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NOTE

From:	Counter-Terrorism Coordinator
To:	COREPER
Subject:	Report on the implementation of the revised Strategy on Terrorist Financing

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

This report, drawn up in cooperation with the Commission, outlines progress in achieving the goals mentioned in the recommendations of the revised strategy since the last report presented to COREPER on 23 June 2010[2].

1 11778/1/08 REV 1
2 10182/10

The fight against terrorist financing was highlighted as a key area in the fight against terrorism in The European Union Counter-Terrorism Strategy adopted by the European Council on 15 December 2005[1]. It also forms an integral part of the EU Action Plan on combating terrorism agreed by COREPER on 13 February 2006[2] where it features as part of the "Pursue" strand.

Recommendation 1 -Monitoring

The revised Strategy on Terrorist Financing lists various important legal instruments, the effective implementation of which would be monitored. A very important one is Directive 2005/60/EC[3] on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing **(3rd AML/CFT Directive)** that entered into force on 15 December 2005 and was to be transposed before 15 December 2007. While at the time of the last report two Member States had not fully transposed the Directive, all Member States have now finalised this process and transposed the directive into national law.

In February 2010 the European Commission commissioned an external study on the application of the 3rd AML/CFT Directive, the results of which have now been published. The findings of this report will be used for the work of the Commission concerning a possible revision of the 3rd AML/CFT Directive.

The 3rd AML Directive is complemented by Regulation (EC) No 1889/2005 on controls of cash entering or leaving the EU (**Cash Control Regulation**)[4]. The Commission and the Member States have monitored the application of this regulation since June 2007 in the Cash Control Working Group. The Cash Control Working Group has not only drawn up a Handbook of Guidelines on Cash Control, it is set up in general to ensure a constant exchange of best practices and harmonisation of implementation between the EU Member States.

1 14469/4/05 REV 4
2 5771/1/06 REV 1
3 OJ L 309, 25.11.2005, p. 15
4 OJ L 309, 25.11.2005, p. 9

The Commission adopted on 12 August 2010 a report on the application of the Cash Control Regulation[1]. On 20 December 2010, the Council adopted conclusions on this report[2]. The Commission and Member states have cooperated further in 2011 via the Cash Control Working Group to ensure follow up to both evaluation report recommendations and the council conclusions. An assessment report to Council on these Commission and Member States activities is scheduled for the end of 2011.

Following the recognition of the EU as a supra-national authority in the context of FATF 'Special Recommendation (SR) IX on cash controls at the borders', the Commission and the Member States have discussed successfully at the FATF a two- stage approach for the assessment of a supra-national authority for SR IX. As a result, in a first stage of future assessments of compliance with SR IX, a review of the relevant EU legislation will be carried out. In the second stage a full assessment of individual EU Member States on compliance with SR IX will take place. This two-stage approach will contribute to a fair and more harmonised assessment and implementation by EU Member States of SR IX.

The Commission will continue to develop and promote the use of the available appropriate data exchange systems by Member States such as: the Customs Files Identification Database (FIDE) and the Common Customs Risk Management System (CRMS) – Risk Information Form (RIF) with a view to being fully in compliance with the essential criteria on information exchange and also on risk analysis as mentioned in SR IX. The Commission will ensure that access to FIDE is extended to the national authorities responsible for combating money laundering under Article 21 of Directive 2005/60/EC (FIUs) through a secure internet connection. Moreover, the model for the Customs Information System (CIS) for gathering data on cash detained, seized or confiscated is ready and will be promoted.

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1 COM(2010) 429 final.
2 15204/2/10 REV 2

Council Decision 2007/845/JHA[1] was adopted in December 2007. It requires Member States to set up or designate **National Asset Recovery Offices (AROs)** which would promote, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime, including terrorism. The Decision should have been implemented by Member States by 18 December 2008. So far 24 Member States have notified their designated ARO to the Commission and the General Secretariat of the Council. In the remaining three countries an internal designation has been made and the notification is pending.

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

On 20 November 2008 the Commission adopted a Communication on the proceeds of organised crime (COM(2008)766), which proposes ten strategic priorities to strengthen the fight against organised crime by enhancing confiscation and asset recovery. In this respect the Communication also calls upon initiatives for an increased cooperation among Asset Recovery Offices of the Member States and for new tools related to the identification and tracing of assets. It proposes that Asset Recovery Offices should meet regularly within an informal Platform in order to ensure effective coordination, cooperation and exchange of information.

The Commission organised several meetings of this informal Platform to discuss issues related to the identification and tracing of criminal assets.
Both, the second Pan-European High Level Conference on Asset Recovery Offices held under Belgian Presidency in December 2010 and the third High Level Conference under Hungarian Presidency in March 2011 have highlighted a number of important results that have been achieved since the last report but also areas where more efforts need to be made in order to facilitate the recovery of illegally gained assets throughout the European Union.

[1] OJ L 332, 18.12.2007, p. 103

The fourth conference hosted by the Polish Presidency in Warsaw on 24 and 25 October 2011 is aimed at taking stock of important developments in the field of AROs and discusses future challenges facing them. Other issues to be discussed will include the exchange and cooperation between AROs, best practices, issues related to management of seized assets and legal issues on confiscation.

Furthermore, on 12 April 2011 the Commission has adopted its report on the implementation of Council Decision 2007/845/JHA[1] concluding that the degree to which Member States have implemented the Decision can be only considered as "moderately satisfactory" and has announced a legislative package by autumn 2011 aimed at reinforcing confiscation and asset recovery throughout the EU.

Recommendation 2 - Threat analysis

As at the time of the previous report, the EU Situation Centre (SITCEN) has continued to provide the Council and the Commission with regular analyses of developments in relation to terrorist financing threats. Furthermore, SITCEN and Europol continue to cooperate, and Europol contributes to requests from SITCEN on a regular basis.

The latest EU Terrorism Situation and Trend Report (TE-SAT) for 2011 from Europol concluded that although the goals of terrorist and organised crime groups (OCGs) were different, the connections between terrorist and organised criminal activities appear to be growing. Crime is being extensively used to finance terrorist activities. Criminal activities that terrorist groups are involved in, either through affiliation with individual criminals and criminal groups or through their own operations, can include the trafficking of illegal goods and substances such as weapons and drugs, trafficking in human beings, financial fraud, money laundering and extortion.
By addressing deficiencies and best practices the conclusions of such reports may help support the development of national strategies and actions at the level of the EU.

[1] Doc. 9037/11, containing COM(2011) 176 final

Recommendation 3 - New developments

Directive 2007/64/EC[1] on payment services in the internal market (***"the Payment Services Directive, PSD"***) was to be transposed by 1 November 2009. To date all Member States have transposed the Directive, with Poland having completed the process in October 2011.

The Commission services have supported Member States in their transposition process through transposition workshops ("the PSD Transposition Group") and other activities to ensure the transposition of the PSD. The oral information given during these workshops and the written information received afterwards have helped the Commission services to update the information publicly available, including a list of questions and answers providing practical guidelines for uniform interpretation of most of the PSD provisions, on the Commission's website[2].

The legal assessment of the domestic law of Member States implementing the PSD has progressed While the Commission's assessment is still not final, it can already be said that overall the results of implementation are significant in terms of the promotion at Community level of a modern and coherent legal framework for payment services, taking due account of consumers' rights and other important interests involved, such as an effective stance against money laundering and terrorist financing.

Some work on the interaction between the PSD and AML requirements regarding supervision and reporting has been conducted by the European financial supervisors' Joint Committee's Anti-Money Laundering Task Force concerning the allocation of competences in some specific situations of cross-border provision of payment services (e.g. remittance services provided through agents). This issue has also been discussed by the Committee on the Prevention of Money Laundering an Terrorist Financing (CPMLTF), by the EU FIU Platform and in the Payment Committee to clarify a certain number of issues with respect to the supervision of and reporting by payment institutions in cross-border situations (branches and agents).

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1 OJ L 319, 5.12.2007, p.1

2 http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm

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

On 22 October 2010, the FATF Plenary[1] adopted a "*Typologies Report on money laundering using new payment methods*". The Commission services actively participated in this work. This Typologies Report, which covers three categories of new payment methods, namely prepaid cards, online payments and mobile phone payments, expands on an earlier typologies report from October 2006 which identified general risks related to new payment methods. The 2010 Report focuses on recent developments regarding the use of new payment methods, updates the related ML/TF risk assessment, and introduces new case studies. In February 2011, the FATF Plenary invited the FATF Working Group on Terrorist Financing and Money Laundering (WGTM) to prepare a best practices paper (BPP) and policy options for consideration, including proposals to amend the FATF Recommendations outside the context of the ongoing preparation for the 4th round of mutual evaluations and its related deadlines. Preparatory work will be carried out by a sub-group of the FATF WGTM under the joint-chairmanship of DE, IT and the US. The sub-group was established in May 2011. The Commission services nominated a delegate to that sub-group.

The new **Electronic Money Directive 2009/110/EC**[2] ("the new EMD") has entered into force on 30 October 2009 and should have been transposed into domestic law of Member States by 30 April 2011. The new EMD has replaced as from that date the previous Directive adopted in 2000. At the date of this report 16 Member States have transposed the Directive. Several others are far advanced in the process.

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1 The report is available on the FATF public website at: http://www.fatf-gafi.org/document/2/0,3746,en_32250379_32237202_46705794_1_1_1_1,00.html

2 OJ L 267, 10.10.2009, p.7

The new EMD clarifies its scope and provides clear definitions and a more appropriate prudential framework, while ensuring a level playing field between all providers and a high level of consumer protection. The new EMD increases the thresholds for applying Simplified Customer Due Diligence under the 3rd AML/CFT Directive whose Article 11(5)(d) grants Member States the option to allow for e-money to enter the system without verification up to a given threshold. For non-rechargeable devices the threshold is increased up to EUR 250 (from the current EUR 150). Member States will also have the option to increase the latter threshold to up to EUR 500 for national transactions only, along the lines of a similar option for low-value payments under the PSD. For rechargeable devices the current threshold (EUR 2500) is maintained.
Based on the experience with the transposition of the PSD, an EMD Transposition Group (EMDTG) had also been set up and met several times until the date of implementation.

In view of the completion of the **3rd round of mutual evaluations conducted by the Financial Action Task Force (FATF)** for its member countries, which was concluded in February 2011, the FATF began measures to carry out a focused review of the international principles that form the basis of AML/CFT systems around the world.
The purpose of this process is to examine new or emerging threats and obvious deficiencies or loopholes in the standards while at the same time maintaining their stability. The review process, preparation for which started already in 2009, relies primarily on studying the level of success so far achieved (regarding the international principles laid down in their current form as well as their implementation in serving the purposes for which they were laid down).

In this respect and in light of the results of the FATF mutual evaluations conducted during the 3rd round since 2004, the current process is aimed at producing two main results: firstly, amendment of the standards and principles as set out in the FATF Recommendations, in order to increase their effectiveness in achieving their objectives and reflect any additional requirements or new principles needed to support the AML/CFT systems around the world; and secondly the consequent amendment of the 2004 Methodology for mutual evaluations for the 4th round of mutual evaluations.

In the framework of preparations for the review process, the FATF, through the Working Group on Evaluations and Implementation (WGEI), has laid down a detailed work plan that has started to develop a vision for those areas that need to be worked out in order to enhance the international standards. This has been approved by the FATF Plenary in October 2009.

General issues dealt with under this review and that are of relevance for terrorist financing include: the risk-based approach; the level of implementation of the FATF Recommendations by countries and the cross-border exchange of information.

Furthermore, specific Recommendation-related issues will also be examined and are to include *inter alia* R.35 (AML/CFT-related conventions), R.36 (mutual legal assistance), R.37 (dual criminality), R.38 (mutual legal assistance on confiscation and freezing), R.39 (extradition), R.40 (other forms of cooperation), R.27 (law enforcement authorities).

Recommendation 4 - Enhancing existing actions

TARGETED SANCTIONS ("UN LIST")

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

Following the judgment of the Court of Justice of the European Communities of 3 September 2008 in Joined Cases C-402/05 P and C-415/05 P Kadi & Al Barakaat v. Council and Commission, the Commission made a proposal for an amendment of Regulation (EC) No 881/2002 [COM(2009)187] on 22 April 2009 and the Council adopted Regulation (EU) No 1286/2009[1] on 22 December 2009.

[1] OJ L 346, 23.12.2009, p. 42

The revised procedure now provides that the listed person, entity, body or group should be provided with the reasons for listing as notified by the UN Sanctions Committee, so as to give the listed person, entity, body or group an opportunity to express his, her or its views on those reasons while at the same time allowing for the funds and economic resources of persons, entities, bodies and groups included in the Al-Qaida and Taliban list drawn up by the UN to be frozen 'without delay' as provided for by the relevant UN Security Council Resolutions.[1]

Meanwhile, clarification by the Court of Justice of the consequences of the 2008 judgment is awaited. On 30 September 2010, the General Court handed down its judgment in Case T-85/09, which concerns Mr Kadi's appeal against Commission Regulation (EC) No 1190/2008 which re-listed Mr Kadi after the judgment of 3 September 2008. The Council, the Commission and the UK have lodged appeals against the General Court's judgment (Joined Cases C-584/10 P, C-593/10 P and C-595/10 P).

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

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[1] United Nations Security Council Resolutions (S/RES) relating to the prevention and suppression of terrorism and terrorist financing require jurisdictions to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of any person or entity either: a.) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with S/RES/1267(1999) and its successor resolutions (see S/RES/1267(1999), S/RES/1333(2000), S/RES/1363(2001), S/RES/1390(2002), S/RES/1452(20020, S/RES/1455(2003), S/RES/1526(2004), S/RES/1617(2005), S/RES/1730(2006), S/RES/1735(2006), S/RES/1822(2008), S/RES/1904(2009)); or b.) designated by that jurisdiction pursuant to S/RES/1373(2001).

On 17 June 2011, the Security Council of the United Nations adopted **Resolution 1988 (2011) and Resolution 1989 (2011)** which divides the sanctions regime against Al-Qaida and the Taliban into two separates regimes. In particular, the Ombudsperson's mandate has been extended, and the rules governing her office have been further improved and elaborated in Security Council Resolution 1989 (2011).

Implications of the Lisbon Treaty

The Lisbon Treaty changed the legal situation by introducing two separate legal bases for measures regarding the freezing of assets related to terrorism:

- Article 75 of TFEU[1] under the Title "Area of Freedom, Justice and Security", which provides a specific legal basis for defining a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds of natural, legal persons or non-State entities in order to prevent terrorism, and

[1] **Art. 75 TFEU** reads as follows:

(1) Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.

(2) The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.

(3) The acts referred to in this Article shall include necessary provisions on legal safeguards.

- Article 215 of the TFEU [1], which provides a legal basis for restrictive measures in the framework of the Common Foreign and Security Policy, including the freezing of funds and economic resources of natural or legal persons and groups of non-State entities with a view to preventing international terrorism.

While the framework referred to in Article 75(1) of the TFEU is to be adopted following the ordinary legislative procedure (Commission proposal, co-decision European Parliament and Council), measures under Article 215 of TFEU are adopted by the Council on a joint proposal from the High Representative and the Commission, and the European Parliament is only informed thereof.

In adopting Council Regulation (EU) 1286/2009[2] on the basis of Article 215 of TFEU, the Council has taken the view that action against international terrorism pertains to the CFSP. Conversely, Article 75 TFEU relates only to EU internal persons or groups.

The European Parliament has filed an application to have Council Regulation (EU) 1286/2009 annulled because it argues that the legal basis should have been Article 75 TFEU rather than Article 215 TFEU (Case C-130/10). The case is still pending.

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[1] **Art. 215 TFEU** reads as follows:
(1) Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.
(2) Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.
(3) The acts referred to in this Article shall include necessary provisions on legal safeguards.

[2] OJ L 346, 23.12.2009, p. 42

In its EU Internal Security Strategy of 22 November 2010[1], the Commission stated that in 2011 it would consider devising a framework for administrative measures based on Art. 75 TFEU as regards freezing of assets to prevent and combat terrorism and related activity.
The Commission Services (DG HOME) organised three expert meetings to discuss with MS, the Council Secretariat and the Counter Terrorism Coordinator the scope and application of Art. 75 of TFEU. The last meeting took place in Brussels on 17 March 2011.

TARGETED SANCTIONS ("AUTONOMOUS LIST")

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

On 9 September 2010, the General Court annulled a Council decision confirming the listing of Stichting Al Aqsa (Case T-348/07, Stichting Al Aqsa v. Council). The General Court held that, if the Council confirms a listing decision following a review based on Article 1(6) of Common Position 2001/931/CFSP, the decision of a competent authority referred to in Article 1(4) of Common Position 2001/931/CFSP on which the original listing decision was based, must still be valid. In the present case, the decision by the competent authority had been repealed. Two appeals against this judgment are pending (Joined Cases C-539/10 P and C-550/10 P).

On 7 December 2010, the General Court dismissed the action submitted by Mr. Sofiane Fahas (Case T-49/07) against his listing by the Council. The Court stated that the Council had respected its obligation to state reasons; that by sending the contested decision and a Statement of Reasons to the applicant, the Council had respected his rights of defence and his right to effective judicial protection. The Court also concluded that none of the Applicant's other fundamental rights has been violated.

Some of the litigation related to the autonomous list continues. Key issues under consideration by the Court include also the interpretation of "decision taken by a competent authority" (C-27/09 P Advocate General's Opinion delivered on 14.07.2011), transmission of sensitive information to the Union judicature (C-27/09 P - ibid) and compensation for damage caused by the Union (T-341/07 - awaiting judgment).

[1] COM(2010) 673 final

The last application was submitted to the General Court on 11 April 2011 (Case T-208/11) by the LTTE, the Council submitted its Defence on 19 September 2011.

NPO-sector

Special Recommendation VIII of the FATF on Money Laundering and Terrorist Financing refers to the problem of a **possible abuse of non-profit organisations for terrorist financing** purposes. To address this problem, some important work has been undertaken by the Commission in the past. T the "*Study assessing the Extent of Abuse of Non Profit Organisations for Financial Criminal Purposes at EU level"* and the *"Study on Recent Public and Self-Regulatory initiatives improving Transparency and Accountability of Non Profit Organisations in the European Union"*, which were presented and published by the Commission in 2008 and 2009 have been the basis of conferences organised by the Commission in Brussels. At these conferences stakeholders, including NPO umbrella organisation representatives, discussed in particular ways of enhancing the transparency and accountability of NPOs in order to address the problem of their potential abuse for terrorist financing.

In the Stockholm Programme the Council has called upon the Commission to promote increased transparency and responsibility for charitable organisations with a view to ensuring compatibility with Special Recommendation VIII of the Financial Action Task Force.

In its Action Programme for the Stockholm Programme, the Commission envisaged a Communication on voluntary anti-terrorist financing guidelines for EU- based non -profit organisations for 2011. It has always been the Commission's policy to carry out its work in this field in co-operation and by consultation with the sector and Member States. Consequently, in advance of the third conference with the sector, Member States representatives and the Counter Terrorism Coordinator (CTC), the Commission Services circulated a paper with a set of concrete guidelines for discussion and written input from interested parties.

Meanwhile the Commission has upheld its close dialogue with relevant stakeholders in this context to promote further transparency and accountability and contributed to various events in this context, like one organised by the UNCTC. In addition, it has initiated a feasibility study on an EU observatory for NPOs as recommended in one of the studies commissioned by the Commission. The study should be finalised in 2012.

It appears worth noting, however, that the Commission did not further address voluntary NPO guidelines in its Communication "The EU Internal Security Strategy in Action: Five steps towards a more secure Europe of 22 November 2010"[1].

Recommendation 5 - FIUs and FIU cooperation

Improving the possibilities of cooperation between Member States' Financial Intelligence Units (FIUs) continues to be a crucial factor in fighting money laundering and terrorist financing and therefore the **future of the FIU.net project** and its transformation into a more permanent structure, has to be regarded as a valuable initiative in this field.

In April 2010, a meeting was held at Europol where the proposal to host FIU.net by the European Police Office was further elaborated. The proposal was positively welcomed and Member States represented at the meeting have agreed on Europol as the general framework. Europol subsequently refined its proposal for the final meeting on the future of FIU.net hosted by the Commission in June 2010. As a result, it has been agreed that FIU.Net will be embedded to Europol by 1 January 2014.
Meanwhile, a transition phase has begun. Its aim is to further address issues such as governance or data processing on practical terms.

The FIU.net that over the past years has been hosted by the NL ministry of justice has increased its operational activities: currently 24 MS are connected to the FIU.net, one MS is about to join which would only leave CZ and AT as the only non-participants in the network. AT, however, is currently verifying the possibilities for connection.
Furthermore, discussions about the connection of non-EU Member States continue to be under consideration, and Croatia, Iceland, Liechtenstein and Norway could be invited to apply for membership of the FIU.net.

1 COM(2010) 673 final

The **final report** of the European Commission-mandated study on "**Best practices in vertical relations between the Financial Intelligence Unit and (1) law enforcement services and (2) Money Laundering and Terrorist Financing Reporting entities** with a view to indicating effective models for feedback on follow-up to and effectiveness of suspicious transaction reports" has been published on the Commission's website[1]. Further work is now being undertaken inter alia within the FIU platform so as to better introduce best practices identified in the report in some key areas of feedback.

Recommendation 6 - Cooperation with the private sector

The role of the financial sector in combating terrorist financing is important and information on suspicious or unusual transactions needs to be exchanged without unnecessary obstacles between all relevant partners, nationally and internationally. Therefore, cooperation with the private sector continues to be of key importance and its involvement in the development of new legislation and operational methods needs to be continuously ensured. Feedback and cost-benefit analysis will contribute considerably to achieving this goal. To this end, on 1 February 2011, the Commission held a meeting with representatives from the private sector to discuss work and initiatives planned and underway in the AML/CFT area, both at EU and international level. Furthermore this meeting was an occasion to get feedback from private stakeholders on their experience in relation with the implementation of EU AML/CFT legislation. The importance of feedback to financial institutions was also addressed in the Stockholm Programme in which the Council calls upon the Commission to present measures to **improve feedback to financial institutions** regarding the outcome of their cooperation in the fight against financing of terrorism. Consequently, the Commission continues to look further into that issue and take the study as a basis for further work. In its Action Plan for the Stockholm Programme the Commission announces a Communication on measures to improve feedback to financial institutions regarding the outcome of their cooperation in the fight against terrorist financing.

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

[1] http://ec.europa.eu/home-affairs/doc_centre/crime/docs/study_fiu_and_terrorism_financing_en.pdf

In addition, work carried out in the context of the Financial Action Task Force on new and alternative payment methods has shown that input from and co-operation with the private sector, such as providers of prepaid cards, is of importance when it comes to the identification of possible loopholes in AML/CFT systems that could be abused for terrorist financing purposes.

Recommendation 7 - financial intelligence and investigations

Financial investigations as a law enforcement technique are vital for ensuring that law enforcement services have the appropriate knowledge, know-how and analytical and other skills to trace, analyse and ensure effective cooperation as regards criminal money and other asset trails moving across borders within the EU and beyond. This is needed both to facilitate confiscation of criminal proceeds and to provide additional opportunities for the investigation of serious crime, including terrorism.

The **5th round of mutual evaluations** that is currently being conducted under the auspices of the Working Party on General Affairs and Evaluations (GENVAL)[1] **on financial crime and financial investigations** is looking into the application of the existing EU and international legal instruments in this field as well as the practices applied in the Member States and also comprises AML/CFT provisions and measures.
The evaluation cycle started in September 2009 and at the time of this report twenty-four Member States will have been evaluated.

The conclusions from the individual country reports and the final report are expected to provide useful support for Member States' investigative authorities by giving greater effect to financial investigations already conducted in the course of counter-terrorism investigations. Furthermore, the identification of best practices and deficiencies should help shape and sharpen further development of the strategies on how to prevent *inter alia* terrorist financing. The on-site visits of the evaluation process are expected to be finalised in 2011 while the final report will be presented to Council in 2012.

[1] Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

Europol has been participating as an active observer in these evaluations and is therefore directly involved in the analysis of the systems in the Member States. The results of this analysis are fed back into further developing the methodology of fighting financial crime and conducting financial investigations.

As to **cash courier intervention operations**, Europol has in April 2010 deployed a mobile office facility in Spain to provide operational support during the **Operation Athena II**. Operation Athena II was a Joint Customs Operation targeting cross-border movements of cash and other monetary instruments. The Operation was organized under the remit of the Customs Cooperation Working Party (CCWP) of the Council of the European Union. In several cases it was possible to establish links between cash movement detections and intelligence collected at Europol in relation to investigations/incidents occurred in the Member States.

Recommendation 8 - International cooperation

In April 2009, the Commission signed, on behalf of the European Community, the **Council of Europe Convention No. 198 on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism**.
Presently 20 EU Member States have signed the Convention and 12 have ratified it. Member States which have not yet done so are urged to ratify this Convention as well.

In the **UN context**, the EU has continued to promote ratification and implementation of the UN Terrorist Financing Convention. A number of countries in different parts of the world have still not ratified the Convention and others which have done so lack the means to implement it effectively. The EU should continue to target this aspect of terrorist financing in its relations with third countries. Coordination with the FATF, IMF, World Bank and UNODC should be strengthened. This could be done in the broader context of the work which the EU has been doing to develop its already close working relationship with the UN Counter-Terrorism bodies, the UN CTED and CTITF, which has a specific working group on tackling the financing of terrorism (including the IMF, UNODC, World Bank, CTED, Interpol and the 1267 Monitoring Team) that also published a 'Report on Tackling the Financing of Terrorism' in October 2009. Ideas being looked at include participation by the Commission and/or Council Secretariat in multi-agency visits led by the UN CTED to help individual countries address issues with the implementation of UN CT measures.

In addition, in January 2011, the Commission was involved in a meeting organised by UN CTED on the abuse of the non-profit sector for terrorist financing purposes.
The Stability Instrument for 2009-11 contained for the first time a specific provision on Counter-Terrorism, part of which is intended to help the UN CTED to take forward international implementation of the Global Counter-Terrorism Strategy.

In its **relations with key partners**, the EU maintained its dialogue with the US, in particular regarding the implementation of the EU-US Declaration on Combating Terrorism of 26 June 2004.

Following the sixth workshop under the Czech Presidency in May 2009 and the seventh EU-US Workshop on Terrorism Financing, hosted by the Spanish Presidency, in May 2010 and the EU-US political dialogue on terrorism financing the same month further EU-US political dialogue meetings on terrorist financing took place in Washington D.C. on 9 December 2010 and on 15 June 2011.

On 6 and 7 June 2011 a further EU-US workshop on terrorism financing, hosted by the Hungarian Presidency of the EU, was held. The agenda included the topics of sanctions compliance, non-banking services - new payment methods as well as implementation of FATF SR VII (wire transfers).
The next workshop will be held in cooperation with the Gulf Cooperation Council (GCC) under the current Polish Presidency of the EU and is scheduled for 22 and 23 November 2011 in Warsaw. It will again highlight the implementation of the FATF recommendations to counter terrorist financing, particularly FATF SR VII (funds transfers), FATF SR IX (cash couriers) and FATF SR V (international cooperation), the implementation of UN sanction regime USCR 1267, 1988 and 1989 and furthermore the question of how to counter-radicalisation and violent extremism.

Following the rejection on 11 February 2010 by the European Parliament of the Interim Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the **Terrorist Finance Tracking Programme (TFTP-Agreement)**, the Council granted a negotiation mandate for a new EU-US TFTP Agreement to the Commission. This Agreement was signed by the Presidency on 28 June 2010, approved by the EP and entered into force on 1 August 2010.

In February 2011 the first joint review of the implementation of the 2010 TFTP-Agreement took place, as provided for under Article 13 of the Agreement. The TFTP Report drawn up following this joint review is not a Commission report as such, but a report by the EU side of the joint review team. The joint review report was generally positive, stating that Europol was fulfilling its role under the TFTP Agreement and that whilst there was scope for improvement, all of the relevant elements of the agreement had been implemented in accordance with its provisions, including the data protection provisions.

Apart from this report, the Europol Joint Supervisory Board (= the data protection control authority of Europol), has, at the beginning of March 2011 and at its own initiative, issued a report on the way in which Europol applies data protection requirements in the practical operation of the TFTP Agreement. The main criticism of the Joint Supervisory Board report is that the "justifications" underpinning the US requests for SWIFT data are provided only in oral form and therefore the Joint Supervisory Board is unable to verify whether the US requests comply with the TFTP Agreement.

On 13 July 2011, exactly one year after the adoption of the Council decision on the conclusion of the second EU-US TFTP Agreement, the Commission has issued a **Communication on "A European terrorist finance tracking system: available options"** (COM (2011)429). This Communication is a response to Article 2 of the Council Decision of 13 July 2010 on concluding the TFTP Agreement, in which the Council, at the request of the European Parliament, instructed the Commission to submit a "legal and technical framework for extraction of data on EU territory". The Parliament requested this because it had serious doubts about the bulk transfer of personal data to a third country. The various options laid out in the Commission Communication provide for the bulk storage and extraction of financial data in the European Union. First discussions in Parliament indicate that the Parliament feels that these options still go too far, and that it would prefer to see a solution which would only consist of a software solution allowing the extraction of data to take place without the need for any transfer of bulk data.