COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.10.2004
COM(2004) 700 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on the Prevention of and the Fight against Terrorist Financing

through measures to improve the exchange of information, to strengthen transparency and enhance the traceability of financial transactions

TABLE OF CONTENTS

1. INTRODUCTION 3

2. OVERVIEW OF THE FIGHT AGAINST TERRORIST FINANCING 3

3. TERRORIST FINANCING AND THE EXCHANGE AND ANALYSIS OF INFORMATION 4

3.1. Information exchange among competent authorities 4

3.2. Information exchange between competent authorities and the private sector 5

3.3. Outreach to the Private Sector 6

4. TERRORIST FINANCING AND THE TRACEABILITY OF FINANCIAL TRANSACTIONS 6

4.1. Financial Investigation 6

4.2. Funds Transfers 6

4.3. Transactions outside the formal financial system 7

4.4. Customer Identification 7

5. TERRORIST FINANCING AND TRANSPARENCY 7

5.1. Legal Entities 7

5.2. Non-Profit/Charitable Sector 8

6. TERRORIST FINANCING AND HORIZONTAL MEASURES 8

6.1. Asset Freezing 8

6.2. Effective and Targeted Training 9

6.3. Security Research 9

6.4. External Action 10

7. CONCLUSIONS 10

ANNEX 1 12

ANNEX 2 14

ANNEX 3 19

1. INTRODUCTION

At its extraordinary meeting of 21st September 2001, the European Council called upon the Council to take all necessary measures to combat the financing of terrorism. In response to the 11th March 2004 terrorist attacks in Madrid, the European Council adopted the Declaration on Combating Terrorism[1]. The Declaration committed the Union and its members *"…to do everything within their power to combat all forms of terrorism…"* and identified a number of Strategic Objectives to help achieve this goal. These include a requirement on the Union and its members to take all necessary measures *"to reduce the access of terrorists to financial and other economic resources"*. The revised 'EU Plan of Action on Combating Terrorism'[2], sets out detailed proposals for developing the fight against terrorist financing.

This Communication considers what further measures may be needed to tackle terrorist financing most effectively. Based on considerations set out in this Communication, Annex 1 constitutes an indication of potential further measures in the fight against terrorism financing to be further examined in terms of feasibility and cost/benefit. Annex 2 is a summary of EU measures relevant to the fight against terrorist financing adopted since October 2001. Annex 3 lists relevant measures which are currently under discussion.

2. OVERVIEW OF THE FIGHT AGAINST TERRORIST FINANCING

Terrorist financing covers two distinct aspects – the financing of terrorist attacks and of terrorist networks. The Madrid bombings are estimated to have cost a mere €8.000. The indications are that transactions to finance terrorist networks, as opposed to a specific attack, generally also have a small monetary value. Since such sums may be small and unlikely in themselves to generate suspicion as they move through the financial system, *detection of financial transactions for the purpose of terrorist financing is difficult.*

This does not mean that financial institutions should not attempt to apply anti-money laundering techniques to the detection of terrorist financing. It does, however, suggest that additional methods, centred on the major risks identified by the security services, must be developed and used to undermine the logistics and operations of terrorist networks, adopting a broader approach than purely the drying up of financial flows. Above all, we need to ensure that *terrorist financiers must operate in a hostile environment where all options are high risk.*

Important EU-level progress has been made in the fight against terrorism and its financing[3]. If these are to be effective in the fight against terrorist financing, they need to be duly implemented and applied by the Member States – a number of important gaps remain[4].

Three principal areas can be identified as relevant to the fight against terrorist financing: *improved co-operation in the exchange of information, enhanced traceability of financial transactions and greater transparency of legal entities*. By addressing these effectively,

---

1 Brussels, 29th March 2004, 7906/04

2 10586/04 of 15 June 2004

3 See Annex 1

4 For example, the Commission Report of June 2004 on Member States' compliance with the Framework Decision on combating terrorism indicates a number of shortcomings at national level (COM(2004)409).

significant further benefits are achievable in the preventive disruption of terrorist activity, the reduction of financial flows to terrorist groups and enhanced understanding of terrorist networks.

The right balance must be found between preventive/disruptive measures on the one hand and civil liberties on the other. For example, *care must be taken to ensure that nationality or religious affiliation does not become a ground for placing a person under suspicion.* Appropriate intelligence or other objective grounds to suspect that a person may have involvement in terrorist activities should be the driving force in all preventive and repressive action.

Data protection issues are central to much of the debate surrounding how to improve the fight against terrorist financing. Any exemptions from the Community Data Protection Directives[5], such as the prevention and detection of crime, have to be necessary, relevant and foreseen by law. *To strengthen police and judicial cooperation, while at the same time ensuring robust data protection, a coherent legal framework at the level of the Union based on common standards regarding the processing of personal data is envisaged.* Such a policy shall encompass *appropriate safeguards* so that processing of personal data by intelligence, police, customs and judicial authorities observes the *principles* of personal data protection enshrined in Article 8 of the Charter of Fundamental Rights.

3. TERRORIST FINANCING AND THE EXCHANGE AND ANALYSIS OF INFORMATION

3.1. Information exchange among competent authorities

Information exchange between relevant bodies at national level is as important as such exchange at EU and international levels. In both cases there is a need *to implement co-operation and exchange structures encompassing fiscal authorities, financial oversight bodies, the Justice Department, intelligence community, law enforcement authorities and authorities in charge of administrative freezing*[6]**.** Such a network could be the forum for structured exchange of information on persons under investigation by participating bodies.

The Communication on improving access to information by law enforcement authorities of June 2004 has proposed action to enhance the exchange of information between relevant actors[7]. Its aim is to establish a *European 'intelligence-led' law enforcement capability whereby available information can be used by the appropriate authorities in their fight against organised crime and terrorism.*

The Communication [8] on the fight against terrorism contains in Annex a Proposal for a *Council Decision enabling the services involved as well as Europol and Eurojust to have access to the most complete and up-to-date information.* The obligation to exchange

---

5 Notably the general Data Protection Directive 95/46/EC and Directive 2002/58/EC on privacy and electronic communications.

6 The Netherlands' FEC is an example of such collaboration and is a network comprising the General Intelligence and Security Services, the tax services, fiscal and economic law enforcement agency.

7 Doc COM(2004)429 of 16.6.2004.

8 European Commission Communication on measures to be taken to combat terrorism and other forms of serious crime, in particular to improve exchanges of information of 29.03.2004. COM(2004)221.

information would apply to all terrorist offences, including participation in the activities of a terrorist group through any form of financing.

The FIU.NET, funded by the Member States and the Commission, aims to establish a computer network for the exchange of intelligence among FIUs. In line with the revised definition of FIUs adopted at the June 2004 Egmont meeting, the FIU.NET will become an important element in facilitating the sharing of intelligence related to terrorist financing. *The Commission and Member States must ensure that adequate funding and other appropriate resources continue to be provided to the FIU.NET.*

Europol's "SUSTRANS" project seeks to establish links between transactions and associated terrorist activity. Further consideration is needed as to whether suspicious transaction reports for SUSTRANS should become part of the Europol Information System or whether a separate database of such reports should be established for this purpose. Many Member States are not providing adequate data to allow the SUSTRANS project to achieve its potential[9]. Moreover, the Protocol to the Europol Convention[10], extending Europol's competence to all money laundering offences, would significantly promote SUSTRANS' effectiveness, but has still not come into force due to slow ratification of the Protocol by certain Member States[11]. Those Member States who have still not ratified the Protocol should do so as a matter of urgency.

Joint Investigation Teams must be further promoted in cross-border investigations of terrorist financing and are well suited to operating with teams of law enforcement, prosecutors and judges. The sharing of intelligence *with criminal prosecutors* would enhance the prospects of successful prosecutions.

3.2. Information exchange between competent authorities and the private sector

Real time data exchange between law enforcement/intelligence services and the private sector generally (financial transactions but also purchase of air line tickets, car hire) can play an essential role in both preventive and repressive law enforcement activity in the fight against terrorism and its financing. This could allow real time tracking of financial transactions.

The financial sector does not have the information which FIUs (and others) can work with when analysing suspicious transactions and financial patterns of suspects. Lack of direct access to information constrains the FIU's ability to configure data from many different sources. *Discussions with the financial community, security services and FIUs should identify where the problems lie and the most cost-effective ways to address these*. A possible means could be to give FIUs *full access to dedicated databases located in and under the control of the financial community.* This might allow linking of subjects, identifying flows of money and tracking of sources. To address privacy concerns, financial institutions could give access on the basis of "encrypted" data.

---

9 In July 2004 the European Commission's Directorate-General Justice and Home Affairs wrote to those Member States who have ratified the Europol Convention and who are not providing adequate data for the purpose of SUSTRANS. The letter asked to be informed why relevant data were not being provided. Replies have been requested by 20 September 2004.

10 Council Act of 30 November 2000 drawing up a Protocol amending Article 2 and the Annex to the Europol Convention (2000/C 358/01).

11 Of the former EU 15 the following Member States have ratified the Protocol: Germany, Spain, France, Greece, Portugal, Finland, Sweden and the UK. Of the new Member States all but Estonia have ratified the Protocol.

3.3. Outreach to the Private Sector

To ensure that the financial community and other branches of the private sector give the highest priority to the fight against terrorism, *high level contacts should be established and maintained between law enforcement agencies specialised in terrorism and private sector representatives. Appropriate mechanisms for co-operation, information exchange and feedback between intelligence services and financial institutions must be further developed.*

4. TERRORIST FINANCING AND THE TRACEABILITY OF FINANCIAL TRANSACTIONS

4.1. Financial Investigation

Member States must ensure that law enforcement services have resource to develop financial investigative skills allowing them to follow money trails backwards to the person providing finance and forwards to terrorist cells. *Financial investigation must be prioritised in the Member States and should become a routine part of all law enforcement investigations of terrorist suspects.*

Designation or establishment of national bodies dedicated to the identification, tracing, freezing and confiscation of terrorist (and other criminal) assets which may combine investigative, fiscal and legal skills, should be promoted. Such bodies could also represent the point of contact both for guidance to the financial community on freezing and related questions and to competent authorities of third countries concerning designation of individuals or groups. Implementation of a co-operation network among such bodies should be further encouraged[12].

Establishing adequate links between funding activities and the pursuit of terrorism/terrorist attacks, would allow financial data to be turned into intelligence which can be turned into evidence. As financial institutions use electronic communications channels, work conducted in the gathering of electronic evidence is of vital importance. A European funded project, "CTOSE"[13], aims to provide a common understanding of the measures needed to present electronic evidence in Court. *The gathering of electronic evidence must be recognised as a key priority.*

4.2. Funds Transfers

The European Commission will adopt a draft Regulation on *payer's information accompanying funds transfers* in the autumn of 2004. This lays down rules on payer's information accompanying funds transfers, to ensure that basic information is immediately available to the authorities responsible for combating terrorism. *The proposal will enhance the traceability of funds transfers and should be implemented by the financial sector as soon as possible, which pleads for a speedy adoption in Council and Parliament.*

---

[12] Through its AGIS funding programme for 2004 the European Commission is currently funding two projects in this area, namely the CARIN network and an assessment of multi agency alternative strategies for targeting the proceeds of criminal activity – a European Union perspective.

[13] http://www.ctose.org

4.3. Transactions outside the formal financial system

Informal money remittance systems, e.g. Hawala, are an important means of transferring illicit money. The Commission is preparing a draft Directive on a New Legal Framework for Payments in the Internal Market to ensure harmonised implementation of SR VI into Community law. The planned regulatory regime for money remitters will foresee registration of the transmitter by introducing a special licence and will take into account the risk profile of providers by establishing tailor-made supervisory requirements.

A preferred method of moving funds for terrorist financing is via individuals who carry cash and other equivalent instruments across borders. Technology for detecting this phenomenon should be developed and deployed. There is also a pressing need to ensure that an appropriate EU instrument is adopted to address the use of cash couriers. *The Commission proposal for a Regulation on cash movements*[14]*, negotiations on which have already been unduly delayed, should be prioritised to ensure adoption of a Common Position during the Netherlands Presidency.*

Use of large scale cash payments to transact business constitutes a vulnerability to terrorist financing which is largely unaddressed. *The proposal for a third Money Laundering Directive extends the preventive mechanism of the anti-money laundering system to cash payments for goods with a value in excess of €15.000.*

4.4. Customer Identification

Financial institutions are already under an obligation to *identify and know their customers.* This is essential to assist the law enforcement effort against terrorism financing. There may be value in *common minimum standards for EU financial institutions as regards verification of customer identity and recording of identifying data.*

Consideration could be given to establishing an electronic database of sample EU (and other) identity documents for law enforcement and the private sector, including examples of forged documents. A cross-check of documents presented could help authorities and businesses identify possible forgeries.

5. TERRORIST FINANCING AND TRANSPARENCY

5.1. Legal Entities

The absence of international standards in key mechanisms used in global financial transactions, including international business companies, trusts and offshore funding vehicles creates a degree of financial opacity of real advantage to those financing terrorism. The European Commission intends to launch a cost benefit analysis of a broad range of transparency measures to contribute to this on-going debate.

Improving transparency of legal persons is a key element in countering infiltration by terrorist organisations and their sympathisers. The Commission Communication of 29 March 2004 on

---

[14] European Commission proposal for a regulation of the European Parliament and the Council on the prevention of money laundering by means of customs cooperation (COM(2002)328-C5-0291/2002-2002/0132(COD)).

the fight against terrorism highlighted the potential benefits of including in legislation on formation and management of legal persons, *mechanisms for the disqualification of individuals or firms convicted of offences related to terrorism or organised crime.* Similarly an effective mechanism for exchanging information on convictions in the EU, may help in preventing terrorist groups and/or their financiers from infiltrating legitimate activities.

5.2. Non-Profit/Charitable Sector

Transparency is a core issue as regards the charitable/non-profit sector. The numbers of charitable/non-profit organisations and the amount of aid they dispense have increased considerably over recent years. Many such organisations raise money destined for conflict zones. Once money arrives in such areas, the ability to rely on international co-operation in order to trace its destination, is much reduced, particularly where funds are moved around such territories in the form of cash.

A minimum EU-wide standard of regulation designed to enhance transparency of the sector should be explored further[15].This could either take the form of binding regulation or a Code of Conduct for the voluntary sector. Appropriate transparency standards could include annual publication of independently audited accounts, corporate governance rules, and a requirement to produce an audit trail for disbursements. Bearing in mind the large numbers of non-profit/charitable organisations based outside the EU but with offices in one or more Member States, transparency measures would also need to impact beyond the EU.

In most Member States the charitable sector enjoys special tax status so that fiscal authorities have detailed information on revenue and disbursements of most charitable sector bodies. The role of *tax authorities in the context of Special Recommendation VIII should be further considered.*

The European Commission *will enhance its automatic intelligence gathering, information extraction and analysis tools to apply to the charitable sector.* The Commission will conduct a feasibility study, with input from Europol, to map the charitable sector in the EU 25 along a number of dimensions that could help to detect high risk for terrorist financing or other criminal activity. The study is also expected to include a review of national risk analysis efforts, if any, and will try to establish a methodology to arrive at vulnerabilities and risk indicators.

6. TERRORIST FINANCING AND HORIZONTAL MEASURES

6.1. Asset Freezing

The EU mechanism for designation of terrorists and terrorist organisations other than Al-Qaeda[16], set up in particular to allow the freezing of assets, has not produced a list that can be considered to be comprehensive and entirely effective. Divergent interpretations of the conditions for designation and the ensuing delays caused by the unanimity requirement seem to be the main cause for this, whereas lack of guidance to third countries that intend to make a

---

[15] The European Commission is organising a workshop on 29 October on the question of an EU approach to prevent abuse of the charitable sector for the purpose of terrorist financing.

[16] Common Position 2001/931/CFSP and Regulation (EC) No 2580/2001.

request for designation may also have had its impact. A standard interpretation and approach on areas of divergence is a key requisite to improve effectiveness, including:

– *designation of groups or entities that have renamed themselves after designation;*

– *designation of 'front organisations';*

– *designation of leaders of groups and entities that have already been designated.*

The electronic-Consolidated Targeted Financial Sanctions List is a joint initiative of the European Commission and European banks[17]. It is a consolidated database of persons and entities subject to EU financial sanctions. Since financial sanctions are applicable on the date of their publication in the Official Journal, *the Commission will strive to ensure that the database is updated on the same day as Official Journal publication.* Financial institutions have requested guidance on matching standards on whether a given person is a designated person. Such guidance would increase the effectiveness of sanctions and, since it concerns EU financial sanctions, should preferably be provided by the Council or the Commission (e.g. in a recommendation).

6.2. Effective and Targeted Training

The presence of suitable numbers of properly trained persons within competent authorities and the private sector is essential.

The case for adequate numbers of trained financial investigators must be promoted. The European Commission and Europol have begun a joint project to establish common minimum standards in the area of financial investigative training in the EU. *This will seek to promote best practice and a common minimum approach to financial investigative training.*

CEPOL has a key role to play in developing a European culture of financial investigation and other training among senior police officers and in spreading best practice in this vital area.

6.3. Security Research

The European Commission manages anti-terrorism research activities which can support, among other things, the fight against terrorist financing. The *"Preparatory Action on the Enhancement of the European industrial potential in the field of Security Research"* has a budget of € 15 million for 2004 and a planned budget of €24 and €26 million for 2005 and 2006 respectively. A *"Group of Personalities"* (GoP) was established in 2003 and tasked to propose key orientations, principles and priorities for a future *European Security Research Programme* ("ESRP") in line with EU policy objectives. The GoP report[18] recommends the establishment of an ESRP from 2007 onwards with funding of at least €1 billion per year additional to currently existing resources. As a follow-up, the Commission adopted on 7.9.2004 a **Communication** entitled **"Security Research: The Next Steps"[19]**. It has noted the recommendation of the report, expressing the need for the establishment of a European

---

17 European Banking Federation, European Savings Banks Group, European Association of Cooperative Banks, European Association of Public Banks.

18 « Research for a Secure Future », Report of the GoP in the field of Security Research, ISBN 92-894-6611-1, Luxembourg Office for Official Publications of the European Communities, 2004.

19 COM 2004/353

Security Research Advisory Board to advise on the content and the implementation of the ESRP and for the submission of a proposal for an ESRP in early 2005, to become part of the 7th Framework Programme of Community Research from 2007 onwards. Areas where further research should be encouraged include distributed problem solving among competent EU authorities and social-cognitive configurations specific to an effective co-ordinated fight against terrorist financing.

6.4. External Action

Combating the financing of terrorism must play an integral part of EU political dialogue and technical assistance programmes with third countries, including the development of ad hoc expert level dialogue. Joint efforts to combat terrorist financing will also continue to be an important and regular part of EU-US cooperation.

Financial havens which allow opaque banking and corporate structures provide refuge for terrorist money. The European Union must promote greater transparency and exchange of information with third countries and dependent or associated territories. Positive action could help cooperative partners overcome difficulties of a regulatory, technical or economic nature when introducing more transparency, in the form of reinforced technical assistance, where the EU as a whole has considerable experience, or through some form of economic support. The annual and mid-term reviews of Country Strategy Papers could also provide for appropriate actions. The Commission will monitor the efficiency and the progress made by overseas financial havens towards more transparency.

7. CONCLUSIONS

Making it more difficult for terrorists to raise money is one element of the fight against terrorist financing. In addition, tracking financial and other transactions is an effective means of locating terrorists and their supporters and disrupting terrorist activity. This would be facilitated through enhanced transparency of financial transactions and legal entities, including those operating in the non-profit sector. To be really effective and achieve real time data exchange in preventive and repressive activity in the fight against terrorist financing, we need to address closer co-operation and enhanced mechanisms for information exchange at national, EU and international levels both among competent authorities and between the latter and the private sector.

TECHNICAL ANNEXES

ANNEX 1

Possible Future Measures relevant to the fight against terrorist financing

Information Exchange:

- Establish appropriate mechanisms to achieve multilateral co-ordination with all authorities and bodies involved in supervising and detecting irregularities in the financial sector (to include fiscal authorities, financial oversight bodies, Justice Department, intelligence community, law enforcement authorities, authorities in charge of administrative freezing measures).

- Promote appropriate information sharing mechanisms between intelligence services and prosecutors.

- Promote intelligence led law enforcement by ensuring access to private sector information to facilitate information gathering on, detection and location of suspects.

- Promote outreach and other mechanisms to facilitate real time tracking and data exchange by means of the financial and other systems.

- Consider ways to improve communication between FIUs and the financial community through enhanced access to relevant databases.

Traceability of Financial Transactions:

- Promote financial investigation as a law enforcement technique in the Member States. Encourage establishment of common minimum standards in financial investigation training standards in the EU via Joint Commission/Europol project).

- Promote establishment of national bodies dedicated to identification, tracing, freezing and confiscation of terrorist (and other criminal) assets and implementation of a co-operation network among such bodies to facilitate co-operation in the tracing of fast moving terrorist and other criminal funds.

- Promote organisational and technical measures needed to present electronic evidence in Court.

- Consider need for common minimum EU standards for verification of customer identity.

- Consider case for database with samples of all identity documents issued in the EU and beyond to facilitate detection of false identity papers by financial institutions when verifying customer identity.

- Guidance on matching standards to be applied when checking whether any given person is a designated person to improve the effectiveness of financial sanctions (see Section 6.1).

Transparency:

- Consider what further measures may be needed to enhance transparency of legal entities having regard in particular to ant recommendations to be made in the Commission's planned Study on cost benefit assessment of transparency measures.

- Consider further EU-wide mechanisms for the disqualification of individuals of firms convicted of offences related to terrorism or organised crime.

- In the non-profit/charitable sector assess appropriate EU-wide transparency measures and mechanisms to ensure compliance with these together with methods to identify high risk for terrorist financing or other criminal activity.

Asset Freezing:

- Promote standard interpretation on designation of groups or entities that have renamed themselves after designation, designation of 'front organisations', designation of leaders of groups and entities that have already been designated.

ANNEX 2

1. Measures Adopted at EU level relevant to the fight against terrorist financing.

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

Legislative Actions

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

This Act provides for the exchange of information between Member States concerning bank accounts held by any person who is the subject of criminal investigations. It has not yet been ratified and Member States are encouraged to accelerate this process.

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

The second money laundering Directive, amending the 1991 Directive, was adopted in December 2001. The definition of criminal activity giving rise to money laundering is widened to include all organised crime and a wide range of serious crimes, including offences related to terrorism. The professions which are required to report money laundering suspicions, in addition to the credit and financial and related institutions, now include accountants, lawyers, notaries, real estate agents, casinos and dealers in high value goods.

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

The effect of this Council Decision was to enable Europol to deal with the serious forms of international crime listed in the Annex to the Europol Convention, such as murder, grievous bodily injury, kidnapping, hostage-taking, organised robbery and illicit arms trafficking. Europol's mandate now includes support for law enforcement against serious international organised crime, including terrorism.

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

The Common Position sets out a number of actions to be taken to combat terrorism. The principal measures contained in the Common Position are: criminalising the financing of terrorism within the EU, freezing of financial assets or economic

resources of persons or entities involved in terrorism, prohibiting the giving of financial or other assistance to such persons or entities, requiring measures to be taken to suppress any form of support for those involved in terrorist acts, taking steps to prevent terrorist acts and denying safe haven to those involved in such acts.

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

The Common Position establishes the primary list of persons, groups and entities involved in terrorist acts[20]. It sets out the criteria to be used to decide who should be considered as terrorists for inclusion on the list and the actions which constitute terrorist acts. The names on the list are to be reviewed at least once every six months. Under the Common Position the European Community is required to order the freezing of the funds and other financial assets or economic resources of, and the prohibition on the provision of financial services to, the listed persons, groups and entities. Member States are required to afford each other assistance in preventing and combating terrorist acts.

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

The Regulation provides for the freezing of the funds, financial assets and economic resources of certain persons, groups and entities involved in terrorism, for a prohibition on the making available of funds, financial and economic resources to such persons, groups and entities and a prohibition on the provision of financial services to them. It authorises the Council to establish and maintain a list of persons, groups and entities involved in terrorism[21]. Provision is also made for the granting of authority for the use of funds frozen in accordance with the Regulation to meet essential human needs and for certain other payments (e.g. taxes, utility bills etc.).

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

This decision contains a list or persons, groups and entities against whom specific restrictive measures are to be applied in accordance with Council Regulation No 2580/2001. An updated list of persons, groups and entities to which the measures imposed by the Regulation apply has been published seven times, the latest publication being that of Council Decision 2004/306/EC.

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

---

[20] The latest version of the list is set out in Common Position 2004/500/CFSP.

[21] The latest version of the list is set out in Council Decision 2004/306/EC.

This Decision establishes Eurojust, to be composed of seconded prosecutors, judges or police officers from each Member State. The objectives of Eurojust are to stimulate and improve the co-ordination, between the competent authorities of the Member States, of investigations and prosecutions, to improve co-operation between the competent authorities of the Member States and to support the competent authorities of the Member States in order to render their investigations and prosecutions more effective.

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

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

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

The Regulation freezes the funds and economic resources of, and prohibits the making available of funds and economic resources to, a large number of persons, groups and entities which are set out in an Annex. The Commission has amended the Regulation on 36 occasions for the purpose of updating the list of persons, groups and entities which are subject to the restrictions set out in the Regulation, the latest publication being that of Commission Regulation (EC) No 1728/2004. Modification of the list is an on-going process.

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

The Framework Decision is intended to make the combating of international crime as effective as possible. It considered it appropriate that a specific legally binding instrument on joint investigation teams should be adopted to apply to joint investigations into drugs/human trafficking and terrorism and that they should be set up, as a matter of priority, to combat offences committed by terrorists. The Framework Decision provides that two or more Member States may establish joint investigation teams for a specific purpose and for a limited period to carry out criminal investigations in one or more of the States establishing the team. Member States are required to comply with the Framework Decision by 1 January 2003.

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

The Framework Decision requires Member States to adopt a common definition of terrorist offence as set out in Article 1. It also obliges Member States to criminalise certain actions related to terrorist groups or terrorism, such as directing or participating in the activities of a terrorist group including by funding its activities in any way, as well as inciting, aiding or abetting and attempting to commit a terrorist offence. Member States had to comply with the Framework decision by 31 December 2002. In June 20041 the Commission produced a report analysing national measures taken to comply with the Framework Decision (COM 2004 409 of 8.6.2004).

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

The Framework Decision provides for the execution in any Member State of a judicial decision made in another Member State for the arrest and surrender of a person for the purpose of criminal proceedings or the execution of a custodial sentence. The offences covered by the Framework Decision include terrorism. After 1 January 2004 extradition between Member States will be governed by rules adopted pursuant to the Framework Decision. Member States were required to take the necessary measures to comply with the Framework Decision by 31 December 2003.

1.14. Directive on Insider Trading and Market Manipulation (Market Abuse) (2003/6 of 28 January 2003) (OJ L 96 of 12 April 2003, p. 16 -25)

The Insider Dealing and Market Manipulation (Market Abuse) Directive was adopted by the Council and the Parliament on 3 December 2002. Terrorists may abuse financial markets by financing activities through insider dealing or market manipulation (using clean money in a dirty way) or by laundering 'dirty' money on financial markets through insider dealing and market manipulation. The Market Abuse Directive contributes to strengthen the fight against criminal activities on financial markets.

1.15. Council Decision of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (2003/48/JHA) (OJ L 16 of 22 January 2003, p. 68)

The Decision relates to access and collection of information concerning and resulting from criminal investigations and proceedings with respect to terrorist offences involving any of the persons, groups or entities listed in the Annex to Common Position 2001/931/CFSP with a view to its communication to Europol and Eurojust. The information in question concerns the identity of the person, group or entity, the acts under investigation or prosecution and links with related cases. In cases involving any of the listed persons, groups or entities the Decision also calls for joint investigation teams in appropriate cases, urgent treatment of requests for mutual

legal assistance and recognition and enforcement of judgements in connection with terrorist offences and sharing of information.

1.16. Ratification of international conventions in accordance with UN SC Resolution 1373 (2001)

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

1.17. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. (OJ L 196/45 of 2nd of August 2003)

This Framework Decision introduces the principle of mutual recognition of judicial orders freezing property and evidence. It establishes the rules pursuant to which Member States must recognise and execute such orders issued by the competent judicial authorities of another Member State. It applies to freezing orders issued for the purpose of securing evidence or subsequent confiscation of property. For this purpose terrorism is included among the offences for which no verification of double criminality is required.

ANNEX 3

1. MEASURES UNDERWAY AT EU LEVEL RELEVANT TO THE FIGHT AGAINST TERRORIST FINANCING

1.1. Draft Framework Decision on Confiscation of Crime-related Proceeds, Instrumentalities and Property

The draft Framework Decision attempts to harmonise certain confiscation related provisions in the Member States, notably in connection with "extended confiscation". According to this concept, a Court shall have power in certain circumstances to order confiscation of a convicted person's assets where the Court is fully convinced, inter alia, that the person's assets derive from other criminal activity. The Framework Decision received political agreement in December 2002 but is still subject to Member State scrutiny reserves.

1.2. Draft Framework Decision on the application of the principle of mutual recognition to Confiscation Orders

The purpose of this draft Framework Decision is to facilitate co-operation between Member States in the recognition and execution of orders to confiscate property. It obliges Member States to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters in another Member State. The draft Framework Decision received political agreement in June 2004 but remains subject to a number of scrutiny reserves.

1.3. Control of Large Scale Cash Movements - Proposal for a Regulation of the European Parliament and Council on the prevention of money laundering by means of customs co-operation

On 25 June 2002 the Commission adopted a report together with a proposal for a Regulation to introduce controls on significant cash movements by persons entering or leaving the Community. The proposed Regulation would complement the Community Money Laundering Directives and oblige persons entering or leaving the Community customs territory carrying cash or equivalent instruments with a value of €15.000 or more, to make an appropriate declaration.

1.4. Proposal for a third Money Laundering Directive

The proposal for a third Money Laundering Directive was adopted by the Commission on 30th June 2004. The proposal seeks to ensure a common EU-wide approach to the FATF 40 Recommendations as revised in June 2003. It proposes to extend the scope of the Directive to trust and company service providers, introduces more detailed requirements regarding customer due diligence and identification of the beneficial owner and extends the anti-money laundering preventive mechanism to transactions suspected to be associated with terrorist financing.

1.5. Proposal for a Council Decision on the exchange of information and co-operation concerning terrorist offences

The European Commission adopted a Communication on the fight against terrorism, including financing of terrorism on 29th March 2004[22]. The Communication contains in annex a Proposal for a Council Decision enabling the services involved to have access to the most complete and up-to-date information. The Commission's proposal widens the scope of the exchange of information to all terrorist offences within the meaning of the Framework Decision of 13 June 2002 on combating terrorism. The obligation to exchange information would apply to all terrorist offences or offences relating to a terrorist group known to the Member States, including participation in the activities of a terrorist group through any form of financing. The exchange of information will apply to all stages of proceedings. Europol and Eurojust must be sent information on terrorist offences at all stages of proceedings, including convictions.

1.6. Proposal for a Regulation on payer's information accompanying funds transfers

The European Commission is expected to adopt a proposal for a Regulation on payer's information accompanying funds transfers in the course of October or November 2004. The proposal for a Regulation aims at transposing Special Recommendation VII into Community law. It lays down rules on payer's information accompanying funds transfers, in order to ensure that basic information is immediately available to the authorities responsible for combating terrorism, to assist them in their task. These rules result in a number of obligations applicable to all payment service providers involved in the payment chain. The payer's payment service provider must ensure that funds transfers contain complete, accurate and meaningful payer's information. Any intermediary payment service provider must ensure that all payers' information that accompanies a transfer is retained with the transfer or that appropriate records are kept. The payee's payment service provider must have effective risk-based procedures in order to identify funds transfers lacking complete payer's information and, as appropriate, report suspicious transactions to the authorities responsible for combating terrorism.

1.7. Draft Directive on a New Legal Framework for Payments in the Internal Market

The Commission is working on the above draft proposal which will ensure the harmonised implementation of Special Recommendation VI of the Financial Action Task Force into Community law and thereby guarantee a level playing field for all providers. The planned regulatory regime for money remitters will not only foresee registration of the transmitter by the introduction of a special licence of a payment service provider but will also take into account the specific risk profile of these providers by the establishment of tailor-made supervisory requirements.

---

22 COM(2004)221