems, particularly those traditionally operating outside the conventional financial sector. SR VII was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. Specifically, it aims to ensure that basic information on the originator of wire transfers is immediately available.

<sup>13</sup> See in this context Commission Communication on a New Legal Framework for Payments in the Internal Market COM(2003) 718 final. Available at Commission homepage [http://europa.eu.int/comm/internal\\_market/payments/framework/index\\_en.htm](http://europa.eu.int/comm/internal_market/payments/framework/index_en.htm)



level playing field (including equal conditions for payment service providers, access, cost of compliance) and for reasons of efficiency (identical originator information requirements to allow straight-through-processing”).

**The Commission will continue to explore in 2004 the sharing of anti-money laundering data (feedback) between public and private sectors and the risk of the use of large-cash payments.** As far as information sharing is concerned, public and private sector efforts will be monitored in order to establish whether further Community action is needed in this area.

**The Commission will propose improved procedures for identifying the holders and beneficiaries of bank accounts.** Although the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>14</sup> (not yet ratified) contains provisions on requests for information on bank accounts, banking transactions and the monitoring of banking operations, it is not clear that the necessary information is always readily available. Banks should be under the obligation to be able to respond rapidly to requests for information from the competent authorities.

Apart from the two money laundering directives mentioned under point 2.2, the Commission presented on 2 July 2002 a proposal for a Council and Parliament regulation on the prevention of money laundering by means of customs cooperation (OJ C 227, 24.9.2002, p 575). The money laundering directives govern, inter alia, the control of financial resources moving via financial institutions. However, there is a risk that this control mechanism could be undermined by large scale movements of cash which are not uniformly subject to control in the Community. The proposal foresees a uniform approach to cash control based on a declaration system for amounts greater than € 15.000. This proposed measure should, in conjunction with the money laundering directives, help to combat laundering of money.

The Commission will also continue to monitor and assess the vulnerability of the Internet and developing communications technologies to exploitation by money launderers. The growing use of the Internet as a vehicle for financial transactions of all kinds has created concerns that certain transfers may escape the controls and surveillance mechanisms implemented by EU anti-money laundering rules.

#### **2.4. Other existing anti-money laundering measures and possible future policy measures**

The Joint Action of 3<sup>rd</sup> December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime<sup>15</sup> complements the Money Laundering Directives by addressing the need for more effective co-operation between Member States in this area. The Framework Decision<sup>16</sup> on money laundering, dealing with the identification, tracing, freezing, seizing and confiscation of the proceeds of crime partially replaces the above Joint Action. It is intended to ensure that Member States take the necessary steps not to

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<sup>14</sup> 326/01 of 21.11.2001

<sup>15</sup> Joint Action 98/699 JHA of 9.12.1998

<sup>16</sup> 2001/500/JHA OJ L 182 of 5/7/2001 The Commission will produce an implementation report on this Framework Decision before end 2003 to enable the Council to assess to what extent the measures necessary to comply with the Framework Decision have been taken.

make or uphold reservations in respect of a number of specific articles of the 1990 Strasbourg Convention<sup>17</sup> obliging Member States to provide for confiscation measures and to criminalise the laundering of the proceeds of serious offences. The Framework Decision also commits Member States to ensure that their domestic legislation allows for the confiscation of property the value of which corresponds to the proceeds of crime

A Council Act of 30<sup>th</sup> November 2000<sup>18</sup> extends the competence of Europol to money laundering in general regardless of the type of offence from which the laundered proceeds originate. To date only six Member States<sup>19</sup> have ratified the Protocol and the remaining **Member States should be encouraged to ratify at the earliest opportunity.**

The Protocol to the Convention on Mutual Assistance in Criminal Matters established by Council Act of 16<sup>th</sup> October 2001<sup>20</sup> provides for Member State authorities, to provide details of bank accounts, and banking operations of identified persons. Member States may not rely on rules of banking secrecy as a ground for refusing to co-operate in this context. **The Protocol represents a potentially important instrument in the fight against organised financial crime. However, it has not yet been ratified and Member States should accelerate efforts to give full effect to the Protocol.**<sup>21</sup>

The draft Framework Decision on Confiscation of Crime-related Proceeds Instrumentalities and Property<sup>22</sup>, received political agreement at the Justice and Home Affairs Council of 19 December 2002. The proposal aims to ensure effective rules governing the confiscation of proceeds of crime including in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime. The Framework Decision on the execution of orders freezing property or evidence<sup>23</sup> establishes the rules for recognition and execution of freezing orders issued by the judicial authorities of a Member State in the framework of criminal proceedings. A draft framework decision establishes a similar approach in connection with the execution in the EU of confiscation orders.<sup>24</sup>

#### *Possible future policy actions:*

- **Case tracking:** Member States are encouraged to develop **coherent systems capable of tracking data provided by entities subject to anti-money laundering reporting requirements in order to demonstrate the law enforcement or other follow-up given to Suspicious Transaction Reports (“STRs”)**. This would allow the production of specific and reliable data at national level in terms of numbers of money laundering or predicate offence prosecutions and convictions, asset confiscations, investigations undertaken and

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<sup>17</sup> Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council of Europe, November 1990

<sup>18</sup> Council Act of 30<sup>th</sup> November 2000 OJ2000/C358/01

<sup>19</sup> As at February 2004 Germany, Spain, France, Greece, Portugal and Sweden had ratified the Protocol  
<sup>20</sup> 2001/C 326/01 of 21.11.2001

<sup>21</sup> As at 1st November 2003 no Member States had ratified the Protocol

<sup>22</sup> OJ C184, 2.8.2002, p.3.

<sup>23</sup> 2003/577/JHA of 22 July 2003 L196/45

<sup>24</sup> 2002/C184/05 2-8-2002 C184/8

arrests made, based on money laundering disclosures. The tracking systems should also be capable of indicating data provided by one FIU to another and data used for related law enforcement purposes. This would require FIUs, law enforcement, courts and other bodies in the anti-money laundering (“AML”) data chain to implement a statistical apparatus capable not only of collecting the relevant data but also of tracing it back to (or forwards from) the AML disclosure.<sup>25</sup>

- **Confiscation powers:** Recommendation 3 of the FATF 40 Recommendations encourages countries to consider confiscation measures “without requiring a criminal conviction or which require an offender to demonstrate the lawful origin of the property alleged to be liable to conviction”. Examples in some Member States show that the setting up of specialised asset recovery bodies<sup>26</sup> can become a cornerstone in efforts to deprive perpetrators of crime of their illegal profits and assets, by whatever legal means available under criminal and/or civil law.<sup>27</sup> These would include the power to confiscate assets without requiring a criminal conviction or which require an offender to demonstrate the lawful origin of the property alleged to be criminal proceeds.<sup>28</sup> **Establishment of asset recovery bodies at national level should be considered. The Commission supports Europol’s efforts to set up an “Asset Seizure Knowledge Centre”<sup>29</sup> to facilitate the identification of criminal assets in the course of major criminal investigations conducted by Member States. Eurojust should also be associated with these efforts.**
- **Reporting requirements:** Recommendation 17 of the FATF 40 Recommendations calls for effective, proportionate and dissuasive sanctions to be available to deal with physical or legal persons who fail to comply with money laundering rules. The Money Laundering Directives impose important reporting and other obligations on specified persons. Consideration should be given as to whether the criminalisation of gross negligence in the failure to comply with reporting obligations and other obligations such as the carrying out of adequate identification checks, record keeping and co-operation with FIUs, including the possibility of corporate liability in appropriate circumstances, would improve the effectiveness of this aspect of anti-money laundering rules.
- **Database of currency transactions: consideration should be given to the feasibility and need for Member States to establish an electronic database of currency exchange transactions above a specified amount to be accessed by**

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<sup>25</sup> See in this context Recommendation 32 of the FATF Forty Recommendations

<sup>26</sup> Recommendation 17 (b) of the Millennium Strategy states that Member States should consider establishing “units which are specifically dedicated to the process of tracing, seizure and confiscation of assets...” and should also examine whether such units’ “manpower, operational and technical resources are sufficient to combat money laundering”.

<sup>27</sup> These examples have proved to be a highly effective tool in removing the proceeds of crime. The procedure is “in rem”, i.e. against the property and is independent of the defendant’s conviction for criminal activity. This allows law enforcement authorities to focus their activities on the assets of criminal proceeds. Once the criminal origin of the assets has been proved, using the lower civil burden of proof, the onus shifts to the defendant to prove the legitimate origin of the assets. As regards the United Kingdom’s asset recovery agency, information can be found at <http://www.homeoffice.gov.uk/>

<sup>28</sup> See in this context Recommendation 19 of the Millennium Strategy.

<sup>29</sup> This centre will provide a full picture of existing asset identification tools within the Member States and beyond, a description of relevant procedures and a list of national contact points to facilitate international co-operation.

**police and judicial authorities in money laundering investigations, subject to data protection requirements.**<sup>30</sup>

- **Financial havens:** Recommendation 14 of the Millennium Strategy stated that an instrument should be adopted in respect of off-shore and on-shore financial centres and tax havens operating in Member States' territory or dependencies, and on a common European Union policy towards financial centres and tax havens lying outside the European Union. Member States should ensure that the FATF 40 Recommendations and Community Money Laundering Directives are adequately implemented in off-shore and on-shore financial centres and fiscal paradises operating in dependent territories. As regards financial havens not forming part of the dependent territory of the Member States,<sup>31</sup> consideration should be given to an appropriate mechanism to facilitate an EU-wide response where financial havens are considered to represent a significant money laundering threat.<sup>32</sup> In order to prevent and unmask corporate financial crime, the involvement of financial centres and special-purpose vehicles necessitates particularly close co-ordination between company law regulators, securities market authorities and the auditors and audit supervisors.
- Underground banking and other alternative remittance systems are frequently used by terrorists and other criminals for international transfer of illegal funds since such systems generally leave no paper trail. To ensure adequate monitoring and, where appropriate, disruption of such systems, it is necessary to encourage rapid exchange of information on a case by case basis between law enforcement authorities, FIUs and other relevant bodies. This in turn should promote co-ordinated action between domestic and foreign authorities to deter the use of such systems for the transfer of illegal funds. To this effect the Commission supports and is participating in, the establishment of an early warning system to promote information exchange and joint action to disrupt illegal international funds transfers.
- **SUSTRANS:** the Commission supports and encourages Europol to **reinforce its anti-money laundering efforts by implementing the computerised evaluation of Suspicious Transaction Reports forwarded to the Analysis System of Europol (SUSTRANS), to be based on more systematic transmission of financial intelligence by Member States.**

**Significant anti-money laundering efforts have been made by the private sector to implement systems allowing, among other things, the identification and reporting of suspicious transactions. As a necessary complement, new initiatives are now required from the public sector. Enhanced effectiveness of complementary public sector efforts in the fight against money laundering, may in turn allow consideration to be given to extension of obligations on financial institutions and others under the Money Laundering Directives. This could include, for example, broadening the definition of money laundering to**

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<sup>30</sup> Recommendation 19 b) of the FATF Forty Recommendations calls on countries to consider establishment of such a database operated by national agencies.

<sup>31</sup> The Joint Council (JHA/Ecofin) adopted conclusions in October 2000 addressing the question of money laundering risks from off-shore and on-shore financial centres and havens.

<sup>32</sup> In this context, see the announcement of the United States Treasury Department of 19.11.2003 that it was taking action to cut Myanmar off from the US financial system by designating it as a centre for money laundering.

**encompass situations where a person ought to have known that property is derived from criminal activity.**

## **2.5. Financial Intelligence Units**

### *Cooperation and exchange of information between FIUs*

The Money Laundering Directives call on Member States to designate an authority to receive suspicious transaction reports submitted by the financial sector and from certain other activities and professions. These authorities are now generally referred to as Financial Intelligence Units (FIUs). All Member States have set up an FIU in their territory. These collect and analyse information received pursuant to the Directive. This information is used to produce financial intelligence, aimed at revealing links between suspicious financial transactions and underlying criminal activity.

At present, co-operation and exchange of information between Member State FIUs is often slow and limited, and is generally not computerised. At the same time, given the frequently international nature of money laundering, efforts to combat this phenomenon could be greatly enhanced and improved results obtained, if available financial intelligence were to be exploited to the maximum. In order to promote an effective exchange of information between Member State FIUs, a Council Decision of October 2000<sup>33</sup> called on Member States to ensure that FIUs co-operate to assemble, analyse and investigate relevant information, including the exchange of information.

The Commission, the European Parliament, the Council and the European Council have all pointed to the need to improve co-operation among FIUs. The Joint ECOFIN/JHA Council of October 2001 called on the Commission to investigate the possibility of Community funding for a project in this area. Under the leadership of the Netherlands, a pilot computer network currently linking seven FIUs has been developed. The first results of this project, called FIU-NET, though modest, are encouraging. However, it is clear that fully to design and build an optimum operational network linking all the Member States' FIUs will require a substantial investment over a number of years.

The Commission believes this is a worthwhile project that should greatly enhance the EU anti-money laundering effort. Accordingly, it is currently proposed that the Commission should conclude a grant financing agreement with the Netherlands Justice Ministry to begin co-financing a project to develop and implement a fully operational computer network linking all Member State FIUs for the processing and exchange of financial intelligence.

The FIU-NET will make possible for all the Member States' FIUs to exchange financial intelligence information through a decentralised computer network; all the FIUs should be connected to the existing basic pilot network (FIU-NET). Given the clear links with its own work, Europol would be closely involved with this project.

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<sup>33</sup> Council Decision of 17 October 2000 concerning arrangements for co-operation between financial intelligence units of the Member States in respect of exchanging information, (2000/642/JHA), OJL271 of 24/10/2000, p.4. The Decision also called on Member States to provide for, and agree on, appropriate and protected channels of communication between FIUs.

On 22 December 2003 the Commission formally decided to make a grant to the Netherlands Justice Ministry for the development of the FIU-NET project. The relevant grant financing agreement between the Commission and the Ministry is now being finalised.

It should be noted that a parallel FIU network is currently in the process of being established between the FIUs of the accession states with the backing of PHARE programme funding. The two networks are being designed and developed so as to be fully compatible and to facilitate their merging into a single EU wide network at an appropriate moment.

## **2.6. Fraud (other than against the financial interests of the Communities)**

Non-cash means of payment (principally credit and debit cards and cheque payments) represent an important source of illicit revenue for organised crime groups through fraud and counterfeiting. A Framework Decision<sup>34</sup> was adopted in 2001 to ensure that fraud and counterfeiting of non-cash means of payment are recognised as criminal offences and are subject to effective sanctions. .

In February 2001, as a complement to the Framework Decision, the Commission adopted a three-year Action Plan to prevent fraud and counterfeiting of non cash payments,<sup>35</sup> which aims at fostering a more coherent approach to prevention in this area. The Action Plan is based on a close co-operation between the relevant public authorities and private parties. It includes a comprehensive set of non-legislative measures aimed at raising awareness, exchanging experience and information, training, developing and sharing educational material.<sup>36</sup> The Action Plan was strongly supported by public and private stakeholders.

The Commission will publish in 2004 a report on progress achieved under the Action Plan and propose further initiatives. Priority areas will continue to be the security of payment products and systems, an effective exchange of information and increased co-operation between relevant public authorities and between the latter and the private sector. Greater clarification of existing EU data protection legislation with respect to fraud prevention activities is necessary to allow a wider cross-border exchange of information. The integration of accession countries in the EU fraud prevention framework and stronger relations with public authorities in third countries will also continue to be a priority. Emerging threats will also be addressed. For example, in February 2004 a workshop was organised under the EU Forum for the Prevention of Organised Crime on identity theft – the unauthorised use of a person's identity as a mask in the commission of crime.

The effective fight against fraud requires enhanced co-operation at all levels. Systems to ensure timely and appropriate data exchange among stakeholders must be

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<sup>34</sup> Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment, (2001/413/JHA), OJ L 149 of 02/06/2001, p.1 The Framework Decision covers theft, counterfeiting or falsification, receiving or obtaining and fraudulent use of payment instruments or instruments purporting to be payment instruments. The unlawful use of a computer to make a financial gain is also covered. The Framework Decision also provides for co-operation and exchange of information between Member States in tackling these offences.

<sup>35</sup> Preventing fraud and counterfeiting of non-cash means of payment of 9.2.2001 COM(2001) 11 final

<sup>36</sup> More information on all the measures of the Action Plan 2001-2003 and their implementation is available at: [http://europa.eu.int/comm/internal\\_market/payments/fraud/index\\_en.htm](http://europa.eu.int/comm/internal_market/payments/fraud/index_en.htm)

fully implemented. **Through the EU Forum for the Prevention of Organised Crime and other groups<sup>37</sup>, the Commission will explore the scope for and possible contents of clear guidelines as to how public and private agencies may work together to combat fraud more effectively. The absence of harmonised legislation in the fight against fraud is a significant dampener on police and judicial co-operation in this area.**

## 2.7. Protecting the Community's Financial Interests

The Community's own resources suffer huge losses as a result of fraud, which generates criminal proceeds with low risk and generally mild punishments in case of conviction.

On the basis of Article 280 EC Treaty the Community and the Member States may take the necessary measures to counter fraud affecting the financial interests of the Community. As with the 1995 Convention on the protection of the European Community's financial interests (in force since 17 October 2002), the Second Protocol to that Convention<sup>38</sup> calls on Member States to take measures and exchange information with the Commission, in order to make legal entities liable for fraud, corruption and money laundering. The Second Protocol has not yet entered into force and the two Member States which have not yet ratified it should accelerate efforts to do so to ensure a more effective fight against fraud to the detriment of the Community's financial interests.

OLAF plays a fundamental role as investigator and/or coordinator in all areas of the protection of the Community's financial interests. Efforts to detect and prevent the laundering of proceeds of EC fraud are an important element of the protection of the Community's financial interests. Enhanced cooperation and exchange of information with FIUs will have an important impact on OLAF's efforts in this area.

Coordinated mutual administrative assistance and exchange of information are important elements in the fight against fraud. The Commission is preparing an initiative on mutual administrative assistance for the protection of the Community's financial interests against fraud and other illegal activities. This initiative covers the fields of vertical and/or horizontal administrative assistance and exchange of information in the areas of VAT fraud, money laundering of the proceeds of EC fraud, structural funds fraud and other areas of fraud that are not yet covered by secondary EC legislation.

In the field of financial crime the initiative aims to make use of the information obtained on the basis of the anti-money laundering tools from first and third pillar legal instruments for the purpose of the protection of the Community's financial interests. This means in particular, tracing EC fraud through information about suspicious financial transactions. Also **VAT fraud** is a major concern for the Member States and the European Community. VAT constitutes in some Member States the most important source of fiscal revenue and Member States VAT Own Resources contribute up to 25% of the Community budget. In addition to the loss of

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<sup>37</sup> For example, the EU Fraud Prevention Experts Group in the area of non-cash means of payment

<sup>38</sup> Second Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities' financial interests, OJ C 221 of 19/07/1997, p.12.

revenue, this fraud jeopardises legitimate trade in certain economic sectors and hampers the functioning of the internal market.

Therefore, in June 2001, the Commission made a proposal<sup>39</sup> for a new regulation to strengthen cooperation between Member State tax authorities to combat VAT fraud. The Council adopted this proposal on 8 October 2003, and a new Regulation<sup>40</sup> (N° 1798/2003) on administrative cooperation in the field of VAT entered into force on 1 January 2004. This regulation has considerably improved the legal framework for administrative cooperation and is therefore to be considered as a major tool in the fight against VAT fraud.

While the new regulation on administrative cooperation was a prerequisite in order to improve Member States' cooperation in the fight against VAT fraud, it was also necessary to accompany this legislative initiative by concrete measures enhancing cooperation between tax administrations and officials. The Fiscalis 2003-2007 programme was therefore adopted by the Council and the European Parliament in order to enhance the day-to-day cooperation between officials.

In parallel, the Commission has, together with the Member States, carried out an in-depth examination of VAT fraud in intra-community trade and has identified the various measures that have been taken at national level and which have given the best results in the fight against "missing trader fraud". In the meantime, several Member States are adapting their national control systems, on the basis of these "best practices", in order to prevent and disrupt such fraud.

The Commission's legislative initiative for a regulation on mutual administrative assistance and exchange of information shall provide for a more detailed legal basis for the much needed coordination role of the Commission (OLAF) in the field of trans-national VAT fraud. This initiative is complementary to existing legislation, in particular Regulation 515/97 regarding mutual assistance on customs and agricultural matters as well as Regulation 1798/2003 on administrative assistance in the field of VAT fraud.

However, in addition to what has recently been achieved in this field, **there is a need to explore the establishment of a common and comprehensive EC concept of fiscal fraud and the harmonisation of penal sanctions. The Commission intends to launch a comparative study of the respective definitions of fiscal fraud and their penal consequences. Enhanced co-operation in particular between the Member States, the Commission (OLAF), Eurojust and possibly Europol, making greater use of already existing co-ordination facilities at OLAF level and at Eurojust, is necessary and requires adequate resources to optimise the potential for a more effective partnership.**<sup>41</sup>

**Finally, the creation of an independent European Public Prosecutor responsible for detecting and prosecuting offences directed against the Community's financial interests, would strengthen the fight against organised financial crime.**

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<sup>39</sup> COM(2001) 294 final du 18.6.2001.

<sup>40</sup> Council Regulation (EC) No 1798/2003.

<sup>41</sup> See Declaration 2 to the Council Decision extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention (2001/C 362/02).



## 2.8. Protecting the EURO

The introduction of the euro created the need for closer cooperation among the EU Member States and the adoption of common rules and procedures. In addition, it called for special action to prevent counterfeiting. Those measures include a Regulation laying down specific measures for the protection of the euro<sup>42</sup> and of a Framework Decision on criminal sanctions<sup>43</sup>. The Council has also extended Europol's mandate to deal with forgery of money<sup>44</sup> and assigned to the Commission the co-ordination of training and technical assistance, through a Decision establishing a specific financial programme<sup>45</sup>.

The European Central Bank ("ECB") has established and maintains the CMS<sup>46</sup> database on counterfeits and analyses new types of counterfeit banknotes. Europol is responsible for the transmission and analysis of information and has established a database including criminal data for use by law enforcement and is strengthening its role in this area. The Commission (OLAF) monitors the implementation of legislation and prepares legislative initiatives, manages the "Pericles" training and technical assistance programme and analyses new types of counterfeit euro coins.

Member States have all implemented the Community legislation related to criminal sanctions<sup>47</sup>. They have established National Central Offices for the protection against counterfeiting and designated bodies responsible for the technical analysis of counterfeits. They have also introduced legislation obliging credit institutions to withdraw from circulation and hand over counterfeits to competent authorities. Finally, co-ordinated by the Commission, Member States carry out training and technical assistance actions for the protection of the euro.

**The increasing use of modern digital equipment, which allows relatively easy reproduction of banknotes is under review by the ECB and the Commission. Community legislation is under consideration concerning use of the specific machine-readable features incorporated in euro banknotes<sup>48</sup>. Finally, appropriate common methods are being examined for the detection of counterfeit banknotes and coins at the level of credit and other relevant institutions.**

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<sup>42</sup> Council Regulation (EC) N° 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, OJ L 181 of 4.7.2001 p.6

<sup>43</sup> Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro, (2000/383/JHA), OJ L 140 of 14/6/2000, p.1

<sup>44</sup> Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment, (1999/C 149/02), OJ C 149 of 28.5.1999, p. 16.

<sup>45</sup> Council Decision of 17 December 2001 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the 'Pericles' programme), (2001/923/EC), OJ L 339 of 21.12.2001 p. 50.

<sup>46</sup> Counterfeit Monitoring System

<sup>47</sup> Commission Reports based on Article 11 of the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, COM(2001) 771 final of 13 December 2001 and COM(2003) 532 final of 3 September 2003.

<sup>48</sup> Such European legislation would require all EU-based manufacturers or importers of printers, scanners and image processing software, to incorporate appropriate detectors into their products; this could be based on the Counterfeit Deterrence System (CDS) developed by the ECB and other Central Banks.

### **3. HORIZONTAL TOOLS TO STRENGTHEN THE FIGHT AGAINST ORGANISED FINANCIAL CRIME**

The European Commission intends to develop and enhance a series of horizontal measures to prevent and fight organised crime in general which are also relevant to the fight against organised financial crime.

#### **3.1. Transparency of certain legal entities**

There is a general need to enhance transparency and integrity standards in public administrations and private entities to prevent and discourage financial crime in general and thus contribute to the more effective tracing of organised financial crime. The FATF has highlighted the need to facilitate access to information on the beneficial ownership and control of legal persons, with bearer shares and trusts requiring particular attention.<sup>49</sup> The need for greater transparency in beneficial ownership was also recognised in the Tampere Conclusions of October 1999.<sup>50</sup>

A report undertaken on behalf of the Commission<sup>51</sup> concluded that a lack of transparency regarding in particular the identification of the beneficial owner, the use of trusts or equivalent instruments and use of nominees constituted obstacles to international co-operation in the fight against money laundering. Recommendations 33 and 34 of the FATF Forty Recommendations also highlight the risks that bearer shares and trusts may be misused for money laundering purposes.

The Parmalat affair and other scandals have shown up many failures. The Commission is now implementing its corporate governance and company law programme which addresses a number of areas where weaknesses have been revealed. The Commission has recently adopted a proposal for a directive revising the 8<sup>th</sup> Company Law Directive on the statutory audit. Issues such as the oversight of auditors, with independent oversight bodies being in charge are addressed; other questions considered include group auditors' full responsibility for the consolidated accounts of listed companies; the need for functional and powerful independent audit committees in all listed companies; a strengthening of sanctions regimes and whether cooperation at European level of all oversight bodies should be enhanced. A cooperative working model with third country regulators is included.

Furthermore work will have to be accelerated on the role of independent non-executive or supervisory directors; on requiring all Directors to be collectively responsible for company accounts; and on ensuring complete information and disclosure with regard to a group's structure and intra-group relations. Where there is resort to tax havens and special purpose vehicles, reflection is continuing as to whether such special operations should be listed in company accounts, their purpose should be explained and the group auditor should be responsible for checking that the description corresponds to reality.

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<sup>49</sup> See in particular Recommendations 33 and 34 of the FATF Forty Recommendations

<sup>50</sup> Conclusion 54 states that "With due regard to data protection, the transparency of financial transactions and ownership of corporate entities should be improved..."

<sup>51</sup> Study of the Regulation and its Implementation in the EU Member States that obstructs anti-money laundering international Co-operation Transcrime Research Institute, Final Report October 2001 available at <http://www.transcrime.unitn.it>

The need for greater transparency to prevent the infiltration of the public and private sectors by organised crime was also addressed by the “Millennium Strategy”,<sup>52</sup>. The Commission has recently funded a study<sup>53</sup> that analyses Member States’ measures to prevent penetration of legal entities by organised crime and terrorist groups. A more detailed discussion of the Study’s findings can be found in the Commission Communication on the fight against terrorism and other serious crime.<sup>54</sup>

**The Commission considers that improved transparency rules could help to combat organised financial crime, but that these need to be elaborated in close co-operation with non-governmental sector representatives. Greater transparency in the corporate sector may impact on efficiency and economic costs, for example, by requiring more detailed scrutiny of the identity of directors or shareholders. Further to the Commission Staff Working Paper on Transparency of Legal Entities,<sup>55</sup> the Commission proposes to carry out cost benefit analyses in connection with the enhancement of transparency measures to help combat organised financial crime.**

In addition, the Commission acknowledges that improved transparency and exchange of information are not only relevant to the fight against organised financial crime but can also play a vital role in other areas of EU interest. New ways on preventing and combating financial malpractice should be explored, with a particular focus inter alia on companies’ use of complex and opaque structures (including certain derivatives) of subsidiaries and other special purpose vehicles to commit and to conceal malpractices in the financial and taxation fields. One of the objectives could be to recommend a comprehensive and consistent EU approach for tackling such malpractices.

### **3.2. Co-operation between the private and public sectors**

Co-operation between the financial and other business sectors and law enforcement authorities at EU-wide level should play a significant role in the prevention and detection of money laundering and other forms of financial crime. This can facilitate the identification of best practice within business, encourage cross-fertilisation of ideas and promote the strengthening of sector-wide internal controls. It is believed that a significant volume of organised financial crime goes unreported. Promoting closer co-operation between police (or other branches of law enforcement) and the private sector could encourage greater reporting of financial crime.

In the context of money laundering, greater co-operation between law enforcement, government and the financial and other business sectors should encourage **detection**

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<sup>52</sup> The Prevention and Control of Organised Crime: A European Union Strategy for the Beginning of the New Millennium 2000/C 124/01. See in particular Recommendation 3.

<sup>53</sup> Comparative Study into Member States’ Measures to Prevent the Infiltration of Legal Entities by Organised Crime and Terrorist Groups – Institute of Advanced Legal Studies, September 2003

<sup>54</sup> Commission Communication on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information, adopted by the Commission on 29.3.2004 - COM(2004)221

<sup>55</sup> Commission Staff Working Paper on the Transparency of Legal Entities and on Measures to Enhance Transparency in the Banking/Financial Sector in the Context of Action to Combat Money Laundering, Brussels 16.10.2001 SEC(2001) 1645

**and elimination of vulnerabilities** within financial systems and which organised crime seeks to exploit<sup>56</sup>.

The Commission intends to promote the development of co-operation between the private and public sectors the EU Forum for the Prevention of Organised Crime and by encouraging greater research work in this area. Building on the outcome of the Dublin Conference “Tackling Organised Crime in Partnership”<sup>57</sup>, the Commission, in consultation with other bodies, will develop an Action Plan for such co-operation at EU level.

**The Commission will explore the scope for co-ordination between law enforcement/government officials and representatives of the financial and other business community affected by organised financial crime.**

### 3.3. Financial investigation

**Financial investigations provide one of the tools to learn more about activities and patterns of behaviour of organised crime groups and provide effective added value to investigations in Member States. If the fight against organised financial crime is to be taken seriously, there is an overriding need to prioritise financial crime among Police Chiefs’ responsibilities and to make adequate provision for the necessary resource and training needs within police and judicial authorities.**

Financial investigations can play an important role in enhancing organised crime disruption policies. This form of investigative technique should be encouraged both at national and, in appropriate cases, at European levels.<sup>58</sup> Success in targeting organised crime and its financing requires a shift in traditional concepts of tackling crime. In financial crime investigations, there is a need to take a “whole crime” approach and to initiate simultaneous investigations targeting the crime and other activities linked to it. **The fight against organised financial crime would be enhanced through the elaboration of a common policy on the development and implementation of financial investigations as an investigative technique. Standard rules for financial investigation bodies throughout the EU should also be considered, notably in connection with funding, training requirements and co-operation mechanisms of such bodies.**

**Member States should enhance Europol capacities in line with developing financial investigation needs. Europol should be empowered to undertake financial investigations in parallel with sectoral organised crime investigations. .**

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<sup>56</sup> In July 2003 the US Department of Homeland Security announced a new programme to share with the private sector data on security gaps and financial system vulnerabilities discovered during investigations to help private companies improve defences against money laundering and other financial crimes.

<sup>57</sup> The Dublin Conference “Tackling Organised Crime in Partnership” took place on 20<sup>th</sup> and 21<sup>st</sup> November 2003. It was funded by the European Commission’s AGIS programme with the support of the Irish Department of Justice, Equality and Law Reform and the Netherlands Centre for International Police Co-operation. The conference outcome statement, the “Dublin Declaration” sets out a number of recommendations concerning establishment of organised crime prevention partnerships.

<sup>58</sup> See in particular Recommendation 27 of the FATF Forty Recommendations

**The Commission proposes to set up a working group of representatives of the European Commission (including OLAF), Europol and Eurojust that aims at the elaboration of minimum standards for national criminal intelligence systems, in order to facilitate effective strategic and tactical analysis, forward planning and operation, all contributing to effective intelligence led law enforcement in the EU.**

### **3.4. Statistics and benchmarking**

The fight against organised financial crime would be enhanced by a common language of financial crime. This would also help in working towards reliable and comparable statistics indicating trends in this area. Recommendation 32 of the FATF 40 Recommendations calls for the establishment of comprehensive statistical mechanisms to facilitate effectiveness and efficiency of anti-money laundering systems. A common system for measuring the volume of STRs, money laundering-related prosecutions, convictions and other law enforcement follow-up to STRs, would be a valuable tool in connection with the setting up of early warning systems and evaluating effectiveness of policy in this area. Article 30(2) d) of the Treaty on European Union stipulates that common action in police co-operation shall include the setting up of a research, documentation and statistical network on cross-border crime. Recommendation 1 of the Millennium Strategy foresaw a uniform EU concept of the topics and phenomena relating to organised crime and the identification of emerging trends<sup>59</sup>.

**The Commission, in conjunction with interested parties, intends to promote relevant data collection and statistical mechanisms with particular regard to organised financial crime. The Commission is also supporting the implementation of a set of economic risk assessments on sectoral organised crime forms, with a view to formulating a European methodology on economic risk and harm assessments.**

### **3.5. Crime proofing**

The Commission services are working on a mechanism to facilitate identification of legislative proposals which may inadvertently create opportunities for crime. In a subsequent stage, it may be possible to extend this form of crime risk assessment to areas beyond the legislative process. This could include procedures and processes surrounding such areas as insurance claim forms or credit card applications with a view to reducing opportunities for fraud. As regards fraud against the Community budget, the Commission/OLAF has begun a fraud proofing initiative designed to identify and remove opportunities for fraud in Community legislative and other proposals.<sup>60</sup>

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<sup>59</sup> The Prevention and Control of Organised Crime: A European Union Strategy for the Beginning of the New Millennium – OJ C 124 of 3/5/2000 Recommendation 1 implicitly addresses the need for a coherent statistical apparatus that would facilitate the scoping of organised crime, measuring European trends and assessing the effectiveness of policies adopted and implemented.

<sup>60</sup> Commission Communication of 7.11.2001 SEC(2001) 2029 final

### **3.6. Policy evaluation and monitoring**

The European Commission attaches particular importance to the mutual evaluation mechanism as established for instance under the Council's Multi-Disciplinary Group. **The Commission foresees a full evaluation of the effectiveness and impact of policy and measures in the fight against organised financial crime in the EU in 2005. The purpose of these evaluation missions will be to identify best practice and areas where additional measures in the fight against organised financial crime could be taken.**

### **3.7. Training Programmes, Workshops and Studies**

Training is a key element in the fight against organised financial crime. Law enforcement and judicial authorities and the relevant private sector must be equipped with the necessary skills and know-how. Training must motivate staff and wherever possible civil society, by addressing the economic and social imperatives underlying the fight against organised financial crime.

**The European Commission will continue to carry out and/or fund seminars, workshops and studies under its AGIS funding programme, details of which can be found on the freedom, security and justice pages of the europa web site ([www.europa.eu.int](http://www.europa.eu.int)).**

## **4. POLICIES TO SUPPORT THE IMPLEMENTATION OF MEASURES TO PREVENT AND FIGHT ORGANISED FINANCIAL CRIME**

### **4.1. Funding measures to fight against organised financial crime**

On 10 February 2004, the Commission published a Communication on the post-2006 Financial Perspectives, entitled "Building our common future – Policy challenges and Budgetary means of the Enlarged Union 2007-2013 (COM (2004) 101 final). The Communication identifies the area of freedom, security and justice as a priority within the overall policy framework, and as "the new frontier for integration". Among the priorities in the area of security is a stronger focus on crime prevention activities, "notably emerging forms and means of serious and organised criminality". This commitment to the establishment of new funding mechanisms will contribute to the broadening of the general debate and policy development on an effective fight against organised financial crime at EU level. The European Commission will thus play a crucial role in the support, monitoring and further development of legislative and policy initiatives in this field.

### **4.2. Enhancing external action in the fight against organised financial crime**

EU technical assistance programmes aim to help third countries to improve their capacity to meet European or international standards. There is an increasing trend towards the inclusion of Justice and Home Affairs aspects in these programmes, particularly in terms of money laundering and terrorism financing. The EU has also concluded a number of agreements with third countries, most recently with the United States on mutual legal assistance in criminal justice concluded on 25th June

2003.<sup>61</sup> The European Commission intends to explore the possibility of concluding similar agreements between the European Union and other countries. The Commission also recalls the necessity<sup>62</sup> to improve the coherence of Community policies towards financial and tax havens, as a mean to promote European or international standards of best practices.

## 5. CONCLUSION

**Organised financial crime undermines legitimate economic actors and strengthens the shadow economy thus diminishing economic growth and public resources. The fight against organised financial crime takes on even greater significance when it is realised that reducing such crime has a broader impact on the fight against organised crime generally. Money is the lifeblood of organised crime and by reducing or removing access by organised crime groups to money; such groups will be significantly weakened.**

**The fight against money laundering has been a top political priority of the European Union for a number of years, based on the need to protect the financial system and to aid efforts to combat organised crime. The tragic events of 11 September 2001 and the international consensus to target terrorist financing have given this work even greater visibility and importance.**

**Whilst acknowledging that far-reaching anti-money laundering measures are already in place, the Commission is determined to continue the fight against money laundering and to develop legislation in the context of an ever more sophisticated financial system.**

**The first and second Money Laundering Directives have instituted significant controls designed to facilitate detection of the laundering of money and other assets deriving from criminal activity. This work will continue. The Commission proposal for a third Money Laundering Directive, to be tabled by the Commission in June 2004, will seek to consolidate and strengthen this approach. The proposal for a third directive will set out the changes to the existing Directives needed to take account of the revised FATF 40 Recommendations and other changes needed to strengthen anti-money laundering defences.**

**The fight against organised financial crime must fully engage all stakeholders in combined efforts to identify, monitor and combat crime. The development of greater co-operation between private and public sectors is a key driver in this area. Equally, enhanced co-operation and information exchange between all levels of law enforcement both domestically and internationally will play a significant role in this context. Greater focus is needed on the strategic role which Europol and Eurojust should play in joint and parallel investigations and**

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<sup>61</sup> In addition to mutual legal assistance in criminal justice, the EU/US Agreement also addresses areas more specific to financial crime, notably exchange of bank account information relating to legal or physical persons suspected of or charged with a criminal offence.

<sup>62</sup> See Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee on Tax policy in the European Union - Priorities for the years ahead. (COM(2001) 260 final of 23 May 2001)

**on co-ordination between Europol and national law enforcement and judicial authorities.**

**Financial investigations should become a routine part of law enforcement activities, adopting a “whole crime” approach gathering intelligence on criminal networks and the beneficiaries of organised crime. Effective tools to allow identification, freezing and confiscation of the assets and instrumentalities of organised criminals, possibly with the assistance of specialised asset recovery bodies and civil procedures, must be further explored.**

**Criminals benefit from the ability to hide the identity of the true beneficial owner of assets, from the ease of incorporation and the use of nominees. Transparency therefore remains an important issue in the fight against organised financial crime and further effort will be needed to address this area.**

**Other forms of support are also necessary to optimise the fight against organised financial crime. There is a need to develop the tools to measure and scope the extent of specific forms of such crime, to monitor developing trends and evaluate effectiveness of policy. Evaluation of policy measures in the fight against organised financial crime is essential. The Commission will therefore propose a full evaluation of the effectiveness of measures in this area to help identify best practice and areas where additional effort may be needed.**

**The European Commission sees the fight against organised financial crime as a core priority over the coming years and is determined to play a full role in the adoption of effective and efficient measures in this field, as outlined in this Communication.**